LEGISLATIVE COUNCIL

Wednesday 11 April 1984

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

PERSONAL EXPLANATION: DIVING SAFETY

The Hon. R.J. RITSON: I seek leave to make a personal explanation.

Leave granted.

The Hon. R.J. RITSON: For more than a year now I have asked questions in this Council and made statements in the press concerning diving safety in South Australia. My principal concern has been that, even when divers are highly skilled and take the greatest possible care, accidents such as air embolism have occurred. Such accidents are serious and life-threatening, and require adequate recompression as a matter of urgency.

The point that I have constantly raised is that there is no reliable facility to recompress injured divers on arrival at hospital and no facility at all for retrieving and transferring under pressure such injured divers. It is the expressed opinion of the Commanding Officer of the School of Underwater Medicine at HMAS *Penguin* in Sydney that there should be recompression facilities available when diving takes place deeper than 100 feet. I have had discussions with the Minister of Health, who has been most receptive, and the question of hospital-based facilities will be considered by his department in due course. The question of transportable facilities for transfer under pressure or for 'on site' safety is a question that each department in turn feels should be the responsibility of another department.

In relation to the police operation in the South-East last weekend, I made a statement in a radio interview that the police were admirable and courageous in diving under these conditions, but that without recompression facilities they were at a risk that would not be there if facilities existed. I am sure that the police divers are skilled and disciplined and perform exceedingly well under challenging and hazardous conditions. However, the fact remains that they were called on to dive to approximately 200 feet using compressed air, and a dive of such depth is beyond the safe limits of compressed air as understood by almost everyone else and as evidenced by the advice reported to be contained on the back of the permit that divers must obtain for diving in that region. I have no criticism of the police skills and the police devotion to duty, but I made what I thought was a legitimate criticism of the lack of recompression facilities in terms of the transportable chambers and 'on site' safety, which is not the fault of the policemen, but merely the fact that perhaps the Government is reluctant to look very closely at the matter apart from the action taken by the Minister of Health.

This morning in another place statements were made and a document tabled which contained the most outrageous, ignorant, untrue, scurrilous and dirty allegations that I have heard in my life. Members know that within departments officers of the Public Service write memos, pass them to other officers and then pass them to Ministers. So, I am not going to direct my feelings towards the person who wrote this memo, but towards the Minister who must have gleefully thought that he could rush into Parliament with it and embarrass me. The memo, signed by the Commissioner of Police, amongst other things, states:

> I am advised that Dr Ritson and Dr Swain, who have raised the doubts surrounding this operation, have an interest in the Adelaide Diving Medical Centre and I understand are seeking Government funds to further the interests of that body.

On reading that statement the average citizen would think that I had some financial interest and was seeking Government funds to create some profit to myself. The only connection I have with the Adelaide Diving Medical Centre is that the medical officer who runs it and who, as a part-time service, treats diving casualties in the privately owned compression chamber came to me as a member of Parliament—because I am the one member in this Parliament with the technical background which qualifies me to understand the problem—asking me to pursue a lobby. The lobby was that this man be relieved of the responsibility of operating this decompression chamber and that the Government, through the hospital, acquire the chamber (which the doctor does not own) and run it, thereby depriving him of income which might have been made from treating divers. This doctor wants the Government to take that chamber over. He wants to be shot of the responsibility of wondering, when he goes on holidays, whether or not there will be anyone to operate the chamber if there is a casualty during that time—a sort of life and death lottery. This has been interpreted as my having an interest and as Dr Swain seeking Government funds to further the interests of his practice.

I can understand a hastily prepared intradepartmental memo based on hearsay flying around a department, but I cannot understand a responsible Minister making no inquiries and bringing that libel—albeit, I trust, accidental libel—into the House of Assembly. What makes it worse is that on 13 December I wrote the Minister a four page letter concerning these implications. I even enclosed a quotation from diving medical officers of the Royal Australian Navy. To date the Minister has not replied to my letter. I asked for an answer through the Hon. Mr Sumner last week. The Minister concerned has not contacted me at all. He has fished around and brought up a dirty little defamatory statement, and tabled it in another place, probably thinking smugly that he has played a bit of politics this morning.

I have explained my actions. I will continue to explain them to any member of the media who wants to talk to me at length. I challenge the Hon. Mr Wright to leave his comfortable seat in the House of Assembly and meet me outside these doors with the media present and get the matter straight. I doubt whether he will. He has demonstrated the gutter-snipe type behaviour that can only come—

The PRESIDENT: Order!

The Hon. R.J. RITSON: —from a man of poor intellect with gutter origins. I challenge him to come down here now.

PLANNING ACT AMENDMENT BILL

In Committee.

(Continued from 4 April. Page 3174.)

Clauses 2 to 6 passed.

Clause 7—'Saving provision.'

The Hon. I. GILFILLAN: I move:

> Page 3, lines 21 and 22—Leave out paragraph *(a)* and insert the following paragraph:
>
> '*(a)* by inserting in subsection (1) after the passage "any other provision of this Act," the passage "but subject to subsection (3),".'
>
> Insert after the expression 'and (7)' in line 24 the following: 'and substituting the following subsection—
>
> (3) Subsection (1) *(a)* shall not apply to a provision of the Development Plan as it relates to the clearing of native vegetation.'

I move this amendment in an attempt to deal with what I believe is the major imminent risk from the failure of Parliament to pass the full scope of this legislation una-

mended in the immediate future. I explain that by saying that the Democrats have been under enormous pressure from both major Parties to consider quite dramatic legislation, both in the original Bill and in amendments which have been discussed with us from the Opposition.

The facts of the matter in human logistic terms are that there has been absolutely no opportunity for the Democrats to consider the ramifications of the Bill as it is before us unamended. There is in that remark no indication that we have either specific opposition or support for the Bill as it is currently before us complete. Certainly, the volume of lobbying from highly reputable groups and individuals arguing both ways—both for the rejection of the Bill and for its support—has been so substantial, so sincere and so profound that we would be neglecting our responsibilities as elected representatives of the people of South Australia if we were to just glibly pass or defeat this Bill today.

I have done my best—and I know that I have some shortcomings as a communicator—to impart to the Minister for Environment and Planning (Hon. D.J. Hopgood) that the worry which is certainly uppermost in my mind (and I believe in his mind, in the short fall) is that the risk to native vegetation is extreme if the Ward appeal is not upheld and if there is open season on the destruction of native vegetation before any other legislative measure can be put into place.

That seems to us to be by far the most serious environmental threat facing South Australia. With a lot of sympathy for that, the Democrats indicated that we would support whatever measures were needed to ensure that those regulations would continue to be effective. However, quite abruptly in the time span in which we are able to handle legislation and give it proper attention, this measure has been introduced. As an indication of some of the uncertainty in other people's minds, Mr Rob Fowler, from the Faculty of Law—in fact, a specialist in environmental law—has been good enough to discuss these matters with us. His position is widely known to all members of this place who have paid attention to this matter. He has in fact changed his mind about whether or not this Bill is appropriate. How can we, who have had virtually no chance to look at the contents of the Bill, let alone assess its ramifications, be asked to stand here today and make a decision on whether this Bill stands or falls? It is quite unfair and unreasonable of the Government to push us to the point where we will have to say 'Yes' or 'No' today to legislation, the consequences of which we do not understand.

The Hon. Diana Laidlaw: Do you think they understand?

The Hon. I. GILFILLAN: I am not sure that anybody does, and that goes for both sides. There may be good reasons to pass the Bill. I need time to consider and hear the opinions of those whose judgment I trust, including Government and Opposition members. If we are to be denied that right, we are put in an extraordinarily invidious position. This amendment is an attempt, with precious little help, to get into the Bill a provision which would hold for the time being the wider consequences that were the intention of the Minister in the original Bill, but specifically point to the immediate threat of the invalidation of the native vegetation clearance regulations. I have asked all members on both sides to consider the amendment.

Unfortunately, it does not look very optimistic, if I am to gauge the verbal communications I have had to date. I would like to have been able to say that the amendment, if successful, would be a holding operation to prevent the wholesale destruction of native vegetation, which I believe will be the consequence of any hiatus in controls because of the climate that has been built up for all sorts of reasons—partly Government deficiency and partly emotive over-reaction from the rural community. For whatever reason, it is there and is a serious situation confronting South Australia. This amendment is our attempt to control the situation whilst at the same time fulfilling the responsibility for which we are elected and paid. I feel most horrified and reluctant to even contemplate being pushed to the point of this dilemma.

If the amendment is lost, the question arises of the Bill being passed or negatived today, and it cannot be revived before the next session. If the Ward judgment is not upheld, the consequence to native vegetation is great, and it is unfair of the Government to put us in this position. We have worked diligently and hard on matters before us with a heavy work load. I make it plain that, if the Government pursues this pressure, it is not only inconsiderate but also irresponsible. I thoroughly reject this procedure because it does not give a fair go to democracy and participation in this place.

It is not with much enthusiasm or good cheer that I support this amendment, because I believe that it will be defeated. If it is to be defeated, it is my intention to move (as I have notified all concerned) for an adjournment for a fortnight which would cover the Easter break and which would enable us to do what we do so diligently, namely, to organise a conference so that we can then know what we are talking about and on what we are voting.

I gather, again from private verbal communication, that the Government has decided that it is not prepared to allow us tolerance and understanding in dealing with this matter. I believe that that is a most unacceptable and irresponsible way of dealing with legislation. It may be that I am assuming presumptuously that my words are having the desired effect and that favourable consideration may be given to an adjournment. I cannot, for the life of me, see what would be lost if there were an adjournment for a fortnight. There is no hope of the Supreme Court handing down a judgment before that time. The benefits of getting this legislation dealt with responsibility so much outweigh the panic of getting this Bill through this afternoon because the Minister has to leave (and we have given consideration to that by reversing our procedures)—

The Hon. J.R. Cornwall: That has nothing to do with it.

The Hon. I. GILFILLAN: It seems to have some pressure put on it—

The Hon. J.R. Cornwall: It ill becomes the honourable member to distort matters like that.

The Hon. I. GILFILLAN: I am sure that if the Minister is prepared to consider the consequences of the plan he has outlined to me detailing what is apparently the Government's intention, I plead with him and members on both sides to reconsider this matter so that my reasonable request for a fortnight's adjournment is allowed.

It seems that, once again, it is my responsibility to look a stage further. I would dearly like to hear that there has been consideration given to our plea for a fortnight's adjournment, in which case I would congratulate the Government for its consideration of our plight. However, if it remains steadfastly against that measure and we are forced to a vote, we will be forced, with great reluctance, to vote against the Bill. Loyalty to the integrity and behaviour of this place is higher than the so-called or anticipated consequences of what might happen, with which we are being threatened. We react very strongly against that. This is an incredibly uncomfortable position to be in. However, if we get to that position we will make every effort to introduce some sort of legislation, even if it means putting a moratorium on clearing of all scrubland, because we are totally devoted to that cause. I plead with the Government to give us time to consider this Bill because nothing will be lost by that and a lot will be gained.

The Hon. J.R. CORNWALL: Occasionally, there comes a time in the affairs of Government when matters of such moment arise that it is necessary to assert the role of Government and to take the action necessary to protect citizens of the State. This is just such an occasion. The urgency of this matter has nothing whatsoever to do with the fact that I am leaving later this evening to attend the annual Health Ministers' conference in Melbourne. It would quite certainly be well within the ability of my colleague, the Minister of Agriculture, and most certainly equally within the competence of the Attorney-General—

The Hon. M.B. Cameron: Will he be doing—

The CHAIRMAN: Order!

The Hon. J.R. CORNWALL: —to handle this matter. It is one of extreme urgency and great gravity, but it is a matter of such simplicity that it certainly does not require either the outstanding abilities of the Attorney-General or of the Minister of Agriculture to handle it. So let us put aside this nonsense that this Bill is being rushed through in indecent haste because I have to consult with my colleagues interstate. The fact is that we put this matter off from last week at the request of the Democrats and others.

The Democrats have been apprised at all time as to the extreme importance that we place on this matter. The repeal of section 56 (1) *(a)* was recommended in a report by the Planning Act Review Committee, which was available for all the world to see as long ago as November last year. The difficulties with section 56 (1) *(a)* of the Act, put through and proclaimed by the previous Government, is that there is at best grave doubt as to whether it protects not only vegetation but also all other planning areas involving the definition of 'existing use'.

It is a matter not just for conservationists and the conservation of the remaining vegetation in this State; it is a matter of grave importance to every person who lives in an urban situation. Last night I cited some of the cases that have already been successfully appealed by people to the Planning Appeals Tribunal, and I refer to *Gein v Woodville* (involving a carport) and *Gama v. East Torrens* (involving major extensions and upgrading of an existing slaughterhouse at Summertown). The latter case involved what might be termed not the most salubrious sort of activity to have expanded by up to 50 per cent, if one happens to live in the immediate vicinity. It was held by the Planning Appeal Tribunal, under section 56 (1) *(a)*, that it did not require planning approval. In the matter of *Pyrgiotis v. the City of Woodville* (involving the erection of a garage on a side boundary of an existing house), it was held that the proposal did not require planning approval. The first matter to come up in the District Court in relation to vegetation clearance was *Dorrestijn v. South Australian Planning Commission.* That matter is now before the Supreme Court.

It is not true to say, as the Hon. Mr Gilfillan suggested, that there is no chance at all that the Supreme Court will deliver a verdict within the next two weeks. There is every chance that that will occur: there is a clear likelihood that the Supreme Court will deliver a judgment before that two weeks is up. The consequences of that, if section 56 (1) *(a)* is not repealed, will be quite horrendous, not only in relation to vegetation clearance but for all of the urban aspects that I have outlined. They go across the board, including industry through to commerce, from tanneries through to slaughterhouses and factories, with all the noise, nuisance, disturbance, and possible threats to public health that that implies.

The Government is not prepared to wait. The Government is not prepared to accept an amendment that covers only vegetation clearance, important though that is. The Government insists that section 56 (1) *(a)* must be repealed forthwith. The Council has waited a week, and we have given the Hon. Mr Gilfillan and other members every chance to consider the matter. If this Bill is lost, it is quite correct to say that the consequences may be horrendous. The bulldozers may be out. However, on the other hand, if the Supreme Court delivers an unfavourable verdict for the Government and the people of South Australia, before the expiry of that two-week period, the consequences from a vegetation clearance point of view will be just as horrendous, and we will not put that at risk. If this Bill is lost, there will be only one reason, and that will be because the Democrats, the Hon. Mr Gilfillan and the Hon. Mr Milne, vote against it. They and they alone must carry the odium for their actions.

The Hon. I. Gilfillan: You can't lose a Bill—

The Hon. J.R. CORNWALL: We will not lose the amendment unless the Democrats vote against it, and we will not lose the Bill unless the Democrats vote against it.

The Hon. Diana Laidlaw: Their vote would not mean a thing if we were not voting the same way.

The Hon. J.R. CORNWALL: Indeed, but we understand your position: you are prepared to put at risk all of the urban situation so that in a bloody minded way you can make it possible for vegetation clearance to continue; we know that. The Opposition is looking after a small and not particularly responsible rural constituency. The fact is that negotiations have been going on with the United Farmers and Stockowners at some length and quite productively with regard to hardship provisions. The Minister and his officers have been talking to members of the United Farmers and Stockowners regarding some sensible hardship provisions that the Government may well be able to put into place in the event that section 56 (1) *(a)* is repealed. We are doing everything we can for those members of the farming community who have been caught up in the vegetation clearance controls.

We are not prepared, of course, to talk about total compensation. I understand that the Opposition explored with the United Farmers and Stockowners at some length and in some detail the possibility of compensation. It was not able in the event even to draft an amendment that would have adequately covered it, but, just as importantly, no responsible Government could have contemplated accepting it because of the tremendous financial implications that would have been involved. It may well have involved many hundreds of millions of dollars, and any question of compensation—

The Hon. M.B. Cameron: That is nonsense!

The Hon. J.R. CORNWALL: I will tell the Hon. Mr Cameron, who sits giggling in his place as usual, that on the question of relocation under the planning provisions I recently had a deputation see me about relocating a nuisance industry from the electorate of Albert Park. I had full investigations undertaken as to the cost of relocating that industry, and it was very considerable. Then, as part of the exercise, I also looked at the potential for the number of nuisance industries under existing use that we might possibly have to take on board if we set that precedent. I can assure the Hon. Mr Cameron—and the sums have been done for me and are within my knowledge so that he should not caw and cackle from heights of ignorance—that the figure that was prepared for me by highly competent professional officers was $300 million to $400 million in the metropolitan area.

The Hon. M.B. Cameron: Will you table it?

The Hon. J.R. CORNWALL: I would be prepared to produce the evidence. The deputation was brought in by the member for Albert Park, Kevin Hamilton. It is purely from memory, but I think that the amount involved in relocating just one industry to Wingfield would have been about $500 000, and the precedent that that would have set would have been horrendous. It is beyond dispute that,

once one sets precedents in these planning provisions for outright compensation, one is getting into water so deep that it would distort the entire State Budget.

For that reason, ultimately the Opposition did not go on with its amendment. It is impossible to draw up an amendment, as the Hon. Mr Cameron has discovered, that would be responsible in the financial sense, so the Opposition elected not to go on with it. I come back again and finally, at least in this contribution, to the nub of the matter, which is that we are asking all members in this place today to exercise the responsibility that the electors would expect of them to ensure that the remaining vegetation in this State on farm and grazing properties is preserved under the existing regulations: not only that, but we are also asking the Council to ensure as a matter of grave urgency that the 'existing use' provisions of this legislation that have been found to be faulty, are not allowed to persist to the detriment of a wide range of urban environment.

The Hon. M.B. CAMERON: The Opposition opposes this amendment, which is selective and which takes out one area of so-called development. I want to say a few words about what the Minister said about the Opposition view on vegetation clearance. At no stage has the Opposition indicated that it wishes all native vegetation in this State to be cleared: let us be absolutely clear about this. Let us be absolutely clear also that the Government has caused the existing problems because it stepped in and tried, as I said in my second reading explanation, to avoid Parliament and the normal procedures by bringing in regulations. Because of that there has been enormous clearing of land in the State that would not have taken place without those regulations. It is the second time that a Labor Government has been irresponsible in this matter.

The first time was in the 1970s, when the Labor Government indicated that it would stop all clearing of land through taking that ability off the titles. When that happened the amount of land cleared in the next 12 months was horrific because of the threat of the Government to stop all clearing. Now it has done it again, because it has failed to have proper consultation with the body. The Minister has said that it would cost hundreds of millions of dollars: that is nonsense! There is already an Act providing for compensation for the prevention of clearing of native vegetation in Western Australia. I understand that the total cost to that State is $35 million, and that is for three years or maybe longer. That scheme is too generous because it goes into areas that I do not consider would be necessary to go into if some sort of procedure were laid down.

All that farmers would want is compensation for the areas that would be suitable for development. Even in our policy we have indicated that large areas should be kept without compensation. I offer to the Government that, if it wants to discuss this matter and bring forward a Bill that will protect native vegetation, we certainly would co-operate, but that Bill would have to provide for compensation for farmers who are required to put aside an area for a national park, because that is really what it is. We are not irresponsible about this matter: that is a genuine position that we hold. I will show the Minister our policy if he likes and he will have to admit that it is responsible, but to infer that we would support the total clearing of native vegetation in this State is wrong. The Minister is trying to cover up for a stupid error on the part of this Government which is rushing into this matter without giving it enough thought.

In relation to the effect on the rest of the State, section 56 (1) *(a)* really takes away a basic property right, despite the fact that that section was included in the Act to protect people's property rights. To take this section away is another indication that this Government does not care about people's rights. The Opposition does care and on that basis, as well as others, rejects the concept of this Bill.

The Hon. J.R. CORNWALL: I cannot let the occasion pass without responding to at least three false propositions put by the Leader of the Opposition. It is on record in *Hansard* and should be made clear that when the Hon. Mr Burdett was handling the new legislation in this place he said that the powers under section 56 (1) *(a)* were 'clearly intended' to apply to vegetation clearance controls. That is on record and quite obviously was the intent of the Liberal Government of the day. Of course, that was supported by the then Opposition, now the Government. Let us have no doubt about what the Cabinet of the day intended, even if the back-bench did not quite understand what it was all about.

The Hon. Mr Cameron also talked about this Government rushing in, without consultation, to apply the regulations to stop vegetation clearance. He said that it was the second time in a decade that this had happened—that it happened back in the 1970s. Of course, the mistake that was made in the 1970s—

The Hon. Anne Levy: That was consultation.

The Hon. J.R. CORNWALL: As the Hon. Anne Levy points out, we tried to have consultations with a group of people whom we regarded as being reasonable. That showed a very severe lack of judgment at the time. At that stage no controls were readily available, and we were trying to evolve controls with all members of the farming community, but a significant number of less responsible members of that community got into wholesale clearance. The same sorts of tired old arguments were put up at the time. I remember them well: 'The Government is interfering with our property rights,' and, 'We should be allowed to chop down a tree whenever we feel like it.' All these simple, emotional, and irrational arguments were put forward at that time. If one looks at the maps of clearance that has occurred in the State since the end of the Second World War one can see that it has gone well past the stage of responsible exploitation of South Australian arable and grazing lands generally and perhaps reached, some time ago, a stage of potential despoilation.

Faced with that position the new Government in 1983 received from the Minister for Environment and Planning a proposition that had been prepared for and submitted to him by senior officers in his Department. The strategy was to use the new Planning Act and to stay well within the spirit and intent of that Act, which had passed through both Houses of Parliament and, as I said, handled in this Chamber by the then Minister for Community Welfare (Hon. Mr Burdett), representing the Minister for Environment and Planning. The spirit and intent of that new Act was to enable any responsible Government to do precisely what was proposed to the Bannon Cabinet last year. As a responsible Cabinet, we were faced with two propositions—first, to attempt to go through these processes of consultation, on which the Dunstan Government embarked a decade earlier, and to suffer in the circumstances the rash of clearance that followed because there were no controls in place or, secondly, to act virtually overnight with the element of surprise being an integral part of the strategy.

The proposal before us was to act overnight to impose vegetation clearance controls immediately. That was done. Following the report of the Planning Act Review Committee and various adverse judgments from the Planning Appeal Tribunal, it is now obvious that section 56 (1) *(a)* is at best faulty and, of course, depending on the outcome of the appeal before the Supreme Court, may prove to be entirely defective. In the event that that is the judgment of the court and we as a Parliament have acted in a most irresponsible way to leave the section intact, the rash of vegetation clear-

ance that may flow from that court decision will not be something that any responsible or caring person wants to see happen. The same end result may occur if this Bill is lost through the combined actions of the Liberal Opposition and the Democrats. So, we are faced with grave and serious decisions.

The Hon. Mr Gilfillan says, 'Let us put it off for a couple of weeks and sit down and talk about it.' Not only has that option been considered and discussed with the Minister for Environment and Planning but also I have personally held discussions on this matter with the Premier. We have endeavoured to consider within that strategy a full range of possibilities that would protect not only the remaining vegetation of South Australia but, as I said before and repeat, the urban environment. The only strategy available to us which would be foolproof and watertight within the law, and the only responsible way at the end of the day in which the Legislative Council can act, is to support clause 7 as it exists.

The third point that the Hon. Mr Cameron raised concerned the Government's trying to take away peoples' property rights. The Hon. Mr Griffin said during his contribution yesterday that this was a pernicious attempt to remove property rights. That is an extreme position, and I believe that in 1984 it is an extraordinary position. Responsible Governments and communities around the world have accepted planning controls for a long time. Civilised people generally agree that there should be sets of rules by which we live to enable us to enhance, to a reasonable degree, our quality of life. I do not want to stray too far from the Bill and give lectures on how we organise human services accordingly, but, we do. All civilised caring societies organise their human services, but they also organise environment and planning rules and regulations which are fair and reasonable. Within that sort of organisation, one does not have the right to deal with one's property in any old way one sees fit. One does not have the unfettered right to annoy one's neighbour in any way that one sees fit.

One does not have the right, nor should one have the right, to interfere with the reasonable amenity of other people who live in one's community, neighbourhood or who live within an area that would be affected by one's decisions to extend so-called existing rights in any old way that one sees fit. So, it is nonsense to say that this Bill is designed in any way to take away people's property rights. It is designed to protect, in both the urban environment and the rural environment, the rights of the people of South Australia to enjoy what exists and to have it protected in a responsible way—no more, no less.

The Hon. I. GILFILLAN: Much of what the Hon. Dr Cornwall said has our unanimous support, and it is nice to hear these words of vision and wisdom. However, I do not really believe that that is appropriate to the issue to which I have devoted most of the emotion of my contribution in this part of the debate. Some time earlier, I made plain in this place and elsewhere that the Democrats espoused the cause of environmental responsibility probably as strongly as, if not more strongly than, any political entity in South Australia.

The Hon. Barbara Wiese: You don't act on it very often.

The Hon. I. GILFILLAN: If we cannot act within the processes of reasonable democracy, it is very difficult to let that show in this place. I remind the Minister who has just complained about no-one having unfettered rights to certain privileges, and so on, and having them taken away as some sort of denial of democratic justice. I believe it is reasonable to say the same about our being denied the opportunity of a favourably considered request for adjournment.

The Hon. J.R. Cornwall: I explained why that was completely unreasonable. You have had it explained to you both privately and publicly on several occasions, and you are not so dim-witted that you cannot absorb—

The CHAIRMAN: Order!

The Hon. I. GILFILLAN: Having absorbed it, I remain unpersuaded. Obviously, it is an issue of massive significance; otherwise, the Government would not have put so much emphasis on and effort into getting it to this stage. I am sorry that the Government appears so far down the track in a commitment that it is immune and invulnerable to what I believe is a reasonable and human plea for time to do our job properly. I heard with appreciation that there is now with the UF & S, thanks to Mr Tauber, some material which is looking at the response to the question of hardship.

We might not have been looking at this Bill but we were looking, with a real concern, at the issue of native vegetation well before most people in this State did so. In my earliest public statement I said that the question of hardship must be looked at. It is because the Minister has shown a continuing readiness to listen, discuss and talk with the tolerance that I have been able to have so much influence. He came to Kangaroo Island at my behest. He acknowledged publicly there that he came out of his respect for me. How come that respect now has denied me enough time to consider this step? What is the reason for the reversal in the Minister's attitude? Am I no longer needed? The point is that I recognised a long time ago that co-operation between the farming community, the Government and the people in the city is essential if there is to be a happy resolution of this matter. It will not be achieved by bulldozing, pushing and hammering measures through Parliament—no more than it will be achieved if irresponsible and reckless people on the land take their bulldozers and go out and flaunt the law.

Where is the climate that will create this co-operation? It will not be engendered by a refusal of what is by any standards a reasonable request. It is not a debate on the pros and cons of the Bill. If I could be reckless enough to anticipate that in a fornight's time it is more likely that we would come down in support of the Bill rather than being opposed to it (although there may be some minor amendments). However, I do not want to prejudge the situation. It is most unfortunate that the Government is pushing us, without any option, into a course of action which we deplore.

I should also like to refer to some comments that have been made. To try to extend the urgency beyond the native vegetation question does not carry very much weight with me. I have seen a list of actions involved: two carports, one slaughter-house and the Dorrestijn case, which really is the meat of the issue. That is where the pressure is and that is why we have made our effort with this amendment. Obviously, as I have predicted the amendment will not gain support, but why will not the adjournment request get support? I hope that it is not obstinance. I wish that the Government had not painted itself into a corner to the extent that it cannot show the consideration to which I think we are entitled when making this request in a democratic institution and as democratically elected members of it.

We have rejected any opportunity or inclination to do bargains over the legislation, the quid pro quo. That is not the way that we believe we should approach it, so I believe that, as best we can, we have behaved with the best principles and the best aim in mind. I would reverse the onus of responsibility which I believe has been inaccurately loaded on us by the Minister. If this Bill is defeated—

The Hon. J.R. Cornwall: Where is the balance of reason now?

The Hon. I. GILFILLAN: Give us time to exercise the balance of reason. Is a fortnight too long for the balance of reason to be expressed?

The Hon. J.R. Cornwall: It is too long. I explained that slowly and at length. I will do so again in a moment.

The CHAIRMAN: Fine, do it in a moment.

The Hon. I. GILFILLAN: I do not want to continue any further at length, except to say that I always at least hope that people who are elected to Parliament in South Australia will not close themselves off from options and will be big enough to say, 'Yes, we will change our minds.' I plead with the Government: it is not surrendering any of its status or public image but it would involve a sympathetic and understanding reaction to a request from two members representing a group which wants to take this matter seriously and consider the many representations that we have received from around the spectrum, including the Environmental Law Association, conservation groups—there are a host of them and I will not go through the list—and the Local Government Association. Many people who are involved want to discuss this matter. We will apply ourselves, as we do, diligently to the business ahead of us.

We have not been able to consider this matter fully because of the pressure of other business which the Government has demanded that we attend to post haste. I plead with the Government once more, realising that the amendment may be a lost cause in this situation—that it does favour the steps that I will try to take for an adjournment.

The Hon. J.R. CORNWALL: I will go through our position once more, slowly, so that the Hon. Mr Gilfillan can never pretend again that he does not understand.

The Hon. I. Gilfillan: I am not pretending—I understand.

The Hon. J.R. CORNWALL: The honourable member may be not the brightest member in Parliament, but he is far from dense. He understands very well the importance of this Bill. My advice is that I should assume my normal character and be gentle because of the extreme importance of this matter. I could say in other circumstances that the parsimony and sanctimony effected by the Hon. Mr Gilfillan does him little credit because it is at best an affectation. The honourable member knows the importance of the Bill, and the consequences of our not passing the Bill today. I have just had a note put in front of me which would be of considerable interest to the Democrats. The note says that the Crown Solicitor advises that the earliest there could be a decision (this is on the balance of probabilities in respect of a decision from the court) is early next week. So, we are not in a position to allow an additional two weeks. The Hon. Mr. Gilfillan thinks about it.

The deficiencies of this section and subsection have been known, have been public knowledge and have been matters of considerable moment for the Hon. Mr Gilfillan, in particular, since early September last year. We have not sprung something on him all of a sudden.

The Hon. I. Gilfillan: Did you have this Bill drafted last year?

The Hon. J.R. CORNWALL: The repeal of section 56 (1) *(a)* is a simple proposition. I said right at the outset, and will say again, that it is a simple proposition. The Hon. Mr Gilfillan understands it with great clarity, as does every other member of this Council. The question of whether it was drafted in September, November or three weeks ago—

The Hon. K.L. Milne: But the emphasis of scrub clearance now creates all sorts of other problems which did not arise then.

The Hon. J.R. CORNWALL: But, the honourable member's colleague, the Hon. Mr Gilfillan—Mr Sanctimony—tells us that to extend this—to point out the extraordinary importance of the judgments that have subsequently been made—whether they apply to carports or slaughterhouses, they do apply to the planning process in urban areas right across the board. The fact that there has not been a rash of extensions of existing use does not affect the principle involved, namely, that under the existing section 56 (1) *(a)* that can happen. The Planning Appeal Tribunal made that clear.

I return to the point of appeal. If the court finds against the Government and the people of South Australia, there will be no protection. There will be no protection for the urban situation, regardless of whether or not this Council accepts the Democrats' amendment. I cannot make that point too often. The Democrats are putting us in an untenable position. They say that they have the balance of power or, as the Hon. Mr Milne likes to characterise it, the balance of reason, and that therefore we will do as they say. The two Democrats sitting in this Council will decide the fate of this Bill and the future of this extremely important aspect of the planning process in South Australia.

If we accept the Hon. Mr Gilfillan's amendment, the rest of the development process, as it applies to development industrially, commercially, residentially, and recreationally right throughout the urban system and right through metropolitan Adelaide, as well as in every provincial city, town and township in South Australia, will remain vulnerable. That is the effect of the Gilfillan amendment. That is why the Government cannot and will not take the risk. The amendment is unacceptable for that very simple but extraordinarily important reason.

I am sure at this point that even the Hon. Mr Gilfillan and the Hon. Mr Milne understand. The stark reality is that the Gilfillan amendment, with or without the Supreme Court judgment but presuming on top of it that we obtain an adverse judgment, means that we will all sit around on our hands as legislators while the urban environment is raped by what applies under section 56 (1) *(a)*. Let us be clear about what the amendment does. It is putting in jeopardy the entire planning process as it applies to so-called extensions of existing use in the urban environment. Be it upon the Democrats heads if they do it, as the matter is now very clear to them.

The alternative will ultimately be to vote against clause 7. The consequences of that action, in the face of an adverse decision by the court, would be that the Democrats would not only be jeopardising the entire urban environment (and I want to be clear about those consequences) and the corner stone of the planning process as it applies to the urban, industrial, commercial, residential and recreational environment but would also be placing in immediate jeopardy the remaining vegetation on existing farming and grazing lands throughout the State of South Australia.

So, I ask honourable members to be very mindful of what they do. The Democrats are now very clear in their own minds as I have laid out and exposed the consequences in very simple form. I have laid it out in a monosyllabic way—in a way that the Hons Mr Gilfillan and Mr Milne, along with every other member opposite, can understand. The Government cannot and will not accept the amendment. The Government will not accept any interference to clause 7 of the Bill because the matters at stake are of such fundamental and grave importance to the urban and rural environment of South Australia, as well as to all good citizens who live in this State.

The Hon. I. GILFILLAN: I make the observation that land clearing is currently restrained in South Australia because of an injunction, and the proper and anticipated course of the Government, if it loses the appeal, would be to appeal to the High Court, in which case there would be the opportunity for an injunction to be sought and almost certainly granted. The Minister has painted the picture in very dramatic colours. That is his characteristic style of communication and, after 18 months, I am conditioned to it. I hope that other members in this place will realise the real issue, namely, whether we can have the time for which

we ask and need to consider the Bill. That is what I am seeking eventually with the adjournment, which I cannot debate at length. I hope that the Committee will be in favour.

The Committee divided on the amendments:

Ayes (3)—The Hons R.C. DeGaris, I. Gilfillan (teller), and K.L. Milne.

Noes (16)—The Hons Frank Blevins, G.L. Bruce, J.C. Burdett, M.B. Cameron, B.A. Chatterton, J.R. Cornwall (teller), C.W. Creedon, L.H. Davis, Peter Dunn, C.M. Hill, Diana Laidlaw, Anne Levy, R.I. Lucas, R.J. Ritson, C.J. Sumner, and Barbara Wiese.

Pair—Aye—The Hon. K.T. Griffin. No—The Hon. M.S. Feleppa.

Majority of 13 for the Noes.

Amendments thus negatived.

The Hon. I. GILFILLAN: I move:

That progress be reported.

The Committee divided on the motion:

Ayes (3)—The Hons R.C. DeGaris, I. Gilfillan (teller), and K.L. Milne.

Noes (16)—The Hons Frank Blevins, G.L. Bruce, J.C. Burdett, M.B. Cameron, B.A. Chatterton, J.R. Cornwall (teller), C.W. Creedon, L.H. Davis, Peter Dunn, C.M. Hill, Diana Laidlaw, Anne Levy, R.I. Lucas, R.J. Ritson, C.J. Sumner, and Barbara Wiese.

Pair—Aye—The Hon. K.T. Griffin. No—The Hon. M.S. Feleppa.

Majority of 13 for the Noes.

Motion thus negatived.

Clause passed.

Title passed.

Bill reported without amendment. Committee's report adopted.

SITTINGS AND BUSINESS

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

That the members of this Council appointed to the Joint House Committee have permission to sit on that Committee during the sitting of the Council this day.

Motion carried.

QUESTIONS

ELDERS INVESTIGATION

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

Leave granted.

The Hon. K.T. GRIFFIN: I seek from the Attorney-General an up-to-date report on the progress of the investigations that he indicated to the Council over 12 months ago were being pursued in conjunction with the New South Wales Corporate Affairs Commission and the National Companies and Securities Commission. As a result of the investigator's report (the Von Doussa Report) action has been taken against Mr Owens. I certainly do not want to canvass that, because the matter is *sub judice.* When I last asked a question about the Elders matter, the Attorney-General said at that stage he was not in a position to indicate whether any final decisions had been taken about prosecutions or decisions not to prosecute any other person or body within South Australia or interstate.

I am certainly not pressing for any prosecutions to be instituted, but I think that, as the matter has now been rolling on for some three years (and it is over a year since the Von Doussa Report was tabled), it is appropriate to have some indication as to whether or not the Government has taken any decisions as to whether or not there will be any further prosecutions. I think that those who may be under a cloud have a right to know, at some time in the not too distant future, whether or not the Government has taken any decisions as to whether or not further prosecutions will be launched.

In that context and, again, without wanting to do anything more than clarify the position, I ask the Attorney-General whether he will indicate the current position in relation to the investigations consequent upon the tabling of the Von Doussa Report, other than in respect of the Owens matter. When is the Attorney likely to be in a position to make a final decision as to whether or not persons or bodies presently under a cloud might be relieved of that burden by having a positive decision from the Government as to whether or not action is to be taken against them?

The Hon. C.J. SUMNER: Obviously this is not a matter specifically for the Government: the matter rests with the Corporate Affairs Commission. A prosecution has been instituted in one case. There are still decisions to be taken in relation to some of the other individuals involved, one way or the other.

The Hon. K.T. Griffin: Individuals or bodies corporate?

The Hon. C.J. SUMNER: Anyone who was involved, including bodies corporate. I am not in a position to say whether further action will be taken against any other individuals or companies, but I will see whether the Commissioner of Corporate Affairs has anything further to add.

HOSPITAL MAINTENANCE PROGRAMMES

The Hon. L.H. DAVIS: My question is directed to the Minister of Health. Has the Health Commission or the Minister given an instruction to public hospitals that they should use the Public Buildings Department in building maintenance programmes?

The Hon. J.R. CORNWALL: Not that I am aware of.

DRUGS

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Minister of Health a question about market research on drug related issues.

Leave granted.

The Hon. R.I. LUCAS: Yesterday in this Chamber I asked a series of questions of the Attorney-General and the Minister of Health on the subject of the $32 000 survey on drug related issues conducted by ANOP, which has a very close association with the Australian Labor Party. Members will recall that the Minister of Health refused to answer a question as to whether that survey included a question relating to the personal approval of the performance of the current Minister of Health.

Members interjecting:

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

The Hon. J.R. Cornwall: That's simply not true.

The ACTING PRESIDENT: Order! The honourable member has leave.

The Hon. R.I. LUCAS: The Attorney also refused to answer that question and refused to obtain an answer for me. There was also substantial conflict and disagreement between the Attorney and the Minister in their answers as to whether the full questionnaire for that survey would be made public. The Attorney-General indicated that a copy of the questionnaire would not be made public. The Minister

disagreed with the Attorney-General and responded as follows:

I cannot understand the question of why I will not provide a copy of the questionnaire and other results of all questions that are currently available to the Health Promotion Services. They are available not only to the Health Promotion Services unit but also to every member of Parliament and to every member of the public in South Australia.

The Hon. J.R. Cornwall interjecting:

The ACTING PRESIDENT: Order!

The Hon. R.I. LUCAS: That quote comes from *Hansard.* The Minister is on the record. The Minister has been caught with his foot in his mouth once again.

The Hon. J.R. Cornwall: You're a blithering idiot.

The ACTING PRESIDENT: Order! The Hon. Mr Lucas has leave. There is a means by which the Minister can force the honourable member to ask his question, if the Minister wishes. The honourable member is entitled to be heard in silence while he has leave to ask his question.

The Hon. J.R. Cornwall interjecting:

The ACTING PRESIDENT: Order! The Minister of Health must control himself.

The Hon. R.I. LUCAS: For the benefit of the Minister of Health, who denies it, I will read from *Hansard* once again, as follows:

I cannot understand the question of why I will not provide a copy of the questionnaire and other results of all questions that are currently available to the Health Promotion Services. They are available not only to the Health Promotion Services unit but also to every member of Parliament and to every member of the public in South Australia.

By 'they' the Minister was referring to a copy of the questionnaire and other results of all questions. The Minister of Health is on record in *Hansard* as saying that the entire questionnaire, together with the results, are available. The Minister went on in the remainder of his reply to my question to imply that the questionnaire and the results had been tabled in November or December of last year.

I have been advised by the table staff that, whilst an ANOP survey report has been tabled, no questionnaire was tabled at all. I ask the Minister:

1. Why did the Minister mislead this Council yesterday by indicating that a copy of the questionnaire was available?

2. Would the Minister agree that it would be grossly improper for taxpayers funds to be used to survey the personal approval level of a Minister of Health?

The Hon. J.R. CORNWALL: The terrier is still at it; he is hunting along on the questionnaire. I will clarify this for the Council and put the matter to rest for all time. The questionnaire (that is, the entire series of questions that may or may not have been asked by ANOP in that survey) I have not seen. I am not privy to the questionnaire; I have never seen it and to the best of my knowledge it remains the property of ANOP.

The Hon. R.I. Lucas: Absolute garbage! You are covering it up.

The Hon. J.R. CORNWALL: I am not covering it up. Hang on a minute and I will tell the poor little fellow, the poor young chap, all about it. I will even tell him about the approval rating, and it will not cause him to smile; I can assure him.

The Hon. R.I. Lucas: So there was a question on it?

The Hon. J.R. CORNWALL: Yes, of course there was.

The Hon. R.I. Lucas: In that survey?

The Hon. J.R. CORNWALL: Yes, of course there was.

The Hon. R.I. Lucas: Taxpayers funds on your approval.

The Hon. J.R. CORNWALL: No, no.

The Hon. R.I. Lucas: It finally comes out. You would not answer it yesterday.

The Hon. J.R. CORNWALL: I did not want to boast about the—

The Hon. R.I. Lucas: No, no.

The Hon. J.R. CORNWALL: I wonder if I could have a bit of control, Mr Acting President.

The ACTING PRESIDENT (Hon. C.M. Hill): Order! The Hon. the Minister.

The Hon. J.R. CORNWALL: There certainly was an approval rating done on me. With the modesty for which I am well known I did not really want to tell everybody about it, but I will in a moment, now that I am forced reluctantly and shyly to do it.

The Hon. R.I. Lucas: You have been caught: taxpayers funds!

The Hon. J.R. CORNWALL: No, no taxpayers funds were involved in this at all.

The Hon. R.I. Lucas: You paid for it, did you?

The Hon. J.R. CORNWALL: No taxpayers funds were involved at all. I will explain precisely what happened.

The Hon. R.I. Lucas: Be very careful!

The Hon. J.R. CORNWALL: Stop being so bloody stupid and infantile.

The Hon. R.I. Lucas interjecting:

The Hon. J.R. CORNWALL: Can't you give me a bit of protection from him, Mr Acting President? He is a goose.

The ACTING PRESIDENT: Will the Minister address the Chair and calmly answer the question.

The Hon. J.R. CORNWALL: I am trying to, Sir, but that infantile thing over there—Rob the blob—persistently and continously interjects. If you can control him, Sir, I promise that I can control myself without any difficulty.

The Hon. L.H. Davis interjecting:

The ACTING PRESIDENT: Order! Both sides have had their fair share of interjections, so let us call it quits.

The Hon. J.R. CORNWALL: Hang on. This side has not gone too well with interjections.

The Hon. Anne Levy: We haven't had any on this side.

The ACTING PRESIDENT: Order! The Minister was interjecting.

The Hon. J.R. CORNWALL: I am on my feet. I do not intend to continue unless I get the full protection of the Chair. I have been putting up with the misbehaviour of that infantile one—of that imbecilic one—and sundry other irresponsible ones on the front bench now for 16 months. If they want me to answer the question and it is a very serious question, the Hon. Mr Lucas—

An honourable member interjecting:

The Hon. J.R. CORNWALL: Shut up, you poor old chap.

The ACTING PRESIDENT: Order! No more interjections! It is contrary to Standing Orders.

An honourable member interjecting:

The Hon. J.R. CORNWALL: What did you have for lunch? You have been on the magic mushrooms, John. The allegation made by the Hon. Mr Lucas is of a very grave kind and it behoves him to listen to the answer.

The Hon. R.I. Lucas: No allegation, just a question.

The Hon. J.R. CORNWALL: The allegation was, and the honourable member knows it—

The Hon. R.I. Lucas: And you've been caught.

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: I need some protection, Sir.

The PRESIDENT: Order! Yes, I will get you protection.

The Hon. J.R. CORNWALL: I want that remark withdrawn, Mr President.

The PRESIDENT: Order! The Hon. Mr Lucas is to stop interjecting. The Minister is to proceed with whatever he is saying.

The Hon. J.R. CORNWALL: I am trying to proceed, but it has been virtually impossible up to date. The Hon. Mr Lucas has said that I have misled the Parliament and have

been caught. He has made sundry other allegations of a very grave nature. They are grossly untrue.

An honourable member: Grossly improper?

The Hon. J.R. CORNWALL: I believe that they are grossly improper. The least that he can do is allow me to answer these filthy allegations—this grave calumny—in silence.

The Hon. L.H. Davis: You should try writing a few novels; you are very colourful.

The Hon. J.R. CORNWALL: The honourable member is a dull fellow.

The PRESIDENT: Order! The Minister has the floor now. He should proceed.

The Hon. M.B. Cameron interjecting:

The PRESIDENT: Order! I cannot keep order all the time if the Minister does not proceed.

The Hon. J.R. CORNWALL: The survey which I had conducted, from memory in August of last year—I have not got the details before me—was undertaken as a major survey of 1 002 people to assess a very wide range of attitudes with regard to drugs and alcohol in South Australia. It was preparatory to drafting legislation—the Controlled Substances Bill—which has only recently passed this Council. It was undertaken preparatory to devising a very comprehensive programme that I outlined briefly to the Council during the course of the second reading debate on the Controlled Substances Bill. It covered attitudes ranging from community education and awareness, the need for education and for support, attitudes to various ranges and classes of drugs, the perception of people as to their understanding of drugs, drug problems, reactions to drug abuse, to name just a few. It was a survey designed specifically to examine in very great depth the attitudes of the people of South Australia to drugs and alcohol.

I knew broadly what I wanted and knew also quite specifically whom I wanted to do it. I wanted Rod Cameron's ANOP organisation to do it because it is my view—and I think that it is a view shared by a very large number of informed people—that Rod Cameron is the best pollster in this country, not only in the matter of political polls, but in all of the commercial work that he does for a very large number of private and corporate organisations. I am trying to recall the precise details.

The Hon. R.I. Lucas: Very hazy.

The Hon. J.R. CORNWALL: Well, I have had a few things on my plate since August last year. My recollection is that the sort of structured poll that we would require and the very large range of questions to get these accurate profiles that we would require were discussed with Rod Cameron. At no stage did I say that I would want to see the full questionnaire. It has always been my understanding—it may be wrong—that a particular pollster's methods are a question for the pollster. When Rod Cameron, for example, does this group interviewing, his methods are very much a matter for himself; so I never discussed it with him. Indeed, I doubt whether I would have had the time to sit down and say, 'Show me your exact structured questionnaire. Where are the arrows? If the answer to question 18 is so and so, please proceed to question 22', etc. There were literally dozens of questions, as anyone can see who reads the results that were tabled in this Council several months ago.

The Hon. R.I. Lucas: There was nothing about your personal approval rating.

The Hon. J.R. CORNWALL: I will come to that. It was an in-depth poll, not an omnibus poll, designed for 1 000 people—but eventually 1 002 people were polled—around the State. The estimated cost for this was $32 000.

The Hon. R.I. Lucas: Taxpayers' money?

The Hon. J.R. CORNWALL: Yes, public money. It was not much money to spend to get—

The Hon. R.I. Lucas: Your personal approval rating?

The Hon. J.R. CORNWALL: No, just settle down little fellow; we will come to that in a moment. For a survey of this depth and breadth to discover in very considerable detail through dozens of questions the attitude of South Australians on how they regard a whole range of drugs (prescription drugs, narcotics, marihuana, poly-drug abuse, and rehabilitation, attitudes to where the emphasis should be on a punitive or supportive approach and so forth) it seemed to me, on the limited experience I have had in other areas of surveying and on advice available to me, that $32 000 was fair and reasonable.

The Hon. C.M. Hill: Why don't you come to the meat of the question?

The Hon. R.I. Lucas: He is trying to think of an answer.

The Hon. J.R. CORNWALL: The background is very important.

The PRESIDENT: Order!

The Hon. C.M. Hill: Was the question dealing with your rating on that list or not?

The PRESIDENT: Order! The Hon. Mr Hill may ask that question as a supplementary question.

The Hon. J.R. CORNWALL: Be comfortable and lay back. The Hon. Mr Lucas has worried at this like a dog at a bone, as though some dreadful infamy has gone on. He is trying to beat it up as though it was some extraordinary scandal—that he had suddenly dropped on to a great scandal. I want to put it to rest for all time, and will give the background in substantial detail.

The Hon. R.I. Lucas: Caught with your leg in the air!

The Hon. J.R. CORNWALL: If the honourable member would shut up and let me get on with it—

The Hon. L.H. Davis: Just hang on to your truss, John.

The Hon. J.R. CORNWALL: The honourable member is a wit: with another half a brain he would really be a performer. The quote was $32 000, which was accepted, and there was a clear understanding of the range of questions. I did not ask to see the questionnaire. Once that had been accepted Mr Cameron, who was in Adelaide, came to see me about the survey, when he could commence it, and what time we should expect the results. By that time there was some degree of urgency, because we were hoping to be in a fairly advanced stage of drafting the Bill. Mr Cameron came to see me in my office, went through the outlines again of the matters that we had agreed should be surveyed, and gave me, in substantial detail, the way in which the poll would be conducted. Towards the end of our discussion—remembering that this is after the $32 000 and the range of the poll had been well and truly agreed—

The Hon. R.I. Lucas: That is absolute garbage, and you know it.

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: Mr President, are you going to let the honourable member get away with that?

The PRESIDENT: The Minister knows that I cannot stop an utterance of anyone on the other side. I now have silence, and ask the Minister to proceed.

The Hon. J.R. CORNWALL: At that point Mr Cameron said, 'What about a personal approval rating? Would you like us to add on one more question concerning a personal approval rating?'

Members interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: It was not public money at all. The $32 000 had already been agreed. I had already told the Council this. If one looks through *Hansard*, one will see that I did not try at any stage to make it other than very public that we intended to survey. The Hon. Mr Lucas was like a terrier dog that far back. He asked, 'How much is it going to cost?' I told him. There was never any secret

about it. I am not about to apologise for organising a survey of attitudes to drugs and alcohol in this State, preparatory to reorganising a Bill in a way that has never been done in South Australia before. It was entirely responsible. At the end of the day Rod Cameron said, 'Do you want us to put in an extra question about Ministerial approval?' I said, 'All right, why not?'

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. Lucas: And it showed a significant drop.

The Hon. J.R. CORNWALL: Now, I will give the Council the precise figures: approve 43 per cent; disapprove 32 per cent; and undecided 25 per cent.

The Hon. R.I. Lucas: A significant drop from before.

The Hon. J.R. CORNWALL: It could not be a significant drop to any poll conducted before as my approval rating had never been polled before.

The Hon. R.I. Lucas: Taxpayer-funded!

The Hon. J.R. CORNWALL: It was not taxpayer-funded.

The Hon. C.M. Hill: Who paid?

The Hon. J.R. CORNWALL: Nobody paid. I explained—

Members interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: The original quote was $32 000 and was accepted before the personal approval rating was raised. I have given the ratings. That is where it sits, and it is as simple as that. As to all this great scandal, shock, or outrage, it simply does not exist. I am sure that it will not satisfy the Hon. Mr Lucas, as it seems impossible to satisfy his infantile mind.

REVERSE CHARGE TELEPHONE CALLS

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Attorney-General a question regarding the 008 Telecom services to Parliament House.

Leave granted.

The Hon. I. GILFILLAN: I have been informed that at present the only reverse charge calls that will be received at Parliament House are either for Ministers or from electorate secretaries. I have had a chance to see the lists of those calls and they are quite an expensive item. There are calls from Airlie Beach, Malaysia, and Sydney as well as other parts of the State. I do not begrudge that: I am just giving this by way of explanation. There is quite a substantial saving between STD and booked calls. So, it seems to me that there is good argument that STD calls should be available to come through on 008. I ask this question because electors voting in the metropolitan area have access by telephone to their politicians and Parliament House with unlimited time at 15c a private call and 20c a public call.

It is a gross discrimination that voters outside the metropolitan area do not have that privilege, and it is about time Parliament addressed the problem. Telecom is only too eager to facilitate and explain to the Government how it can save money on existing calls, by obtaining an average cost that will offer considerably cheaper rates than the standard call rates from the outposts of South Australia. So, it could be an advantage economically. Overriding all this, I believe that it is time that Parliament realised that democracy means equal opportunity of access to politicians and that rural residents of South Australia should not be penalised any longer.

Can the Attorney say whether the Government will consider installing the 008 Telecom system to Parliament House that allows reverse charge access from anywhere in the State at the local telephone call fee? Two types of system are available. There is the 008 Statewide system and the 008 Australiawide system. I believe that in order to keep costs reasonable to South Australian voters we should install the Statewide system.

The Hon. C.J. SUMNER: I am not sure that the question is appropriate to be directed to me. The question of funding telephone accounts and other matters within Parliament House is a matter for the Speaker of the House of Assembly in respect of his House and the President of the Legislative Council in respect of this Chamber. Obviously, the Budget that is approved by Parliament for Parliament is initially processed by the Government, but the Budget Estimates put before the Government initially are prepared by the Speaker and the President. I suggest that the honourable member directs his remarks to you, Mr President, and take up the matter with you, Sir, and perhaps you, Mr President, can discuss the matter with the Speaker in another place and this matter and the cost of it can be included in Budget proposals from Parliament House to the Government for the next Budget. I am not able to indicate what the Government's attitude to that idea might be, and Appropriation Bills come before Parliament for consideration. I suggest that it is a matter that should in the first instance properly be directed to you, Mr President.

The Hon. I. GILFILLAN: Whether this is a supplementary question or whether I just seek clarification I am not sure, as it may mean that I ask you, Mr President, for your opinion, because I do not want to misdirect my question. The Attorney has thrown doubt on whether the question should have been directed to you.

The PRESIDENT: It should be directed to me. I can tell you some of the history in this matter in which I have appealed not only to one Government but to several Governments that State members should be entitled to carry a numbered card, as do Federal politicians, that would give them access to Parliament and Ministers without any concern. This has never been taken up but, in view of your question, I will confer with the Speaker and make a joint approach to the Government to consider the honourable member's proposition.

DRUGS

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Minister of Health a question about market research on drug related issues.

Leave granted.

The Hon. R.I. LUCAS: To use the Minister's own insulting terminology, 'The terrier dog evidently has bitten the dog doctor!' This Minister has conceded a gross abuse of his position in respect of using taxpayer funds to poll personal approval questions. I have also been advised that this particular ANOP report that the Minister says was tabled in November and December last year in this Chamber—this taxpayer-funded survey costing $32 000 which also polled a personal approval question of the Minister, and who knows what else. He also included at least one question asking people how they intended to vote if a State election was to be held at the time of the survey. A State election vote intention question in this survey. This Minister indicated in the Chamber yesterday that the answers to all the questions had been tabled. We have wrung out of the Minister after two days of persistent questioning that certainly one question, his own personal approval rating, was not included in this report. He would not provide us with the questionnaire—fobbed it off—aided and abetted by the Attorney-General, and finally, caught with his leg in the air. I have now been advised that not only was the personal approval level of the Minister polled by a taxpayer-funded survey but also a State election vote intention question was

also included. My questions to the Minister are quite simple for a simple Minister:

1. Why was an election voting intention question included in the taxpayer-funded survey?

2. Were the results to that question given to any other persons and, in particular, the ALP head office on South Terrace?

3. Will the Minister now come clean and stop this cover-up and table all the results to all the questions in the $32 000 taxpayer-funded survey that he had done by his mate Rod Cameron and the ANOP Company, the company associated with the ALP?

Members interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: The terrier is really pressing on with his beating up of what he sees is another Windsorgate. You really do amaze me, you lot: you really are the pits. You are a disgusting lot. You pursued old Jack Slater over something that was—

Members interjecting:

The PRESIDENT: Order! There will be order. There is no question about the Minister in another place. He should not be included—

The Hon. J.R. CORNWALL: Turn it up, you have always made it clear in this place that the Minister can answer a question in any way that he sees fit. We are not about to change the rules, are we?

The PRESIDENT: I do not think it is appropriate for the Minister to bring into his answer his colleague in another place.

The Hon. J.R. CORNWALL: That is a matter of opinion, and that is fair and reasonable. What we have had—they really are the pits, this lot. They tried to beat up through the Leader of the Opposition in another place (Mr Olsen, the member for Rocky River) a scandal out of the $140 million deal that the Premier was able to get for this State from the Japanese consortium. He tried to beat that into a scandal. Nothing happened. They then tried to beat up a scandal out of the Minister of Recreation and Sport, Jack Slater. They pursued it into the ground until the only people who had egg all over their collective faces were members of the Opposition. Yes, they went into the pits with the Deputy Premier at one stage. They keep looking under pieces of concrete and they keep running up and down hollow logs—they see scandals everywhere. They think it is New South Wales revisited.

Members interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: They really must be desperate. The Hon. Mr Lucas now gets to his feet and claims that he has clear evidence that in a survey conducted by ANOP for the Health Promotion Services Unit of the Health Commission at my instigation questions were asked about voting intentions if an election were to be held on Saturday. Frankly, he is privy to more information than I am. I would like to know whence he gets that information, because I certainly did not commission a poll that asked about voting intentions on Saturdays, Sundays, Wednesdays, or any other days. I certainly did not pay for a poll that asked about voting intentions.

I have at great length explained what was commissioned, what was the agreed price and precisely what that price was, and I have tabled in this Parliament all of the information obtained from that survey, with the exception—

Members interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: I was asked whether I would like, at no extra charge, a question tacked on the end about approval rating.

The Hon. Peter Dunn: You don't expect us to swallow that.

The Hon. J.R. CORNWALL: I do not care what the Hon. Mr Dunn swallows, if he wants to wallow in the pits with his colleagues. It ill becomes the Hon. Mr Dunn, as he is normally above them. He does not normally play the politics of the beat up of the gutter, or the disgusting type of politics that Rob the blob and Legh the flea want to play in this place. Apparently, he wants to go down in the gutter, too. I have explained precisely what I asked for, precisely what I paid for, and precisely what I got. As an addendum, there was one more question about my—

The Hon. C.M. Hill: Table it.

The Hon. J.R. CORNWALL: I have stated the results—43, 32, and 25.

Members interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: As to the question whether the results were given to any persons, especially the ALP office in South Terrace: the results of my survey were not given to anyone else except the Health Promotion Service and the people of South Australia.

The Hon. R.I. Lucas: That's because it is not here—

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: The survey I commissioned, that I paid for, and that I received was tabled in this Parliament. It is a public document.

The Hon. R.I. Lucas: Without those results.—

The Hon. J.R. CORNWALL: That is a dreadful and scurrilous lie, and the honourable member ought to be ashamed of himself. If he persists I will have no alternative but to say worse things.

The Hon. R.I. LUCAS: On a point of order, Mr President, I do not necessarily agree with previous rulings, but you have always ruled that those words used by the Minister are unparliamentary, and I ask that you do so again.

The PRESIDENT: The honourable member is asking that the words be withdrawn. I ask the Minister to comply with that ruling as it is a ruling of the Parliament.

The Hon. J.R. CORNWALL: I withdraw the word 'lie'. The scurrilous untruths that this fellow is perpetrating today do him no credit as they do the Opposition in this Council and the Opposition generally no credit. It is the politics of denigration and filth and it is disgusting.

The Hon. L.H. Davis: You were the original author of that—you should know all about it.

The Hon. J.R. CORNWALL: I hope that that is on the record, because the honourable member is deep in the pits with the Hon. Rob Lucas, who has beaten up these untruths in the first place. He has said, by interjection—

The Hon. C.M. Hill: He found you out.

The Hon. J.R. CORNWALL: Ho! Ho! Ho!

The Hon. C.M. Hill: You took that question off the list before you tabled the document and the public paid for it.

The Hon. J.R. CORNWALL: I will repeat again that what I paid for was what I got. It was an in-depth and wide-ranging survey into attitudes on drug and alcohol services in South Australia. The contracted price was $32 000—that was the amount paid. There were 1 002 people surveyed, there were literally dozens of questions, as anybody who reads the results that are public property, can see. There was an additional question after the price had been agreed. I cannot be responsible for the day to day conduct of ANOP or anyone else. I am telling the Council what I paid for, what I contracted for, what I got and, yes, after the price had been agreed an additional question was offered which I accepted. My approval rating, I am happy to say, was 13 per cent greater than my disapproval rating.

ACCOUCHEMENT LEAVE

The Hon. K.L. MILNE: Has the Attorney-General an answer to my question of 27 March on accouchement leave?

The Hon. C.J. SUMNER: Maternity leave has been availabe to all female employees of South Australian Government Departments since 18 June 1970. Currently, the conditions attached to granting maternity leave are:

1. The leave granted is without pay for a period up to 12 months: however an employee may substitute recreation leave or long service leave to which they have an entitlement to during the 12 months.
2. Prior to the leave being granted the applicant must provide a statement from a medical practitioner that she is pregnant and the date which the birth of the child is expected.
3. The leave granted is a continuous period either during the continuation of the pregnancy until one month after the birth of the child, or at the request of the applicant, for a period exceeding the expected duration of the pregnacy provided that the total period does not exeed 12 months.
4. The period of leave without pay, in excess of one calendar month, does not count as service for long service leave, recreation leave, or sick leave entitlements.

Maternity leave is granted as special leave without pay, and as such it is not a direct cost to the South Australian Public Service. Maternity leave generally, for periods up to 12 months, is available to members of the Public Service in all States of Australia and members of the Australian Public Service. In some States provision exists for part of the maternity leave, up to 12 weeks, to be paid leave. The Public Service Board has no knowledge of whether maternity leave is granted in other countries.

MEDICAL BOARD

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister of Health a question about the Medical Board.

Leave granted.

The Hon. ANNE LEVY: On 16 January the Adelaide *News* ran a small article that stated:

> Family Planning Centre consultations will be free after Medicare is introduced on 1 February.

It gave some information resulting from decisions taken by the Federal Minister of Health. Subsequently, on 22 February, the Medical Board sent a letter to the Director of Family Planning who has a PhD. The letter stated:

> The Board's attention has been drawn to an article which appeared in the *News* of Monday 16 January and the Board views this article with a great deal of concern. You are requested to attend the March meeting of the Board which will be held on (a specified date) so that the Board may discuss this matter with you and consider your explanation of the contents of the article.

The Director of the Family Planning Association replied to the Medical Board and very politely stated:

> The Board may be under the misapprehension that I am a medical practitioner. In fact, I am the Chief Executive Officer of this Association and its public spokesperson, and do not hold a medical degree. The article which appeared in the *News* was in response to extensive questioning from a reporter from that newspaper concerning changes in health insurance. These changes confused many people, and the reporter was attempting to clarify the situation with regard to family planning costs.

One might expect that following that, the Medical Board may have apologised for its inadvertent error. However, it responded to the Director of Family Planning by stating that it had noted the information that he was not a medical practitioner and drew his attention to a provision of the Medical Practitioners Act which provides:

> No person shall hold himself out or permit another person to hold him out as a general practitioner or a specialist unless he is registered on the appropriate register or registers. Penalty: $5 000 or imprisonment for six months.

The letter from the Medical Board continued later as follows:

> I am also instructed to point out to you that the ethics of the medical profession prevent practitioners from advertising their services in a manner which appeared in the newspaper article. The contents of the article relating to the Family Planning Association may therefore place medical staff employed by the Association in an invidious situation.

The quotations that I have read are only a small selection from the letter that came from the Medical Board. It seems to me to be extraordinary that the Medical Board, having made a slight error, should not apologise for having made that error and retreat from the situation. However, it is absolutely extraordinary not only that it not did not apologise but also proceeded to threaten the Family Planning Association in this way. They received full explanations from the Director as to what has occurred but are implying that he is a fraud and are threatening the Association and the work it does, all of which seems to me to be absolutely incredible. Will the Minister take up this matter with the Medical Board and suggest that, before it contacts anyone who is named as being a doctor (with every justification for the title being used), they at least check the medical register so that they do not make such mistakes in the future?

The Hon. J.R. CORNWALL: I am aware of something of the saga of Dr John Porter of the Family Planning Association. He is indeed a PhD. Life apparently was not meant to be easy for PhDs these days, as, no doubt, our Federal colleague Dr Neil Blewett would attest. This matter was drawn to my attention quite recently. The position is that the Minister of Health of the day has committed to him the South Australian Medical Practitioners Act. However, as with all professional registration boards in the spectrum of the health area, the Minister has no right at all to interfere with the conduct of the board, which has its own statutory powers under the Act. So, it would not be proper for me to direct them to do anything at all.

It does seem, on the face of it, that the Board is hounding Dr Porter, not only in an unreasonable way but also in an untenable way. Dr Porter has never held himself out to be a medical practitioner, as I understand it. Dr Porter said that under the new Medicare arrangement (I think he made a press release about this) consultations at the Family Planning Centre would be free. That was a very accurate statement: under the new Medicare arrangement consultations at the Family Planning Centre are free.

With regard to the alleged offence of holding out, Dr Porter (to the best of my knowledge) has never remotely held himself out to be a medical practitioner. In all the circumstances, I think it might well be wise for me (now that the Hon. Miss Levy has raised this matter publicly) to write to the President of the Medical Board asking that this matter be reconsidered and that a large dose of common sense be applied to the whole situation.

TELEVISION STATION O/28

The Hon. C.M. HILL: I seek leave to make a brief explanation prior to asking the Minister of Ethnic Affairs a question about television station O/28.

Leave granted.

The Hon. C.M. HILL: The subject of the entry into South Australia of television station O/28 for members of migrant

communities is a very serious one from the point of view of those residents in this State who wish to watch ethnic television. For some years the proposal, as honourable members know, has been mooted, first by the Fraser Federal Government, which promised prior to losing office that it would budget for the station to be extended to South Australia from interstate, and to budget for and extend the service in the 1983-84 financial year.

During the term of the present Labor Government in Canberra, ethnic people here have been concerned from time to time because of delays in the introduction of this service. There was a march down King William Street and a large demonstration in front of Parliament House regarding this matter. Ultimately, the Minister in this Council received a communication from Canberra which said that early in 1985 the Federal Government would find the funds and extend the service to Adelaide. That in itself was disappointing but was accepted in view of all the circumstances.

In recent weeks there has been further publicity about this matter, and it has been stated in the press that some party in South Australia has indicated a belief (either through community radio or a community television service) that the ethnic community here might be served with a form of ethnic television satisfactory to them and that, therefore, in view of that, there would be no need to extend the services of station O/28 from Sydney and Melbourne to Adelaide. There have been reports in the press, quite understandably, that that proposal is unacceptable to the South Australian community at large.

In view of this disturbing press publicity, has the Minister of Ethnic Affairs in the past few weeks made any representations to his Ministerial colleague in Canberra to ascertain whether the Federal Government intends to honour the commitment that it gave to the Hon. Mr Sumner and through him to this Council to provide the extension of televion station O/28 to South Australia in the first half of the 1985 calendar year? If he has not had such communication with Canberra as a result of this recent publicity, will the Minister take immediate steps to verify with Canberra that its commitment stands so that the ethnic people of South Australia can be assured that the commitment will be honoured and that in the latter half of the 1984-85 financial year they will have the O/28 television station extension, as previously promised?

The Hon. C.J. SUMNER: I have not taken any action similar to that suggested by the honourable member because I have not seen a need to do so. I understand that a community broadcasting group has queried whether or not station O/28 can be extended to Adelaide. However, nothing has emanated, to my knowledge, from the Federal Government which would indicate that the decision taken in the last Budget to allocate funds for transmitters in this financial year and to have channel O/28 extended to Adelaide early in the 1984-85 financial year has been countermanded. Indeed, I notice that a back bench member of the Federal Parliament (a member of the Government, Senator Bolkus) criticised the statements made by the broadcasting group and asserted that it was important for channel O/28 to be extended to Adelaide.

So, I have no information that indicates any change in that position. I know that an inquiry is proceeding into special broadcasting services and the funds that can be provided for both Ethnic radio and television. I have instructed the Ethnic Affairs Commission to prepare a submission for presentation to that inquiry. That submission will again argue the case for the importance of channel O/28 to South Australia. I have not received any information which indicates that there has been any change of mind by the Federal Government on this matter. In view of the honourable member's question, I will write to the Federal Minister responsible.

SHOP TRADING HOURS ACT AMENDMENT BILL (1984)

Adjourned debate on second reading.

(Continued from 28 March. Page 2916.)

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

That this debate be further adjourned.

The Council divided on the motion:

Ayes (11)—The Hons Frank Blevins, G.L. Bruce (teller), B.A. Chatterton, J.R. Cornwall, C.W. Creedon, M.S. Feleppa, I. Gilfillan, Anne Levy, K.L. Milne, C.J. Sumner, and Barbara Wiese.

Noes (10)—The Hons J.C. Burdett, M.B. Cameron (teller), L.H. Davis, R.C. DeGaris, Peter Dunn, K.T. Griffin, C.M. Hill, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Majority of 1 for the Ayes.

Motion thus carried.

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

That the adjourned debate be resumed on motion.

The Council divided on the motion:

Ayes (10)—The Hons J.C. Burdett, M.B. Cameron (teller), L.H. Davis, R.C. DeGaris, Peter Dunn, K.T. Griffin, C.M. Hill, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Noes (11)—The Hons Frank Blevins, G.L. Bruce (teller), B.A. Chatterton, J.R. Cornwall, C.W. Creedon, M.S. Feleppa, I. Gilfillan, Anne Levy, K.L. Milne, C.J. Sumner, and Barbara Wiese.

Majority of 1 for the Noes.

Motion thus negatived.

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

That the adjourned debate be an Order of the Day for Thursday 12 April.

The Council divided on the motion:

Ayes (10)—The Hons J.C. Burdett, M.B. Cameron (teller), L.H. Davis, R.C. DeGaris, Peter Dunn, K.T. Griffin, C.M. Hill, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Noes (11)—The Hons Frank Blevins, G.L. Bruce (teller), B.A. Chatterton, J.R. Cornwall, C.W. Creedon, M.S. Feleppa, I. Gilfillan, Anne Levy, K.L. Milne, C.J. Sumner, and Barbara Wiese.

Majority of 1 for the Noes.

Motion thus negatived.

The Hon. M.B. CAMERON: I do not quite know what to do in a case like this where I do not have control of my own business.

Members interjecting:

The PRESIDENT: Order!

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

That the adjourned debate be made an Order of the Day for Tuesday 17 April.

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

To amend the Hon. Mr Cameron's motion by striking out 'Tuesday 17 April' and inserting 'Wednesday 9 May'.

The Hon. R.J. Ritson: That makes it very clear: they don't wish to consider the Bill at all. The deal has been done!

The Hon. M.B. Cameron: That's the end of the session.

The PRESIDENT: Order!

The Council divided on the Hon. Mr Sumner's amendment:

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

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

Majority of 3 for the Noes.

The Hon. Mr Sumner's amendment thus negatived.

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

That Orders of the Day: Private Business No. 4 be made an Order of the Day for Wednesday next.

The Council divided on the motion:

Ayes (11)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall, C.W. Creedon, M.S. Feleppa, I. Gilfillan, Anne Levy, K.L. Milne, C.J. Sumner (teller), and Barbara Wiese.

Noes (10)—The Hons J.C. Burdett, M.B. Cameron (teller), L.H. Davis, R.C. DeGaris, Peter Dunn, K.T. Griffin, C.M. Hill, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Majority of 1 for the Ayes.

Motion thus carried.

ROAD TRAFFIC ACT REGULATIONS

Adjourned debate on motion of Hon. M.B. Cameron:

That regulations under the Road Traffic Act, 1961, re traffic prohibition (Enfield), made on 27 October 1983 and laid on the table of this Council on 8 November 1983, be disallowed.

(Continued from 4 April. Page 3163.)

The Hon. BARBARA WIESE: I oppose the motion. I have struggled with this decision because, being a member of the Subordinate Legislation Committee, I have had an opportunity to study the issues involved at some length. The Subordinate Legislation Committee took evidence from all interested parties and inspected the area. When moving the motion the Hon. Mr Cameron said that disputes over road closures are difficult matters for members to decide. He also said that, inevitably, there are two sides to the story and, where traffic is diverted from one area to another, there are likely to be some people who benefit and some who lose.

I acknowledge that this is also the case with this closure. Because this is so, I oppose the motion with some reservations as I can see the argument of the people on the other side. With road closures it is virtually impossible to please everyone and, therefore, our aim should be to do the greatest good for the greatest number. In cases like this it really amounts to spreading the inconvenience as evenly as possible. In other words, our aim should be to restrict the traffic flow as much as possible through residential streets but, as far as possible, do this in such a way that some streets are not required to carry a greater burden of traffic than others. This is the ideal and it is very difficult to live up to.

I freely admit that in the Windsor Gardens case this goal has not been achieved by the road closures implemented by the Enfield Council. In fact, I think that the council admitted as much in its evidence to the Subordinate Legislation Committee when one of its representatives said that it did not foresee that traffic volumes in Manunda Avenue and Tarpeena Avenue would be as high as they turned out to be after the road closures were implemented.

The council also admitted that other measures over and above those already taken will need to be taken before traffic problems in the Windsor Gardens area are satisfactorily overcome. For example, the council requested the Highways Department to install more traffic lights on North East Road, to provide better access for local residents and reduce traffic flows through the narrow streets of the Windsor Gardens area. As I understand it, other ideas are also under consideration. In other words, these closures are not the sum total of all possible action. Local problems are still being assessed and traffic flows are continuing to be monitored.

On the other hand it should be acknowledged that the closures have brought considerable benefit and relief to the residents in the streets that have been closed. In weighing the pros and cons of the Enfield Council's action I have come to the conclusion that, although not all problems have yet been overcome, disallowance of these regulations will not solve them. It would only mean that the former unsatisfactory situation would be restored. I do not think that that is in anyone's interest. Ultimately, the control of traffic volume will be the responsibility of the Enfield Council, regardless of any decision Parliament makes today. The Enfield councillors will have to make the final decision and be judged by their electors concerning traffic management in the area.

We should remember that even then the council does not have an entirely free hand in this matter. Any proposals for traffic control must be approved first by the Road Traffic Board. The council and more particularly the Board have the expertise in traffic management. They conduct surveys and studies of traffic flows and they are skilled in this field. The Board is responsible for the overall traffic management in the metropolitan area. I doubt whether any honourable member here can claim to be better informed or more highly skilled in this area than are the people who are dealing with those sorts of questions every day.

I really do not think that it is a sufficient reason to overturn the recommendations of these bodies by saying, as the Hon. Mr Gilfillan said during the debate, that road blocks do not appeal to him. We all have our views and idiosyncracies, but they need to be based on more than just whim or prejudice to be sufficiently important to overturn decisions by responsible organisations. I also want to comment on a point made by the Hon. Mr Cameron who said that if this motion was successful he hoped that all parties concerned would get their heads together and try to work out a scheme that would be satisfactory to everyone. I, too, hope that this will be the outcome—

The Hon. R.C. DeGaris: Do you believe it?

The Hon. BARBARA WIESE: Probably some people will not be happy whatever the outcome, but it should be possible, with better organisation, for a larger number of people to be satisfied than currently is the case. I submit that the disallowance of regulations is not necessary to achieve that end. Under these regulations part of the problem for some of the people has been alleviated and what now needs to be done is for the council to collect conclusive data on the new problems which have been created and then take further action in consultation with local residents to solve those new problems.

The Hon. J.C. Burdett: But they have not done that yet.

The Hon. BARBARA WIESE: They have not done what yet?

The Hon. J.C. Burdett: They have not a solution to the problem that they have created—

The Hon. BARBARA WIESE: They have some ideas about the way they might be able to solve those problems. The problem with determining at this stage what the solution will be is that there has not yet been enough statistical evidence collected on the traffic flows through that area since the road closures were implemented, and so it is necessary for some time to elapse before those problems can be sorted out and a solution found. In conclusion, I repeat that the disallowance of these regulations will really

solve no-one's problems and for that reason I oppose the motion.

The Hon. G.L. BRUCE: I oppose the motion for disallowance. I was a member of the Subordinate Legislation Committee and I advise honourable members that the matter was not taken lightly. The Subordinate Legislation Committee spent a whole day in the area. Not only did we traverse it in a bus but we also walked up and down the streets. We were aware of the situation and were made aware of the views of both groups of residents. We met with the council, which gave evidence before us, and I believe that the council's intention to do the most good for most people in the area is commendable. The main objective sought is a decrease in traffic volume through the area. What the council is about and the way it has acted helps to bring that about.

It does not matter what happens in regulations: when you close roads someone is disadvantaged. This area was being used as a through route. By the closing of these routes people can still get through but it is very difficult. It is time-consuming and more difficult. What is being sought to be achieved is to get people out on to the main arterial roads instead of going through the back roads to get to their destinations.

The main concern results from insufficient access to the North East Road. Evidence given to the Subordinate Legislation Committee showed that there is a real problem in putting more access roads on to the North East Road, and the problem will not be solved in the near future. Indeed, the solution to that problem is many years away and probably many thousands of dollars will have to be spent in getting proper access roads built in to not interfere with the flow of traffic on the North East Road. It is one of the most congested roads in Adelaide in peak periods. I live out there and know that unless drivers turn at traffic lights one has no hope of entering or leaving North East Road from a side street, and that is the main problem: the authorities cannot provide easy access to North East Road. The council has closed those roads off to make access through the residential area more difficult. The council did not enter lightly into that. Negotiations, investigations, and everything else has been under way since 1978, and we are now about six years up the track.

The solution the council came to is this: the Subordinate Legislation Committee was concerned about the boom gate, which is one of the innovations and we have not seen anything like it previously in South Australia, other than in parking lots. Members of the Subordinate Legislation Committee expressed concern and brought the council back to give further evidence. We became satisfied that the council had taken all views into consideration in respect of the boom gate, which was to be strengthened and made more aesthetic and pleasing to the eye. That function was necessary if the council was to stop through traffic and just let the buses pass as was necessary in the overall scheme. The problem in the area has not been completely resolved and it will never be completely resolved.

However, the council and local residents have tried to do the right thing. Some residents are disadvantaged by the change. That could not be helped because the diversion of through traffic has occurred in their streets, but the overall long-term effect will be eventually to make the area unattractive to through traffic, which is the whole idea of the proposal.

I do not believe that what the Hon. Mr Cameron has suggested or the view of the Hon. Mr Gilfillan that the people ought to get together to solve the problem is practical. In doing that someone would be disadvantaged. No-one will agree to be disadvantaged. An independent arbitrator will have to come in, whether it is the council with regulations or the Subordinate Legislation Committee recommending to this Council that we proceed and let these regulations pass. Some independent arbitrator has to take a stand on the matter and move into the area, otherwise the problem will not be resolved to the satisfaction of everyone.

What we are about is to do the most good for the area and for the most people in the area at the time. I believe that the evidence given to the Committee shows that the council is trying to do that and I would be loath to interfere with the council's programme at this time. I believe its actions are responsible. Indeed, I was concerned about another street not mentioned in these regulations. We spent time in the area and met the residents involved in the Strawson Road closure. I believe there is merit in this closure, which is lumped in with these regulations. If they are rejected, that closure goes down the drain, which would be unfortunate. Residents opposed to that closure will not find it unfortunate, but it is an ill wind that blows no-one any good. If they are into the disallowance, some people will be happy and others sad. I believe there was much merit in the Strawson Road closure. Unfortunately, in the way that the regulations are put together the Subordinate Legislation Committee had no role other than to recommend to Parliament that it either allow or disallow those regulations.

I believe that the homework has been done by the council and by the Subordinate Legislation Committee. I oppose the motion moved by the Hon. Mr Cameron and I urge the Council seriously to consider leaving the road restrictions as they are and approve the regulations so that the council can get on with the job of trying to alleviate the situation even more. Evidence showed that this was not the final solution and the council is aware of that.

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

MENTAL HEALTH SERVICES

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

That the report of the Inquiry into Hospital Services in South Australia, laid on the table of this Council on Tuesday 18 October 1983, be noted.

I welcome this opportunity to comment on the Sax Report, more correctly known as the report of the Inquiry into Hospital Services in South Australia. That inquiry was announced by the Minister of Health on 20 January last year. The five member review committee headed by Dr Sidney Sax had to address four terms of reference:

1. Conduct a review of public and private hospitals in South Australia and report on:
   - *(a)* the quality of patient care;
   - *(b)* any grounds for concern about the extent and appropriateness of surgical procedures being undertaken;
   - *(c)* the suitability of hospitals for the conduct of surgery and obstetrics;
   - *(d)* the arrangements under which medical services are provided in recognised hospitals, having particular regard to the rights of private practice and facilities charges;
   - *(e)* the need, if any, for consumer protection legislation.
2. Undertake an assessment of the present and future needs for hospital facilities in South Australia in relation to the level, standard and distribution of services. In particular:
   - *(a)* assess the metropolitan hospital planning framework;
   - *(b)* report on any duplication of specialised services and equipment and recommend any action necessary;
   - *(c)* report on the role of the private hospital sector and suggest appropriate ways in which community hospital services might be made accessible to public patients;

(d) report on whether there is a need for State Government controls on the establishment of new hospital services, facilities and beds in both the public and private sector.

3. Review the administration of public hospitals and report and make recommendations in respect to:

(a) the role and functions of boards of management;

(b) equitable funding and resource allocation between hospitals and between services within hospitals;

(c) incentives/disincentives for effective management and resource utilisation;

(d) cost control and cost containment programmes in hospitals.

4. Review services for the care of the aged including those provided by hospitals and nursing homes. Comment on and make recommendations in respect of:

(a) the need for and function of geriatric assessment units in major hospitals;

(b) the role of the State Government (and in particular the South Australian Health Commission) in:

- the provision of nursing home accommodation
- establishing and monitoring nursing home standards.

The Sax Report is an extensive document with some 215 recommendations, but for all that it has deficiencies and inconsistencies, which I will touch on later. I hope that at the end of my contribution the Minister of Health will be able to indicate what has happened or will happen to the various recommendations in the report. I hope, too, that he will not take his usual course of berating and abusing me or any other contributors to the debate for daring to question another of the various experts which he seems to bring out with regular monotony. Although the report has a number of good points, one cannot help but feel that the recommendations of the committee line up very closely with Labor Party policy, without much justification for their being made.

For example, it is well known Labor Party policy, often promoted by the Minister of Health, that there should be a No Fault Misadventure Compensation Scheme. This has been recommended in the report, but there is no substance to take it up. There are no figures and little research to justify this recommendation. It seems that a great deal of what the Minister of Health had to say in various statements and policies before the report was written have materialised in the final recommendations.

Whilst I have no doubt that the Minister of Health would claim that this was due to his expansionary foresight and capacity, I am not sure that this is the case. The terms of reference in the report in a number of instances almost directed the committee to come to the conclusions to which it came, and at the time of announcing the review the Minister conducted a number of interviews where he openly stated what he thought the conclusions of the committee would be. This makes it hard for the objectivity of the review to be guaranteed.

I wish now to deal with recommendations which cause some concern. Dealing with the issue of quality of care, the report recommends:

The South Australian Health Commission maintain an awareness of the number of specialists in provincial towns and cities and where necessary take appropriate steps (including two to three year sessional contracts) to attract new specialists to those centres.

Action taken by the State Minister, in conjunction with his Federal colleague, Dr Blewett, under Medicare will, in fact, undermine this very recommendation of the committee. Indeed, country hospitals are likely to lose specialists rather than attract new ones as a result of the restrictive conditions under Medicare. In country areas, specialists need to be encouraged to visit hospitals. However, requirements concerning contracts, the level of fees that can be charged and other issues relating to the rights of private contracts, will simply lead to an undermining of confidence on the part of specialists. Specialists will ask themselves, 'Why should I bother when the Government constantly seeks to place extra controls over me?' It would be easier to only practise in the large provincial cities or in the metropolitan area.

Under recommendation 3.9, Sax proposes that:

No Government support be provided to assist the development of Accident and Emergency Departments in private hospitals.

I do not accept this recommendation. On pages 40 and 41 of the report, in discussing accident and emergency departments, the committee criticises the accident and emergency services in major hospitals, but then concludes that no assistance should be given to private hospitals on the grounds that back-up facilities are available only in large public hospitals. How can the committee on the one hand argue that there is no need for any form of private facility in certain areas by saying that there is back-up in the public hospital system and at the same time criticise the public hospital system?

Surely, if a private hospital is able to provide services, this should be recognised and encouraged. There will be areas, because of their location and where suitable medical practitioner back-up is available, where support for private accident and emergency services can be justified. Indeed, the committee was not critical of the calibre of accident and emergency care in private hospitals, but it was in public hospitals. This is unacceptable and suggests a dislike of any form of private involvement—a dislike that the present Minister of Health has made a platform of his approach to the administration of health in South Australia during his term as Minister.

I now turn to recommendation 3.11, which states:

The South Australian Health Commission consider the appointment of obstetric registrars or staff specialists on a rotation basis at certain larger country hospitals.

In its discussion preceding this recommendation, the committee hinted that a reconstruction in obstetric services in small hospitals should take place. Whilst general Government obstetric standards in small hospitals may be in order, the most crucial factor in determining the quality of service provided is the training and experience of the medical attendants. There are many medical and health professionals in small hospitals who have had, and continue to have, enough experience and capacity to justify the continuance of obstetric services in what would be considered small hospitals. I strongly believe that the service should be close to where people reside—in other words, close to where the needs lie.

The spread of services within country hospitals should be maintained. At the same time, I am not suggesting, as I am sure the Minister will claim, that we should carry out obstetric procedures with inadequate staff and equipment. What I am saying is that if presently staff are adequately trained and adequate facilities are available then such services should continue to be provided. Indeed, within the rural community particularly, but also in the metropolitan area, many women seek to have their babies in the local area close to where they live. They want to give birth to their children in their home town or suburb, provided, of course that the deliveries are expected to be uncomplicated and relatively straightforward. People have such a right and the Government should not seek to take it away from them because of some paternalistic notion held on the part of the Minister of Health.

Recommendation 3.17 states:

The South Australian Health Commission continue its programme of role and functions studies; this programme shall encompass all hospitals, including private hospitals.

Whilst implying in this recommendation that role and function studies are made, the Sax Committee itself made recommendations, for example, in relation to the closure of the Lower Murray Hospital at Tailem Bend without any such study being undertaken. Given this attitude, it would seem likely to me that this recommendation would be paving

the way for studies to be taken to justify the closure of many other hospitals in country areas.

With regard to the Lower Murray Hospital at Tailem Bend, I have spoken to Board members, medical and other staff who confirm that no member of the Sax Committee of Inquiry went there during the conduct of that inquiry and that no member of the Sax Inquiry contacted the hospital in any official capacity. So, clearly no role and function study was conducted. Nonetheless, there was the recommendation that the hospital be reduced to the status of a nursing home and health centre.

The Hon. J.R. Cornwall: There is a role and function study under way now. I have been there since.

The Hon. J.C. BURDETT: I am quite aware that thereafter there were very bitter complaints—

The Hon. J.R. Cornwall: It was a routine run.

The Hon. J.C. BURDETT: There were very bitter complaints on the part of the Tailem Bend community, and there will continue to be such complaints unless something active happens as a result of the role and function study just mentioned. However, the Sax Committee made no contact with the hospital at all, but recommended its virtual closure—reducing it to the status of a nursing home and health centre.

The Hon. J.R. Cornwall: Have you been there, John?

The Hon. J.C. BURDETT: Yes, I have.

The Hon. J.R. Cornwall: Pretty old fashioned, isn't it?

The Hon. J.C.BURDETT: That really has nothing to do with it. The point I am making is that, while I have been there—

The Hon. J.R. Cornwall: Haven't you heard about patient safety?

The ACTING PRESIDENT (Hon. Peter Dunn): Order!

The Hon. J.R. Cornwall: You never cease to amaze me.

The ACTING PRESIDENT: Order! The Minister will get a chance to reply in a moment.

The Hon. J.R. Cornwall: I won't bother about it.

The ACTING PRESIDENT: The Minister will remain quiet, now, please.

The Hon. J.C. BURDETT: While the Minister and I have been to Tailem Bend, the Sax Committee has not, yet it did recommend the closure of the hospital. I can assure the Minister that there is no doubt whatever that the total community is very upset and prepared to take quite radical action if nothing proper is done about this matter and if they are not heard.

The Hon. J.R. Cornwall: You are a month out of date.

The Hon. J.C. BURDETT: I am not out of date.

The Hon. J.R. Cornwall: You are out of date—you're positively olde worlde.

The Hon. J.C. BURDETT: I have been in contact with the community this morning and can assure the Minister that, unless his role and function inquiry comes up with something in the way of maintaining the facilities, the Minister will certainly find out what the community thinks.

The Hon. J.R. Cornwall: Your'e pre-empting its finding. You're meddling in the affairs of Government.

The Hon. J.C. BURDETT: I am not pre-empting anything. I am just telling the Minister what is the mood of the local people, which he will soon find out.

The Hon. J.R. Cornwall: And who will be the next shadow Minister.

The ACTING PRESIDENT: Order!

The Hon. J.C. BURDETT: Indeed I am already aware of occasions where Health Commission officers have indicated to hospital boards or staff that one particular hospital or another will be next. So, I am concerned that this recommendation has set the scene for an undermining of country health care through the closure of viable and legitimately justifiable country hospitals. Recommendation 3.24 proposes that:

(Subject to Recommendation 32.5) the South Australian Health Commission actively encourage hospitals to participate in the accreditation programme of the Australian Council on Hospital Standards (ACHS).

If (and I stress 'if') the Health Commission is simply going to encourage hospitals to participate in an accreditation scheme that is fine, but to actively encourage accreditation when interpreted by this Minister of Health could, quite frankly, have very sinister implications. Accreditation is an expensive procedure. In accredited hospitals costs go up. In working towards accreditation, and on achieving accreditation, a great deal of clinical time and effort goes into meetings and committees, which is a costly process and for which I am not totally satisfied that substantial additional benefits are evident in regard to the area of patient care.

I understand that the Royal College of Surgeons and the Australian Medical Association are moving within metropolitan hospitals to have an accreditation monitoring committee rather than a host of subcommittees in an effort to save many meetings per week. As part of the process of accreditation, doctors attending hospitals are required to attend regular peer review meetings. If a doctor practises at a number of hospitals (say, 10), he can be required to attend 10 such meetings. Even for a very small hospital the cost of accreditation can be of the order of $50 000 to $60 000 just to start with. If accreditation is to be encouraged by the Health Commission, and at a later stage openly required by it, the question of who finds the funds must be resolved given the Minister's frequent concern about the limited availability of health funds and the need to ensure that they are wisely and fairly spent. I believe that hospitals are always looking to improve their performance and resources and that accreditation does not necessarily imply that things will be better. I am concerned, too, that the autonomy of boards of management within a hospital will be partly eroded under a programme of accreditation by placing budgetry control in the hands of an outside body, not even the Health Commission. Recommendation 3.31 deals with:

The practicability of a private practice privileges fee being explored.

I have no objection to an exploration of the practicability of such a fee, but again I signal a concern that in the hands of the present Government such a fee could become a ideological battle rather than a constuctive discussion with our doctors.

Appropriate and properly costed charges would be acceptable but we should be aware that many doctors donate equipment to hospitals which they then use themselves. That is quite common. This is a frequent practice, although one suspects that, with the Big Brother approach of Medicare, doctors will have no incentive to continue and I believe it would be wrong if doctors provided equipment and they are then charged to use the facilities they provide themselves. Although this may not conflict with the Hon. Dr Cornwall's sense of morality, it does with mine.

I mentioned earlier my reservations about a No Fault Misadventure Compensation Scheme. Assessment of this is recommended under 3.38, as follows:

Public discussion of the concepts of a Patient Advice Office and a No Fault Medical Misadventure Compensation Scheme as described be encouraged.

I am concerned because that recommendation appears to be almost a straight lift from ALP policy, and the report does not present any hard facts to justify either the scheme or an investigation of it. A proposal like this should be adequately costed and investigated. The report has failed to do that. Just becuase it is ALP policy does not mean it should be recommended and, whilst I know it is a pet

project of the Minister of Health, I am not satisfied that the report has presented sufficient evidence to warrant any further consideration of such a scheme.

Turning to needs of hospital facilities, I am particularly concerned with recommendations 4.5, 4.7 and 4.11. My concern relates to the acknowledged desire of this Minister and this Government to cut services in small hospitals, particularly in rural areas.

The Hon. J.R. Cornwall: We have the best country hospitals in the world.

The Hon. J.C. BURDETT: That will not be the case if the Minister has his way. Recommendation 4.5 states:

The level of surgical, obstetric and paediatric services in regional, district and community hospitals be clearly defined taking account of the size of the hospital, the training, competence and organisation of its staff and its proximity to better equipped and staffed hospitals.

The Hon. J.R. Cornwall: You're an old mischief maker.

The Hon. J.C. BURDETT: I am simply quoting. On the surface this is all right, but it should not be used as a vehicle for cutting services for small hospitals. Country people have a right to expect minimum services at reasonable proximity and, as a former board member of a country hospital, and having visited many country hospitals in recent months to discuss the Sax Report, I know how strong the feeling is of this Minister—that he is out to get them.

The Hon. J.R. Cornwall interjecting:

The Hon. J.C. BURDETT: I will come to that in a moment. It would be appropriate at this stage to mention that on a number of occasions the Minister of Health has attacked me for visiting hospitals in country areas, saying that I had never contacted him to seek his agreement to visit them. I have dealt with this matter before. In regard to teaching hospitals (what are generally regarded as public hospitals—or whatever the Minister's definition may be), I have always not only informed him but always sought his permission to visit. In relation to, say, the Mannum, Lameroo or Pinnaroo Hospitals, it seems to me that that is quite irrelevant, and I have not contacted the Minister on those occasions.

The Hon. J.R. Cornwall: Who funds them? Is that different money from that used at the Mount Gambier Hospital or the Royal Adelaide Hospital?

The Hon. J.C. BURDETT: It is not a question of funding; it is a question of the manner in which the hospitals are conducted and the way in which they are managed and their boards of management are elected. I am certainly informed that the Minister of Health, when he was in Opposition, did not always give notice to the former Minister of Health on every occasion that he visited health institutions. Recommendation 4.7 deals in more detail with role and function studies and specifies the following hospitals for development or redevelopment:

Mount Gambier Hospital, Port Augusta Hospital and Whyalla and District Hospital be developed as regional hospitals. Port Lincoln Hospital and Port Pirie and District Hospitals be developed as regional hospitals by 1991. Clare and District Hospital and South Coast District Hospital be developed as district hospitals by 1991.

That point was a cause of great amusement at Clare, because the Clare and District Hospital considers that it has been a district hospital in every sense for about the past 10 years. Recommendation 4.7 of the report continues:

Five hospitals in the remote western and northern part of the State, namely: Andamooka Outpost Hospital; Australian Inland Mission Hospital, Oodnadatta; Bishop Kirkby Memorial Hospital, Cook; Royal District Nursing Society Hospital, Marree; Tarcoola Hospital, be classified as medical and nursing centres.

Blythe District Hospital and Lower Murray District Hospital have their roles redefined as medical and nursing centres.

I strongly oppose the recommendation in relation to the Blythe and Lower Murray Hospitals. Already the hospital management in both cases have had indicated to them by Health Commission officers that they will be closed down as hospitals.

The Hon. J.R. Cornwall: Blythe is 12 minutes from Clare. How can you justify keeping Clare and Blythe open?

The Hon. J.C. BURDETT: I am quite happy to debate that matter with the Minister at some other time. I am dealing with a more general subject at the moment. This attitude is extraordinary when we find that no role and function study has been carried out at the Lower Murray District Hospital. As I have said, no contact was made with the hospital and it was not visited at all before that recommendation was made. At Blythe, since the role and function study, the situation has now changed, where the doctor is resident at the hospital and he co-operates with other doctors including those at Clare and Snowtown to ensure that an important facility and an adequate standard of health care is available.

It would be easy to overlook this recommendation to close Blythe and Lower Murray, but the implications of it are quite far reaching. The closing of one hospital could put others at risk, not simply because it establishes a precedent but also because it saps from a rural area medical practitioners and others who would normally provide support at hospitals nearby. This applies in regard to Blythe and Snowtown, for example. If the Blythe Hospital is closed and there is insufficient, as it would seem likely, need to warrant a doctor remaining in the town, that doctor will be lost to Blythe and will also be lost to nearby towns where, in the normal course of events, that person would serve as a relieving doctor or a support during operations.

Consequently, the removal of a hospital from a town removes also the medical staff, who are lost to the wider community and to the hospitals and doctors in neighbouring towns, so that the impact of what seems to be a relatively minor decision is far more widespread. In the case of the Lower Murray Hospital, located at Tailem Bend, I oppose its closure. Even though it is close to Murray Bridge there is no public transport from Tailem Bend to Murray Bridge other than the Bluebird, which runs infrequently and takes considerable time. For example, if someone at Tailem Bend wanted to travel on the Bluebird to visit a member of the family in hospital at Murray Bridge, they would have to wait eight hours before they could return.

Whilst private transport could be arranged to Murray Bridge, in many instances, because of high unemployment in the area, this may not be available to all people and, probably more importantly, there is a large area east of Tailem Bend which requires access to adequate health facilities. I certainly found in my visit to the area recently that it was persons resident around Coonalpyn and areas nearby who were the most hostile to the suggestion of the closure of the Lower Murray Hospital at Tailem Bend in its present form. This access by people to the east will be seriously eroded when hospital facilities are made available only at Murray Bridge and not Tailem Bend.

I have had it on good authority that hospitals east of Tailem Bend and to the south have been threatened by the Health Commission that, on the completion of Stage 4 at Murray Bridge, at least four of them will be closed. The Minister of Health, who prides himself on consultation and openness, has a secret plan to close five hospitals serving the Murray and Mallee region.

The Hon. J.R. Cornwall: How dare you reflect on the Health Commission.

The PRESIDENT: Order!

The Hon. J.C. BURDETT: I am repeating what has been said by the Health Commission. In the recommendation dealing with administration of hospitals, the committee has made a number of unacceptable comments and proposals.

Of particular concern is the recommendation which gives to the Minister of Health the power to appoint and remove all boards and every member of any board.

The Minister could wield such power wantonly and unacceptably and, more than that, this recommendation removes the appropriate influence of the local community over who will run their hospital. The Minister may claim that he would always take into account local community views and feelings, but there is no guarantee that he would, and with this Minister I wonder. Boards should be elected by the community, not appointed by a central authority which is unanswerable to the local community and whose aims and objectives could run counter to the best interests of the community.

The Hon. C.M. HILL secured the adjournment of the debate.

PUBLIC INTOXICATION BILL

The Hon. J.R. CORNWALL (Minister of Health) obtained leave and introduced a Bill for an Act to provide for the apprehension and care of persons found in a public place under the influence of a drug or alcohol; to repeal the Alcohol and Drug Addicts (Treatment) Act, 1961; and to provide for other incidental matters. Read a first time.

The Hon. J.R. CORNWALL: I move

That this Bill be now read a second time.

In view of the fact that I have to go and take my place on the national stage with my colleagues the other Health Ministers, and that the hour is rather late, I seek leave to incorporate the second reading explanation in *Hansard* without my reading it. I commend it to all members. It is a very significant piece of legislation and an excellent second reading explanation.

Leave granted.

Explanation of Bill

The purpose of this short Bill is twofold. First, it will repeal the Alcohol and Drug Addicts Treatment Act and abolish the Alcohol and Drug Addicts (Treatment) Board as a statutory body. This will leave the way clear for the Board to be replaced by a Drug and Alcohol Services Council, to be incorporated under the South Australian Health Commission Act. Secondly, the Bill will modify the public drunkenness protective custody system previously legislated, so that the repeal of the offence of public drunkenness can finally be given effect.

Turning to the Alcohol and Drug Addicts (Treatment) Act, honourable members may be aware, as the Report of the Royal Commission into the Non-Medical Use of Drugs in South Australia observes, that until 1961 the treatment of alcoholism and other forms of drug dependence in South Australia was the responsibility of the Mental Health Services, which had a specialised unit at Hillcrest Hospital. At that time suggestions were made that a separate treatment agency was required for such cases and that neither mental hospitals nor prisons were appropriate centres for the treatment of dependence. In April 1961, the then Government formed an advisory committee to consider creating centres for the reception, care, control and treatment of alcoholics and drug addicts. The committee recommended the establishment of centres, independent of prisons or mental hospitals, to which alcoholics and addicts could be committed compulsorily. Legislation to implement the recommendations was passed in 1961.

Implementation of the Act, however, was delayed pending the construction of a large treatment centre. In 1964, following the recommendations of other committees, the Act was amended. The amendments provided for the creation of a Board consisting of three members, in place of a single Director, and for the Board to cater for voluntary as well as involuntary patients at such institutions as might be approved by the Minister. The committees favoured abandonment of the proposed large treatment centre, which was never built. The Act was finally brought into force in 1965 and in 1966 the Board started its service. The Board has since expanded its services, partly by creating its own facilities, and partly by funding existing voluntary agencies.

The Act has, however, remained in its earlier form. It provides for a quite complex system of designating committal centres and voluntary centres (as well as sobering-up centres), and for the admission to and detention of patients in those centres. It reflects an authoritarian and institutional approach to the problems of drug dependent persons. In practice, these provisions have never been used.

The most recent inquiry to address the Alcohol and Drug Addicts (Treatment) Board and its services was the 1983 Inquiry into Mental Health Services in South Australia under the distinguished chairmanship of Dr Stanley Smith. That committee recognised that the Act's 'treatment and discipline' approach took no account of factors essential for modern day, effective and comprehensive delivery of services: for example education, training, programme evaluation, monitoring and research. The committee recognised that the Board itself considered its legislation to be anachronistic, and supported the Board's endeavours to have its charter updated.

The manner in which the Board's charter might be updated was addressed in some detail by the Smith Committee. It was recognised that, since the passage of the Alcohol and Drug Addicts (Treatment) Act in the 1960s, the South Australian Health Commission has been established. The Health Commission is the statutory authority with the primary functions of rationalising and co-ordinating health services and promoting the health and well being of the people of this State. Services to that end are generally provided by health units incorporated under the South Australian Health Commission Act, funded by the Commission and accountable for that expenditure to the Commission.

The Alcohol and Drug Addicts (Treatment) Board, as a statutory body itself, sits anomalously outside this system. It has no clear statutory relationship with the Commission, yet it provides health services of a particular kind and receives funds from both State and Commonwealth sources. The Smith Committee believed that there were compelling reasons for change. Specifically, it recommended:

> that the Alcohol and Drug Addicts (Treatment) Board be incorporated under the provisions of the South Australian Health Commission Act, while allowing it to retain substantial independence. This would obviate the duplication which often arises with separate statutory authorities with overlapping interests, and the corollary problems of areas 'falling in the cracks' and receiving inadequate attention from either body. It would also ensure direct access by the Board to resources which exist within the South Australian Health Commission, such as health promotion, data analysis and epidemiology.

The Bill before honourable members today therefore provides for the repeal of the Alcohol and Drug Addicts (Treatment) Act. It provides for staff and assets, rights and liabilities of the Board to transfer to a new Drug and Alcohol Services Council, which will be an incorporated body created under the South Australian Health Commission Act. It is made clear that the staff of the disbanded Board will go over to the new council without any reduction in salary or interference with leave rights.

The Board will work with the Minister and the Health Commission in developing a constitution for the new organisation appropriate to the 1980s and beyond. It is hoped that the new body will come into existence to coincide with the beginning of the next financial year. The Government regards this as an important step in revamping and strengthening South Australia's alcohol and drug services. The new council will have a vital role to play in implementing the Government's drug abuse strategy.

It will continue to develop as an authoritative resources and information centre on matters relating to the misuse and abuse of alcohol and other drugs. Its educational role, in conjunction with other bodies, will be strengthened. It will be the principal resource for alcohol and drug related monitoring, evaluation and research activities. It will promote specialised education and training for occupational groups likely to be concerned with issues relating to alcohol and drugs.

It will, at this stage, retain its facilities for treatment of patients, pending the development of alternative resources in the general hospitals, as recommended by the Smith Committee. The Government acknowledges the rationale of Smith's recommendation that alcohol and drug addiction treatment should be integrated into the general health care delivery system. It recognises that this will be an evolutionary process, which must be accompanied by appropriate education and training programmes.

The second aspect to the Bill is the modification of the public drunkenness protective custody system. Indeed, since the Alcohol and Drug Addicts (Treatment) Act is to be repealed, it is necessary to restate the public drunkenness provisions, with modification, in this legislation. Honourable members will recall that in 1976 Parliament passed an amendment to the Police Offences Act to repeal public drunkenness as a criminal offence. The Alcohol and Drug Addicts (Treatment) Act was also amended in that year to introduce a protective custody system, enabling police to apprehend persons drunk in a public place and to take them to an appropriate place, without treating them as criminals. The amendments to that Act were found to be inadequate in 1978 and modifications were passed by Parliament in that year.

The amendments to the Police Offences Act and the Alcohol and Drug Addicts (Treatment) Act are not yet in force. Last year, when their implementation was considered, problems were found to exist with the amendments to the Alcohol and Drug Addicts (Treatment) Act. Section 29 of that Act provides for the police to take a person found to be drunk in a public place:

(a) home;

(b) if that is not reasonably practicable, to a sobering-up centre;

(c) if that is not reasonably practicable, to a police station.

A person taken to a police station which has not been declared a sobering-up centre would be able to be held there for only four hours. Thereafter the person must be released or transferred to a sobering-up centre.

As the provisions of section 29a stand, a person would be able to be held at a sobering-up centre (including a police station so declared) for:

(a) 18 hours;

(b) 30 hours with a medical certificate as to need;

(c) 102 hours with a court order.

There are several concerns in relation to the present amendments. In particular, the police are concerned that they are bound by the present amendments to take persons found to be drunk home as a first option, rather than to a police station.

The police have sought flexibility of options as to where they take persons apprehended. In most cases, they would prefer to take such persons to a police station, and arrange for staff of the new council to pick them up and take them to a sobering-up centre or home. Clause 7 (3) of the Bill therefore provides the flexibility of options sought by the police.

The police also saw practical difficulties in the fact that the present amendments enabled them to hold a person apprehended in a police station for only four hours, particularly in the country. Most country stations are not manned on a 24 hours per day basis. In simple practical terms, there may not always be a police officer available to release an apprehended person after four hours. It has been envisaged that this problem would be overcome by declaring most country police stations sobering-up centres so that the periods for which a person could be held would be longer.

Under the present amendments, it would be possible to hold a person at a sobering-up centre for 18 hours, in the first instance. However, this approach is open to criticism. It is really simply giving to a police station another more euphemistic name. Such a declaration does not bring with it any special treatment. It does however make it possible for a person to be detained against his will, without charge of an offence, for 18 hours at the very least, in what is still a cell, however characterised.

There is consensus between the police and Board officers that these potential periods of detention are unduly long. The police consider that 10 hours rather than four hours is the appropriate period for which a person should be able to be held at a police station. They agree that it is inappropriate to declare police stations sobering-up centres and to acquire the power to detain persons for long periods. The Board prefers where possible to treat people on a voluntary basis and largely has managed to do so without a detention system.

For the few problem cases, the Board considers that a maximum of 18 hours, including the time for which a person is held at a police station and at a sobering-up centre, will be sufficient. Thus, under the Bill:

(a) the period for which a person may be held at a police station is extended from four to 10 hours (see clause 7 (4));

(b) only places with treatment facilities can be sobering-up centres (see clause 5);

(c) the maximum period for which a person can be held at a sobering-up centre is 18 hours, including time spent at a police station, and other detention periods are deleted (see clause 7 (5)).

Two other important matters to which the attention of honourable members is drawn are clauses 5 (1) *(b)* and 7. Clause 5 (1) *(b)* enables the Governor to declare any substance to be a drug for the purposes of the Act. This means that volatile solvents (glue, petrol) could be declared at a later date if appropriate so that police would have the power to apprehend glue sniffers, and take them home or to treatment. The police have felt powerless to act in such situations, although they often encounter the problem.

Clause 7 makes special provision to protect children detained at a police station or sobering-up centre. In particular, the parents must be notified if possible, and steps must be taken where reasonably practicable to keep children separate from adult offenders at police stations.

In summary, the operation of the Act to repeal public drunkenness is long overdue. It is imperative that the problems with the protective custody scheme regarding persons under the influence of alcohol or other drugs be finally resolved, to enable the scheme to be implemented as soon as possible. It is also timely to implement the Smith Report recommendations with respect to the Alcohol and Drug

Addicts (Treatment) Board. I commend the Bill to the Council.

The provisions of the Bill are as follows: Clauses 1 and 2 are formal. Clause 3 provides the necessary transitional provisions consequential upon the repeal of the Alcohol and Drug Addicts (Treatment) Act, the disbandment of the Board that operated under that Act and the proposed establishment of a Drug and Alcohol Services Council as a health centre under the South Australian Health Commission Act. It is made clear that the staff of the disbanded Board will go over to the new council without reduction in salary or interference with leave rights.

Clause 4 provides various definitions. Clause 5 empowers the Governor to declare premises that have treatment facilities to be sobering-up centres for the purposes of the Act. He may declare substances to be drugs for the purposes of the Act. The Minister may appoint authorised officers. Clause 6 clarifies the fact that the Act applies to children as well as to adults.

Clause 7 provides for the apprehension of persons found in a public place under the influence of a drug or alcohol and unable to take care of themselves. A member of the police force or an authorised officer may exercise this power. Once apprehended, a person must be taken to one of four places, at the discretion of the member of the police force or authorised officer. The person may be taken home or to an approved place (for example a shelter or hostel) and released from custody. Alternatively he may be taken to, and detained in, a police station or a sobering-up centre. The maximum time a person can be so detained is 18 hours, with no more than 10 hours being spent in a police station, and he must be discharged earlier if the person detaining him is satisfied that he has recovered sufficiently to take care of himself. The parents or guardians of a child who is detained must be notified, unless their whereabouts is unknown or it is not reasonably practicable to do so. Children detained in a police station must be kept separate, where possible, from adult offenders. A detained person may be discharged into the care of a solicitor, relative or friend of his before the expiry of his period of detention. He may also be discharged early for the purpose of medical treatment.

Clause 8 enables a person who has been detained under this Act to get a declaration from a special magistrate that he was not, at the relevant time, under the influence of a drug or alcohol. Such a declaration does not have the effect of rendering his detention unlawful. Clause 9 provides that a person may be transferred from one sobering-up centre to another during his detention. Clause 10 provides that a person is in lawful custody while he is being detained in a police station or sobering-up centre, or while he is in the custody of any person in whose charge he has been placed by the officer in charge of the station or sobering-up centre. A person who escapes that lawful custody may be apprehended and returned to the place in which he was being detained.

Clause 11 provides an offence of ill-treating or neglecting a person while he is being detained. Clause 12 provides an offence of unlawfully removing a person from a place in which he is being detained pursuant to this Act, or aiding his escape. Clause 13 gives members of the police force and authorised officers the usual immunity from liability. Clause 14 provides that offences are to be dealt with summarily. Clause 15 provides for the making of regulations.

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

[*Sitting suspended from 5.50 to 7.45 p.m.*]

CRIMINAL LAW CONSOLIDATION ACT AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Criminal Law Consolidation Act, 1935, and to make a consequential amendment to the Trustee Act, 1936. Read a first time.

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

That this Bill be now read a second time.

With the concurrence of the Council I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

The provisions of this Bill implement the recommendations and the Seventieth Report of the South Australian Law Reform Committee—Locus Standi—Prisoners Rights. At common law anyone convicted of treason or a felony and sentenced to death or outlawry was said to be 'attainted'. This consequence had two principal effects. First, he suffered forfeiture of his property and of most causes of action which were available to him. Secondly, he suffered 'corruption of the blood', that is, he became incapable of holding or inheriting land, of transmitting title or sustaining a claim in a court of law.

The common law rule that the property of persons convicted of treason or a felony was forfeited to the Crown was abolished in 1874. However, persons convicted of treason or a felony were placed under certain disabilities during the service of their sentences. These disabilities included the incapacity to hold certain offices, and the inability to bring legal proceedings for the recovery of any property, debt or damage. The legislation authorised the appointment of a Curator of Convicts Property, and gave the Curator power, *inter alia*, to pay the costs of the convict's prosecution and other debts owed by him and to institute legal proceedings on behalf of the convict. The Curator was also given absolute powers to deal with the convict's property, and was not required to take into account the wishes of the convict in its management.

In 1966 the Criminal Law Consolidation Act was amended to place all persons undergoing imprisonment, other than those on remand, under the same disability. That is, provisions designed originally to ameliorate the position of felons at common law have been extended to all prisoners, placing persons imprisoned for even minor misdemeanours or for failure to pay a fine under significant disabilities.

The Law Reform Committee recommended that the restrictions on prisoners to bring actions and deal with their property in Part X of the Criminal Law Consolidation Act should be repealed and in its place it should be enacted that a prisoner is under no disability to bring any action, make any contract, or exercise any conveyance, transfer or other dealing with property.

The procedural restrictions on prisoners commencing civil actions in the courts are anomalous and out of keeping with modern views concerning the rights of prisoners and the proper limits of the punishment of imprisonment. No matter how serious a person's crimes, the punishment of the loss of liberty does not warrant, in addition, denying to the prisoner access to the courts for an impartial determination of their claims according to law.

The denial of prisoners' access to the courts is contrary to universally accepted standards of human rights as spelled out in the International Bill of Human Rights. For example, Article 10 of the Universal Declaration of Human Rights provides that everyone is entitled in full equality to a fair

and public hearing by an independent and impartial tribunal in the determination of his rights and obligations. Article 14 of the International Covenant on Civil and Political Rights provides that all persons shall be equal before the courts and tribunals.

The repeal of Part X of the Criminal Law Consolidation Act and the enactment of provision that a prisoner is under no disability to bring any action requires a consequential amendment of section 88 of the Trustee Act, 1936. That section provides that a beneficial interest in property shall not remain vested or become vested in the convict either for himself or as a trustee or mortgagee. As the Law Reform Committee said, it may well be highly inconvenient to have a convict as trustee, but the remedy for that is provided by the law already, namely, an application to discharge a trustee who is unable to look after his trust property and to appoint another trustee in his place.

Another related matter which requires attention is section 296 of the Criminal Law Consolidation Act. This section provides that a person convicted of a felony and sentenced to imprisonment with hard labour for a term exceeding 12 months loses any office which he may hold under the Crown or any public employment, and any superannuation payable out of a public fund. As the Criminal Law and Penal Methods Reform Committee pointed out in its Fourth Report on the Substantive Criminal Law (at page 386) this disqualification does not follow a conviction of misdemeanour followed by a similar term of imprisonment. There is no justification for the discrimination and the section should be repealed.

Clause 1 is formal. Clause 2 amends section 3 of the principal Act which sets out the arrangement of the Act. The reference to Part X is removed. Clause 3 repeals section 296 of the principal Act. Clause 4 inserts new section 329 into the principal Act. The new section provides that a person who has been convicted of treason, a felony or any other offence, shall not, by reason only of that fact, be under any legal disability except as is prescribed by any Act of the State or the Commonwealth. Clause 5 repeals Part X of the principal Act. Clause 6 repeals section 88 of the Trustee Act, 1936.

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

STATUTES AMENDMENT (OATHS AND AFFIRMATIONS) BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Evidence Act, 1929, and the Criminal Law Consolidation Act, 1935; and to make related amendments to the Acts Interpretation Act, 1915, the Local and District Criminal Courts Act, 1926, the Oaths Act, 1936, and the Supreme Court Act, 1935. Read a first time.

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

That this Bill be now read a second time.

With the concurrence of the Council I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

This Bill brings into effect the Forty-sixth Report of the Law Reform Commission of South Australia relating to the form of oath to be used in courts and other tribunals. In addition, it revises and updates the laws relating to perjury. The investigation by the Law Reform Committee of the form of oath that should be used in South Australian courts and tribunals was initiated some years ago. The report that was submitted by the committee noted that there were (as is still the case now) three forms of oath in common use in this State. None of the oaths have statutory force. All have been in use in South Australia for a very long time and are well understood by ordinary people as well as those presiding in courts. The committee provided a detailed analysis of the forms of oath in use and discussed their origins, and finally concluded that it did not consider it appropriate that any change be made to the forms. This recommendation has been accepted by the Government.

As part of the committee's discussion of this topic, the committee also suggested that the requirement of section 8 of the Evidence Act, 1929, that a person who objects to being sworn must come within a prescribed qualification, is inappropriate. Instead, the proper consideration should be what is appropriate to the person taking the oath. The committee, therefore, recommended that section 8 be amended. This recommendation is also acceptable to the Government and is implemented by this Bill by a provision that a person may make an affirmation instead of an oath in all circumstances in which an oath is required or permitted by law.

Furthermore, in light of other matters contained in the committee's report and because of the necessity to amend section 8 of the Evidence Act, it has been decided to take the opportunity of reviewing all three sections of the Act that are concerned with the taking of oaths and the making of affirmations. Accordingly, it is proposed to repeal sections 6, 7 and 8 of the Evidence Act and substitute two new sections in a more acceptable form. Such a revision allows also for the implementation of one other recommendation of the Law Reform Committee's Forty-sixth Report concerning the general power of courts and persons authorised to hear and determine matters to administer oaths or take affirmations. It is proposed that a prescription of this power be provided in the Evidence Act, and consequently other provisions duplicating the power may be repealed.

Finally, as part of this review of the law relating to oaths, this measure provides for the reform of that provision of the Criminal Law Consolidation Act, 1935, relating to the crime of making a false statement under oath. Presently, the crime of perjury is provided for in a number of Statutes. It is submitted that a general prescription of the offence is preferable, and this has been undertaken. It is also of interest to note that one aspect of the reform of this section is consistent with a recommendation of the Law Reform Commission in its second report concerning the concept of committing a crime 'wilfully and corruptly'. The section presently refers to 'wilful and corrupt' perjury but, as was discussed by the Law Reform Committee, the use of the word 'corrupt' is undesirable as it is either redundant or unduly restrictive upon the operation of such a provision. The concept of making a 'false statement' under oath is far easier to comprehend. Therefore, a new section is proposed.

Clause 1 is formal. Clause 2 provides for the commencement of the measure. Clause 3 provides for amendments to the Evidence Act. The revamped definition of 'court' takes into account a recommendation of the Law Reform Committee that a general statement of the power of a 'court' to administer an oath or take an affirmation be included in the Evidence Act, in preference to the Acts Interpretation Act. The reform of present sections 6, 7 and 8 is also undertaken in light of the recommendations of the committee. Proposed new section 6 (1) *(a)* re-enacts present section 6. Proposed section 6 (1) *(b)* deals with a point made by the committee concerning the difficulties that a court may sometimes encounter if witnesses do not have beliefs that are consistent with the norm. Accordingly, the provision

will ensure that a court may administer any oath that is binding upon the conscience of the witness. Paragraph *(c)* makes reference to any other form of oath authorised or permitted by law. Proposed new section 6 (2) re-enacts the present section 7 III. Proposed new section 6 (3) implements the recommendation of the Law Reform Committee concerning the inappropriateness of the requirements of present section 8 of the Evidence Act that a person must state a ground of objection before he may make an affirmation instead of an oath. It is proposed that a person be permitted to make an affirmation instead of an oath in all circumstances in which an oath is required or permitted by law. Proposed new section 6 (4) is similar to present section 8 (3). Section 6 (5) provides that an affirmation has the same force and effect of an oath. Oaths and affirmations are not to be invalidated by procedural or formal error or deficiency. Proposed new section 7 is consistent with the proposal that provision be made in the Evidence Act in relation to the power of 'courts' to administer oaths and take affirmations.

Clause 4 provides for the recasting of section 239 of the Criminal Law Consolidation Act. The section will now provide for an offence of perjury constituted by making a false statement under oath. 'Oath' is defined to include 'affirmation', and provision is also made to define the concept of making a 'false statement'. At the same time, the offence of subornation of perjury, or in citing, procuring, inducing or aiding the commission of perjury, is provided in new statutory terms. Section 7 (3) provides a useful evidentiary provision. Subsection (4) allows any court to direct that a person be prosecuted for perjury. Proposed subsection (5) provides that corroboration is unnecessary in order to obtain a conviction for perjury or subornation of perjury. Finally, a penalty of four years' imprisonment is retained.

Clause 5 provides for the repeal of sections 41 and 51 of the Acts Interpretation Act, 1915. Section 41 allows any court, judge or other person authorised by law to hear any matter or thing to receive and examine evidence, and administer an oath or take an affirmation. A comparable provision is to appear now in section 7 of the Evidence Act. Section 51 provides for the crime of wilful and corrupt perjury. This will now be provided for under the Criminal Law Consolidation Act.

Clause 6 repeals section 299 of the Local and District Criminal Courts Act, 1926. Again, this provision provides that a person is guilty of perjury if he wilfully and corruptly gives false evidence. It may be repealed. Clause 7 repeals section 29 of the Oaths Act, 1936. This section provides that a person who makes a false oath, affirmation or declaration before a Commissioner is guilty of perjury. It may be repealed. Clause 8 provides for the repeal of sections 37 and 118 of the Supreme Court Act, 1935. Section 37 is concerned with the power of certain persons to administer oaths. The provisions of new section 7 of the Evidence Act will now be sufficient. Section 118 is concerned with perjury.

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

PLANNING ACT AMENDMENT BILL

(Continued from page 3451.)

Bill recommitted.

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

A quorum having been formed:

Clause 7—'Saving provision'—reconsidered.

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

Page 3—

Lines 21 and 22—Leave out paragraph *(a)* and insert paragraph as follows:

'*(a)* by inserting in subsection (1) after the passage "Notwithstanding any other provision of this Act" the passage "but subject to subsection (3)".'

Line 23—Leave out paragraph *(b)* and insert paragraph as follows:

'*(b)* by striking out subsections (3), (4), (5), (6) and (7) and substituting the following subsection:

(3) The operation of subsection (1) *(a)* is suspended until the first day of November 1984.'

I indicate to the Committee that certain discussions have taken place since this matter was last before it and I think that good sense has prevailed.

The Hon. L.H. Davis: Not with us.

The Hon. C.J. SUMNER: But you are the Opposition. The effect of the amendment is to retain in position the Government's proposal in this clause until 1 November 1984. A sunset provision has been introduced into the Bill.

The Hon. L.H. Davis: Is it the sunset for the Democrat Party?

The Hon. C.J. SUMNER: I will not comment on the Democrats.

The Hon. Diana Laidlaw: You just agree with them.

The CHAIRMAN: Order! Let us get on with it.

The Hon. C.J. SUMNER: A very sensible compromise has been arrived at. The problems that may have occurred if vegetation clearance had been able to commence apace following the result of the Supreme Court decision will not be able to occur, but the Government will have to have its policy in the area reconsidered before 1 November 1984. Then the operation of the provision we are inserting will come into effect and the Government, in order to ensure that its policy continues in respect of vegetation clearance (if the Supreme Court case goes against it), will have to introduce legislation before 1 November 1984. This seems to be a sensible holding operation and I commend it to the Committee.

The Hon. M.B. CAMERON: What an embarrassing moment for the Attorney-General! Actually, for some reason I feel sorry for him having to be the Minister who has to present this extraordinary proposal following the extraordinary outburst of the Minister of Health this afternoon on the same matter. The Minister said, 'In no way can we accept any amendment to our Bill.'

Members interjecting:

The Hon. M.B. CAMERON: What did the Minister call the Democrats? 'Postulating politicians of the centre', was his phrase. The most incredible words were used in respect of the Australian Democrats about how important it was that the Bill should stay in its present form.

The Hon. C.J. Sumner: It is staying in its present form.

The Hon. M.B. CAMERON: Yes, it is going to stay in its present form until November. That is an extraordinary situation. The Government has now accepted a remarkable situation under which people in every part of the State will be affected by the deletion of section 56 (1) *(a)* until November. Consequently, every person with a problem under this provision is going to be killed off until November, and goodness knows what will happen.

The Hon. L.H. Davis: No—

The Hon. M.B. CAMERON: No, it is the most ridiculous situation of which I have ever heard. One is either for it or against it—

The Hon. Diana Laidlaw: While the Government makes up its mind.

The Hon. M.B. CAMERON: Yes, while the Government makes up its mind. I just find this absolutely amazing, that we are expected at this stage of the evening to accept this proposition, that we are expected to believe that the Democrats believe in the development of this State. The Democrats are saying, 'Let us freeze development from now

until November. Every problem in this State relating to section 56 (1) *(a)* is finished until November.'

Members interjecting:

The Hon. M.B. CAMERON: The Hon. Mr Bruce said, 'Good', but he would not be *au fait* with the problem in this matter. All the people in South Australia who have a problem with this section will be put outside the law until November and then they will not be sure whether or not they will be inside the law. They will not be able to plan or do anything. The Government can have its little corridor discussions but one thing is certain: the official Opposition in this State knows where it is going. This proposition is not on.

The Hon. C.J. Sumner: Clear all the vegetation, is that what you want to do?

The Hon. M.B. CAMERON: At least the Minister is being honest. The Government can hide all the time behind this matter but he is being honest in saying that that is the sole purpose for the introduction of this provision. The Government is panicking because of a situation which the Government created. Why does not the Government introduce a Bill which provides for fairness for everyone affected by these regulations? Why does the Government not introduce a Bill that will provide for adequate compensation for the people who are asked to provide private national parks in this State? If the Government did that it would not have a problem in the rural area. It would not have this problem with these regulations.

The Government went outside the normal Parliamentary system and it is frightened of the end result because it did not examine the question properly before it acted. We said that it was probably illegal at the time. We warned the Government but it would not listen to the warning and it would not examine the situation. The Government will not go back to base one and try and bring in a new Bill to make the position fair. The Government is in a state of panic. Government members are all in a state of panic over a matter that the Government has created itself. This amendment is just not on. It is not fair to put the people of this State into a situation where they are totally uncertain about their future under the Planning Act. It is not fair to anyone in this State, either in the metropolitan area or country area, and it is an extraordinary deal that the Government has done with the Australian Democrats. As far as we are concerned it is not on.

The Hon. I. GILFILLAN: The Leader of the Opposition made it abundantly clear that his Party is going to oppose the amendment. I am pleased and relieved to discover that the impassioned argument for logic is not completely frustrated in this Chamber and that our call was heard by the Government. I congratulate the Government on its consideration of the matter. I was relieved at the time when I was under assault from the Minister of Health that I had the feeling of support from members of the Opposition who seemed to be very much on my side in arguing my case at that stage of the day. However, one of the reasons—

The Hon. M.B. Cameron interjecting:

The CHAIRMAN: Order!

The Hon. I. GILFILLAN: One of the reasons why I had so much trouble persuading the Government—and it needed to be persuaded—to give us more time was that the Opposition had done a deal with the Government to complete this Bill today. Had they been more tolerant of the time required and not made undertakings that the Bill was to be put through today—

The Hon. J. C. Burdett interjecting:

The Hon. I. GILFILLAN: In this case some people have different viewpoints on this side of the Chamber. That is what I was told by someone who should be speaking with authority. I do not see it as the major issue before us. I make those few points because they are relevant in view of some of the noises I heard a little while ago.

We did have a difficult situation confronting us. It was impossible to resolve the situation satisfactorily, bearing in mind that there was a risk that native vegetation could be put in extreme danger. We had the choice of arguing for the adjournment for a certain period of time or for a sunset clause. We discussed the matter with some people directly involved in the consequences of this Bill, sought their opinion and their advice (as is our habit in coming to any of the decisions that we take), which will mean that in due time we will have a much richer base on which to contribute to this debate when the replacement Bill comes forward before 1 November, otherwise the Government loses anything it feels it will achieve in the Bill. It is obviously a practical and sensible step and reflects the consideration that we were hoping to get from the Government, but at certain times through the afternoon I gave up hope of that. It is great to know that faith won out in the end.

I am sorry that those who showed sympathy for our cause earlier in the day now seem to have lost their enthusiasm for it. I assure them, and everyone else who takes note of what we say, that we hope to benefit from the Opposition's comments on the situation and the legislation as much as we do from the Government or anyone else and look forward to co-operating eventually for legislation that will be for the benefit of most people in South Australia. In that respect I am sure I am quoting accurately from a responsible member of the Opposition that we will try to build proper legislation. We have some six months in which to do it.

The Hon. M.B. CAMERON: First, the Hon. Mr Gilfillan inferred that I was the person who did the deal with the Minister of Health to get this Bill through today. Let us get this matter clear. Last evening the Minister of Health wanted to put through this Bill. We had some words about that matter.

The Hon. R.I. Lucas: He wanted to get off to Sydney pretty quickly.

The CHAIRMAN: Order! The honourable member will get back to the clause.

The Hon. M.B. CAMERON: That is well and truly associated with the statement just made. In the finish, being a co-operative Opposition, although we had difficulty with the Minister because he genuinely wanted to go interstate—

The Hon. C.J. Sumner: He had to; it was for a Ministerial conference.

The Hon. M.B. CAMERON: We accept that. We are always willing to co-operate. At no stage was any comment made to me by the Hon. Mr. Gilfillan or any person representing the Democrats to suggest that they wanted the Bill put off for a fortnight. If that was the case, I would have considered it.

The Hon. L.H. Davis: He did not approach you on that at all?

The Hon. M.B. CAMERON: Not at all. I had to approach him to obtain his support to put off the Bill until today. Even then, there was some doubt about that at one stage. I believe that in the finish the Hon. Mr. Gilfillan accepted that. I then went to the Minister of Health, with whom I had a private conversation, and indicated to him that, in order to facilitate his departure, I was prepared to have the Bill brought on before Question Time and before private members business in order to facilitate his departure.

The Hon. J.C. Burdett: That is most unusual.

The Hon. M.B. CAMERON: Yes, it is a departure from normal practice.

The Hon. C.J. Sumner: Very co-operative.

The Hon. M.B. CAMERON: That is dead right. That was the deal. We enabled the Minister to finish this legislation before his departure. I thought that that was fairly co-

operative. If that is a deal (and I believe the word was used with a sinister connotation) then, yes, I did a deal with the Minister of Health in order to co-operate with the Government. I was surprised when the Minister did not take it to the third reading and finish the matter before he left for Melbourne. I realise now that a deal of a different sort was going on. If anyone was doing a deal it was not the Opposition.

The CHAIRMAN: Order! I bring Mr Cameron back to clause 7.

The Hon. M.B. CAMERON: I am dealing exactly with clause 7.

The CHAIRMAN: Order! We are dealing with a statement that the Hon. Mr Gilfillan made and I am not a bit interested.

The Hon. M.B. CAMERON: I was interested and I am interested in correcting it because Mr Gilfillan inferred that I did a deal when in fact the deals that have been done have been since this Bill was discussed this afternoon and they relate to clause 7. It is not on to accuse me of doing a deal, as the Hon. Mr Gilfillan did. The only person who has done a deal is the Hon. Mr Gilfillan. He has done a deal and completely retracted from his previous position.

The Hon. C.J. Sumner: No, he has not.

The Hon. M.B. CAMERON: Yes, he has. He said that sections of the Bill were not on and he attempted to amend it to bring it back to applying to rural areas of the State. He is saying that everything is all right all over the State and that he will allow it until November. That is a complete change of position. I will not go into other private conversations held prior to this Bill coming back, because I do not normally bring private conversations into this place. However, this deal should be rejected.

The Hon. C.J. SUMNER: The Leader of the Opposition is being grossly unfair to the Hon. Mr Gilfillan, who has achieved his objectives.

Members interjecting:

The Hon. C.J. SUMNER: Everyone but the Opposition has achieved their objectives. The Hon. Mr Gilfillan has achieved time to consider the legislation carefully. The Government has achieved what it aimed to achieve, namely, a moratorium on further scrub clearance should the Supreme Court decision find that earlier regulations were invalid. The Parliament has achieved something because it will have the opportunity, assuming the Supreme Court decision goes against the Government, to further debate the Government's policy in this area. It seems that honour has been satisfied on all sides.

Members interjecting:

The Hon. C.J. SUMNER: I am not sure what is dishonourable about reaching a sensible compromise—it has only made the Opposition grumpy. I am sorry it feels that way.

The Hon. L.H. Davis: You know why.

The Hon. C.J. SUMNER: Yes, because it has been slaughtered. The Opposition thought it was on a good thing and that it had the Government on the run. What has happened is that a very sensible compromise has been reached, and I commend the Hon. Mr Gilfillan for reaching that compromise. I think that it has achieved what he wants to achieve and what the Government wants to achieve, for the moment. Of course, he has done that with the support of his colleague, the Hon. Mr Milne.

The Hon. K.T. Griffin: Rather reluctantly, I think.

The Hon. C.J. SUMNER: I do not think that the Hon. Mr Milne was reluctant at all. What has been achieved is the best result that could be achieved for the moment. I am pleased to say that the Government was influenced by contributions made by the Hon. Mr Gilfillan during the second reading debate and the Committee stages of the Bill.

Some fairly wild accusations have been made about the effect of this Bill, but the fact is that the sunset provision does not preclude development between now and November 1984. Existing uses are protected; there is no threat to them. Any extensions of existing uses can be the subject of a development application to a local council in the usual way. I again commend the amendment to the Committee.

The Hon. K.T. GRIFFIN: This amendment ignores all the other criticisms that have been made in respect of previous clauses of this Bill. The injustice of retrospective penalties is retained. There has been strong criticism of that by both the Law Society and the South Australian Environmental Law Association because the penalty provisions of this Bill impose a continuing penalty before a conviction is recorded, and even before any charge is laid, so that great injustice is continued.

The Hon. M.B. Cameron: On every development in the State.

The Hon. K.T. GRIFFIN: Yes, on every development; that is correct. The problem with the amendment, I suspect, is that it will cause everybody who has an existing use to hold their breath for six or seven months as they do not know where they are going. The clause is suspended until 1 November 1984, but there is nothing to stop the Government bringing back and amending the Bill, again being supported by the Democrats to continue that extension. If that occurs all existing uses will not be protected. It means that present rights of property owners—

The Hon. C.J. SUMNER: I rise on a point of order, Mr Chairman. I am not sure that the honourable member—

The Hon. K.T. Griffin: I am debating clause 7, the Attorney's amendment.

The CHAIRMAN: What is the point of order?

The Hon. C.J. SUMNER: The honourable member should be dealing with clause 7, which relates to section 56.

The Hon. K.T. Griffin: I am dealing with it.

The Hon. C.J. SUMNER: It seems to me that the honourable member's remarks relate to clauses already dealt with.

The CHAIRMAN: I do not uphold the point of order, as I relate the remarks to clause 7.

The Hon. K.T. GRIFFIN: The Attorney-General is particularly sensitive about this matter because he knows what abrogations of rights are perpetrated by this clause, and this Bill. The fact is that anybody who has an existing use has his rights abrogated by this amendment to clause 7, which amends section 56 of the Act. If there is any non-conforming use, I interpret this amendment as suggesting that that is in breach of the development plan.

It is all very well for the Attorney-General to put a gloss on this, but the fact is that it is a very significant abrogation of individuals' rights which have been in existence for many years. It does not matter that the operation of section 56 (1) *(a)* is suspended until 1 November—it effectively abrogates people's rights. Let us look at what might happen on 2 November 1984 if section 56 (1) *(a)* comes back into operation. Does that mean that all the rights presently existing revive, or does it mean that they have all been scrubbed because of the operation of this amendment, or that, in the light of the operation of the amendment, there are no existing use rights which then carry forward beyond 1 November?

I suggest that the clause is quite clumsy. I assert quite vigorously that it is an abrogation of accrued property rights of a whole range of people across South Australia in relation not just to vegetation clearance but also to what people can presently put up—things such as a garage—without having to get planning approval.

Why should people have to seek planning approval if they want to erect a carport? I have always thought it quite

ridiculous to have the Planning Act bearing down on every small property owner in the metropolitan area of Adelaide requiring them to obtain permission to erect a carport, not just of a particular design but of a particular colour. I see nothing wrong with the Planning Act not applying to those small improvements to residential or other properties within urban areas. What are people on the Government side getting fussed about? They want to bring down the heavy hand of bureaucracy on every property owner in South Australia and make all of those owners subject to the Planning Act, no matter how small a development might be. Clause 7 assures that the heavy hand of bureaucracy can be applied once again.

It may be that the State Planning Commission or Tribunal has said that people do not have to get planning approval for a garage, so I ask 'So what is all the fuss about?' It is not as though there is a major development is being affected. No-one can tell me that the Adelaide Railway Station development will be in any way compromised or assisted by this amendment being in the Bill. In fact, I think that the whole Bill ought to go out, but I will address that matter at the third reading stage. I do not believe that this amendment addresses the issue previously canvassed by the Australian Democrats. I believe that it is a backdoor way of achieving the abrogation of property rights, and it is for that reason I do not support the amendment before the Committee.

The Hon. L.H. DAVIS: The proposal cobbled together over the dinner break is political and economic madness; there is no question of that. The proposition we have here is that the operation of subsection (1) *(a)* of section 56 is suspended until 1 November 1984, about 6½ months. What does this mean to the factory owner or a person planning a development of a domestic nature? What is that person to do during that 6½ month period? He will presumably be told by the planning authority that on 1 November 1984 subsection (1) *(a)* of section 56 may or may not come into operation.

What does that person do? Does he proceed with his plans and consult a surveyor or a builder? What sort of contingencies does he make for a planned development on a site? What does a home builder do if he is planning something of this nature which will be picked up by the operation of new section 56 (1) *(a)*, if it comes into effect on 1 November? The amendment is absolute madness and will make South Australia a laughing stock. I cannot believe that the Government is seriously proposing such a clumsy and ill-conceived proposition, simply because it wants to ram through some amendments to the Planning Act.

The Hon. Diana Laidlaw: Anything for political expediency.

The Hon. L.H. DAVIS: Yes, anything for political expediency. The Australian Democrats have been a party to this provision.

The Hon. C.J. Sumner interjecting:

The Hon. L.H. DAVIS: The Attorney-General responds by referring to native vegetation. The Government sought to be cute about this measure by joining together the rights of factory owners and home owners with a desire to prevent the clearing activities of farmers. The Government has tried to place two quite distinctive operations under the one umbrella. That in itself is clumsy. The amendment has the apparent support of the Australian Democrats, who have been softened up with some red wine over the dinner break.

Members interjecting:

The CHAIRMAN: Order!

The Hon. L.H. DAVIS: I am absolutely appalled. By seeking to control whatever the Government classifies as development, which includes additions to buildings and the clearance of indigenous plants, the Government is seeking to control the continuance of an existing use. Quite obviously, between now and 1 November we will have situations where a factory owner might need to erect employee amenities to comply with other legislation, or a home owner might need an extra room or two to accommodate a growing family. What will they do in the interim period?

What will the Government say to people who in the vacuum of the next six months will presumably think about this legislation again and finally decide what will happen after 1 November when the sun finally goes down? I will be interested in the Attorney's response to that question. What is the Government's intention after 1 November 1984? What will the Government say to people? Many people will be affected by the absurd amendment now before the Committee.

The Hon. C.J. SUMNER: I do not want to get into a long debate with honourable members opposite. I have not been intimately involved with this Bill. Members opposite are talking a lot of nonsense. The fact is that the amendment will not prevent people adding extensions to their homes, and it will not prevent factory owners from extending their factories. If a factory extension is to take place in an area zoned for factory use, that will be permitted.

The Hon. L.H. Davis: You're not right.

The CHAIRMAN: Order!

The Hon. C.J. SUMNER: I am not going to get into a slanging match with honourable members opposite who have the wrong impression of the intention of the Bill.

The Hon. L.H. Davis: You'd better get the Minister of Health to fly back.

The Hon. C.J. SUMNER: I do not think that I need the Minister of Health on this occasion. The amendment will not prevent extensions, and I hope that it does not do so, because I have some planned. On my advice, the amendment will not stop home extensions or factory extensions if a factory is located in an area zoned for that use. The amendment will stop the extension of an existing use without permission—for example, a shop in a residential area. If a shopkeeper wanted to convert his shop into a massive supermarket, that would be caught by the legislation. Surely that is not unreasonable. I should have thought that that was consistent with normal planning principles. I am only concerned to try to correct some of the misconceptions held by honourable members opposite.

The Committee divided on the amendments:

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

Noes (6)—The Hons J.C. Burdett, M.B. Cameron (teller), L.H. Davis, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Pairs—Ayes—The Hons Frank Blevins and J.R. Cornwall. Noes—The Hons. C.M. Hill and K.T. Griffin.

Majority of 3 for the Ayes.

Amendments thus carried; clause as amended passed.

Title passed.

Bill reported with amendments. Committee's report adopted.

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

That this Bill be now read a third time.

The Council divided on the third reading:

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

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

Pairs—Ayes—The Hons Frank Blevins and J.R. Cornwall. Noes—The Hons Peter Dunn and C.M. Hill.

The PRESIDENT: I bring the attention of the Council to the fact that in my opinion this Bill completely wrecks

the law as it relates to land tenure. It does not do what it set out to achieve. I believe that it should be redesigned. In accordance with section 26 of the Constitution act I do not concur with the third reading of this Bill. The numbers are now equal on both sides, and the Bill cannot be read a third time.

The Hon. C.J. SUMNER: I raise a point of order, Mr President. You have been provided with an opinion from the Solicitor-General which indicates that that vote is invalid. I therefore indicate quite firmly that in the view of the Government that vote is of no validity whatsoever. I ask you to reconsider the statement that you have made.

The Hon. Diana Laidlaw interjecting:

The Hon. C.J. SUMNER: I am raising a point of order because what the President has purported to do within the terms of the State's Constitution and within the terms of the Standing Orders is not available to him. That is the point of order that I am raising, and I am raising it for this reason. You know, Mr President, that when this issue came up for debate and consideration prior to Christmas in the debate on the Maralinga Land Rights Bill I provided you with an opinion from the Solicitor-General of this State, which was backed by two other opinions from eminent Queens Counsel: Mr J.J. Doyle of Adelaide and Mr Castan of the Melbourne Bar.

The Hon. K.T. Griffin: You did not table them.

The Hon. C.J. SUMNER: I can give them to honourable members and I can give them to the President. I tabled the opinion of the Solicitor-General.

The Hon. M.B. CAMERON: A point of order, Mr President.

The PRESIDENT: Order! A point of order.

The Hon. C.J. SUMNER: I have the floor on the point of order.

The PRESIDENT: Order! Yes, we have one point of order before us.

An honourable member: Get to it.

The Hon. C.J. SUMNER: I have got to the point of order and I am expanding on it. In the light of that, Mr President, it seems to me that the vote that you have purported to cast is not a valid vote. You are ignoring the views of the Solicitor-General.

The Hon. K.T. Griffin: He is entitled to; he is the President. He looks objectively at the Constitution Act.

The Hon. C.J. SUMNER: So you are suggesting that the Solicitor-General has not looked objectively.

The Hon. K.T. Griffin: He's wrong.

The Hon. C.J. SUMNER: He is backed by two other silks.

The Hon. M.B. Cameron: Do you believe in democracy?

The Hon. C.J. SUMNER: Of course. That opinion, and it is backed by the second—

Members interjecting:

The PRESIDENT: Order! I want to hear what the Attorney-General has to say.

The Hon. C.J. SUMNER: As you know, Mr President, and as I indicated in the Ministerial statement that I made when I tabled the opinion of the Solicitor-General, the second reading debate and the comments when that amendment to the Constitution Act was introduced clearly show that the intention of section 26 was to provide for the President to indicate his concurrence to a Bill where an absolute majority was required. That is in *Hansard.* That was the statement of the then Premier (Mr Dunstan). That intention, expressed in the Parliamentary debate, was reaffirmed by the Solicitor-General. The opinion of the Solicitor-General was confirmed by two Queens Counsel—a further Queens Counsel in South Australia—Mr J.J. Doyle, QC—

The Hon. M.B. Cameron: Are they members of Parliament?

The Hon. C.J. SUMNER: Apparently honourable members opposite want to flout and ignore the law.

The Hon. K.T. Griffin: We are upholding the law.

The Hon. C.J. SUMNER: You are suggesting—

The Hon. J.C. Burdett: Read the Constitution Act.

The Hon. C.J. SUMNER: I have read the Constitution Act. So has the Solicitor-General read the Constitution Act.

The Hon. M.B. Cameron: Relate the law to what you are saying to us.

The Hon. C.J. SUMNER: I have done that, and I did that before Christmas when I tabled the opinion of the Solicitor-General. All I can say is that your non-concurrence in this Bill is not valid, Sir. I am very surprised that you have purported to do that in the light of the opinion of the Solicitor-General who, apart from the Attorney-General, is the senior Crown law officer in this State and whose opinion I would thought would mean something to you, as the President of this Chamber. That has, apparently, been swept aside. Mr President, you have not any alternative opinion.

The PRESIDENT: I think that the Attorney was making a point of order; he has now gone beyond that.

The Hon. C.J. SUMNER: The valid point of order I make is this: that in the light of the legal advice given to you on this topic by one of the senior law officers of the Crown in this State, backed up by two other opinions, you have attempted this evening, by non-concurrence with this—

An honourable member: It's all over.

The Hon. C.J. SUMNER: It is not all over. We will see.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: The fact is that in most Houses of Parliament there is not a deliberative vote for a Presiding Officer. Look at the United Kingdom Parliament. Ask whether there is a deliberative vote for the Speakers in the House of Commons.

Members interjecting:

The Hon. C.J. SUMNER: I have already studied section 26 (3) of the Constitution Act. The Solicitor-General and Mr J.J. Doyle have studied that section and come to the same opinion. At the time the Bill was introduced the same opinion was expressed by Mr Dunstan—not a legal opinion, but an opinion concerning what the Government intended by this section. That was set out in the Ministerial statement I provided to the Chamber during debate on the Maralinga Land Rights Bill. Tonight, Mr President, your purporting to exercise this non-concurrence with the Bill is to completely ignore the opinion of the senior Crown law officer of the State. Mr President, you have ignored the opinion of two other silks and have apparently done it without seeking any advice from me—which I would have expected to have been done—and apparently without seeking independent advice from anyone with a knowledge of the Constitution Act.

The PRESIDENT: I did not seek your advice in the first place—you gave it to me freely.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I would have thought that as the Presiding Officer in this Chamber, before making a decision of this kind, it behoved you to seek the advice of the senior Crown law officers in this State. If you, Mr President, did not believe that that was within your province, I believe that some alternative advice might have been sought. It has not been sought from those with the responsibility to give it and, traditionally, the Crown law office has advised the President of this Chamber and the Speaker in the House of Assembly on matters of this kind. Mr President, if you search the files that you have as President in this Council you will find many Crown law opinions provided to the President. Apparently, on this occasion a

Crown law opinion has been provided and you have ignored it without providing any reason. My point of order is clear: that you have purported to exercise non-concurrence with this Bill in a manner which is not in accordance—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: The Hon. Mr Griffin insists on interjecting. Is he arguing with the opinion of the Solicitor-General?

The Hon. K.T. Griffin: Of course.

The Hon. C.J. SUMNER: And with the opinion of Mr Doyle and Mr Castan?

The Hon. K.T. Griffin: Yes.

The Hon. C.J. SUMNER: The honourable member has not produced any opinions—

The Hon. K.T. Griffin: It is clear: it does not need a silk to tell you what the law is.

The Hon. C.J. SUMNER: Members opposite argue that they do not need a silk to tell them the law. The fact is that they are faced with three opinions from eminent silks, two from this State and one from Victoria, which they blithely cast aside.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Then are you saying that the silks concocted their opinions? Members opposite are accusing the three lawyers who provided this advice with fabricating their advice. That is the effect of it.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: If the situation is as the Hon. Mr Griffin outlines (that it is clear that anyone could come to the conclusion he has come to), then it is obvious that he is saying that the opinions of the three silks are not genuine opinions.

The Hon. K.T. Griffin: I am saying that they are wrong; they might have a genuinely held view but—

The PRESIDENT: Order! I ask the Attorney-General to make his point of order.

The Hon. C.J. SUMNER: I assure you, Mr President, the Hon. Mr Griffin and the Hon. Mr Burdett that I would much rather take the opinions of the Solicitor-General, Mr J.J. Doyle QC, and Mr Castan QC, than the opinions expressed by members opposite. The person responsible for advising you, Mr President—the Solicitor-General—has provided that advice. The point of order—

The Hon. K.T. Griffin: Provided it to the Government.

The Hon. C.J. SUMNER: I made it available to the President, as was my duty. Therefore, I say that the action which you, Mr President, have taken—and this is the point of order—is contrary to Standing Orders and contrary to the Constitution Act.

The PRESIDENT: I do not uphold the point of order. I shall read the relevant section of Standing Orders, which states:

> Where the President has not exercised his casting voice, he may indicate his concurrence or non-concurrence in the passing of the second or third reading of any Bill.

I do not believe that anyone needs an interpretation further than that. It also appears in the Constitution Act.

The Hon. G.L. BRUCE: A point of order. If the President is referring to Standing Order 231, the preamble states:

> In the case of an equality of votes, the President shall give a casting voice . . .

Where the President has not exercised his casting voice—surely means on the equality of votes. If one looks further, the Standing Order further states:

> See (in Committees) Order No. 361 . . .

This order says that the Chairman shall have a casting voice only.

The PRESIDENT: I cannot uphold that as a point of order because it is clear that in the case of equality of votes the President must cast a vote. But, if a President has not used his casting vote, then he may indicate his concurrence or non-concurrence if he has not cast a vote. Now, I did not cast a vote.

The Hon. C.J. SUMNER: A point of order. On his own admission the President says that he did not cast a vote. That is a serious point. It is down in *Hansard.* The President admitted that he did not cast a vote. That is a significant admission which is on record.

The PRESIDENT: If the honourable member sits down I will correct it for him.

The Hon. C.J. SUMNER: It is too late to correct it.

The PRESIDENT: It is never too late. I make the point that I was explaining to the Hon. Mr Bruce that, since I did not have a casting vote, I had the right to express my concurrence or non-concurrence.

The Hon. C.J. SUMNER: You, Mr President, did not say that.

The PRESIDENT: I have said it now.

The Hon. C.J. SUMNER: It is a very significant point.

The Hon. K.T. GRIFFIN: I offer guidance to reinforce the view which you, Mr President, put and the decision you have taken. The Attorney-General made great play of the opinion of the Solicitor-General. I draw the attention of the Council to section 26 (3) of the Constitution Act which provides:

> Where a question arises with respect to the passing of the second or third reading of any Bill, and in relation to that question the President, or person chosen as aforesaid, has not exercised his casting vote, the President, or person chosen as aforesaid, may indicate his concurrence or non-concurrence in the passing of the second or third reading of that Bill.

It there refers to any Bill. I also draw the attention of the Council to section 8 of that Act concerning the power of the Parliament to alter the Constitution Act. That section states:

> The Parliament may, from time to time, by any Act, repeal, alter, or vary all or any of the provisions of this Act, and substitute others in lieu thereof: Provided that—
>
> *(a)* it shall not be lawful to present to the Governor, for His Majesty's assent, any Bill by which an alteration in the constitution of the Legislative Council or House of Assembly is made, unless the second and third readings of that Bill have been passed with the concurrence of an absolute majority of the whole number of the members of the Legislative Council and of the House of Assembly respectively:
>
> *(b)* every such Bill which has been so passed shall be reserved for the signification of His Majesty's pleasure thereon.

The relevance of that section is that there is no reference to a vote but to a concurrence of an absolute majority of the whole number of the members of the Legislative Council. It is clear from both section 26 and section 8 that the words 'vote' and 'concurrence' or 'non-concurrence' are interchangeable.

The PRESIDENT: I think the Hon. Mr Griffin is out of order.

The Hon. C.J. SUMNER: I take the point that you indicated, Mr President, that you had not used a vote, and that may become significant. I move:

> That your ruling that you are able to exercise a non-concurrence with this Bill such as to defeat the Bill be disagreed to.

The PRESIDENT: I did not give that ruling.

The Hon. C.J. SUMNER: I ask you to give a ruling, Mr President, on the interpretation to the Standing Order to which you referred. I ask you, Mr President, to give a ruling in respect of the Standing Order. The point of order that I have taken is that the Standing Order does not mean that you are able to exercise non-concurrence with the passage of a Bill and thus defeat a Bill. That is how I have asked you to rule because that is the point of order that I have raised. I believe that you should rule one way or the other on my point of order.

The Hon. K.T. Griffin: There is no point of order.

The Hon. C.J. SUMNER: I have raised the point of order.

The Hon. K.T. Griffin: You might have raised a point of order but there is no ruling—it is a decision.

Members interjecting:

The PRESIDENT: Order! I did not give a ruling. I merely interpreted the Standing Order.

The Hon. C.J. SUMNER: I appreciate that. I raised a point of order. Mr President, you have ruled that your interpretation of the Standing Order is that you are able to exercise that non-cocncurrence in respect of the third reading of the Bill. That is a ruling, and I have moved to dissent from it.

The Hon. J.C. Burdett: That is not a ruling.

The Hon. C.J. SUMNER: There is a ruling, Mr President, because you had ruled on the interpretation of that section of Standing Orders. That being the case, I have asked you for an interpretation of Standing Orders.

The Hon. M.B. Cameron: You are struggling.

The Hon. C.J. SUMNER: I am not. Mr President, you have given that interpretation. It must constitute a ruling within the terms of Standing Orders with which this Council can disagree. If that is not the case it seems to be that you, Sir, and you alone are abrogating to yourself, you are taking from the Council the right—

The PRESIDENT: Don't go on. It is not necessary. If you ask me for a ruling, I will give you one.

The Hon. C.J. SUMNER: There is a ruling, and I move dissent from that ruling.

The PRESIDENT: The honourable Minister must bring that forward in writing.

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

That the President's ruling be disagreed to.

This is an important issue and I have canvassed the matters concerned in the point of order.

The PRESIDENT: Order! I call for a seconder.

The Hon. ANNE LEVY: I second the motion.

The PRESIDENT: My instructions tell me that unless the Council decides that the matter requires immediate determination and it is so resolved, the debate on the motion for disagreement with the President's ruling must be adjourned and be made the first Order of the Day for the next day of sitting. If the matter is to be decided forthwith, some member will have to move that the debate on the motion for disagreement with the President's ruling be proceeded with forthwith. It is for the Council to decide that either it wishes to proceed as the first matter tomorrow or the matter can be dealt with forthwith.

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

That the matter be proceeded with forthwith.

The Hon. J.C. BURDETT: I second the motion.

The Council divided on the motion:

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

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

Pairs—Ayes—The Hons Peter Dunn and C.M. Hill. Noes—The Hons Frank Blevins and J.R. Cornwall.

Majority of 1 for the Noes.

Motion thus negatived.

LOCAL GOVERNMENT ACT AMENDMENT BILL (No. 2)

Second reading.

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

That this Bill be now read a second time.

In the light of the lateness of the hour, I seek leave to have the second reading explanation incorporated in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

Efforts to rewrite the Local Government Act have been under way for at least 20 years, if not since the amalgamation of the District Councils Act and the Municipal Corporations Act in 1934. Everyone involved in any way with Local Government agrees on the need for the Act to be rewritten. The 1970 Report of the Local Government Act Revision Committee noted that 'the Act is hopelessly outmoded on many important matters'. Fourteen years later the same situation applies.

The previous Government instigated the review of the Act as a major priority within the Department of Local Government. It embarked upon a programme of five Bills being drafted each of which would, on preparation, be inserted into the existing Act resulting in an entirely new Act on completion of the fifth Bill. A draft Bill, intended to be the first of the five, was in fact released by the then Minister of Local Government in July, 1982. Following a lengthy consultation process, however, this Bill was not introduced into Parliament before the November 1982 election, which brought the present Government to office.

As part of its pre-election commitment, the present Government is continuing with the process of rewriting and upgrading the legislative basis of Local Government, the Local Government Act. The Bill prepared by the previous administration has been substantially retained in terms of both structure and content. On coming to office, however, the present Government undertook a thorough revision of the policy framework included in the Bill. For this exercise the following principles were established:

1. In order for the status of councils to be improved within the Australian strucutre of government, the representative character of Local Government must more closely model that of its State and Federal counterparts, whilst retaining its non-partisan and voluntary aspects.

2. More specifically, in order to be seen to govern in the interests of the broad community, elected office must be accessible to the entire community.

3. Similarly, in order to be seen to govern by standards beyond reproach, Local Government decision-makers and decision-making must be highly visible and consequently highly accountable.

These notions of representation, accessibility and accountability form the keys to the major changes which are proposed. It can be seen from the above that the prime objective of the Bill, apart from systematic re-organisation of the act, is the improvement of Local Government's standing both within governments and, more importantly, amongst the general community.

Representative

Two issues relating to Local Government's electoral arrangements have been tackled in the Bill. First, a system of optional preferential voting replaces the present first-past-the-post. Not only will this allow some weighting to be attached to the views of the electorate and therefore achieve a more representative result, but the voting method at Fed-

eral, State and Local Government elections will be made more consistent. This will help reduce voter confusion.

Acknowledging apparent fears expressed in some quarters that a system of optional preferential voting may herald the introduction of party politics to Local Government, the Bill provides for the simple 'bottom-up' distribution of preferences thereby minimising the potential for factionalism. Additionally, this system is particularly easy to count with distribution of preferences ceasing when the remaining number of candidates equal the number of vacancies.

The second electoral issue dealt with in the Bill relates to the terms of office for Local Government elected members. The present staggered system places councils on a continual election footing and mitigates against rational forward planning. Moreover, some members may face elections in a more favourable climate than others depending upon the local circumstances prevalent at any particular time. Accordingly, the Bill provides that all members will in future retire at the same time. In addition, the Bill extends the term of office for all elected members to three years. This confirms a general trend in all governments towards longer fixed terms of office. Again, this is also intended to assist in forward corporate planning and management. Whilst concern has been expressed that these measures may cause sudden and harmful changes in Council direction, reference interstate indicates that complete changes in the membership of a Council at a single election are very rare indeed.

Accessibility

South Australian Local Government has a tradition of voluntary community service. Whilst this tradition has earned it significant respect, it is apparent that participation in Local Government through elected office involves an increasingly significant financial burden being borne, particularly by councillors and aldermen. Higher telephone costs, stationery, motor vehicle expenses etc. Nowadays form essential expenditure for an efficient elected member. To the extent that an elected member is unable, through limited means, to meet such costs, his/her capacity to effectively carry out their responsibilities is reduced. Similarly, many potential candidates for Local Government elections may be deterred from nominating through the costs involved in the office. In order to ensure, therefore, that people of all means have access to elected office the Bill provides that all Council members will be entitled to an annual allowance. Regulations to the Act will prescribe minimum and maximum levels for the allowance. Any member will be able to decline the allowance and participate in Local Government on a purely voluntary basis. It is intended that this will not interfere with existing assistance for Mayors/Chairmen and their deputies.

In addition to financial restrictions to Local Government elected office, another vital issue affecting all present and potential members of Councils is the times at which meetings are held. Whilst ideally Councils should decide the times at which it is most convenient to sit, the Bill provides that all meetings of Council and Committees shall be held after 5.00 p.m. This has been done for two reasons:

First, a number of cases have been cited where a member has been required to resign from Council through being unable to attend meetings during the day, generally because the member is engaged in employment. Second, it is reasonable to assume that those individuals in employment are to some extent dissuaded from standing for Council where meetings are held during the day. At the very least, where meetings are held during normal working hours, their right to stand for office is dependent upon the agreement of their employer. Whilst some councils may prefer to continue day meetings, on balance the benefits to be gained from ensuring that elected office is accessible to the entire community favour the requirement in the Bill.

Accountability

Two important measures are included in the Bill which are designed to clearly and publicly demonstrate the propriety of the conduct of Council affairs—thus removing a stigma which detractors of Local Government have frequently sought to impose. First, the Bill reinstates the requirement, originally proposed by the previous government, that all meetings of Council or Council committees are to be conducted in public except where the Council is considering certain prescribed matters. These exceptions will include the consideration of tenders, disciplinary action against an officer and the like, and are deliberately broad in scope.

Whilst it may be argued that the decisions of State Government are not subject to such public scrutiny, it should be borne in mind when making such comparison that Councils carry out both Parliamentary and Executive functions. As such, the approach in the Bill attempts to define clearly those circumstances where Councils should privately hold discussions, and those where the public should reasonably be able to view proceedings.

The second issue affecting the accountability of Local Government decision-making relates to the provisions in the Bill requiring all members of Council to declare their financial interests in a Public Register, to be updated annually. This requirement does no more than mirror conditions under which all State Parliamentarians hold office and follows a trend established in other States.

Together these changes represent the principal features of the Bill. A number of other changes, however, are being made to which the attention of the House is drawn:

- The expansion of the Local Government Advisory Commission to include Local Government Association and Trades and Labor Council representation.
- The removal of the existing petitioning process involved in Council boundary changes.
- The clarification of interest provisions.
- The simplification of advanced voting procedures.

A draft of this Bill was sent to all Councils in November and copies sent directly to each Member of the Executive of the Local Government Association, to the President of the Institute of Municipal Management and to the Secretaries of the major unions in Local Government to ensure that the opportunity was granted to all relevant parties to make input into the Bill, Officers of the Department of Local Government have discussed the Bill widely throughout the State and the Minister of Local Government has held discussions with representatives of the Local Government Association.

As a consequence of the consultation process, a total of 120 submissions were received. The importance of this Bill to Local Government was reflected in the enormous input made by elected representatives and staff of Councils; a variety of changes of both a policy and technical nature have subsequently been made as a result. The Government would like to place on record its appreciation for the cooperation which Local Government, including the Local Government Association, has extended in this process. This Bill now being presented to Parliament would represent a unique achievement indeed, if it were able to satisfactorily combine all views expressed prior to and during the consultation period. That is not the case. However, the changes made by the Bill and the rationale for those changes is well understood by all involved. If not agreed to in total, the intent of these proposals is certainly widely acknowledged.

Clause 1 is formal. Clause 2 provides for the commencement of the measure. Clause 3 amends the section of the principal Act concerned with the arrangement of the Act so that it will accord with other ammendments to the Act.

Clause 4 provides for the repeal of present section 4 of the principal Act and the substitution of new transitional

provisions. The operation of this amending Act shall not affect the composition of any council, council committee, area of word. Persons shall continue to hold the same offices. All voters' rolls shall continue in existence until revised. A proposed new subsection will cater for the fact that after the commencement of the amending Act, the term 'clerk' will be replaced, for the purpose af the Act, by the name 'chief executive officer', but will still be in existence in other legislation. Another transitional provision applies to councils that have more aldermen than the number prescribed by the amending Act. Other provisions deal with notices and nominations relating to voters' rolls. Others ensure that there will be no transitional problems if extraordinary vacancies have occurred in an office of the council, or if a council has been declared to be defaulting council. The operation of the Acts Interpretation Act, 1915, is preserved.

Clause 5 provides necessary amendments to the interpretative provision. An amendment of note is the effective substitution of the definitions of clerk, district clerk and town clerk by a definition of 'chief executive officer'. Other definitions, such as 'metropolitan municipal council', 'metropolitan district council' and 'metropolitan council', are rendered superfluous by new provisions in the amending Act. A definition of 'periodical election' is to be inserted as a result of proposed three year terms for members of councils. This clause provides also for the striking out of section 5 (7), a provision that attempts to restrict the functions of a council to its area. While such a provision as this may often be appropriate, it may sometimes be the case that councils must act outside their areas (for example, in serving notices on ratepayers who live elsewhere). It is therefor appropriate to allow general principles to operate and to repeal the provision. A proposed new section 5 (7) will provide for another matter, being the time at which an election or poll is to be deemed to have concluded. Finally, subsections (10) and (11) of section 5 are also to be struck out as they are now superfluous.

Clause 6 provides for the repeal of sections 6 and 6a of the principal Act. It has been decided that councils may no longer be distinguished, for any reason, as 'metropolitan municipal councils' or 'metropolitan district councils'. Section 6a, concerning the Local Government Association of South Australia, is to be replaced by proposed new section 34.

Clause 7 is the most significant provision of the Bill, providing for the repeal of Parts II to IXAA (inclusive). These Parts of the Act are concerned primarily with the constitution and membership of councils, the Local Government Advisory Commission, defaulting councils, and officers and employees of councils. New sections are to be substituted. Proposed new section 6 provides for the constitution, by proclamation, of new councils. A proclamation under the section would have to provide for a variety of matters, including the area of the new council, its name and its composition. Proposed new section 7 provides for the amalgamation, by proclamation, of councils into one or more new councils. Again provision is made for such matters as area, name and composition. A proclamation may make provision also for the method of assessment that is to apply if the former councils employed different methods, for the application of existing by-laws, for the resolution of any problems that might arise in relation to officers and employees of the councils, and for any other matter that may warrant action in view of an amalgamation.

Section 8 would allow the Governor, by proclamation, to change the name of a council. Proposed new section 9 would provide for changes in the name of an area by proclamation, while changes to the name of wards could be effected by resolution of a council. Proposed new section 10 would enable a proclamation to be made changing a district council to a municipal council and *vice versa*. New section 11 relates to the composition of a council. Provision is made for such matters as a council that has a chairman to instead have a mayor (but a council will not be able to dispense with the office of mayor in order to have a chairman), for the creation of offices of alderman in a council whose area is divided into wards, and for alteration in the numbers of existing aldermen and councillors of a council. Subsection (2) provides that the Governor may, if providing for new or additional offices in the membership of a council, appoint the first persons to fill the offices.

Proposed new section 12 allows the alteration of boundaries of the area of a council. By one or more proclamations, if two or more councils are affected, provision may be made for the adjustment of rights and liabilities of those councils, for the application of by-laws that may apply to the areas affected by the alteration, and for any other matter that may require adjustment. New section 13 provides for the formation, alteration or abolition of wards. Section 13 (2) provides that the area of a municipal council must be divided into wards. New section 14 allows the Governor to abolish a council. Upon abolition, the rights of the council will either vest in some other council or councils, or in the Crown. Proposed new section 15 prescribes the methods by which proclamations under the preceding sections may be initiated. It is proposed that the functionaries be either the Houses of Parliament, the Advisory Commission, or, in the case of proposals relating to the names of councils, areas, or wards, or to alterations in the status of a council, the council that would be affected.

Proposed new section 16 would allow the Governor to provide for a variety of matters by the one proclamation. Thus, for example, a proclamation providing for an alteration in the boundaries of an area could also provide for the creation of a new ward in light of the alteration and the appointment of further councillors. Proposed new section 17 provides that a proclamation could take effect from a specified date, or from date of publication. Proposed new section 18 would allow the governor to correct any error or supply any deficiency apparant in a proposal for a proclamation from the Houses of Parliament, or the Advisory Commission. It might be the case that a proposal contained some minor defect that, if a provision such as this was not available, would have to be referred back to the initiating body for rectification. This could cause considerable delays and difficulties, especially if the defect was discovered at about the time that the proclamation was due to be made. Proposed subsection (2) allows for a correction to be made even if a proclamation has already been made upon the basis of the address or recommendation. This would be of particular importance if a series of related proposals were being put into effect. Proposed subsection (3) would allow the Governor to correct errors in proclamations made by him. Subsection (4) would allow a correcting measure to have effect from the date of the defective address, recommendation or proclamation (as the case may be).

Proposed new section 19 provides for the establishment of a new Local Government Advisory Commission. Under section 20, the Commission is to consist of a District Court Judge, a member or former member of a council nominated by the Local Government Association, a person nominated by the United Trades and Labor Council, a person with experience in local government nominated by the Minister, and a person holding office in the Department of the Minister. Proposed new section 21 allows for the payment of allowances and expenses to members of the Commission. Section 22 provides for the appointment of a Secretary (who may hold office in conjunction with another office in the Public Service). Section 23 ensures that a proceedings of

the commission are not invalid by reason of a vacancy in its membership; personal liability is not to attach to members. A quorum of the Commission will be three, according to proposed section 24, and a decision of three will be a decision of the Commission.

Section 25 proposes that the Commission have the powers of a Royal Commission. Proposed section 26 provides for the manner in which matters are to come before the Commission and decided. Subsection (1) allows the Minister to make a reference of his own motion, and he must refer a proposal for the making of a proclamation if the relevant council, or 20 per centum of electors of an area or portion of an area that would be affected by the proposal, apply under subsection (2). A proposal will not be referred to the Commission if a similar proposal has been decided upon by the Commission in the preceding three years. Subsection (6) provides for the giving of public notice setting out the substance of the proposal and inviting interested persons to make submissions. (However, this procedure need not be complied with if the change proposed is of a minor nature.) Hearings are to be conducted, and the Commission may conduct also private inquiries. A report is to be prepared and presented to the Minister. The Commission may no recommend an alternative proposal unless it gives fresh notice or it is satisfied that all interested parties have had an opportunity to consider the alternative and make submissions to the Commission. Proposed new section 27 would allow the Minister to refer any other matter to the Commission for advice and report.

New section 28 provides for councils to carry out periodical reviews to ascertain whether there should be an alteration in its composition or an alteration of its position as to wards. A council will have to give public notice of the review and allow interested parties to present submissions. The Commission may furnish advice during the course of the review. The council shall report to the Minister, and any of its proposals for reform will be referred to the Commission. Subsection (7) provides that reviews should be conducted in seven year cycles, after an initial determination by the Minister as to when the first review should be completed. (This will thus allow the Minister to stagger council reviews throughout the State). If a council fails to complete a review as prescribed, the Commission shall act instead.

Proposed new section 29 empowers the Minister to commission a poll on a proposal for the making of a proclamation. Provision is made for the preparation of a 'summary of arguments' to assist electors. The Minister may direct councils to conduct the poll, or arrange for the Electoral Commissioner to conduct it (who may, if the Minister so determines, recover his costs from the council or councils affected by the proposal). Proposed new section 30 empowers the Minister to initiate an investigation into the affairs of a council if he has reason to believe that the council has failed to discharge its statutory responsibilities, or that an irregularity has occurred in the conduct of its affairs. A report on the outcome of the investigation must be presented to the Minister, who shall supply a copy to the council.

Under new section 31, the Minister could make recommendations to the council in view of matters contained in the report. Furthermore, if the report, or a report of the Ombudsman, disclosed failure of responsibility on the part of a council, or an irregularity in the conduct of its affairs, the Minister could under section 32, direct the council to rectify the situation. New section 33 relates to the power to declare a council to be a defaulting council. Such a declaration could be made only in serious cases of failure of responsibility or irregular conduct, as disclosed by a report to the Minister. Councils are to be given a reasonable opportunity to make submissions to the Minister in relation to the report. An administrator would be appointed in the event of a council being declared to be a defaulting council, and a report would have to be laid before both Houses of Parliament within five sitting days, An administrator would have to make a tri-monthly report to the Minister. A council would cease to be a defaulting council if a proclamation so provided, or after the expiration of a period of twelve months, whichever first occurred.

New section 34 is the section that relates to the Local Government Association of South Australia. The Association is to continue to be a body corporate. Its constitution and rules shall not be altered without Ministerial approval.

New section 35 is the first of many sections concerned with the structure and functions of a council. Section 35 provides that a council is responsible for the area in relation to which it is constituted, and for the execution of other powers and functions of local government. It is thus a general description of the nature of a council. Proposed new section 36 describes how a council is constituted of its members and is a body corporate. New section 37 provides that the common seal of the council may not be used except by resolution of the council. Attesting witnesses must be the mayor, chairman, and the chief executive officer. Proposed new section 38 provides for council committees. Committees may inquire into and report to the council on any matter within its responsibilities, and may exercise delegate powers. A member of a committee is to hold office at the pleasure of the council. Subcommittees may be established by a committee. The presiding member of council is, *ex officio*, a member of all committees and subcommittees.

Proposed new section 39 provides for advisory committees. These may consist of persons who are not members of councils. Proposed new section 40 is a saving provision. Section 41 would provide for the power of a council to delegate a power, function or duty. Some limitations are prescribed (relating principally to borrowing and expending money, and providing certain reports), and further limitations may be prescribed by regulation. Each council must keep a separate record of all delegations and review that record annually. Section 42 provides for the maintenance of suitable offices. A council must have a principal office.

Proposed new section 43 is the first of many provisions concerned with the membership of councils. It provides that the mayor or chairman is the principal member of the council. A mayor represents the area as a whole. A chairman is to be chosen from amongst the members of the council. A council may, as is appropriate according to the circumstances, appoint a deputy mayor or a deputy chairman. They will be able to exercise all the powers of a mayor or chairman in the absence of the mayor or chairman. If a deputy is absent also, or there is none, the members may choose one of their number to act in the office of mayor or chairman. Under section 44 the mayor of the City of Adelaide is entitled to be styled 'Lord Mayor'. Section 45 provides for the office of aldermen, who are to be representatives of the area as a whole. There may not be more aldermen than half the number of councillors. Section 46 relates to councillors. There may not be more than four councillors for each ward.

Section 47 provides that the term of office of a member continues until the conclusion of the periodical election next held after his appointment or election. This ensures continuity in the constitution of a council. Alterations to the composition of a council, its area or its wards would not affect a term of office. Proposed new section 48 prescribes the grounds upon which an office may become vacant. A member may be removed from office on the ground of mental or physical incapacity to carry out his duties of office, or his office vacated if he becomes bankrupt, is convicted of an indictable offence, is absent from three or

more meetings, of the council without leave, becomes an officer or employee of the council, or resigns.

Proposed new section 49 provides that a member of a council is entitled to receive an annual allowance and reimbursement of his expenses. It is envisaged that allowances will be fixed at the first meeting after an election, and then in every May thereafter. Limits on the amount of an allowance may be prescribed, and may vary according to the different offices of a council. A member may decline to accept an allowance.

Section 50 would require a council to take out policies of insurance insuring members and their families against death or injury while on council business. Section 51 provides that no personal immunity will attach to a member of a council for any act or omission by the council or by him. Instead, any liability will lie against the council. Section 52 provides that members should make a prescribed declaration before taking office.

Proposed section 53 relates to the issue of conflict of interest. The section defines when a member may be regarded as having an interest in a matter before the council. The basic test is whether the member or a person closely associated with him would obtain a direct or indirect benefit or suffer a direct or indirect detriment if the matter were decided in a particular way. Section 53 (2) prescribes the various people who are to be regarded as being closely associated with a member. Subsection (3) addresses what might otherwise have been the vexed question of the status of officers of the Crown by providing that a member who is an officer or employee of the Crown, or an agency or instrumentality of the Crown, shall be regarded as having an interest in a matter before the council by virtue of his office or employment if the that matter directly concerns the department, agency or instrumentality with which he is connected (but not otherwise).

Under section 54, a member with an interest in a matter must disclose that interest, refrain from taking part in relevant discussions, and must not vote in relation to the matter. A penalty is provided if these requirements are breached. It is a defence if the member was unaware of the interest at the time. Some exceptions are provided. New section 55 would make it an offence for a member to abuse confidential information gained by him by virtue of his position. Under section 56 it will be an offence to offer or accept a bribe. Under section 57, a conviction for one of the preceding offences will disqualify a member from holding office for seven years, unless the court orders otherwise. The court may order the member to pay compensation to the council for any loss that it may have suffered by virtue of the member's impropriety.

Section 58 relates to council meetings. At least one ordinary meeting must be held in each month, but ordinary meetings may not be held on Sunday or public holidays, and not before 5 p.m.; three days notice must be given. Special meetings may be called by the mayor or chairman, or by three members. Section 59 deals with the quorum required for a council meeting. Section 60 provides the procedures that must be followed at meetings. The mayor or chairman is the presiding member. A mayor will not have a deliberative vote on any matter, but may exercise a casting vote. A chairman will have a deliberative vote, but may not exercise a casting vote. Section 61 relates to meetings of council committees; they will not be able to be held before 5 p.m.

Section 62 provides that meetings must, subject to prescribed exceptions, be held in public. The exceptions include the consideration of professional advice, issues relating to the staff of the council, tenders, information received on a confidential basis, or matters of a prescribed class. A record must be made as to the basis upon which the public are to be excluded from a meeting. Section 63 provides for the calling of meetings of electors. These meetings must be advertised and all resolutions passed must be transmitted to the council. Section 64 relates to the keeping of minutes. A copy of minutes of council meetings must be put on public display for a period of one month. All minutes and some other documents are to be available for public inspection. Section 65 relates to the adjournment of meetings.

Proposed new section 66 is the first of many sections that relate to officers and employees of councils. The office of 'clerk' is to be replaced by the office of 'chief executive officer' (The Act presently provides that the clerk is the chief executive officer of a council.) A deputy may be appointed. However, a council will not be obliged to keep the statutory title of 'chief executive officer' for the person who fills that office. A chief executive officer must give two months notice of resignation. Proposed new section 67 relates to other offices and positions. New section 68 provides for the establishment of a 'Local Government Qualifications Committee'. Under section 69, a person will be able to apply to the Committee for a certificate of registration, which may be required for appointment to a prescribed office, or an office performing prescribed functions. The Committee will consider the educational qualifications, experience and suitability of applicants for certificates. It may be empowered to suspend certificates and to conduct examinations. It will also be required to promote the establishment and development of courses of study.

Section 70 provides that subject to the conditions of any Act, award or agreement, conditions or service of officers and employees may be determined by the council. Section 71 empowers the council to suspend or dismiss an officer or employee. Section 72 will provide that an officer or employee who transfers to another council, with a break of less than thirteen weeks, will be entitled to regard his service as continuous. He will, accordingly, retain existing and accruing rights to long service leave and sick leave. Councils affected by this continuous entitlement will be able to make suitable adjustments between themselves. Sections 73 to 78 relate to superannuation, and are comparable to provisions presently being provided for in another amendment to the principal Act.

Proposed new section 79 provides that an officer or employee shall not use confidential information to his own advantage. Section 80 provides that an officer or employee must disclose any private interest that he may have in a matter in relation to which he is authorised to act. The provision makes reference also to the interests of persons who are closely associated with the officer or employee. Section 81 relates to bribes. Proposed new section 82 provides for the appointment of authorised persons. These offices will replace local government constables. An appointment may be limited to the enforcement of specified provisions of the Act. Each officer must have an identity card. Section 83 sets out the powers of authorised persons. A person may not obstruct an authorised person or refuse to answer lawful questions. Section 84 would provide officers and employees with immunity from personal liability.

Section 85 is the first of many provisions dealing with elections and polls. It is the interpretation provision. Section 86 provides that there must be a returning officer for each area, who would be the officer principally responsible for the conduct of elections and polls. Section 87 provides for the engagement of electoral officers (on as temporary basis). Section 88 is a delegation power relating to the powers, functions and duties of the returning officer. Section 89 provides for the appointment of polling-places by councils. Public notice of the locations must be given. An electoral officer will reside at each polling-place. Costs and expenses of the returning officer are payable by the council under section 90.

Proposed new section 91 sets out entitlements to vote. A natural person, of or above the age of majority, may vote if he is an elector in the area for the House of Assembly, he lives in the area and has lodged a declaration with the council, or he is a ratepayer by virtue of being the sole owner or occupier of ratable property. A body corporate may be enrolled as an elector if it is a ratepayer by virtue of being the sole owner or occupier of ratable property. A group may be enrolled as an elector if all members are ratepayers, the members are joint owners or occupiers and at least one of them is not enrolled in his own right under a preceding right to enrolment. A body corporate or group votes by appointing a nominated agent.

Section 92 provides that the chief executive officer is responsible for the maintenance of the voters' roll. The roll must be revised twice yearly so as to reflect entitlements at March and at September. The Electoral Commissioner is, for each revision, to supply a copy of the House of Assembly roll. Voters' rolls must be available for public inspection, or for purchase at a fee. The roll will be conclusive evidence of entitlement to vote. Section 93 provides that a person whose name appears on the roll is entitled to vote at an election or poll. A person may vote in several capacities, with one vote for each capacity. A person whose name has been omitted in error from a roll may, subject to the Act, vote as if the error had not occurred.

Section 94 provides that elections be held on the first Saturday in May in 1985, and triennially thereafter. Supplementary elections may be held if a periodical election wholly or partially fails, or in the event of a casual vacancy occurring not less than six months before a periodical election. Section 95 is concerned with the eligibility of persons to be candidates for election. A person is eligible if he is, or is entitled to be, an elector for the area, provided that he is not an undischarged bankrupt, liable to imprisonment, disqualified from holding office, or an officer or employee of the council. Furthermore, members of other councils and persons who have nominated for offices of other councils are ineligible. A person running for the office of mayor or alderman must have been a member of a council for at least twelve months.

Under section 96, nominations will have to be made by at least two electors entitled to vote for the nominee. Nominations for periodical elections will close on the first Thursday in April. Public notice of vacancies must be given. A person may not nominate for more than one office. By virtue of section 97, the death of a candidate will result in an election failing. Under section 98, if a supplementary election does not fill a vacant office, the council may appoint a person to the office.

Section 99 deals with the form and contents of ballot-papers. Names of candidates will be arranged according to the drawing of lots. Section 100 deals with the method of voting. The system that is proposed is one of 'optional preferential voting'. The voter will therefore be obliged to mark his first preference on the ballot-paper, and may then, if he so desires, mark other preferences as he chooses. Section 101 provides for the appointment of scrutineers by candidates. Notice of appointment must be given to the returning officer or a presiding officer. Sections 102 to 105 (inclusive) deal with the conduct of polls. A poll may be initiated by a council in relation to any matter within its responsibilities. Voting is to be by marking a cross to indicate support for the proposal submitted to the poll, or to indicate opposition. The council may appoint suitable persons to act as scrutineers.

Section 106 allows a person who may not be able to vote at an election or poll to apply (personally or in writing) for advance voting papers. Applications must be made before polling-day. Declarations must be made to the effect that the vote is the vote of the relevant elector, that the vote has not been influenced by fraud or undue influence, and, if the voter is not on the roll, that he is entitled to vote. Section 107 sets out the procedure for advanced voting. The vote must be returned by the close of polling. Section 108 provides for assistants to voters who are illiterate or physically unable to vote. Spoilt advance voting papers may be returned, and fresh ones issued, under section 109. A person to whom advance voting papers have been issued may not, according to section 110, vote unless he has delivered the papers for cancellation. Advance voting papers must be available at least twenty-one days in advance by virtue of section 111.

It is proposed, under section 112, that voting occur between 8 a.m. and 6 p.m. on polling day. Before any vote is taken, the ballot-boxes must be displayed empty to any scrutineer or elector who may be present (section 113). Section 114 sets out the procedures to be followed in relation to voting. The person desiring to vote must state his full name and address, answer whether he has voted before on the day, and may then receive the voting papers. Section 115 is concerned with the person who, on polling day, claims to be entitled to vote, although his name is not on the roll. Such a person will be entitled to sign a declaration before a presiding officer, vote, and then have his vote placed in an envelope (bearing the declaration) for deposit in a ballot-box.

Section 116 provides for assistants if voters are unable to vote. Section 117 allows the issuing of fresh ballot papers if one is inadvertently spoiled. Section 118 provides for the exclusion of unauthorised persons from polling-places. Under section 119, a presiding officer may cause any person who attempts to influence a voter, or behaves in a disorderly manner, to be removed from a polling-place. A member of the Police Force may be asked to assist. The returning officer may, under section 120, adjourn an election or poll if it becomes impracticable to proceed on the appointed day. Votes cast prior to an adjournment, other than advance votes, shall be disregarded.

New section 121 sets out the procedure to be followed at the close of voting for an election. The presiding officer is to complete a return relating to the use of ballot-papers, and then send it with the ballot-boxes to the returning officer. The returning officer will then, in the presence of the scrutineers, conduct the count. Any tie in the number of votes cast will be resolved by the drawing of lots. Recounts may be requested within seventy-two hours of a provisional declaration. New section 122 sets out the procedure to be followed at the close of voting for a poll. The counting of ordinary votes is to be done by the presiding officers, in the presence of scrutineers. Declaration votes will be counted by the returning officer. A recount may be requested.

Section 123 provides that all electoral material must be kept for at least six months. Under section 124, it will be an offence to attempt to influence any step in process of voting by the use of violence, intimidation or bribery. A maximum penalty of ten thousand dollars or five years imprisonment is prescribed. Under section 125, it will be an offence to attempt to vote when not entitled to do so. A maximum penalty of five thousand dollars or two years imprisonment is prescribed.

Section 126 provides for an offence of attempting to unduly influence the vote of a person. However, under section 127 no declaration of public policy or promise of public action shall be regarded as bribery or undue influence. Under section 128, it will be an offence to solicit votes within six metres of a polling-place. New section 129 makes it an offence for a person, other than an electoral officer, to have a voters' roll in his possession at a polling-place or to keep a record of persons voting at the polling-place and

an electoral officer must not disclose information as to who has voted to anyone other than another electoral officer.

Under section 130, it will be an offence for a scrutineer to interfere with a voter. Under section 131, neither a candidate nor an agent for a candidate may act as a witness or assistant. Section 132 relates to the publication of electoral material, providing that it must contain the name and address of the person who authorises its publication. Section 133 is the first section dealing with disputed returns. There is to be a new Court of Disputed Returns, constituted by a District Court Judge. Section 134 provides for the office of clerk of the court. Section 135 vests the court with its jurisdiction. Section 136 sets out what must be contained in a petition (which must be lodged within twenty-eight days of the disputed election). The respondent may reply within seven days of service of the petition.

Section 137 prescribes the powers of the court. The court will not be bound by the rules of evidence but shall act according to good conscience and the substantial merits of the case. Under section 138, the entitlement to vote of any person on a roll shall not be called into question. Under section 139, the court shall not declare an election void on the ground of an illegal practice unless satisfied, on the balance of probabilities, that the illegal practice affected the result. However, some illegal practices shall be deemed to have affected a result unless the contrary is proved. This provision will therefore overcome the problem associated with attempting to overturn an election if persons who were not entitled to vote in fact do vote. Section 140 provides that if a person is declared not to be duly elected, he shall cease to be elected and the person declared to have been duly elected shall take his place accordingly. Section 141 allows a party to appear personally or by counsel. A question of law may be stated to the Supreme Court for its opinion. Section 143 allows orders for costs. Section 144 allows for the making of rules.

Sections 145 to 150 (inclusive) provide for the creation and maintenance of a register of interests of members of councils and their families. The provisions are similar to those applying to members of Parliament. Primary returns must be lodged by 30 September 1984; ordinary returns within 60 days of each thirtieth day of June. The register is to be maintained by the chief executive officer. A statement containing a compilation of the information on the register must be laid before the council by the chief executive officer.

Clause 8 proposes an amendment to section 168 of the principal Act that is consequential upon the repeal of those provisions of the Act dealing with the annexation of areas. Clause 9 proposes an amendment to section 169 that is consistent with the abolition of the classification of some councils as 'metropolitan municipalities'. Those councils presently within this classification for the purpose of this section may, after the amending Act, be prescribed.

Clause 10 provides for amendments to section 201 of the principal Act. Section 201 is concerned with the appointment of Assessment Revision Committees. These Committees will now be appointed after the conclusion of the periodical elections, not the annual elections as is presently provided. Clause 11 provides a consequential amendment to section 227 in relation to a cross-reference of that Part of that Part of the Act under which polls of electors are to be conducted. Clause 12 amends section 281 of the principal Act, which deals with alterations to the boundaries of any area. A reference contained in this section to the alteration of the 'constitution' of any area is inconsistent with the approach proposed by this amending Act.

Clause 13 provides a consequential amendment to section 287a of the principal Act that is consistent with the proposal to delete references to 'metropolitan councils'. Clause 14 provides an amendment to section 288a of the principal Act. Again, as it is proposed to do away with the classification of some councils as 'metropolitan municipal councils', such a reference in this section is to be deleted. At the same time, it is considered that this section may apply to all municipal councils, whether or not they may be 'metropolitan municipal councils'.

Clause 15 effects an amendment to section 290 of the principal Act by substituting the word 'constables' with the term 'authorised officers'. Clause 16 proposes the insertion of a new section, providing for auditors. Each council will be required to have a qualified auditor for its area. The removal of an auditor must be reported to the Minister. Clause 17 provides for the repeal of section 295 of the principal Act. This section allows the Minister to appoint officers to inspect the accounts, records or procedures of councils. This matter will now be dealt with under proposed new Division XIII of Part II of the Act.

Clause 18 proposes an amendment to section 325 of the principal Act to strike out a reference to 'metropolitan district'. Clause 19 provides an amendment to section 377 of the principal Act by striking out two subsections. Section 377 (4) and (5) provide for the execution of documents by the affixing of the common seal in the presence of the principal officer and clerk. This will now be dealt with under proposed new section 37 of the Act.

Clause 20 proposes an amendment to section 449 of the principal Act that is consistent with other provisions of this Bill. Clause 21 provides various amendments to section 457 of the Act. The amendments provide for a meeting of electors under Division IV of Part V to be held when a prescribed lease is to be granted, and delete the possibility of a poll being held.

Clause 22 provides for the amendment to section 459 of the principal Act. A reference to 'municipal council' is to be struck out, and a new subsection is to be inserted that will provide for the conduct of a meeting of electors to approve the use of the parklands referred to under the section. The ability to demand a poll is to be deleted. Clause 23 proposes the repeal of section 661 of the principal Act, which provides that a council and its officers shall have and may exercise all powers vested by law. Such provision is to be made in the proposed new sections dealing with the nature of councils and the functions and duties of officers.

Clause 24 provides for amendment to section 667 of the principal Act ('By-laws'). A paragraph concerning meeting procedures should be deleted, and a reference to 'constables' altered to 'authorised persons'. Clause 25 provides amendments to section 681 of the principal Act, which is concerned with the adoption of by-laws upon the union, or amalgamation, of areas. New terminology is to be used and a cross-reference to the provisions of Division II of Part II, is appropriate. Clause 26 provides for amendments to section 691 of the Act. Paragraphs *(f)* and *(g)* are to be deleted. These paragraphs are principally concerned with the formulation of educational and professional qualifications for persons employed in the field of local government. This will be within the responsibilities of the Local Government Qualifications Committee under Division II of Part VI.

Clause 27 provides for the repeal of section 718 of the Act. This section is concerned with the immunity of members of councils, and is to be replaced by new section 51 of the Act. Clause 28 is a consequential provision, dealing with the repeal of section 724 of the principal Act (which is concerned with proving the appointment of constables). Clause 29 is consequential on the repeal of section 724.

Clause 30 provides for the repeal of section 736, which provides that judicial notice should be taken of the common seal of a council. The provision is superfluous. Clause 31 proposes the repeal of section 737. This section is concerned

with evidence of minute-books. An evidentiary provision is to be provided by new section 64 (8). Clause 32 proposes the repeal of section 741. Similar provision is to be made by new section 37 (3).

Clause 33 proposes a new section 744 to the principal Act. This is consistent with new terminology to be employed in relation to the officers of a council. Clause 34 provides an amendment to section 745 of the principal Act that is consequential upon the introduction of 'authorised persons'. Clauses 35 and 36 provides for the repeal of various provisions of the Act that are to appear now in the new Parts to the Act (except section 753, defending title to office, which is considered to be inappropriate by virtue of the provisions of the proposed new Parts).

Clause 37 extends the operation of section 768 (obstructing meetings) to council committee meetings. Clauses 38, 39 and 40 provide for the repeal of various sections of the Act considered to be superfluous or inappropriate upon the introduction of the proposed new Parts to the Act. Clause 41 repeals Parts XLIII and XLIV of the Act. There are to be new provisions on elections and polls.

Clause 42 amends section 858 of the principal Act by striking out a passage of the section that is superfluous by reason of proposed new section 37 (2). Clause 43 provides for the insertion of a new section 879a, which will preserve the ability of mayors and chairmen to be, *ex officio*, justices of the peace. Clauses 44 to 46 provide for the repeal of various schedules. Clause 47 is a provision of general application that is designed to alter all references to clerk, town clerk, etc., to 'chief executive officer'.

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

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

Adjourned debate on second reading.
(Continued from 4 April. Page 3187.)

The Hon. I. GILFILLAN: This legislation has exercised a lot of our attention over the past few weeks. We have consulted with the Australian Small Businesses Association, the Chamber of Commerce and Industry, the South Australian Employers Federation, the United Trades and Labor Council, the Metal Industries Association, the Master Builders Association, the Independent Schools Staff Association, and many individuals who have approached us or we have approached separately because they have had expertise and experience in industrial conciliation and arbitration. Whether I refer to them specifically in my comments, I will in any event mention that we have had discussions with industrial commissioners in Western Australia, Victoria and South Australia.

Some objections have been expressed about the Bill by employer organisations. Different organisations have outlined different objections. In our search for getting information from the groups contributing to us, it became plain that different organisations put a different emphasis on various matters, so it was a matter of judgment as to which were the most significant of the objections and which were most soundly based when assessing the Bill. We received two letters, one from the Concrete Masonry Association of Australia Co-operative Limited of 147 Walker Street, North Sydney, New South Wales. That organisation wrote requesting us to oppose the Bill in its entirety and criticised the recommendations of the Cawthorne Report, which was a fairly sweeping contribution in our search for opinions. It was of some interest that that company in New South Wales felt so moved. Monier Limited in South Australia also wrote opposing the Bill.

The Hon. M.B. Cameron interjecting:

The Hon. I. GILFILLAN: Yes, it was the South Australian chapter, I agree. That was the address on the letterhead.

The Hon. M.B. Cameron: It was the South Australian company.

The Hon. I. GILFILLAN: Yes. I have had private conversations with several people with industrial experience, including two from IRAC which, as employers have found, in general terms, support the Bill except in a few clauses. I am not diminishing their objections to those few clauses but, on balance, it meant that a large substance of the Bill was supported. Once again, the objections here are not consistent, except for one or two clauses. In fact, I would identify two specifically at which the majority of objection was levelled. It is our belief that there are several serious faults in the Bill and several minor faults. We have attempted to draft amendments which will seek to correct those faults.

The Democrats recognise that the Bill is a major piece of legislation, that it is high in priority for the Government which regards its passage as essential to fulfil an election promise. It has a responsibility to its supporters and to the people of South Australia. However, the Democrat role in Parliament is to modify legislation if need be. We do not see our role as blindly opposing, therefore, we have identified the clauses which, in our opinion, need amendment.

I mention first the clause that has been identified specifically as putting under threat the contractor/subcontractor arrangements in South Australia. It has probably shared the top spot on the charts as being the subject of most criticism by those who wish to criticise the Bill, particularly in the earlier stages when it was under consideration.

The Hon. R.J. Ritson: What about torts?

The Hon. I. GILFILLAN: Torts came up as a late finisher. It did well towards the bend but, in the early stages was not up with the contractors. We made a great effort to draft an amendment which would leave the contractor and contracting system uninterfered with, believing as we do that the right of individuals to contract their labour and services free from dictation of what should be specific rates of remuneration and other conditions in which they should work, that those conditions should not be imposed on the contracting and subcontracting areas of industry in South Australia.

We felt, at the same time, that there was good reason, where employees, either working in the contract system or elsewhere, were subjected to conditions which (to use the terms of the Bill) were 'harsh, unjust or unreasonable', for us to believe that it was our duty to support steps to correct that situation and, if possible, develop systems that would identify those harsh, unjust or unreasonable conditions and allow the Industrial Commission or other forces to correct them. We believe that we eventually offered an amendment that would have achieved that aim. However, that amendment left room for a serious threat to the contracting and subcontracting areas in South Australia, so we chose to back off from any attempt at all to amend the clause of the Bill dealing specifically with the contractor and subcontractor areas. Therefore, it is our intention to oppose the clause related to those areas, which was a difficult decision to make. However, we held so high in our priorities the freedom from interference and the right of contractors and subcontractors to work, or to offer to work, at rates and conditions that they alone chose, and the risk of destroying those rights by trying to amend the clause of the Bill was so great that we withdrew our amendment and will oppose the clause.

The next clause containing a serious fault is the one dealing with (in common terms) preference for unionists, normally in people's minds related to preference in employ-

ment when an employer, in choosing from several applicants for a position, is directed to choose a member of a union in preference to a person who is not a union member. The Democrats believe that there should be no compulsion to unionism and that preference as a word is very close, semantically, to 'compulsion'. It certainly left us in a state of indecision as to whether or not the clause should be dealt with by an attempt to amend it or whether to issue a challenge as to whether or not compulsory unionism should be further encouraged in this State. Once again, we have spent a lot of time deliberating on this matter and consulting with people as to what would be the effect on the industrial scene of such preference clauses. I must say in respect of the current situation that a lot of people who are in a position to make a balanced judgment on this matter, and to give an experienced opinion in this area, say that the preference clause is most unlikely to cause serious impositions along the track of compulsory unionism. Also, the Cawthorne Report (referred to with considerable respect) did, in fact, encourage legislation along the lines of the Bill.

It appeared to us, as we attempted to amend that clause, that once again it was too dangerous and that the interpretations likely after amendment would be unclear. We gained some consolation from the fact that the reason for amending the current clause in relation to preference to unionists (other things being equal—in an abbreviated form) is so ineffective that those who wanted to see preference to unionists put into effect were moving to amend it dramatically and to delete the indication of 'all other things being equal'. What we have decided to do is leave the *status quo*. In other words, we will move to allow the current section of the Act to remain virtually intact so far as it offers any direction to an employer employing an employee. However, we accept with enthusiasm the part of the clause giving the Commission the right to intervene in demarcation disputes between unions. Therefore, those who are looking at our amendments intently will notice that part of the amendment allows the Commission to show preference to registered associations. The purpose of that is to give that very valuable additional power to intervene in demarcation disputes and, therefore, quite substantially reduce areas of industrial dispute in South Australia. I am informed that a very high proportion of hours lost in industrial disputes stem from demarcation disputes.

Workers who are subjected to harsh, unjust or unreasonable conditions should be protected from those conditions. However, we believe that that will need to be done in legislation other than this. I turn to clause 19, which deals with preference to unionists. The Bill seeks to force an employer to engage an applicant for a job who is a member of a union or states he intends to join a union above any other applicant who may apply for the job without consideration of any other factor. We find this unacceptable. The Democrats are opposed to compulsory unionism. This Bill takes a giant step towards that if there is no amendment to that clause. We will move an amendment that will leave the present section of the Act intact. A further serious fault, in our opinion, relates to clause 44, which prevents unregistered associations (that is, groups of employees who are not members of a union) from having industrial agreements with employers. The restriction on freedom that this clause would impose on groups of employees who wish to have the protection of a registered agreement is unacceptable to the Democrats and we will oppose this clause. This matter was specifically brought to our attention by the Independent Schools Staff Association and we believe that the situation where those who do not wish to join a union are unable to enter into a registered agreement is unacceptable. However, I make the point that we do not oppose unionism and although several of my reflections can be interpreted as being anti-unionist in interpretation or intent I believe that we have got, underlying our approach to this Bill, clear evidence that we do support the organising of the labour force in the industrial manufacturing scene, and that there are great advantages for efficiency and for justice in the work place and for a good, orderly, dispute-free industrial climate which is to South Australia's advantage.

There are some clauses in this Bill that we think move in that direction, but we do not believe that big sticks will achieve the result that we all want to see in South Australia. Another major fault, one to which the Hon. Dr Ritson referred, appears in clause 51, the clause dealing with torts. Under that clause an employer who is suffering economic damage as a result of a strike must seek the consent of the Commission before proceeding with action in the court. We believe that it is the inherent right of all citizens to have the due processes of law available to them and that leaving it up to the 'Yes' or 'No' of the Commission is unacceptable. We will move an amendment in this area giving an employer the inalienable right to sue for damage for economic loss. Injunctions are certainly going to be affected. We realise that this matter has now got to the top of the list of major concerns of employer organisations, which fear that without Supreme Court injunctions being available to them they will be susceptible to heavy handed stand-over tactics.

It is a problem to settle any dispute if stand-over tactics are used by either party. We have accepted that, in essence, this Bill reflects a serious attempt by the Government to create a better climate for conciliation and arbitration. To do that, I believe that the Government has encouraged the Commission and given it further powers and resources to exercise its role as a conciliator and arbitrator and that in this case, where torts are involved, actions for damages for virtually everything other than economic damage can proceed. However, because the action for economic damage is in so many cases so intrinsically linked to the nature of industrial disputes, it is our attitude that to allow the action for damages to proceed immediately and allow an injunction of the Supreme Court to intrude, it does not give the Commission the full opportunity to which it is entitled to conciliate and arbitrate. We are prepared to trust—and we see no reason why we have any right not to—that the Commission will realise that it has a wider responsibility in these circumstances.

Acknowledging that the Commission needs to satisfy itself that conciliation or arbitration have been completed before an action for damages can proceed, the clear message to the Commission must be that, if it can identify an unreasonable abuse of pickets or the failure to maintain the operation of machinery which is causing serious deterioration and economic loss, it must then feel very strongly motivated to act as expeditiously as possible, and our amendment provides for that. I recognise immediately that that direction has no time frame and is only an encouragement. However, I feel that that is a significant message to the Commission that it is expected to act expeditiously.

Of course, measures are available to the Commission itself to intervene, and the consequences of its own intervention are quite substantial. One problem that has been mentioned to us is that that process may take time, during which a lot of damage could be done. I believe that it is fair to emphasise, of all the matters in the Bill, the question of the abuse of a moratorium on Supreme Court injunctions, because that causes us the most concern. I believe that that area reflects the highest single area of concern in the minds of employers in South Australia.

In our opinion, there are other unacceptable matters in clause 18, which provides a right of entry to union officials. A union official has no obligation to give an employer notice. We are moving an amendment so that in the award

there will, with the Commission's approval, be an instruction to union officials to give an employer notice before gaining entry to the workplace. Concerns have been expressed to us that that entry is expanded to allow a union representative to discuss membership, and that that power will be abused and the workplace interrupted with a constant barrage of campaigning and canvassing for union membership. The restriction of obstructing and hindering, we believe, will restrict this to a lunchtime clause, so we feel satisfied that there will be minimum disruption in normal working hours in the normal workplace. This is one area where the Democrats can show quite emphatically our support and encouragement for the organising of labour and registered associations.

In our opinion there is no reason why union representatives cannot have access to a workplace to discuss a matter with people working in various areas. We do not believe that there will be any deleterious effects as a result of this clause once we have amended it. We do not believe that powers should be given to a board of reference, under clause 18 (5), to intervene in a matter of demotion of an employee. Therefore, we will move for the deletion of that subclause completely. That will remove any right of a board of reference to intervene.

The Bill does offer an improvement in allowing for compensation as an alternative when a case for wrongful dismissal has been proved. At present, the parent Act allows for reinstatement only. That can be quite intolerable, especially for small businesses where personality clashes or an unproductive climate in the workplace can prove very costly to employers and place great stress on a reinstated employee. Currently, there are out of court settlements to prevent reinstatement, and this is a direct cost to industry. We believe that compensation will be less costly, and that is confirmed by evidence that we have received from the Western Australian Commission, as follows:

Individual Dismissals
1 June 1983-31 December 1983

1. Total = 47 cases (including 5 appeals)
2. In 15 out of these 47 cases, compensation was awarded.
3. Compensation amounts were as follows:
   - 2 cases—1 week in lieu of notice
   - 4 cases—1 additional week's pay
   - 2 cases—half *pro rata* long service leave entitlement
   - 1 case—2 week's additional pay
   - 1 case—$312
   - 1 case—$500
   - 4 cases—compensation settled between parties [amounts not recorded].

The Hon. R.I. Lucas: Is Western Australia the only State with compensation?

The Hon. I. GILFILLAN: That is the only State I know of, but I am not sure. However, because we realise that employers are nervous about the option for compensation, we will move an amendment to provide that an appeal against any determination in a wrongful dismissal case will be heard by the Full Commission, which will comprise as a matter of course two Supreme Court judges and one commissioner other than the commissioner who presided over the first hearing.

The Democrats will be moving another minor amendment to ensure that the Commission cannot force an employer to create a job to oblige a reinstatement clause. Employers will only be obliged to reinstate in a position other than the original position, if such a position is available. Proposed new section 174 (2) provides:

> Where an offence against this Act arises by virtue of contraventions of, or non-compliance with, an award or order of the Commission, no proceedings in respect of that offence shall be commenced except by leave of the Full Commission.

Once again, the Democrats believe that there is no justification for the legal rights of anyone in the State to be held at the whim of any other body. We will oppose that subclause to ensure that there will be no need for leave of the Full Commission to be sought before an offence against this Act can proceed.

That completes the list of amendments to be moved by the Democrats. We believe that our amendments will make a substantial difference to the effect of the Bill compared to its original form, because it would have had unfortunate effects in South Australia.

In conclusion, I regret that there is not a machinery provision within the Bill to pick up harsh, unjust or unreasonable working conditions. I do not believe that anyone in South Australia would happily live with the idea that there are people who are forced to accept dangerous or intolerable working conditions because of the circumstances in which they find themselves.

We have very much appreciated the time and energy of those who have discussed the Bill with us. Some have had vested interests, but we have welcomed that because they have had a so much more accurate background and enthusiasm in putting forward their points of view than has someone who is detached and, as I am prepared to confess, not very conversant with the way in which the industrial scene and the Commission works.

I mention in particular the assistance that we have had from officers in the Deputy Premier's office, and the time and effort that the Opposition—particularly the Leader, Martin Cameron, and the shadow Minister in another place, Roger Goldsworthy—has spent with me in particular. Shortcomings may well be identified in the Bill and perhaps they will be corrected in due course. If our amendments are successful, South Australia will benefit from the passing of this Bill. I support the second reading.

The Hon. G.L. BRUCE: I, too, rise to support the second reading of this Bill. Members of the Opposition have expressed concern about subcontractors and the relationship that they have in the work force and how it will destroy South Australia. I was very interested to read in the *Advertiser* of last Friday, 6 April, an article headed 'Inside advice on roofing'. Some of those reporters from the *Advertiser*—Alex Kennedy, Matt Abraham, Stuart Diwell, some of those names being familiar to these people in the Chamber—related experiences that they had had. Alex Kennedy, in particular, said that she was going to get the job done right. She got the big boys. She would pay a few hundred dollars extra for peace of mind, no leaks and an expert job from the roofing specialist.

The first problem Alex Kennedy found was that, although she thought that she was paying for the big boys, she found when they arrived that she had finished up with a couple of subcontractors. From there on it was a tale of woe. She got no satisfaction; the job was unsatisfactory; the roof leaked. She could get no satisfaction from the big boys. Alex Kennedy asked a contractor to fix a carpet that was damaged. He said, 'I will see my wife; she has got a good recipe to clean up carpets.' That was the satisfaction that they got in relation to subcontracting.

The advice of the Department of Consumer Affairs is that, if one ever gets any work done, one should try to avoid subcontractors unless one can investigate them thoroughly and find what their reputation is. The subcontracting in certain areas of work—related to roofing in this case—is very bad. These three took the advice of the Department of Consumer Affairs and tried to avoid getting subcontractors. However, they were landed with subcontractors and got jobs that did not do any credit for the subcontractors or the industry as a whole in South Australia.

The whole concept of this Bill is based broadly on the Cawthorne Report. Cawthorne has turned his attention to

virtually every aspect of the industrial scene. This Bill has attempted to pick up those major points that have not been looked at or dealt with over the years. A build-up over time has indicated that now is the right time for the Industrial Conciliation and Arbitration Act to be gone through thoroughly.

The Hon. M.B. Cameron: Do you believe that unregistered associations should have the right to appear before the Conciliation and Arbitration Commission and the Industrial Court?

The Hon. G.L. BRUCE: No, not really.

The Hon. M.B. Cameron: Why not?

The Hon. G.L. BRUCE: Why should we get into that now? It is more of a Committee Bill. I thought that that sort of thing would be confined to Committee. In relation to compulsory unionism—

Members interjecting:

The PRESIDENT: Order! The honourable member should not take much notice of interjections.

The Hon. G.L. BRUCE: Compulsory unionism serves a useful purpose. The Hon. Mr Gilfillan touched on demarcation disputes. I believe that if there is compulsory unionism the roles will be defined completely where they are. That does away with a lot of the disputes. Non-unionism causes just as many disputes as do the demarcation issues. Anyone who picks up the benefits of an award or an agreement should be prepared to pay in to that society and have his voice heard and recorded as to how that society should be run. In my experience in the field, I found that most people reacted to unionism in any form through the hip pocket nerve. If one said 'You are expected to join the union and contribute to its costs and running. You are enjoying the benefits of that award or agreement that you work under,' their main reaction was, 'What does it cost?' When it was going to cost money they did not want to be in it. It was the principle. They did not feel that they should be forced to go into a union. If it was suggested that there was a way out and that they could pay their union fees to charity those persons bucked harder. They did not want to pay the money to any other organisation, which was the way out in most agreements that were drawn up. Any amount of organisations in South Australia already have preference to unionist clauses written into their agreement.

The Hon. M.B. Cameron: It should not be there.

The Hon. G.L. BRUCE: No, because the organisations themselves recognise that there is a stable force, and that if there is an allegiance to a body apart from themselves they get a better type of worker because that worker is prepared to work under rules and regulations and accept his responsibility in the work force to that management.

I found that in all cases, without exception, where a worker or management recognises that there is a responsibility to the award and conditions under which they work and they are prepared to support that, there is a better relationship on both sides because there is a respect for one another. However, anyone who wants to opt out of the system and wants to cash in and freeload along the road creates nothing but problems and troubles.

The Hon. L.H. Davis: Are you against subcontracting?

The Hon. G.L. BRUCE: Yes, because subcontracting in a lot of places becomes slave labour. Cases have been drawn to my attention in the building industry where subcontracting painters took the whole family in. The job had been subcontracted, and when the person looked at it to see how he could get his price so low the whole family—kids and all—were painting inside the house. That is what the subcontractor does: cuts his price so low in some situations that he is forced to work for long hours and to bring the family and friends in to try to get the deal done at a cost.

Going back some years, in subcontracting with painters, the paint was so watered down that when it came to a test the subcontractor packed up and went. He was not game to wait and be told that he was kicked off the job because the quality of the product that he was using was not up to scratch. That occurred in subcontracting in homes in the area where I live.

There is a lot to be looked at in subcontracting. A lot of work has to be done. People outside in our day and age, where there is a shortage of jobs, have been forced to knuckle down to wages and conditions that are not in accordance with the award. If they buck they are dobbed in because some of them are drawing the dole. They try to get a bit of money on the side; so they accept a lesser rate of pay. Some of them are desperate for a job; they have not had a job; they are married women, have been out of work, and find it difficult without that extra income. They are prepared to work at half the award rates in small shops and industries around town. The Department of Labour and Industry does not have enough inspectors to inspect the situation, control it and check it out. False wage books and false names have been kept and all sorts of avoidance have been going on. Also, no taxes are being paid.

I know the rates of pay in many of those areas. Some people never have a birthday. They remain 18 years of age for the rest of their working lives. Women of 27 years and 28 years work on an 18-year-old's wage. The minute they say that it is their birthday they are sacked. If members opposite believe that that is not going on they are walking around with blinkered eyes. Some aspects of this Bill should be addressed very strongly and strengthened so that those people in society who are being got at are given some protection. I know that there will be no bipartisan approach and that members opposite do not think that these things happen. I assure them that these things do happen.

The Hon. Diana Laidlaw: We do not think that extreme laws should be made for the exception.

The Hon. G.L. BRUCE: I do not believe that it is extreme law if people are protected in the work force. Just two weeks ago, in the industry I came from, a hotel changed hands and all the staff were sacked. The only reason for it was to avoid the obligation to continue their service benefits. Those employees were then offered re-employment the next day.

The Hon. Diana Laidlaw: They were on casual work, though.

The Hon. G.L. BRUCE: No. Permanent work, too. This is done on the assumption that obligations under the Long Service Leave Act can be avoided. With being re-employed the staff have their lost sick pay. Three weeks ago the staff at a hotel on the southern side of town went on strike because they were given notice. The union was called in and intervened and all the people were re-employed. They were going to be offered re-employment anyway. This was done to break the service and show that there had been a break in service.

The Hon. Diana Laidlaw: You would be doing a lot better if you looked at the provisions for long service leave for casual work.

The Hon. G.L. BRUCE: Long service leave is already there for casual workers in the industry.

The Hon. Diana Laidlaw: It is highly confused.

The Hon. G.L. BRUCE: It is not confused. There have been court cases on this in the industry I came from and there is no confusion concerning long service leave applying to casuals. As soon as one has worked in the industry in a casual capacity for seven years one is sacked. Unfairness is very hard to prove. Some of the law in the new Bill concerning unfair and unjust dismissal should be looked at by this Chamber. Much work has to be done in this area. Where there is a fair change in the work force, whether or

not a person is permanent or casual, and where the industry is not stable, these employees will be virtually trembling in their shoes coming to the sixth year of service because they know that whatever they do will be wrong. There is no way that they can please the person they are working for. Some nit-picking thing will be found to say that they are unsatisfactory and they are then sacked.

I believe that the Bill should provide for flexibility to give compensation where there is unfair and unjust dismissal and where it can be shown that it was done as a whim to try and avoid the obligations of paying money to the work force. Everything we buy has a built-in price to compensate for long service leave, sick leave, holiday pay and other conditions. Yet, when it comes to those workers starting to qualify for some of the conditions the cost of which should be built into the cost of the product, the workers are discriminated against and told that they are unsatisfactory workers. It does not matter whether those employees have been good employees for 6½ years or longer, as long as they do not reach seven years.

Some points in the Bill should be addressed by the Council concerning those aspects of employment. Quite a few other things have been touched on in the Bill. It is a very comprehensive Bill. I hope that when we reach the Committee stage the controversial clauses will be given proper consideration by members on the other side and will not be brushed aside as something that has been concocted by some mad red dog trade unionist, as members opposite seem to think everybody on this side is when mention is made of industrial matters.

I believe that there is great scope for safety committees to be incorporated into the Act so that the worker has some bearing on the conditions under which he is employed. There will be plenty of argument when compensation is debated. I feel that there should be a major provision and allowance to give people on the shop floor some input into the conditions under which they work so that the environment is not solely left to the prerogative of management. I believe that not enough consideration is given to dangerous substances and conditions of work. If workers mention the handling of dangerous substances or protective clothing they are shown the door and told that if they are not happy there are plenty of others to do the job. Machinery procedures should be set up so that whenever there is a complaint it is dealt with in the proper manner and does not prejudice the worker and leave him open for dismissal. I support the second reading of the Bill and indicate that I will be supporting every clause during the Committee stage. I trust that the Council will give it the full attention it deserves.

The Hon. C.J. SUMNER (Attorney-General): The Opposition's objections to the Bill have centred around two main points: first, that the Bill will increase costs to employers and will discourage employment and, secondly, that a number of amendments seriously undermine the principles of freedom of association and freedom of choice. On the question of costs, it has been alleged that, in so far as clause 4 and the potential to extend the Act to cover subcontractors are concerned, building costs will rise between 10 per cent and 30 per cent. No evidence has been advanced to support these allegations and, indeed, if the current buoyant state of the housing market is taken into account, it would be most surprising if there were many contractors who were getting less than award employees.

In any event, the provisions of clause 4 are purely facilitative. The Opposition's arguments presuppose that the Commission will recommend for an extension of its jurisdiction into the building and construction industry generally. This may not be the case. For example, in New South Wales, the Burns Inquiry into subcontracting in the building industry found that it was not necessary or desirable to control contract labour in that industry. There is nothing to say that a similar result would not be found in this State. The question of whether regulation is desirable in the public interest must be determined on its merits.

In so far as the other provisions of the Bill are concerned, any cost impact would be minimal. With respect to retrospectivity, the South Australian Commission has already ruled that 'save in exceptional circumstances, award prescriptions are to be prospective in operation' *(Nurses Appeal Case, 39 SAIR)*. Given this conservative attitude of the Commission, and the very limited grounds on which retrospectivity may (and this rests solely on the Commission's discretion) be granted, it is unlikely that any significant impact would be had on costs. This flows from the fact that the situations in which retrospectivity may be granted under the Bill would normally allow parties sufficient time to have full knowledge of the proposed award, and to take the necessary steps to ensure compliance from the relevant date. Under the current legislation employers do, in fact, observe long established nexi arrangements and consent agreements on dates of operation even though, legally, such dates may not be capable of being reflected in an award. Thus, the effects of the changes proposed on retrospectivity will have minimal cost impact.

The Hon. Mr Davis has claimed that the reforms made by this Bill in the area of wrongful dismissal are 'a very expensive device for reinstatement'. As the words imply, this area is concerned with the redress of an individual wrong to an employee, with potentially disastrous and far reaching consequences. It is entirely within the hands of an employer, through the adoption of good relations practices, to avoid even coming into contact with the jurisdiction at all.

However, it must also be pointed out, that the number of claims for wrongful dismissal is minimal in terms of the number of persons employed in this State. The experience of Western Australia, where compensation is similarly unlimited, indicates that the financial burdens of compensation are by no means crippling. For instance, in the period 1 June 1983 to 31 December 1983, compensation was awarded in only 15 out of the 47 cases before the Commission. The compensation payable ranged from $500 to two weeks pay to half *pro rata* long service leave entitlement. These are hardly settlements which will incite employers.

The second ground for the Opposition's objections to the Bill relates to the alleged infringement of certain individual freedoms. Once again, the Opposition has mistakenly linked the proposed preference provision with compulsory unionism. That area has been traversed on many occasions in this place. Suffice it to say that the Bill's provision is merely an enabling one which depends solely on the Commission's discretion for its incorporation into an award, after hearing arguments by all the parties. The actual wording of that enabling provision is based on the Federal Act which already applies to the majority of employees working in this State and which was inserted by the Menzies Government in 1947 to encourage organisations of employees and their registration under the Act. The establishment of consistency for all employees working under awards in South Australia must surely be regarded as a desirable aim and in the interests of industrial harmony.

Unfortunately preference in employment cannot help but raise a highly emotional reaction amongst members opposite. This was clearly discounted by Mr Cawthorne in his discussion paper when he said:

> . . . the issue of preference is a highly emotive one and viewpoints differ markedly as to its desirability. However, all things considered, it is suggested that unless one views unions and unionism in an entirely negative way—which is totally inappropriate—it can be

> fairly argued that Industrial Commissions should have within their discretionary armoury the power to award preference. The Commission may then in appropriate cases make such an award depending on the facts of the particular case and all of the circumstances... This is not legislating for preference to unionists as such but simply recognising that the Commission should be delegated an adequate power to deal with the issue should the need arise.

He continued in his report:

> ... 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. In the former case, workers are often subject to all sorts of pressures (both articulate and inarticulate) from the employer, not to join a union whilst the exterior facade is one of 'everyone is entitled to make their own decision on whether to join or not'.

I do not wish to labour this point any further. However, I do wish to record my disappointment that there seems to be a lack of support for the practical reforms which the Government has proposed. Several members of the Opposition have expressed objections to the provision of the Bill which seeks to qualify the grounds on which an action in tort can be pursued, for the reason that this interferes with the right of an individual to seek a legal remedy. Once again, this is a highly emotive issue. However, there is nothing in the Bill which would deny an individual such a right—the Bill merely delays the civil action, not prohibits it.

As was recognised in the Cawthorne inquiry, tort actions do nothing to settle industrial disputes, but, rather, they can inflame an existing dispute. Indeed, many employers acknowledge the disadvantages of pursuing such actions, both in the short term and in the long term, in that they do not provide an avenue for the settlement of a dispute, nor do they persuade parties to get together and settle their differences. The case of *Woolley v Dunford* illustrated the point that an action can proceed to finality on the question of liability in tort, but the dispute itself can continue unabated and unresolved.

The provisions of clause 51 have been designed with the express purpose of providing a machinery for the resolution of industrial disputes. The unqualified availability of tort actions allows employers to totally bypass the conciliation and arbitration system, even though the root cause of the action constitutes an industrial dispute. Cawthorne recognised the incompatability of this situtation when he said, 'Industrial matters should be dealt with and resolved within the machinery which is clearly best suited for that purpose.' Accordingly, the Bill provides that all of the process of conciliation and arbitration should first be explored, before an action in tort can be taken—I repeat that this by no means constitutes a bar to the individual pursuit of a civil claim. It merely gives the greatest opportunity for the settlement of a dispute before the torts action is heard.

During the course of the debate on the Bill it was alleged that clause 44, which prohibits unregistered associations from entering into new industrial agreements, constitutes an 'anti-freedom' measure. Reference was made particularly to the position of the Independent Schools Association. The Government's view is that associations which are not subject to the registration requirements of the Act should not be able to profit from the advantages and benefits gained by trade unions for their members. Accordingly, while the Bill bars new agreements from being entered into by such organisations, existing agreements can continue indefinitely and be varied, although such variations will be subject to Commission scrutiny. It should be pointed out that South Australia is unique in allowing unregistered associations to file industrial agreements and seek awards. The Government's initial view was that there should be a complete ban on unregistered associations having such rights. However, the compromise struck in IRAC was to allow existing agreements to continue but to prohibit any new unregistered associations from seeking the protection and benefits of the Industrial Commission.

In so far as the contract labour provisions of the Bill are concerned, these also are enabling. Thus the Commission must first be convinced that it is desirable for there to be regulation of independent contracts. The Government is, therefore, not in any way pre-judging the need for such regulation. The question of whether there is in fact a need to regulate the dealings of contractors is a matter to be determined solely on the merits, and I am confident that the Commission would only recommend regulation if it were in the public interest to do so.

During the course of the passage of this Bill through Parliament, it has been acknowledged on many occasions that it is an important measure containing many worthwhile reforms. Unfortunately, as with all industrial legislation of this kind, philosophical diferences and pressures are brought to bear and traditional stances are adopted. In closing the debate on the Bill, I ask all honourable members in this place to adopt an openminded attitude to what the Government regards as a well balanced package which is the product of exhaustive enquiry and consultation and which can only serve to further improve the already harmonious industrial relations climate in this State. I commend the second reading to honourable members.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Objects of Act.'

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

> Page 1, line 32—Leave out 'encourage the organisation' and insert 'provide for the organisation upon a voluntary basis'.

The Opposition has very strong views about this area. We do not believe that there should be any form of coercion in respect of unionism. In the second reading debate I said that we believe that unions should earn their membership by the good deeds that they do for their members and not by the coercion that is placed upon people from outside by a union and, in some cases, by the employer. We hold that view strongly.

In fact, we would take the ultimate step of ensuring that people cannot provide for preference to unionists. In fact, two of our amendments to later clauses will attempt to make that step which, I believe, should be part of our Constitution. I said that in the second reading debate and it is a view that I hold strongly. This is a country of freedom: we have freedom of choice and that freedom should be extended to this area. We have seen too many examples of people being prejudiced in employment because of an attitude which we believe is abhorrent in respect of ordinary Australian values of freedom. In order to ensure that the Bill has that stamp upon it, I have moved my amendment, which as a matter of words could be described as a matter of motherhood, but at least it provides the basis for further amendments to be moved later. It is important to put that point of view at this stage.

The Hon. R.I. LUCAS: As the Hon. Mr Cameron pointed out, this amendment is tied in with the next question of preference to unionists and compulsory unionism. I will not explore in detail the arguments for and against such, but I will take this opportunity to indicate that a person in this Chamber, the Hon. Mr Bruce, who has had a long association with the Liquor Trades Federation and is experienced and much respected in the trade union field, indicated quite clearly in a very honest contribution to this debate that, in his view as a trade unionist and as a legislator, what

we have with respect to preference to unionists and compulsory unionism laws is in fact compulsory unionism. He was honest, and I admire him for that, as it is the correct situation, although it goes under the euphemism of 'preference to unionists.' The Attorney-General, who does not have the Hon. Mr Bruce's experience in this field, told us a lot about his relevent area of expertise last night. This is certainly not one of his areas and the Hon. Mr Bruce is his superior in this area. Mr Bruce quite clearly indicated that in South Australia we do have compulsory unionism.

This section of the Bill to which we are looking is tied in with a series of other amendments which will tighten up even further what the Attorney-General refers to as 'preference to unionists', but what the Hon. Mr Bruce quite rightly describes as 'compulsory unionism'. I hope the Attorney-General will not chastise his back-bencher for his honesty. It would be most unfortunate if the Leader was to attempt to discipline his Whip over the matter, as it was an honest contribution, for which I thank the Hon. Mr Bruce.

The Hon. L.H. DAVIS: The objects of the Act establish the benchmark for the rest of the provisions of the Act. The change in the objects, both in subclause *(e)* and subclause *(f)*, which we will be debating shortly, are ominous in the sense that they quite deliberately set out the Government's intentions—to remove the voluntaryism, which I would have thought should be a feature of Australian life, and to substitute compulsion. Therefore, the amendment before the Committee, namely, to amend clause 3 *(e)* to provide for the organisation, upon a voluntary basis of representative associations, is much more in keeping with the Australian way of life, rather than quite deliberately encouraging the organisation of representative associations of employers and employees. Obviously, this is not a major amendment when compared with some of the quite horrendous proposals that we will be debating later tonight. However, the Opposition takes up this matter at an early stage because it is concerned that the Government is seeking to change the thrust, direction and operation of industrial conciliation and arbitration in South Australia.

The Hon. G.L. BRUCE: I do not know whether I gave the indication of compulsory unionism as well as the Hon. Mr Lucas indicated. I come from an area where preference to unionist agreements have been drawn up between responsible industries and that union for the benefit of both parties, which gives preference to unionism. There is an option out of most preference clauses if one is an objector. It lays down the grounds for objection. Rather than those people who decide to opt out having a financial gain a clause lets them provide their funds to a charity. When given that option, they buck like wounded bulls. It is the hip pocket nerve that keeps most people out of the union. If they were told that they could join the union free of charge, there would be an avalanche of union members. They are happy to box on, put out their hands for benefits and accept everything which is dished up to them and which is paid for by members of the union or the association. However, they are not prepared to accept the responsibility of being in that organisation, contributing to it and getting the benefits that come from it. It is usually financial aspects, and no other reason, that keep them out.

When the Hon. Mr Cameron, as Federal Minister, proposed that there should be an extra week's holiday for unionists but not for people outside the union, most people could not join their appropriate union quickly enough. There is nothing sinister in this clause, and I oppose the amendment moved by the Hon. Martin Cameron.

The Committee divided on the amendment:

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

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

Pairs—Ayes—The Hons C.M. Hill and R.J. Ritson. Noes—The Hons Frank Blevins and J.R. Cornwall.

Majority of 1 for the Noes.

Amendment thus negatived.

The Hon. M.B. CAMERON: As the last vote was lost and the words of my next amendment would have a similar effect, I will not proceed with that amendment.

Clause passed.

Clause 4—'Interpretation.'

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

Page 2, lines 6 to 19—Leave out paragraphs *(a)* and *(b)*.

This is an important amendment and, despite the Government's claiming to have widespread support for this legislation, there is intense opposition from many quarters to a large number of the clauses in this Bill, this being one of them. I was interested to hear the Hon. Mr Gilfillan indicate that he had had communication from two members of the IRAC Committee who indicated that they were opposed to certain clauses in this Bill. That is one of the difficulties that has confronted people looking at this Bill because there has been a constant claim of widespread support from all sections of industry. If clause 4 was passed as it stands, anyone in receipt of remuneration would be classed as an employee. The most obvious impact of this would be the ultimate elimination of our system of subcontracting and loss of independence and, ultimately, unionisation of all subcontractors, who are, after all, small businessmen.

While on this point, I indicate that I have also had communication from many groups in the community, including the Australian Small Business Association. I will read a letter I received from that association, as follows:

Dear Mr Cameron,

Following discussions held today with you we wish to inform you that, in general, we fully support the proposed amendments to the Industrial Conciliation and Arbitration Bill which are to be submitted by the Liberal Party in the Upper House.

That letter is signed by two executive representatives of that organisation whom I do not want unnecessarily to embarrass by indicating their names. However, I assure members that this information is available to them privately if they require it. The amendment removes the new definition of 'employee' and will ensure that the subcontract system is not undermined.

The Housing Industry Association has estimated that housing costs could rise between 10 and 30 per cent if the Government's proposals are passed. The Employers Federation, Chamber of Commerce. Metal Industries Association, Printing and Allied Trades, Employers Federation and the Master Builders Association all strongly oppose clause 4 as it relates to employees and employers. The Employers Federation states:

We are opposed to the proposed coverage of independent subcontractors under the terms of the industrial Act. The Act is designed to provide a means of regulating wages and conditions of employment and should not be used to cover contractors, who are of a different legal nature to that of employees.

Later, it continues:

In terms of the drafting of the proposed subsection 6 *(a) (b)*, the current wording would mean that once a class of person is declared by regulation that class will be considered by the Act as an employee for all purposes. There is no power under the Bill for the Minister to regulate how such a class of person would be covered and to what extent that coverage would be allowed. The example of the need for flexibility is where the Commission might decide that it should be allowed to decide rates of pay for a

certain class of persons and not work conditions as included under most awards.

This clause is one of the very important clauses of the Bill in terms of its effect on this community. I have had indication that the 10 per cent to 30 per cent rise suggested is an under-estimation of the cost to the community in terms of housing alone. This problem of increased costs will exist not just in relation to housing but throughout the community. I am amazed that the Government is seeking to step into this field, with the obvious end result being a rise in costs to the community and a decrease in the competitiveness of this State compared with that of other States.

This is one of the State's great systems. It is obvious, as the Hon. Mr Bruce indicated, that from time to time minor problems occur within this system, but they are minor when compared with the benefits of the system that accrue to the community. If people wish to operate as small businessmen in their own business, why should we interfere with that wish through legislation? Why should we attempt to impose on them legislation which they do not want, do not require and which can only add to the cost burden of the people of this State? If these people believe that they can operate a small business without this legislation, why should they not do so? Why should we set down upon them as a community? I urge members to oppose this clause, which is the beginning of the end of the subcontract system as we know it.

The Hon. L.H. DAVIS: Some people may not be aware that this is not a clause that has just slipped in at the last moment—a clause that has been dropped in without any thought. In fact, this clause is supported by the Labor Party around Australia. It was proposed back in 1979 when the then Labor Government introduced amendments to the Industrial Conciliation and Arbitration Act. Some of the key points of the Bill that lapsed then applied to the abolition of subcontracting. I am appalled to think that this Government is persisting with the amendment to existing section 4, which will affect the subcontracting system in this State and lead to its possible abolition in key industries such as housing, transport and cleaning. The subcontract system has served Australia well since World War II, when it was first introduced. This is confirmed by the fact that the housing industry in Australia is arguably the most efficient in the world. I am interested in seeking responses from the Attorney-General in due course about what evidence the Government has to justify this course of action. This Council should know what the real purpose of this clause is.

I have here a publication of the Builders Workers Industrial Union, South Australian Branch, which has formed the group called SUBCON. It comes straight out in the November 1983 issue of this document and says that the aim of SUBCON is to bring all subcontractors into a uniform body and organisation with the union movement. Does the Attorney-General agree with the observation of the Builders Workers Industrial Union, South Australian Branch. Is it the aim of the amendment to section 6 to bring all subcontractors into a uniform body and organisation with the union movement, which is what this publication states? It makes no bones about this, it is there in black and white. I will also ask the Attorney to respond to the proposition that the Government approves the setting up of minimum union rates as indicated by a document found on a building site. That document states:

Government approves the setting of minimum rates. B.W.I.U. and Operative Plasterers Subcontractors to head drive for better rates and conditions for subcontractors. Subbies unite and win—Join SUBCON.

There is the union at work again. We know that, at this very moment, Commissioner Pryke, at the request of the Government, is privately hearing submissions related to the possibility of setting a schedule of minimum rates of payment for subcontractors.

I find it quite remarkable that we are asked to debate amendments to clause 6 when a hearing is occurring relating to this very matter. I will be interested to hear the Attorney's reaction, to see whether any evidence is available in relation to Commissioner Pryke's comments. Is the Government represented at the inquiry? Has the Housing Trust made a submission to the inquiry? Has the Housing Trust said what impact the removal of subcontracting will have on the cost of Housing Trust accommodation, given that that accommodation is presumably designed to cater for the very people that the Labor Party claims to best represent—the working class? I ask the Attorney whether the Housing Trust has made a submission to the inquiry. Commissioner Pryke was asked to hear this matter back in November and, specifically, to make recommendations regarding a schedule of minimum rates of payment to subcontractors working on South Australian Housing Trust contracts.

I will be interested to hear the Attorney's response to my questions. Let us not ignore the fact that South Australia is not an island in this matter. Such action on subcontracting is taking place in all Labor States in Australia, with the exception of New South Wales (and I will explain that in a moment). In Western Australia only last week the building unions demanded that employers agree to new industrial relations legislation and, if not, they would face industrial action. The BWIU has sent letters to all major State home building firms threatening them with industrial action (and one can imagine what sort of action that will be) unless they support in writing the State Government's industrial relations legislation.

To give the BWIU in South Australia credit, it has not been quite as unsubtle as its fellow unionists in Western Australia. From what I have already indicated—from the page found on a building site urging people to join Subcon, and from the recent publication of Subcon (which underlines the real purpose of subcontracting)—it has nothing to do with cheaper housing, more efficient housing or more effective housing. All it has to do with is more unionists. That is happening in Western Australia at this very moment. The State Government in Western Australia is ramming through amendments to its industrial relations legislation to redefine the word 'employee' and bring subcontracting under the jurisdiction of the Western Australian Industrial Commission. That is happening right now.

I now turn to New South Wales, where the Assistant State Secretary of the BWIU said in the *Sydney Morning Herald* of 25 January 1984 that the union was aiming at the eventual unionisation of the building industry. The National Secretary of the BWIU, Mr Pat Clancy (a name that may be familiar to some members opposite), said that the union was trying to end exploitation of tradesmen who work under subcontracts which do not compensate for award conditions such as annual leave, long service leave, sick pay, and accident coverage. He said that they were aiming for the eventual unionisation of that industry and that they would put pressure on builders to sign agreements on contract rates, which would mean that subcontractors would have to join the union. That is also happening in Victoria and, as I have said, in South Australia.

In the *Advertiser* of 5 March a Mr Ben Carslake, the new South Australian Secretary of the Builders Workers Industrial Union, said that he is leading a push to get minimum rates for all subcontractors in the housing industry. He said that he is seeking to coerce workers into abandoning subcontracting in the building industry and seeking to replace it with an employee/employer relationship or piecework (and I will say more about that in a moment). That movement is also being given legal status in the Bill before us. I seek

a response from the Attorney in relation to the questions that I have placed on the record.

The Hon. C.J. SUMNER: The Government opposes the amendment. The amendment will delete the provision in the Bill which enables the Commission to cover those contract areas declared by regulation after inquiry and recommendation by the Commission. Mr Frank Cawthorne conducted a full inquiry into the industrial relations area during the period of Liberal Government.

The Hon. R.C. DeGaris interjecting:

The Hon. C.J. SUMNER: Not in every respect, but substantially. Mr Cawthorne recommended that the jurisdiction of the Commission be extended to allow for the regulation of contract labour on an industry-by-industry basis. All stages of this process will be reviewed by the Industrial Relations Advisory Council, that is, an initial proposal to refer the matter for inquiry and implementation of the Commission's recommendations to be considered by IRAC. Regulations are not automatic—that answers the Hon. Mr Davis's question. It can only take place after considering all aspects, including the economic effects of regulation.

The Hon. L.H. DAVIS: I did not really receive any answers. Is the Government aware of the Housing Trust's response to the possible introduction of subcontracting and/or minimum rates in respect of housing, with which it is associated?

The Hon. C.J. SUMNER: I understand that the Housing Trust made a submission to the inquiry. The inquiry will determine the question, taking into account that submission and others.

The Hon. L.H. DAVIS: What was the submission of the Housing Trust?

The Hon. C.J. SUMNER: I do not have the details of the submission.

The Hon. L.H. DAVIS: Does not the Attorney find it somewhat strange that he is not aware of the Housing Trust's submission to an inquiry which is on all fours with the provision before the Committee?

The Hon. C.J. SUMNER: No.

The Hon. L.H. DAVIS: This is a most unsatisfactory state of affairs, because the Housing Trust is the major builder in South Australia. There can be no question that the subcontracting system will increase the cost of housing to the Housing Trust by at least 10 per cent, and many people say that it could be 20 per cent. I would have thought that the Attorney would at least do the Committee the courtesy of having information such as that available when we are discussing such an important and fundamental matter that will have such an impact on the employment and economy of South Australia.

The Hon. C.J. SUMNER: The matter is being considered by the Industrial Commission. It is not a matter that is formally before the Government. Submissions will be taken by the Commissioner in relation to this matter, not just from the Housing Trust but also from all other interested bodies.

The Hon. L.H. DAVIS: The Government initiated this inquiry into the housing industry, setting minimum contract rates for the housing industry. Given the importance of this matter to the debate, I suggest that the Government report progress and seek advice as to the Housing Trust's attitude on the possible abolition of subcontracting and the establishment of minimum rates.

The Hon. C.J. SUMNER: The amendment does not abolish subcontracting, as the honourable member well knows. I have indicated the effect of the clause, which takes the matter on an industry-by-industry basis. Regulation of the industry is needed in order to bring subcontractors within it. That would not be done without the advice and consideration by the Industrial Relations Advisory Council.

The gravamen of the honourable member's argument, whether it be about the Housing Trust submission or about other matters that the honourable member mentioned, is that subcontracting will be abolished. That is not what the Bill says. Regulation in this area is not—I repeat, not—automatic. It can take place only after considering all aspects, including the economic effects of regulation. In so far as the honourable member is espousing a view that the provisions in this Bill in this form will abolish subcontracting, his argument is clearly based on a misconception.

The Hon. L.H. DAVIS: The Attorney is clutching at straws and is in water out of his depth. Clearly, he must agree—

The Hon. R.C. DeGaris interjecting:

The Hon. L.H. DAVIS: Well, it is pretty deep in this case. The Attorney will have to agree that the amendments to section 6 of the principal Act will give the power to abolish subcontracting effectively and create an employer and employee relationship. Does he disagree with that proposition?

The Hon. C.J. SUMNER: The honourable member said that this clause will abolish subcontracting. The fact is—

The Hon. L.H. Davis: It will give the power to.

The Hon. C.J. SUMNER: That is different from what he said, but he has now corrected himself and has decided to be a bit more precise than he was earlier. He said that it would abolish subcontracting, but the fact is that the clause as drafted will not abolish subcontracting. The honourable member is floundering around in an area that he knows very little about. He should stick to the Stock Exchange and get out of an area about which he knows nothing. He certainly does not know anything about reading legislation; this clause does not abolish subcontracting. I would have thought that anyone who read it would realise that that was the case. It gives the power by regulation for certain subcontract arrangements to be considered as employer-employee relationships, but only after inquiry, only after the Government has made a regulation to that effect, which involves Parliamentary scrutiny, and only after IRAC has looked at the issue. So, regulation is not, as I said, automatic. It is a complete misconception for the honourable member to assert boldly that this section abolishes subcontracting; it does not.

The Hon. L.H. DAVIS: The Attorney is being cute. Quite clearly, the amendments to section 6 that are proposed by the Government give the power to abolish subcontracting. If the Government supports subcontracting and does not intend to abolish it or see the possible abolition of subcontracting, why does it introduce this clause?

Members interjecting:

The CHAIRMAN: Order!

The Hon. R.I. LUCAS: I will first concede that there are examples of abuse of the subcontracting system; I will not say that some do not exist. But, what the Attorney and the Government are not conceding is that subcontractors in the main are subcontractors because they see advantages in being subcontractors and, in effect, independent small business people. They have a wide range of freedoms that many employees do not have: they can choose to work for whatever hours they want to work; they can choose their own rate or level of activity for the work that they want to undertake; and they can choose at what time of the year they want to work or do not want to work. In fact they can choose a whole range of things that an employee cannot. Those are significant advantages for what, in effect, are independent small business men.

Neither the Attorney nor anyone on the Government side is prepared to concede that many subcontractors are more than happy with their lot and with what they see as the advantages that they have. The Minister in another place,

all those who supported him, and the Attorney in this Chamber have not presented one shred of evidence or one submission from any group purporting to represent subcontractors that they want this change. In opposition to that, significant numbers of submissions have been given to the Minister in charge of the Bill in another place; I presume the Attorney has seen them, and I will briefly refer to some of them: the Employers Federation, the Chamber of Commerce, the Metal Industries Federation, the Printing and Allied Trades Employers Federation, and the Master Builders Association. The list goes on and on, all strenuously opposing this provision in the Bill. The Attorney rather meekly and weakly argues that IRAC supports this and that therefore that is good reason for its being in this Bill.

The Hon. C.J. Sumner: You don't understand what I said. You don't listen.

The Hon. R.I. LUCAS: No, the Attorney does not understand his brief. IRAC is not sufficient reason for supporting this Bill.

The Hon. C.J.Sumner: I did not say that.

The Hon. R.I. LUCAS: The Attorney gave tht as his feeble excuse: Cawthorne and then IRAC. That was the Attorney's feeble reasoning for it. He has not presented any submissions from subcontractors; he cannot, he knows it, and he will not. The Minister of Labour did not present any submissions.

The Hon. M.B. Cameron: And he won't.

The Hon. R.I. LUCAS: And he will not, has not, and cannot. Dozens of submissions are lined up against the Attorney, the Minister of Labour and the Government on this measure. Will the Attorney give us some indication of the measure of support for this provision from those who will be most affected—this great uprising of discontent amongst subcontractors in South Australia?

Secondly, the Government has disagreed with the estimates that various people have made as to the cost effects of this provision on South Australian industry. Those estimates have ranged from 10 per cent to 30 per cent. Will the Attorney provide the estimates that Government officers have made of the possible cost effects of this provision on South Australian industry?

The Hon. C.J. SUMNER: The honourable member does not listen; he never listens. The fact is that I said that, before regulation was introduced in the subcontract area, the matter would go to IRAC; that is the context in which I mentioned IRAC. If the honourable member wants to deliberately misrepresent what I have said, let that be a matter for him. I thought better of him. There is little point in just throwing around abuse about this measure, or any other one; that seems to be what the honourable member is intent on doing, and misrepresenting what I have said.

Honourable members opposite have no figures in relation to what this may cost. They pluck out of the air figures of 10 per cent to 30 per cent. As I said in my second reading response, that is purely speculative. There is considerable support in industry and among people who work as subcontractors in certain areas: in the transport area, for instance—owner drivers support it—and there is support amongst subcontractors in the building industry.

It is not true to say that there is no support for the proposition. This is a clause which facilitates the getting of proper conditions for people who work in industry. I am surprised to see that the honourable member, having conceded the abuses that occur in subcontracting arrangements, is now ignoring and refusing to support something which, after proper inquiry (and it is not automatic), could ensure justice for many people working in what simply are exploitative conditions.

The Hon. G.L. BRUCE: The Hon. Mr Davis seems to think that subcontractors apply only to the building industry?

The Hon. L.H. Davis: I did not say that. I mentioned the transport and cleaning industries.

The Hon. G.L. BRUCE: The honourable member did not mention those industries in my hearing, and he concentrated solely on the building industry. A lot of subcontracting goes on in the grey area industries. A magazine came across my desk yesterday from the Australian Hotels Association, and an article on page 9, headed, 'An employee or contractor?', states:

> When an employer is putting on a new hand he sometimes has doubts whether it is best to have him as an employee or as an independent contractor.
>
> It is necessary to differentiate between employees and independent contractors in order to determine—
>
> - The applicability, if any, of award and statutory wages and conditions including annual leave, sick leave, and long service leave.
> - The necessity, if any, to obtain workers' compensation cover;
> - The necessity to pay pay-roll tax;
> - The necessity to withhold income tax instalment deductions.
> - Liability at common law for failure to take reasonable care to look after the safety of employees.
>
> Various tests at common law have been used by the courts to determine whether a person is an employee or independent contractor, and these are referred to below.

It then goes on to give the control test, the organisation test, and the business test. Many people in the big world outside employ people as subcontractors who should not be on subcontracting. There is no provision for them to be subcontracting. Those people are working in dangerous situations and areas where no workers compensation covers them. They are working where there is no proper agreement on tools and supplies.

I believe that this clause gives the right to review those areas where a raw deal is being done on subcontractors. Members opposite admit that subcontracting is cheaper. Somebody is paying for that cheapness. The ordinary worker, not the skilled worker—

Members interjecting:

The CHAIRMAN: Order!

The Hon. G.L. BRUCE:—is subcontracted for no reason other than that it is cheap labour.

The Hon. R.I. Lucas: Wages will go up; therefore costs will go up.

The PRESIDENT: I ask the Hon. Mr Lucas not to keep on interrupting, but to ask questions if he wishes.

The Hon. G.L. BRUCE: The honourable member is asking people to work for less than their neighbours and friends who are on award conditions or rates. He is asking these people to undermine the conditions that have been built up by society on a firm structure of industrial agreement. He is asking for that to be undermining grey areas on subcontracting. I believe that this clause gives the right for people to look at those areas that are grey and say that they come under award provisions or an employee contract. I believe that there is scope for the provision to stay in the Bill.

The Hon. L.H. DAVIS: In drawing up this amendment, did the Government take notes of the findings of the Burns Inquiry in New South Wales, which was commissioned by the Wran Labor Government and which reported on the matter now under consideration in 1981? Has it taken note of the research of an objective and independent person who is world renowned for his ability to assess productivity in the home building industry and building industry generally, namely, David Woodhead of the Building Research Department of the CSIRO?

The Hon. C.J. SUMNER: The answer to the first question is 'Yes', it was canvassed in the Cawthorne Report. The answer to the second question is, 'No'.

The Hon. R.C. DeGARIS: The Attorney-General dealt with IRAC, which does not exist as far as this legislation is concerned.

The Hon. R.I. Lucas: The Attorney cannot read legislation.

The Hon. R.C. DeGARIS: Yes, he can, and he is not bad at it. Does the Attorney agree that it is possible, under the regulation making powers of this clause, that subcontracting could be annihilated as it exists in South Australia if a Government decided to attack that industry of subcontractors?

The Hon. C.J. SUMNER: I do not agree with that proposition. Subcontracting may be regulated in some areas under this clause, depending on the situation. If there are particularly exploitative relationships involved with subcontractors, which the Hon. Mr Lucas pointed to, then regulations can be made to bring an industry within the terms of the clause. As I said, it is not automatic. The Government has indicated that IRAC and the Parliament would be involved in considering any such regulation. I cannot accept the proposition in the dramatic terms in which the honourable member outlined it.

The Hon. L.H. DAVIS: To take up the Hon. Mr DeGaris's point, which I think is valid, if one brings subcontractors within the ambit of section 6 and creates an employer/employee relationship, surely one then destroys subcontracting, as it is now outside the employer/employee relationship provided for in the legislation.

The Hon. R.I. LUCAS: Once again I compliment the Hon. Mr Bruce on an important contribution to this debate. Together with Terry Groom in another place, the honourable member conceded, quite honestly, that the effect of this change will be that wages and costs will increase and, therefore, costs to the industry will increase. The Hon. Mr Bruce is an honest member of this Chamber and has openly and honestly conceded that. That is the correct situation. The Hon. Mr Bruce knows it. The Attorney-General is being less than frank with us and is not conceding it. The question I put to the Attorney is simple and important. The Attorney is disagreeing with the estimates that various people have carried out concerning cost increases of 10 per cent to 30 per cent as a result of this legislation. What cost estimates have Government officers done as to the potential cost increases of the legislation?

The Hon. C.J. SUMNER: I do not have specific information on that topic. Honourable members opposite seems to be misreading the effect of the clause. An inquiry would need to be conducted. The economic effect of bringing subcontractors in by regulation would need to be assessed. At that time the economic effect of doing it in terms of increased costs would be assessed.

The Hon. R.I. Lucas: So, you have no idea.

The Hon. C.J. SUMNER: Obviously, no detailed study has been done because the Act does not regulate subcontractors. It provides a mechanism—

The Hon. L.H. Davis: It provides a mechanism for regulation.

The Hon. C.J. SUMNER: That is what I said. It provides a mechanism to regulate subcontractors and to do away with, where appropriate, exploitative relationships in the work force—exploitative relationships which the Hon. Mr Lucas has alread conceded exist in the subcontract area.

That being the case, any assessment of costs would be done at the time of the inquiry. It is not possible for the Government, just as it is not possible for honourable members opposite or those who support them, to make an estimate of the cost. It could vary from industry to industry. It would depend how many industries are brought within this clause. Whether they are brought within it will depend on inquiry. One of the things which will be taken into account and which I have referred to about half an hour ago, if honourable members had been listening, was that it will not be automatic and that economic effects would be taken into account. It would be at that point when there would be a detailed and careful analysis of any potential costs.

The Hon. L.H. DAVIS: That is a remarkable admission from the Attorney. He is saying that the Government has proposed, through its amendment to section 6, a provision which gives the potential to alter existing contractual relationships without seeking any information at all from the industries that could be affected by it. What the Attorney has said to the Committee is in sharp contrast to what the Minister of Labour said in another place. He was reported as having said:

> This clause gives power to the Commission on my recommendation—

I am quoting him directly—

> to deal with any industry at all.

He did not say anything about IRAC. We have a split in the Government camp about exactly how this clause is interpreted. One could drive two Melbourne expresses through it and still have room to move. Can the Attorney say whether the Government has had any discussions with any of the industries that could be affected? For example, is the Attorney aware of whether there have been any representations from the Housing Industry Association? Has the Government made any contact with the Association which, after all, is the umbrella organisation responsible for building 10 000 private houses in South Australia in 1984? If we take the minimum figure of a 10 per cent increase, if this clause comes into being, it would add an extra $20 million to houses. If we take a 20 per cent increase, it would add an extra $40 million to the cost of housing.

The Hon. R.C. DeGaris: How much a house are you allowing?

The Hon. L.H. DAVIS: I am estimating $40 000 a house and the value of subcontracting at 50 per cent, which is $20 000. A 10 per cent increase on that is $2 000. The guts of the argument is that if we change the nature of the contractual arrangement from a subcontractor who works in his own time—he might do it on the weekend so that he can play golf during the week—and if that initiative and approach of getting on with it is destroyed and the Government establishes an employee relationship, creating a piecework programme so that people work bit by bit, creating demarcation disputes, introducing unionism, it will increase the cost in South Australia.

I come back to the point I started with. Why cannot the Attorney be candid and say that the Government is in the arms of Trades Hall, that the Government is committed to this as policy irrespective of the economics of the situation? Why cannot the Attorney report progress and get some decent answers to this clause? I cannot believe that any Government with any respect for the fragile economy of South Australia, and with any understanding of what this clause could do to the people of South Australia, could tell Parliament that the Government is introducing a clause which it intends to have passed into legislation without knowing the economic consequences of it. I cannot believe that the Attorney can be so glib about it, and I am appalled that this Government, which claims to be in the position of wanting South Australia to win—that was its slogan in 1982—is now introducing legislation which has the capacity to destroy the South Australian economy.

The Hon. G.L. BRUCE: I can tell the Hon. Mr Davis what this clause will do if it is given a chance. It will give people a fair go. I know of large factories in South Australia that have put off workers and told them that they could subcontract from their homes and be paid so many cents for a dozen items. If a person visits that worker's home he is still working, while the kids and visitors sit and watch television at 9 p.m. or 10 p.m., putting in plastic washers.

Once a week a truck comes and takes the production away, but no provision is made for the workers at the factory because it is all shipped out. The home is the factory. Is that what Opposition members believe subcontracting is all about? We do not want that at all. The Opposition concentrates on housing where, there may be legitimate subcontracting, as there may be with transport, but there are many grey areas and there are many rip-offs and exploitative practices going on under the name of subcontracting in the great wide world.

The Hon. R.I. LUCAS: The Hon. Mr Bruce is genuine in his heartfelt contribution but the end result of his simplistic argument is more far reaching. If we come back to a situation of an employer and employees—they could go back to the factory situation. The employers might not want to continue the method of operation. They have made an estimate that they cannot afford at today's wage costs to operate the factory at the award rates that the Hon. Mr Bruce and his union movement colleagues have achieved for union members in South Australia (and in Australia, for that matter). The Hon. Mr Bruce is fighting genuinely for people working on a subcontract basis in their homes, but employers could more quickly go into the realms of improvements in technology, so that the simple tasks presently undertaken at a rate less than the award rate by these people at home will no longer be done by people at all. The employer will decide that he cannot afford to employ them at the full award rate and so he will either close up shop or move more quickly into higher and higher levels of technology. The people whom the Hon. Mr Bruce genuinely tries to protect and support will find themselves not earning any money at all because they will be unemployed and on the dole.

The Hon. G.L. Bruce: They would probably be better off.

The Hon. R.I. LUCAS: The Hon. Mr Bruce says that they would be better off, but I am sure that he does not really believe that. He would accept that the level of money that they achieve at present, whilst less than the award rate, is certainly more than the unemployment rate. The Hon. Mr Bruce is genuine and I do not wish to denigrate him at all. He seeks to protect those people subcontracting in their own homes, but let him be aware that if he and the Government achieve what they are seeking in this respect, he will not be protecting those people at all, and they will not thank him. Rather than getting what it is that they are presently getting, they will have the choice of nothing or the unemployment benefit.

The Hon. G.L. Bruce: They will not get the unemployment benefit because there is usually supplementary income of the other partner.

The Hon. R.I. LUCAS: They will not get anything at all. What the Hon. Mr Bruce is saying is that they would not get the award rate and, therefore, they ought not get anything at all. That will be the ultimate effect of what the Hon. Mr Bruce and the Attorney, on behalf of the Government, are arguing.

The Hon. G.L. Bruce: Do you want to turn it into a cottage industry?

The Hon. L.H. Davis: Do you want to turn South Australia into a cottage State?

The Hon. R.I. LUCAS: One of the Hon. Mr Davis's former leaders was a great proponent of turning South Australia into a cottage industry State. I am sure that he is not criticisng one of his former leaders in that respect. The Hon. Mr Bruce will have to come to grips with this problem. In setting out to do what he is trying to do in this Bill, he is going to to—

The Hon. G.L. Bruce: I am going to support the Bill.

The Hon. R.I. LUCAS: Yes, and those people whom the honourable member is trying to support will end up with no job at all. Those people whom the honourable Mr Bruce honestly tries to protect will not thank him at all. They might be rather cross with the honourable member if they lose their supplementary income.

I return to the contribution made by the Attorney-General, meagre though it was, on the economic effects of this Bill. As the Hon. Mr Davis pointed out, this is an extraordinarily important part of the Bill, and the Attorney-General has conceded that the Government has no idea and has done no work on its economic consequences. We all concede that it is not possible to lay down definitively what the economic consequences of the Bill will be because, in many respects, decisions will have to be taken by the Court and the Commission as to which subcontracting industries will be regulated.

There is no doubt that, in the most important area of building and housing costs, the Government could calculate with respect to the potential for increase within South Australia. No-one is expecting the Attorney-General to be able to gaze into a crystal ball and say what the final result will be. However, no doubt exists that Government officers in the housing industry could calculate the potential effect, particularly in the housing industry, if all subcontractors ended up having to be paid award rates and conditions. Has the Attorney-General any idea whether the Housing Trust has made such calculations and provided those calculations to the Government on the potential increase in costs to the housing industry in South Australia?

The Hon. I. GILFILLAN: I have on file a similar amendment that is intended to protect the contracting industry, so the Democrats will be supporting the amendment.

The CHAIRMAN: I was going to make the point that we had received an identical amendment from the honourable member but we took the first amendment to reach the table. The Hon. Mr Gilfillan has an identical amendment.

The Committee divided on the amendment:

Ayes (10)—The Hons J.C. Burdett, M.B. Cameron (teller), L.H. Davis, R.C. DeGaris, Peter Dunn, I. Gilfillan, K.T. Griffin, Diana Laidlaw, R.I. Lucas, and K.L. Milne.

Noes (7)—The Hons G.L. Bruce, B.A. Chatterton, C.W. Creedon, M.S. Feleppa, Anne Levy, C.J. Sumner (teller), and Barbara Wiese.

Pairs—Ayes—The Hons C.M. Hill and R.J. Ritson. Noes—The Hons Frank Blevins and J.R. Cornwall.

Majority of 3 for the Ayes.

Amendment thus carried.

The Hon. K.T. GRIFFIN: Will the Attorney-General give an indication of what paragraph *(e)* is intended to cover? It seems to be wide in that it provides:

by inserting after subsection (2) the following subsection:

(3) An award or order made against the Public Service Board in pursuance of this Act, or an industrial agreement made by the Public Service Board in pursuance of this Act, is binding upon, and enforceable against, any body corporate or other person who would, at common law, be regarded as the employer of the employees to whom the award, order or agreement relates.

I have an amendment because I am not sure what the clause is designed to do. It appears to be much wider than just relating to public servants. Will the Attorney-General clarify the situation?

The Hon. C.J. SUMNER: The need for such an amendment as contained in the Bill flowed from the fact that the Public Service Board is recognised as an 'employer' under the Industrial Conciliation and Arbitration Act, but the relevant employee may be contracted to a statutory body as employer. Thus, the Public Service Board may be bound by awards, agreements or orders made under the Act, and not the common law employer. The difficulties attaching to this situation were examined in the Full Industrial Court decision in *Manock v Institute of Medical and Veterinary Science (Referral of Questions of Law) Case* (1978) 45 S.A.I.R.

935, which is quoted at pages 475 and 476 of the Cawthorne Discussion Paper.

Thus, it is not the case, as was claimed by the Hon. Mr Griffin in his second reading speech, that the order or award would bind a body which had not an interest in the proceedings, as that body's employees are the ones affected by that award or order. The Government's amendment merely clarifies a situation which has resulted in practical difficulties in the past and, accordingly, if the honourable member moves for the deletion of the paragraph, it will be opposed.

The Hon. K.T. GRIFFIN: I tried to follow that. It is a bit difficult to hear on this side of the Chamber, but do I understand that it only results from the Manock case, which was a matter involving, from memory, Dr Manock, who was a pathologist with the Institute of Medical and Veterinary Science on a secondment basis to the forensic science services in Divett Place. I have a recollection that there was some dispute involving Dr Manock challenging the capacity or ability of the Public Service Board, or some other board or agency, to make some appointment over him or to describe some other person as holding an office that he alleged he held. I am not sure whether that was on the basis of his being an employee or a contractor. If it was as a contractor, then I am not sure that this clause addresses that situation but deals only with employees in the common law situation.

The Hon. C.J. SUMNER: The matter was addressed on pages 475 and 476 of Mr Cawthorne's discussion paper. He concluded that such a provision, similar to that in the 1979 Bill, would do much to resolve this important practical matter and therefore must be regarded as having considerable merit. It is my understanding that that is what the amendment to the Act is designed to do, namely, clarify the status of the Public Service Board in situations involving other statutory authorities.

The Hon. K.T. GRIFFIN: If it relates only to statutory bodies, which are in fact instrumentalities of the Crown, I will not proceed with my amendment. However, if it is likely to have wider implications than the Public Service Board representing statutory bodies, which are instruments of the Crown, then I would continue with my amendment at this stage.

The Hon. R.C. DeGARIS. This is a peculiar clause. It states:

An award or order made against the Public Service Board in pursuance of this Act . . . is binding upon . . . any body corporate or other person . . .

I understand what a body corporate is, but what is the reason for the inclusion of the words 'or other person' in the clause?

The Hon. C.J. SUMNER: The intention is as I have outlined. There may be other persons who are Government bodies but who do not constitute a body corporate.

The Hon. R.C. DeGaris: Name some of them.

The Hon. C.J. SUMNER: I suppose a Minister is not a body corporate; that is one. This is an attempt to overcome the problems outlined. I refer honourable members to pages 474, 475 and 476 of the Cawthorne discussion paper.

The Hon. R.C. DeGaris: Did he recommend the words 'or other person'?

The Hon. C.J. SUMNER: He said that the clause in the 1979 Bill, which he cites in his discussion paper and which is substantially the same as clause 4 with slight drafting amendments, would do much to resolve this important practical matter and accordingly must be regarded as having considerable merit. That is the basis for the clause.

The Hon. K.T. GRIFFIN: I do not want to prolong discussion on this matter, so I wonder whether a better course would be for me not to move this amendment at this stage but to indicate that when we finish the Committee stage it may be appropriate to recommit the Bill to consider this amendment, if it needs some redrafting, to ensure that it is limited only to statutory corporations. I do not want to be difficult and really want to see that the drafting is sufficiently precise to apply to the sorts of situations that the Government is trying to cover.

As the Hon. Mr DeGaris has indicated, the use of the words 'or other person' tends to suggest that this might involve something more than statutory authorities. I suppose even the use of the words 'body corporate' gives a wide ambit to this matter than the words 'bodies incorporated by Statute'. If the Attorney is prepared to obtain clarification of this clause and allow recommittal of the Bill after the Committee stage, that would probably facilitate consideration of the Bill.

The Hon. M.B. CAMERON: The point raised by the Hon. Mr Griffin deserves further consideration. It is not clear to me what is meant by this clause, and I ask the Attorney-General to answer the Hon. Mr Griffin's question as to whether or not he is prepared to reconsider this clause.

The Hon. C.J. SUMNER: I am surprised that honourable members opposite have not studied the Cawthorne Report.

The Hon. K.T. Griffin: I am talking about the drafting.

The Hon. C.J. SUMNER: That is here now and the honourable member has had it for several weeks.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: I have. The clause to which Mr Cawthorne referred in 1979 is substantially the same as this clause. I make the point that the honourable member has had the Cawthorne discussion paper and the drafting of the Bill and could have considered this matter before today, but apparently he has not done so.

The Hon. K.T. Griffin: You ought to know what it's about; you are the Minister.

The Hon. C.J. SUMNER: I have indicated what the matter is about. I have indicated that it is to clarify the problem that occurred in the Manock case when there was doubt about who the employer was in a situation involving employment by Crown authorities. I have indicated that already. I will give consideration to recommitting the clause at the appropriate stage.

Clause as amended passed.

Clauses 5 to 7 passed.

Clause 8—'Jurisdiction of the court.'

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

Page 3, lines 26 and 27—Leave out all words in these lines.

This clause deals with the jurisdiction of the court. The Government proposes to take the hearing of dismissal claims out of the hands of the court, and into the Commission to be heard by a single Commissioner. The Opposition believes that judicial matters should be settled in court. Our view is echoed by the Law Society, which strongly believes that the proper place in which questions of law should be resolved is a court. I have received a letter from the Law Society, which, in part, states:

Our concern with these provisions relates to the removal of re-employment applications from the jurisdiction of the Industrial Court and the transfer of them to the Industrial Commission, constituted of a single Commissioner, with power of the Commission to award compensation in some circumstances and, further, with a right of appeal limited to a hearing before a single judge.

The re-employment jurisdiction in South Australia at present is far wider than that existing in any other State, in that it allows any individual to obtain relief by means of a curial process on his own application. He does not have to be represented by or have the support of a union, and the exercise of the jurisdiction is not dependent upon the existence of a collective dispute or a union sponsored application.

There is a lengthy submission in the rest of the correspondence from the Law Society, and I believe that the Hon. Mr Griffin read that submission into *Hansard.* I am sure that he will take up that matter further. Under the Act as it now stands determinations are made by the court concerning

wrongful dismissal. Without reflecting on commissioners, they are appointed from diverse backgrounds. There is no guarantee of legal training.

The Hon. K.T. Griffin: They are specifically not legally trained.

The Hon. M.B. CAMERON: That is correct. As the Hon. Mr Griffin points out, they are specifically not legally trained. It would be quite improper if a judicial decision was taken by someone without appropriate judicial training. The Cawthorne Report recommended against what the Government is doing except for the purposes of pre-trial conciliation. Although the Government claims that this Bill is based on Cawthorne's proposals, this clause is an important area where Cawthorne's proposals are ignored.

The Hon. K.T. GRIFFIN: There is no justice in this clause at all. It seeks to give to a lay commissioner with no training at all in assessing issues on a judicial basis the right to award unlimited compensation. Even magistrates, who have some legal training, have limits on their jurisdiction, and judges of the District Court have limits placed on their jurisdiction. When a matter goes to the Magistrates, District or Supreme Courts, the evidence that can be given is limited according to well established rules to protect both parties and to ensure that only real evidence is given and not hearsay, and extraneous matters are not introduced.

There is an appeal against the decision of a magistrate right up to the High Court of Australia or even to the Privy Council. However, in this case, if a lay commissioner is required to assess compensation for any amount at all (and they can be huge amounts) the only appeal is to a single judge of the Industrial Court, and there is no further right of appeal. There is no justice in that at all. I would have thought that anyone who had any concern at all for the rights of citizens in respect of compensation matters, whether the person who is claiming compensation or the person against whom the claim is made, would realise there are certain basic rights. Those rights include appeals to the highest court in the land, if one alleges that an improper and unjust decision has been made.

This provision flies in the face of all those basic principles and allows extraneous material to be involved and places no limits at all on the jurisdiction of lay untrained commissioners. I believe that this is a most serious matter which should not be supported in the Bill. The amendment to delete the provision is the only proper and just course in the context of compensation for a cause of action that is referred to as unjust dismissal. I support the amendment.

The Hon. C.J. SUMNER: There is no merit in the Opposition's amendment. This sort of matter can be dealt with appropriately in an industrial context by a commissioner, as it is in a number of other States in Australia. If it is a matter of undue legal complexity, it can be dealt with by one of the presidential members of the Commission. I really think that the arguments of members opposite have little merit.

The Hon. L.H. DAVIS: I support the amendment. Quite clearly, it is absurd to remove the existing power which now resides with the court to hear and determine questions of dismissal and place it in the hands of a Commissioner who has no legal training. To my way of thinking, it seems quite contrary to the suggestions contained in clause 60, where the court is given power to make decisions relating to compensation if an applicant has been dismissed from his employment. There seems to be some confusion between the proposal contained in this clause and that contained in clause 60. I think that there has been a blurring of functions between the arbitral and judicial functions of the Commission and the court. I support the observations of the Hon. Mr Griffin in this respect. I am surprised that the Attorney supports the provision in the Bill. I know that he is locked into it as a member of the Government, but I cannot believe that he really believes that this clause can possibly improve the existing situation.

The Committee divided on the amendment:

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

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

Pairs—Ayes—The Hons C.M. Hill and R.J. Ritson. Noes—The Hons Frank Blevins and J.R. Cornwall.

Majority of 1 for the Noes.

Amendment thus negatived.

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

Page 3, lines 29 and 30—Leave out subsection (2a).

It would be better if I confined my remarks to this clause, but I indicate that some of my remarks will be also applicable to clause 14. Section 15 (1) *(d)* relates to claims and this reinstates the restriction on those who can claim pursuant to section 15 (1) *(b)*; that is, that one must be governed by an award before one can make a claim. Award free people cannot make a claim. We believe that this subsection should be left out.

The Hon. K.T. GRIFFIN: I suggest that this is consequential on clause 14. With a little flexibility in the debate, if the Hon. Martin Cameron addresses the matters of substance in relation to clause 14 we could use this as a test case.

The CHAIRMAN: I can see no reason why that should not be the case.

The Hon. M.B. CAMERON: Clause 14 is very broad. It gives the Full Commission power to make awards of general application. In other words, it seeks to extend the powers of the Commission to enable it to override all other existing awards. This will remove from employers the right to become involved in cases of specific application before the Commission. In tough economic times such a *carte blanche* upgrading of power is most undesirable. The Government's proposals are all one way. There is no recognition that there may be a time when a particular condition warranted reduction rather than improvement.

There is a further amendment to clause 14, but I will leave that for the time being because it is a separate matter. Clause 14 also refers to section 25a, and that is where my remarks are directed. There is a delineation of people who can make application. For the first time, the United Trades and Labor Council will be brought into this group. All the other organisations—the Minister, the South Australian Chamber of Commerce and Industry Incorporated, the South Australian Employers Federation Incorporated or any other registered organisation that applies by leave of the Full Commission—will be registered bodies, except the United Trades and Labor Council. The registered bodies have certain obligations placed on them, which are, namely, that the rules must be reviewed by the Commission and be the subject of argument by interested parties when changes are proposed, notification of officers to the Commission, half yearly audited accounts to be given to the Commission, subject to the cancellation of registration if their affairs are not conducted properly, and subject to the Industrial Court's ordering the Association to comply with the same rules.

They are very wide powers that are given to the Commission. Yet the United Trades and Labor Council will have the same right to appear, but will not have to be a registered organisation and will not be subject to those conditions. It will have potentially in all applications two representatives because there will be a representative in normal circumstances from the union that is making the

application as well as the additional representative from the United Trades and Labor Council. That is really unbalancing that area. I urge members to vote against this clause as a test clause for the amendment to clause 14—referring section 25a.—

The Hon. K.T. GRIFFIN: I support the amendment, which is consequential on that amendment to clause 14 which seeks to delete the proposed section 25a. Proposed section 25a gives a very wide jurisdiction to the Commission on the application of the Minister, the United Trades and Labor Council, the South Australian Chamber of Commerce and Industry, the South Australian Employers Federation or any other registered association that applies by leave of the Full Commission. It gives the Full Commission jurisdiction to make an award of general application, regulating remuneration or conditions of employment. There is no suggestion that all of those who are likely to be affected other than the peak bodies referred to or the union will have a right to be heard. One would have expected, again as a matter of basic justice, that if there is to be an award of general application everybody who is likely to be affected would have a right to come along and fight out the matter before the Full Commission, but that is not to be the case.

In view of that, because it is a very wide power of the Commission limited to a very few bodies or persons to initiate it, I do not believe that it is a matter that should be included in the principal Act. For that reason, I am certainly very much in favour of the amendment moved by the Hon. Martin Cameron.

The Hon. R.I. LUCAS: I quote from the submission that was made by the Employers Federation with respect to clause 14:

> The proposed section 25 *(a)* is designed to allow the Full Commission to make general awards affecting all employees under its jurisdiction. We believe that awards should be made as closely as possible to the industry that they will affect and therefore we are opposed to general orders which are designed to supersede awards which have been negotiated and/or arbitrated to suit specific industry requirements.
>
> We would therefore submit that general awards should not supersede industry award conditions even where that industry award may be inferior to the general award in respect to that particular condition of employment.

There were many other submissions on this provision by various employer groups, all, in effect, saying much the same sort of thing. The danger that I see in this provision is that what is likely to happen is that the highest common denominator principle is likely to evolve; that is, the very best of all provisions in all awards are likely to be rolled up in one little parcel and be made subject of general orders.

In response to earlier questioning the Attorney indicated that the Government had not bothered to consider the economic consequences of the provision with respect to subcontracting. By his attitude the Attorney indicated that personally he was not fussed about it and that, by inference, neither was the Government. Does the Attorney have an estimate of the potential cost effect on industry of this provision?

The Hon. C.J. SUMNER: This is unlikely to have any additional cost. It merely formalises what is done now by a test case mechanism and makes it easier for the Commission to adjudicate on general principles now determined by test cases which then flow through to other awards. It is certainly a complete misconception for the honourable member to think that the Commission takes the highest of each particular condition being considered and makes that into a general award. In general awards, as in provisions that are already in industrial legislation, certain minimum conditions are provided; it is in that area that the general award has its effect.

The Hon. L.H. DAVIS: Can the Attorney say whether or not any other State has such a far-reaching provision which cuts across industry awards and makes awards of general application of this nature?

The Hon. C.J. SUMNER: Yes, Queensland.

The Hon. L.H. DAVIS: The Attorney earlier accused me of having a limited knowledge in this field, but even my limited knowledge extends to the awareness that in Queensland general awards are of a limited application, whereas this is of a very broad application. I do not think he will come back on a rebuttal on that point. As the Hon. Mr Lucas observed, we are dealing with the impact of this clause on the economy in South Australia. My concern is that it will cut across the arrangements that are traditionally made in industries between employers and employees. It will mean that the Commission can make an award which will flow through to all industries, irrespective of whether that award is appropriate. Certainly, the award shall not be made under this section except on the application of the Minister, the United Trades and Labor Council, the Chamber of Commerce, the Employers Federation, and so on. It is hard to conceive a situation where the employer groups will say, 'We want this award to be of a general application.' Can the Attorney think of any situation where an employer group would ask the Commission to make an award of general application, given that it may stretch to an industry over which that employer group may have no immediate interest? I do not think that it is possible to conceive such a situation.

The point has already been made that there will be a tendency to pick the eyes out of the award so that the UTLC may make an application and seek the best of all worlds for its members. One can imagine that there could be situations in which an award of general application, which would be quite inappropriate to certain awards, could be made.

During my second reading speech I gave the example that an award of general application may be made concerning hours. One may have an industry (for instance, the oyster industry) which would not operate between 9 a.m. and 5 p.m. because high tide is at 8 o'clock. This again is a very good example of legislation by stealth and by Trades Hall, where the Attorney cannot give an indication of what the economic impact is. He says that we are just formalising an existing situation. We are not formalising an existing situation—we are going much further than the existing situation. Indeed, I suggest not only that there is the economic impact but also that it will create strains between employees and employers because, as we all know, within an industry the employee and employer groups get together, bargain and get their trade-offs and everyone goes away happy. They have their tea allowance and special arrangements.

Now, we give the Commission the power to make an award of general application which may cut across what the employer may like and will lead to the employer perhaps toughening up on his attitude. One could imagine that an award might be inappropriate in the case of the union. Could the Attorney envisage a situation where any employer group might ask the Full Commission to make an award of general application?

The Hon. C.J. SUMNER: Yes. Obviously there could be a whole number of situations where an employer group might make such an application. In legislation at the moment there are provisions for minimum conditions relating to all sorts of things—the way in which employees can be paid, sick leave, and a whole host of other established minimum conditions.

A general award would enable the Commission to provide for such minimum conditions across the board. It may well be that that agreement has been entered into by the UTLC

and the employer organisations and that they are happy for it to proceed. I cannot imagine that that would necessarily be an unusual situation. It may be that, if not formally making the application (and they may do that), the employer group will go to the Commission agreeing to certain such minimum conditions. So, I do not see that the honourable member's flights of fancy about this clause deserve further consideration.

The Hon. R.I. LUCAS: The Attorney's lack of grasping matters economic is evident again. In response to my earlier question on this clause, the Attorney indicated that there would be no economic effect from this provision. If the Attorney had the time to talk to some employer groups, I am sure that he would be soundly laughed out of the room. The Attorney is correct in part in what he says, that is, that the Commission at the moment has power to establish standards through appropriate test cases, for example, maternity leave provisions.

Even the Attorney would have to concede that under existing provisions there are some time delays with the test case situation flowing on to other awards. Under this new provision, the Attorney is urging the power to make general awards. The time delay that is evident in the existing situation will not be evident in the new situation. That is clearly the reason why the Government, under instruction from the union movement, is proceeding in this direction—it is adminstratively cosier and is achieved more quickly. As I said, the Minister really does not grasp matters economic at all. This has slipped right by him again.

The Hon. L.H. Davis: He has read a lot and still does not grasp it.

The Hon. R.I. LUCAS: The Attorney indicated last night that he had read Marx—we wondered whether it was Carl or Groucho. He certainly has not grasped the economic effect of this. It would not be proposed in this legislation if it was not going to make the whole thing administratively cosier for the union movement, to ensure that these upgrading provisions flow through more quickly to a wider range of workers.

If it is going to flow through more quickly to a wider number of workers, then clearly it must have economic effects. The Attorney says that at the moment it still flows through, but there are time delays, and the difference in time delays and the automatic provisions of a general order under this clause will result in an economic cost to business. Now that we have shown the Attorney that there will be an economic cost, can he indicate whether he, in his handling of the Bill, has been given any information about the cost of this provision to South Australia?

The Hon. C.J. SUMNER: I do not accept the honourable member's premise. He has come into this Chamber and insists that he is the only one who knows anything about economics.

The Hon. R.I. Lucas: You said you knew nothing at all.

The Hon. C.J. SUMNER: The Hon. Mr Lucas has come along to Parliament, and I suspect that he knows little about anything, yet he pontificates and carries on. He is probably the most long-winded speaker that has ever been visited upon the Parliament, apart from one notable exception who is well known to every honourable member.

The Hon. Mr Lucas engages in irrelevancies and carries on about the interpretation of Acts about which he knows little. I suspect from my indication of the honourable member's economic expertise (if that is what he claims to have; and I am not sure that he does claim that) that I have as much as the honourable member. Certainly, I find his arguments in economics not particularly valid. I do not accept the premise that he has put up in this case. If there is to be a general award, or an argument about what happens to a general award, then just as in a test case there would be an argument about the economic effects of a particular condition, and that argument would also be conducted in any case before the Commission for a general award.

The Hon. L.H. DAVIS: The Attorney is boxing himself inexorably into a corner. I have already observed that this clause is broader than any other clause in similar legislation in Australia. The Attorney responded limply by suggesting that a similar provision exists in the Queensland legislation. However, he has not rebutted my proposition that it was of a more limited nature.

I want to develop the argument of what the impact of an award of general application will have on an employer. One can imagine a situation where, for example the UTLC applies to the Full Commission for an award of general application. Let us say that it affects remuneration, the Full Commission takes evidence and it becomes an award of general application sweeping through a range of industries. Does the Attorney really believe that it is good economic sense to make an award of general application where employers have very little time to get their case together because it will affect a range of people many of whom may not be expecting it and will not be budgeting for it? That is not good economic sense. I cannot believe that the Attorney could argue that it would improve the existing situation, where we rely heavily on industry awards and where there is a relationship, albeit strained at times, between employer and employee. At least they are within arms length of each other and can negotiate the conditions, bargain and arrange trade-offs. Here we have an award of extended application where the domino is pushed a long way away and suddenly the employer well down the line finds the dominoes falling in his lap so that unexpectedly he has an award of general application affecting his industry and business. That is not satisfactory. I do not accept it as a reasonable amendment and I join with my colleagues in strenuously opposing the clause.

The Hon. C.J. SUMNER: As usual, the honourable member has based his argument on misinformation. I refer him to page 129 of the Cawthorne Report where the effect of the Queensland legislation is outlined. I have outlined the effect of it. There is such a power elsewhere in Australia—indeed, in Queensland, believe it or not.

The Hon. L.H. Davis: It's not the same.

The Hon. C.J. SUMNER: It is. It is a broad power to prevent a multiplicity of inquiries relating to the same matter.

The Committee divided on the amendment:

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

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

Pairs—Ayes—The Hons C.M. Hill and R.J. Ritson. Noes—The Hons Frank Blevins and J.R. Cornwall.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clauses 9 and 10 passed.

[*Midnight*]

Clause 11—'Presidential members.'

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

Page 4—

Line 34—After 'Court' insert '(other than in relation to entitlements to a pension)'.

After line 34—Insert new subsection as follows:

(6a) Each Deputy President of the Commission appointed under subsection (3) shall be an employee within the meaning, and for the purposes, of the Superannuation Act, 1974.

The amendment to this clause is related to my amendment to clause 65. Clause 65 provides that a Deputy President of

the Commission, who is not a Deputy President of the Industrial Court, is deemed to be a judge for the purposes of the Judges' Pensions Act. That means that, by virtue of that Deputy President of the Industrial Commission being deemed to be a judge, he or she is automatically admitted to a generous superannuation scheme which is non-contributory.

Clause 11 enables the Governor and, in effect, the Government, to appoint Deputy Presidents of the Commission who may not otherwise be qualified to be Deputy Presidents of the Court. Their minimum qualifications are less than the minimum qualifications required for Deputy Presidents of the Court. They need not necessarily be legally trained and need not have any academic qualifications at all. They may only be required to have experience at a high level in industry, commerce, industrial relations, or the service of the Government, or an authority of the Government. I do not have too many objections to a person with that experience being a Deputy President of the Commission, the responsibility of which is initially conciliation and then arbitration. I would certainly not put that person in the same category as a member of the Industrial Court, having a much wider responsibility and jurisdiction and, in fact, being eligible to constitute a court of appeal within the Industrial Court.

So, I am concerned about the prospect of such Deputy Presidents of the Commission being admitted to the Judges' Pensions Act. There is no comparison between the Court and the Commission in that respect, and for that reason I have moved my amendment. I will treat it as a test of the whole concept. If I do not succeed on this I will not proceed with my amendment to clause 65. It is a matter of significant principle, and I do not believe that the Judges' Pensions Act ought to be open to all and sundry, particularly the provisions of that Act, the generosity of which is designed to ensure that judges—those exercising a judicial responsibility—are as independent of the Government as possible.

The amendment will not exclude lay Deputy Presidents of the Commission from superannuation, but will treat them as though they were employees for the purposes of the Superannuation Act. That is akin to the position of magistrates, so there is no difficulty with that. It is also the position with those persons who were Masters of the Supreme Court at the time when the changes in the courts administration were effected in about 1980 or 1981. I urge the Committee to support my amendment and not agree to those lay Deputy Presidents having access to all the benefits of the Judges' Pensions Act.

The Committee divided on the amendments:

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

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

Pairs—Ayes—The Hons C.M. Hill and R.J. Ritson. Noes—The Hons Frank Blevins and J.R. Cornwall.

Majority of 1 for the Noes.

Amendments thus negatived.

The CHAIRMAN: Does the Hon. Mr Griffin wish to continue with his other amendment?

The Hon. K.T. GRIFFIN: My next amendment is consequential upon the amendment just defeated and it is therefore my decision not to proceed with it.

Clause passed.

Clauses 12 and 13 passed.

Clause 14—'Insertion of new sections 25a and 25b.'

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

Page 5, lines 34 to 45 and page 6, lines 1 to 7—Leave out all words in these lines.

An additional matter is involved to which I will address some short argument, although I do not intend to canvass the matters previously canvassed. It deals with subsection (4). The same situation arises in clause 22. The amendment would give the right to the United Trades and Labor Council to intervene in matters in which its affiliates are affected. It should be noted that the following would arise from the wording which has been adopted in the amendment. I indicated earlier that the United Trades and Labor Council could intervene in almost any matter before the Commission. The intervention would be in addition to that of its affiliate's, and not necessarily on behalf of that affiliate. It would give the UTLC the rights of a registered association without having the obligations that I mentioned earlier. Employer organisations are recognised by the Commission as being representatives of employers. However, employers must still show a direct interest in order to be given intervention powers. It should also be noted that many employer organisations are often given limited rights of intervention, except where members' rights are directly affected. Employer associations cannot appear on behalf of a member or affiliate already appearing before the State Commission. I believe that having this section dealing with the United Trades and Labor Council gives it the right of double entry in these negotiations and means there will be two bodies representing the same organisation on the same matter.

The Committee divided on the amendment:

Ayes (8)—The Hons J.C. Burdett, M.B. Cameron (teller), L.H. Davis, R.C. DeGaris, Peter Dunn, C.M. Hill, Diana Laidlaw, and R.I. Lucas.

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

Pairs—Ayes—The Hons K.T. Griffin and R.J. Ritson. Noes—The Hons Frank Blevins and J.R. Cornwall.

Majority of 1 for the Noes.

Amendment thus negatived.

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

Page 6, line 10—Leave out 'or other'.

This is, to our mind, an unnecessary provision of this Bill. The Government clearly intends to allow the Industrial Commission to investigate any matter and not just those of an industrial nature. The Liberal Party believes that the Commission should be only responsible for, and involved in, matters of an industrial nature. This is certainly the view of various employer groups that have made contact with us. The Employers Federation made the following comment:

> We are also concerned that the Commission may be given the power to inquire into and report on matters other than industrial matters. It is inappropriate, in our view, for the Industrial Commission to be given a charter to examine anything not falling within the definition of industrial matters. We will be specifically concerned should this provision—

and listen to this—

> be used to refer the issue of shop trading hours to the Commission,

I have a faint feeling that this might be called the 'red meat provision'. In fact, I think that this clause has been included in the Bill for the purpose of getting everyone out of trouble on that matter. 'Other matter' could quite easily refer to shop trading hours. We have had some hints that that is the case. One would have to be suspicious that this provision has been inserted in this Bill and will pass before the Bill that I have before the Council is voted on. That is the reason for the performance today to try to put off my Bill until 9 May.

What the Government and other people are doing, if they do not support this amendment, is trying to avoid the responsibility of this Parliament on matters such as shop trading hours. It is my suspicion that they are going to refer

matters other than those matters that should be considered by the Industrial Commission to that Commission. I think that that would be most improper. It would be a derogation of the powers of this Parliament that should not be entered into. The Parliament should keep these powers unto itself. If it wants to deal with the matter of shop trading hours, I think the best thing we can do at some time in the future is look at allowing people to shop whenever they like. That is a matter to be considered at some other time on some other day. In the meantime, it would be most embarrassing for this Parliament if the Industrial Commission were left in a position where a matter such as the red meat provisions of shop trading hours could be referred to it. That would be saying, 'It is too hard for us. Put it where someone else can deal with it—it is too embarrassing, put it aside.' I have a feeling that that is going to happen.

The Hon. L.H. Davis: More than a feeling—a certainty.

The Hon. M.B. CAMERON: I think it could get to that stage.

The Hon. B.A. Chatterton: Make up your mind.

The Hon. M.B. CAMERON: I will leave it as a suspicion; I must have a little faith in the Government's ability to make up its mind on matters such as this—whether or not it should allow one of the products of South Australia to be sold during normal trading hours. I have a feeling that this provision has been inserted in the Bill in an endeavour to get off the hook everybody who has been opposed to this Bill. We will watch with interest and see what happens with this provision, if it remains in the Bill. In the meantime, I urge members to vote against this provision, which should not be in this Bill and which is not necessary for the industrial affairs of this State. The only thing to do is to take it right out.

The Hon. I. GILFILLAN: We had some misgivings about this, but on consideration and discussion it seemed sensible that the Commission not be restricted entirely to those restraints, and it may be of economic advantage to use a body that is established to investigate other matters. I am not sure what the actual flight of fancy is to which the Hon. Mr Cameron is referring. If he is trying to link some support for this clause to the Shop Trading Hours Act Amendment Bill dealing with fresh red meat, I see no connection. It has nothing to do with any knowledge that I have; I can give him a complete assurance of that.

If he would just listen for a moment, the reason for some reluctance to proceed with the Bill today is that those who really care about the reform know that the groups that are working most diligently to get reform in the next stage are most embarrassed by the very poor timing of the Bill that is currently before us. The Hon. Martin Cameron must realise that there is no more private members' time. Even if we were successful here there is no hope of achieving it through the Bill. The reason for opposing this clause on the spurious grounds that it has something to do with other legislation and seeking an adjournment on that is quite unacceptable and has no relation to fact. The clause in the Bill gives an opportunity for the profitable, worthwhile use of the Commission which may not be specifically defined.

The Hon. M.B. CAMERON: All that I can say to the Hon. Mr Gilfillan is that he is naive if he thinks that this matter does not potentially relate to shop trading hours. I do not want to debate the issue of whether or not there is private members' time left in the other place because that is a matter that should not be discussed in relation to this Bill, and I am surprised that the Hon. Mr Gilfillan brought it up. We tried to tell him that once before and received quite a tongue lashing from him on that matter.

What other matters does the Attorney-General expect will have to be considered by the Industrial Commission? There must have been reasons for putting this in the Bill. Perhaps it would help if the Attorney-General would give us some indication of what other matters would need to be considered by the Industrial Commission. I am quite happy for the Hon. Mr Bruce, in the absence of the Attorney-General, to answer that question.

Secondly, is it the intention of the Government to refer the matter of late night trading for red meat to the Industrial Commission? Will he give an absolute guarantee that that will not be the case and that this Government will not refer matters dealing with shop trading hours to the Industrial Commission under this provision; that is, 'other matter'?

The Hon. G.L. BRUCE: I understand that it will be possible to refer the broader aspect of shop trading hours to the Commission, but I see no sinister matter with just the red meat situation because we are arguing and debating a Bill on those hours in Parliament. It is conceded that other matters could include the broader concept of shop trading hours, which has been a thorn in the side of previous Governments for the past years. If it can be resolved in the industrial arena it should be resolved. I cannot see any reason why the shop trading hours cannot be taken to the Industrial Commission and why it cannot deal with any industrial or other matters as it sees fit.

There could be other matters of which we are not aware now, but there is no reason why the Commission should be restricted in what it looks at. The other matter is the regulation of owner drivers. We could be looking at that, but there are plenty of other matters which could be and should be referred to the Commission. We oppose the amendment of the Hon. Martin Cameron.

The Hon. L.H. DAVIS: My understanding is that this provision was not recommended by the Cawthorne Report. I am curious to know why the Government included the words, 'or other matter' in new section 25b. Why was it not content to leave the Industrial Commission with what one would have thought was its charter: namely, to make recommendations on questions related to industrial matters?

The Hon. C.J. SUMNER: It is a provision that has operated very successfully in New South Wales and has been picked up by the Government in this legislation.

The Hon. M.B. CAMERON: While the Attorney-General was out I asked a specific question relating to late night trading for red meat. I asked the Government to give a guarantee that this clause will not be used to refer that matter that has been the subject of some debate in the Parliament—when I say 'some debate', it is pretty hard to get it debated lately, but no doubt it will be debated again—and that this clause will not be used to try to resolve that matter outside the Parliamentary arena when it should be resolved here in this place.

The Hon. C.J. SUMNER: No such guarantee can be given. No consideration has been given to what might happen with shop trading hours. The clause is enabling; it does not refer to any particular matter. It clearly has in New South Wales, where there was an inquiry into some aspects of shop trading hours by the Industrial Commission. That would be possible under clause 25b.

The Hon. L.H. DAVIS: The Attorney concedes that there is a similar provision in New South Wales. Is he aware of what other uses have been made of such a clause in New South Wales? I ask that because my real concern is that a Minister can refer any other matter to the Commission for inquiry, and these matters may well be of public importance which could more appropriately be the subject of discussion in Parliament or handled by a working party or some other broader based group in the community. I share the concern that the Hon. Mr Cameron has expressed that the Commission can be used as a vehicle for the Government's too hard basket.

The Hon. R.C. DeGARIS: As I understand the clause, the Commission cannot achieve anything or resolve anything. All that it can do is report to the Minister. As I have heard so far, the impression seems to be that the Commission will make decisions on policy, and the Commission cannot make decisions on policy in regard to that clause. It can only have matters referred to it and the report is made back to the Minister. That is all. We have to rethink this a bit. I do not think that there is any relationship to the question of red meat in this whatever.

The Hon. DIANA LAIDLAW: One query comes up from an answer by the Hon. Mr Bruce. I support the amendment moved by the Hon. Mr Cameron, but for quite different reasons from those which he has outlined. I believe that it should remain simply an industrial matter for the Industrial Court, and I would say that shop trading hours, if that was for red meat or general retailing, if that was the decision of the Government to refer it to the Industrial Court, would be an industrial matter and could still be referred by the Government to the Industrial Commission whether 'or other' is in this clause or not. What is meant by 'owner-driver regulation' mentioned by the Hon. Mr Bruce?

The Hon. C.J. SUMNER: Regulation of contractual relationships that owner-drivers have with people for whom they are driving.

The Committee divided on the amendment:

Ayes (7)—The Hons J.C. Burdett, M.B. Cameron (teller), L.H. Davis, Peter Dunn, C.M. Hill, Diana Laidlaw, and R.I. Lucas.

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

Pairs—Ayes—The Hons K.T. Griffin and R.J. Ritson. Noes—The Hons Frank Blevins and J.R. Cornwall.

Majority of 3 for the Noes.

Amendment thus negatived; clause passed.

Clauses 15 to 17 passed.

Clause 18—'Further powers of Commission.'

The Hon. I. GILFILLAN: I move:

Page 8, line 16—After 'thinks fit' insert ', after giving the employer notice prescribed by the award,'.

The amendment attempts to make sure that an employer will have due notice of a union representative having access to workers. It is self-explanatory.

The Hon. M.B. CAMERON: The Opposition supports this amendment, which will be an additional safeguard for employers to at least have notification, as the honourable member said.

The Hon. C.J. SUMNER: The Government follows the argument put forward.

Amendment carried.

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

Page 8—
After line 21—Insert 'and'.
Lines 25 to 29—Leave out all words in these lines.

The Opposition believes this clause will cause employers grave difficulties, particularly where there is a competing claim between various unions. There is a common term called 'body snatching' which is well known in industrial circles. This clause will exacerbate that problem. There is no reason why employees cannot be interviewed in other than the employers' time. I am aware that in some circumstances this now occurs. However, that is done by agreement between an employer and the union. I do not believe it should be part of the Act. It is another indication of the whole thrust of the Bill, which I will be saying something about later; that is, that it is all one way.

We have heard that it is a consensus Bill, but this is another indication that it is not a consensus Bill—it is directed in one direction only, that is, towards the union movement. Anyone who thinks that, because IRAC looked at it, it somehow has the blessing of all employer groups, has another think coming. This clause is opposed by employer groups. It is an unnecessary provision and will cause unnecessary problems within the workplace, not only by single unions but by competing unions and will exacerbate the problem of competition between unions for membership.

The Hon. L.H. DAVIS: I support the remarks of the Hon. Mr Cameron. I object to two aspects of section 18 *(c)* (iii). First, it extends the 'right of entry' provisions which exist now for unions and, secondly, as the Hon. Mr Cameron observed, it creates the real danger of internecine warfare between unions as they compete for union membership. It is not impossible to imagine that a union, under this provision, will have the right of entry and use that right to try and win away members belonging to another union. That will be legitimised under this Bill. Surely the Attorney cannot support such a situation. I do not think that it is in the best interests of employee/employer relationships or, indeed, inter-union relationships, to have such a provision on the Statute Books.

The Hon. C.J. SUMNER: The Government opposes the amendment. It is reasonable to allow the Commission to include in an award the capacity for the right of entry to cover the interviewing of employees, which is all the Bill does. I am surprised that honourable members are so agitated.

The Hon. L.H. DAVIS: I ask the Attorney whether or not this provision would enable officials of one union to enter the business of an employer where the employees are members of another union.

The Hon. C.J. SUMNER: If the Commission awarded it, but it is most unlikely that it would if it felt that that was likely to be a consequence of making the order.

The Committee divided on the amendments:

Ayes (8)—The Hons J.C. Burdett, M.B. Cameron (teller), L.H. Davis, R.C. DeGaris, Peter Dunn, C.M. Hill, Diana Laidlaw, and R.I. Lucas.

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

Pairs—Ayes—The Hons K.T. Griffin and R.J. Ritson. Noes—The Hons Frank Blevins and J.R. Cornwall.

Majority of 1 for the Noes.

Amendments thus negatived.

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

Page 8, line 46—Leave out 'unless'.
Page 8, line 47 and page 9, lines 1 to 17—Leave out all words in these lines.
Page 9, lines 1 to 17—Leave out all words in these lines.

These amendments would allow an award to be backdated. It is intended to provide the Commission with the power to award an operative date prior to the first available opportunity for employers to be aware of the application. The Opposition believes that this is anomalous, particularly if a Federal award was to be given substantial retrospectivity. The Federal Commission cannot award retrospectively beyond the date of filing of a dispute if the State Commission decided to follow on from the legislative guide and granted common operative dates. In these circumstances, employers bound by the State award would have an operative date before the time they could possibly have been aware of the impending award change.

This clause makes it very difficult for employers because it allows retrospectivity behind the date of application as well, and that, in our opinion, is not fair and should not be put on the Statutes. It is not fair for employers not to

know the operative date of a potential change, and it would make it extremely difficult for them to make any decisions about the amount that they would be having to pay out in award wages. I urge the Committee to vote to delete these words, which would enable the present situation to continue and which is fair to all parties concerned.

The Hon. L.H. DAVIS: The Committee should be aware that the Federal Commission cannot award retrospectivity beyond the date of filing of the dispute. Again, this is pace-setting legislation. I referred in my second reading contribution to a very practical example. I would be pleased if the Attorney could respond in due course. I instanced the sweetheart deal between the Road Transport Federation and the Transport Workers Union in 1980, at a time when there was some concern about escalating salaries and wages. That deal came to $20 a week but was not formalised for 12 months. At the end of that 12 months the sweetheart deal at $20 a week amounted to $1 000 a year. In South Australia we did not have a provision such as that operating and so that deal could not flow on to South Australia. However, under the provisions of this Bill it could flow on. If we take the example of about 1 000 people in South Australia who could come under the umbrella of the TWU award, at $1 000 retrospectively, immediately employers in South Australia would be hit with a bill of $1 million.

When we are talking of retrospectivity, we are talking about a lump sum—one hit of $1 million, which would come from employers who were not privy to the impending award change and would have had no idea at all about it. I find that outrageous. Again, the Attorney-General is going to shield behind his ignorance of economics—

The Hon. C.J. Sumner: Don't be stupid.

The Hon. L.H. DAVIS: I am not being stupid: I am being quite realistic. The Attorney-General will say that the Government has not been able to measure the economic consequences of this because it is only a clause in the Bill and may never come into effect. Along with subcontracting and many other clauses, this has or will become legislation. Once it is on the Statute Book, it can become operational.

My concern in addressing this legislation in the Committee is to see that we make good laws for South Australia—laws that do not adversely impact on the South Australian economy. This is another example of a provision which, unquestionably, is pace setting. Parties who are not represented at the proceedings will have a grievance forced on them without legislative protection. Can the Attorney-General of South Australia say that that is good law? At the moment we have the incentive for unions to be able to refer issues to the Commission early in the course of a dispute, and now I believe that one of the outcomes of a measure such as that which we have before us is that it will lead to the delayed involvement of the Commission. The union can lay back, knowing that retrospectivity can apply, and that will lead to a breakdown in industrial relations. It is an unhealthy provision. I do not think it is conducive to employer/employee relationships. More importantly, I believe that it will have an extremely adverse impact on the South Australian economy and employers, who will suddenly be hit with retrospectivity in very large lumps.

The Hon. C.J. SUMNER: The Cawthorne Report recommended legitimate grounds for retrospectivity, particularly between the relationship of Federal and State awards, the consent of parties for instance, and additional related grounds of national wage case flow-ons. As a matter of practice, the State Industrial Commission has ruled that, save in exceptional circumstances, award prescriptions are to be prospective in operation. That was the case in the nurses appeal case to which I referred in the second reading reply. The exceptions allowed are for actions by employers who have unduly protracted proceedings or undue delays caused by the Commission itself, or the matter could be one of general application stemming from, for example, the national wage case decision of the Federal Tribunal.

The Hon. M.B. CAMERON: The Attorney-General is just skating over these provisions. I will indicate what one large employer group had to say about this provision, as follows:

> To burden employers with the cost of retrospectivity can have a profound effect on profitability and, in turn, on employment opportunities.

The Hon. C.J. Sumner: They can argue in the Commission.

The Hon. M.B. CAMERON: That is all right.

The Hon. L.H. Davis: But why put it in the legislation?

The Hon. M.B. CAMERON: Yes.

The Hon. L.H. Davis: Why have it there at all?

The Hon. M.B. CAMERON: Yes. It is a different matter.

The Hon. C.J. Sumner: Because justice demands that it should—

The Hon. L.H. Davis: It is not justice.

The Hon. M.B. CAMERON: It is not justice when retrospectivity is placed on one. The Government is doing just that. This will potentially have a profound effect on profitability and on employment opportunities. I am afraid that that is the effect of almost every provision in the Bill.

It is all very well for the Government to bring forward this measure, which is designed to assist the trade union movement (and that is all it is designed to do when one gets down to the bottom line), and then try to pretend that it has no effect on the most important elements in this State at present—the profitability of companies and employment opportunities. It is typical of the trade union movement. It does not worry too much about the unemployed; it is the employed about whom it is concerned, and I am afraid that we are seeing that from the Government in relation to this measure. There certainly will not be any relief for unemployed people by any measure within this Bill.

This clause will in fact have a very profound effect on employment in this State, and I do not think that that can be repeated often enough. I certainly intend to take up that matter at a later stage, because it is (or should be) an essential part of any legislation before this Parliament that we try to help create employment opportunities and not take steps that will cause a disincentive to employment opportunities. That is the end result, the bottom line, of this sort of provision. The Government can argue that in fact it happens now—well, that is fine. Let that be by agreement, but not by our giving an automatic power so that no-one knows where they stand in relation to the starting date of agreements and no-one has any idea of what effect a particular decision might have because there is no specific date on which to work.

The Committee divided on the amendments:

Ayes (8)—The Hons J.C. Burdett, M.B. Cameron (teller), L.H. Davis, R.C. DeGaris, Peter Dunn, C.M. Hill, Diana Laidlaw, and R.I. Lucas.

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

Pairs—Ayes—The Hons K.T. Griffin and R.J. Ritson. Noes—The Hons Frank Blevins and J.R. Cornwall.

Majority of 1 for the Noes.

Amendments thus negatived.

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

> Page 9, lines 18 to 22—Leave out subsection (5).

This clause deals with the powers of a board of reference to grant relief to an employee who has been demoted by his employer. This concept is new in this State and would, the Opposition believes, lead to unnecessary litigation. While there are provisions relating to people who make irresponsible

claims this clause, if passed, would nevertheless lead to a tremendous number of claims being made, which would involve eventually almost every person subject to demotion. In our view this is an unnecessary provision, one that would cause major problems for, and have a drastic effect on, industry in this State.

The CHAIRMAN: I point out that the Hon. Mr Gilfillan has an identical amendment to the same lines.

Amendment carried.

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

Page 9, after line 40—Insert new subsection as follows:

(10) An award, or part of an award, made in pursuance of subsection (1) *(c)* before the commencement of the Industrial Conciliation and Arbitration Act Amendment Act (No. 4), 1983, shall, upon the commencement of that amending Act, cease to operate.

This new clause is introduced as a prelude to oppositon to clause 19. Its aim is to remove the effect of section 29 (1) *(c)*, which is the preference to unionists proposal. The Liberal Party is totally opposed to any preference to unionists. We see that, under this Government, as being nothing but compulsory unionism. There is no place, in our view, for preference to unionists in our arbitration laws.

We are all aware that this situaion exists and that there are employers who give preference to unionists. That does not mean that it is right. I made a very strong point about this in my second reading speech, part of which I will reiterate now. We are a free country and it ought to be part of our basic freedom that if we wish to join an association we are able to do so, but that if we wish to opt not to join an association we should also be able to exercise that freedom. It should not be in any law in our country that people are forced to join an organisation. From time to time there have been arguments related to the United Nations Charter on this matter. One of these days we will grow up sufficiently in this country, in terms of freedom, to make certain that that provision is mirrored in our legislation.

It is wrong for people to be forced into organisations; it is wrong, for instance, for Governments to force people into organisations. Certainly, the present Government has shown itself to be an eager partner in what I regard as being a crime against freedom in this matter. The Government has leapt in at every opportunity to provide for preference to unionists. It has even gone to the extent of trying to persuade, almost by threat, country hospitals to give preference to unionists. The Government has done it in the teaching service and in every other section of Government. It has gone to the extent of sending directions to heads of departments for lists to be provided giving details of people who do not belong to a union.

The Hon. L.H. Davis: The hit list for schools!

The Hon. M.B. CAMERON: Yes, the hit list syndrome of the Government. Let me tell members that in a very short time indeed the Liberal Party will be in Government, and this type of provision will be the first one to go out the window: there will be no more of that nonsense and people who work for the Government in this State will have a bit of freedom back again which they do not have at the moment under the present Government.

The Hon. B.A. Chatterton: Including the fishing industry?

The Hon. M.B. CAMERON: The honourable member comes from what I consider to be a moderate background, and I am surprised that a person of his intelligence and common sense would support the sorts of things that have gone on in Government circles. So, the honourable member has gone down considerably in my estimation in supporting this measure. I am amazed that members opposite have put themselves forward as proponents of freedom in this country, because they simply are not. They do not believe in it and have shown that by the way they have gone about this problem within this State. I urge honourable members to support this amendment which once and for all will get rid of the closed shop syndrome, the preference to unionists syndrome, and which will provide for some freedom again in this country that people should enjoy.

The Hon. C.J. SUMNER: The Government opposes the amendment. During the debate on this Bill matters concerning preference to unionsts have been covered fully. There is little more to add.

The Committee divided on the amendment:

Ayes (8)—The Hons J.C. Burdett, M.B. Cameron (teller), L.H. Davis, R.C. DeGaris, Peter Dunn, C.M. Hill, Diana Laidlaw, and R.I. Lucas.

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

Pairs—Ayes—The Hons K.T. Griffin and R.J. Ritson. Noes—The Hons Frank Blevins and J.R. Cornwall.

Majority of 1 for the Noes.

Amendment thus negatived; clause as amended passed.

Clause 19—'Power to grant preference to members of registered associations.'

The Hon. I. GILFILLAN: I move:

Page 9, lines 43 to 46—

Page 10, lines 1 to 22—Leave out proposed new section 29a and insert new section as follows:

29a. (1) The Commission may, by an award, direct that preference shall, in relation to such matters, in such manner and subject to such conditions as are specified in the award, be given to such registered associations or members of registered associations as are specified in the award.

(2) Notwithstanding the terms of a direction under subsection (1)—

(a) an employer is only obliged by the direction to give preference to a member of a registered association over another person where all factors relevant to the circumstances of the particular case are otherwise equal;

and

(b) no employer is obliged by the direction to give preference to a member of a registered association over a person in respect of whom there is in force a certificate issued under section 144.

This new section attempts to support the intention of the previous amendment moved by the Hon. Martin Cameron: that is, to resist any further moves to implement compulsory unionism in South Australia. The provisions retained in relation to employment is a mirror of the current provision that has existed through several preceding Governments and has not been an instrument to increase by compulsion unionism in employment. Therefore, it did not prove particularly awkward for us to accept that that could stay put, but it seemed to be a significant advantage to have new subsection (1). It is pertinent to remark that the Minister of Transport has pointed out today that the most regrettable dispute that held up the trains was purely and simply a demarcation dispute. This is a constructive step that will give the Commission the power to reduce, if not eliminate the incidence of these demarcation disputes. Paragraph *(b)* applies to conscientious objectors, and I do not believe that it is contentious.

The Hon. R.I. Lucas: What do you do with conscientious objectors?

The Hon. I. GILFILLAN: In this amendment, nothing. It remains as it is in the Bill virtually.

The Hon. L.H. DAVIS: This existing clause 19 has been written in the bowels of Trades Hall and clearly has been designed by the trade unions. It is particularly objectionable to see that in clause 19 (2) the Commission is given the power to prevent or settle an industrial dispute if it feels that it is necessary to maintain industrial peace or for the welfare of society by making a direction as provided for in subclause (1).

That refers directly to the preference clause. One can see very quickly that unions can create industrial disharmony and then go to the Commission. They can use an industrial dispute as a device to further preference to unions. They can in fact, by doing the wrong thing, advance their own cause. I find that quite a remarkable and obnoxious provision. There is no way that it could be interpreted otherwise. Clause 19 (2) on page 10 quite clearly directs that the Commission, for the prevention or settlement of an industrial dispute, to ensure that effect will be given to the purposes and objectives of an award for the maintenance of industrial peace, for the welfare of society, should make a direction for preference. So, the trade union can create this dispute and masquerade before the Commission saying that there is an enormous problem but the way around it is to direct that preference shall given in an award, and so the union interests are furthered. Sadly, of course, the community will be the loser, because of the disruption that inevitably will be associated with the industrial dispute.

This clause gives the Commission the power to grant preference to unionists, and includes as the reason for doing so maintenance of industrial peace and the welfare of society. It is tending to have the opposite effect, and preference to unionists understates it: it is making compulsory unionism, which will be the subject of debate when we address that matter in another clause.

The Hon. C.J. SUMNER: The amendment moved by the Hon. Mr Gilfillan seeks to restate the old preference provision that is contained under section 29 (1) *(c)* of the exsiting Act and which therefore retains the concept of preference where all things are 'otherwise equal'. The Commission has on a number of occasions commented that these words render the existing section meaningless. For it to be continued in that form is quite absurd and amounts to tokenism. The Government in its Bill sought to rectify this problem by providing for a preference clause in similar terms to the provision under the Federal Act. It has been there since the Menzies Government introduced it in 1949. Given the clear opposition to this change by the Opposition and the Democrats, the Government unfortunately has no choice but to accept the amendment sought, as it retains the *status quo* but in addition provides for the ability of the Commission to have a role in settling demarcation disputes, a role which is currently denied it under the existing section.

It is worth pointing out, however, that even this role, which the Democrats agree is desirable, may not be capable of implementation whilst the concept of 'otherwise equal' is retained in the Act. The Government is most concerned that the very reasonable proposals put up in this area have not been accepted. The arguments used have been highly emotional and totally ignore the fact that the same provision was inserted into the Federal Act by the Menzies Government in recognition of the fact the whole system of conciliation and arbitration is underpinned by registered associations.

The Hon. R.I. LUCAS: My contribution to the second reading debate in this Bill concentrated almost solely on the question of closed shops, preference to unionists and compulsory unionism.

The Hon. Barbara Wiese interjecting:

The Hon. R.I. LUCAS: No, I do not have that long. The Attorney-General has indicated with respect to the provision that he has sought to include (that is new section 29a (2)) that it is in the Federal Act, and that is quite right. That does not make the provision a proper one, and we certainly oppose that provision and all preference to unionist clauses in the Bill.

For the Attorney's benefit, I will indicate how the provisions of the preference to unionists sections in the Federal Act have been interpreted. Most members will be aware of the injustice of the preference to unionists sections regarding initial employment: that is, other things being equal distinguishing between two persons solely on the basis of whether or not a person belongs to a union. However, the provisions in the Federal Act, which the Government has sought to introduce here and which the Attorney describes as being reasonable, have been interpreted extraordinarily widely under the Federal Act.

I point to the example of the *Federated Clerks Union of Australia v. Altona Petro-chemical Co. Pty Ltd* case, reported in the early 1970s. That preference award extended way beyond the question of giving preference to a union member at the initial time of engagement. This is the most common understanding that people have of a preference to unionists clause. What it also did was that, if a job needed to be filled, it could not be filled until the union had been notified of the existence of a vacancy and had an opportunity to advise its members of it to ensure that unionists who were interested in the position had first chop at the block. This preference to unionists award provided for preference to unionists in the upgrading or promotion of employees. So there was preference given to unionists over non-unionists when any promotional position was considered by an employer under that Federated Clerks Award.

The most important question in today's industrial climate concerning people being laid off for whatever reason—the economic recession, or whatever—is that preference be given to unionists concerning who will be retained by an employer. So, if someone is to be laid off it is a non-unionist and not the unionist. Regarding determining the times of annual leave, preference once again was to be given to unionists, so that they had first chop at the choicest times for annual leave—the Christmas break or school holidays, when parents wanted to be with school children. That interpretation of the Federal Act, that the Attorney says is quite reasonable, means that non-unionists not only are discriminated against regarding initial employment, but are discriminated against in retrenchment, promotions and times of annual leave.

The Hon. L.H. Davis: And the Attorney is a libertarian.

The Hon. R.I. LUCAS: And the Attorney-General is a civil libertarian, as the Hon. Davis interjected—supposedly. How can the Attorney justify and defend a situation when all those advantages are given to a group of people who happen to belong to a union and are not given to persons who choose not to belong to a union? The Attorney, in stating that these are eminently reasonable provisions obviously is deluding himself.

That is how the Federal Act has been interpreted, and that is the provision that the Attorney sought to include in the State Act. It is highly likely that that is the way the new legislation would have been interpreted in South Australia. While the Hon. Mr Gilfillan's amendment is at least a marginal improvement on the measure that the Attorney tried to convince us to support, it is not satisfactory. The position put by the Hon. Mr Cameron in earlier provisions should be supported by the Committee, that is, that there should not be preference to unionists or, in the words of the Hon. Mr Bruce in his very honest contribution earlier this evening, compulsory unionism in South Australia.

As I indicated during the second reading debate, even if we were successful in removing these iniquitous preference to unionist clauses, that would not solve the problem for persons who did not want to join unions in South Australia. There would still be the problem of the closed shop, a problem that is as much due to the attitudes of employers in South Australia as it is to employee associations. There is an attitude held by certain employers to the effect that, if administrative efficiency and a cosy relationship with a respective union gets the nod for that particular work place, that is more important than the individual rights of a person who would choose not to join a particular union. Of course,

we associate it, as is most often the case, with the Australian Labor Party as a result.

The problem of the closed shop will clearly remain, even if the Hon. Mr Cameron's amendments were agreed to. Nevertheless, it would at least be a statement of principle by this Parliament that it supported the rights of an individual in being able to choose to join or not join a trade union. For those reasons I strongly support the position adopted by the Hon. Mr Cameron. I see only a marginal improvement resulting from the Hon. Mr Gilfillan's amendment over the provision in the Bill.

The Hon. G.L. BRUCE: Awards and agreements are fought and paid for by union members with hard cash. I believe it is only right that preference should be given to union members in the terms of employment when they are working under an award agreement. I see nothing wrong with that concept. If people are not prepared to belong to a union and pay their way, they should not be prepared to put out their hand and grab every increase and every safety feature that is fought for on the shop floor and demand those benefits as a right, while at the same time not contributing to the organisation that helped to achieve those benefits.

The Hon. M.B. CAMERON: The Hon. Mr Davis spoke very eloquently about this clause and put a very sensible point of view to the effect that the clause should not stand as it is. The clause is a clear invitation to total unionism, and there is absolutely no doubt about that. What on earth would happen if we had a Commission as provided in clause 19, as follows:

(2) Whenever, in the opinion of the Commission, it is necessary, for the prevention or settlement of an industrial dispute, for ensuring that effect will be given to the purposes and objectives of an award, for the maintenance of industrial peace or for the welfare of society to make a direction as provided by subsection (1), the Commission shall make such a direction.

The direction is that preference should be given to unionists. No dispute in the State would stop until preference was given to unionists—it is as simple as that. That is quite absurd. I do not know why the Government is not honest about it and does not come out and say that there will be compulsory unionism all over the State. At least that would be the honest approach. Instead, this nonsensical clause is in the Bill. The Hon. Mr Bruce would agree that it would be far more honest to say that everyone who is working has to be in a union.

The Hon. G.L. Bruce: It would stop much industrial strife.

The Hon. M.B. CAMERON: Of course it would. I am pleased that the Hon. Mr Gilfillan will be supporting our move to wipe out this iniquitous provision which is the design for disasater for industry in this State. It is designed purely (to use the term that has already been used today) for the masters of the people opposite. That is all it is. It is designed to assist the people on South Terrace who control the destinies of Government members. I do not want to develop that argument because it is—

The Hon. Barbara Wiese: Boring!

The Hon. M.B. CAMERON: It is not boring. They have good taste sometimes on South Terrace.

The Hon. G.L. Bruce: You are just a group of freeloaders.

The Hon. M.B. CAMERON: That is an incredible statement. We all know why this clause is here: it is an instruction to the Government to look after its friends. So be it. As far as the Opposition is concerned this provision can go right out of the window and disappear. How any member could support it and still claim that they believe in freedom in this country is beyond me. I guarantee that none of them would have the hide to do it.

Amendment carried; clause as amended passed.

Clause 20—'Applications to the Commission.'

The Hon. M.B. CAMERON: The Opposition opposes this clause, which seeks to limit the capacity of associations or organisations of limited size to make application to the Commission. The inclusion of the phrase 'public interest' is a smokescreen for the Government's intention to undermine unregistered associations at every opportunity. The Government justifies preventing any new unregistered association obtaining agreements by explaining that South Australia is the only State left where that can occur. That is no argument in support of this provision. The principle of free choice should remain at least in this State, and the Opposition seeks to have this clause deleted.

The Committee divided on the clause:

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

Noes (8)—The Hons J.C. Burdett, M.B. Cameron (teller), L.H. Davis, R.C. DeGaris, Peter Dunn, C.M. Hill, Diana Laidlaw, and R.I. Lucas.

Pairs—Ayes—The Hons. Frank Blevins and J.R. Cornwall.

Noes—The Hons. K.T. Griffin and R.J. Ritson.

Majority of 1 for the Ayes.

Clause thus passed.

Clause 21—'Special jurisdiction of the Commission to deal with cases of unfair dismissal.'

The Hon. I. GILFILLAN: My amendment deals with the option for reinstatement if there has been an unfair dismissal case found in favour of the employee. Because there was some uncertainty as to whether the pressure would be there by the Commission on the employer to create a position, I move:

Page 11, line 3—After 'former position' insert '(if such a position is available)'.

This will ensure that there can be no pressure on the employer to actually create a position.

The Hon. C.J. SUMNER: That amendment is acceptable to the Government.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 11, line 20—After 'applicant' insert '(including costs incurred by the other party to the application in respect of representation by a legal practitioner or agent)'.

This amendment adds some substance to the clause which will act as a disincentive for an employee who might be tempted to take out frivolous or vexatious actions in that, if the Commission is of the opinion that he or she has invented a frivolous or vexatious action, costs will be awarded against the applicant. This amendment is inserted so that legal costs of the employer in defence would become part of the costs that would be awarded against the applicant.

The Hon. C.J. SUMNER: This amendment would allow costs of legal representation to be awarded where, in the opinion of the Commission, an application for re-employment for wrongful dismissal was frivolous or vexatious. It has been pointed out that not to include legal costs would render this provision meaningless. Whilst the Government does not accept this as a precedent for awarding such costs elsewhere under the Act, it is prepared to accept the amendment in the knowledge that there have to be very strong grounds existing before the Commission will find a claim to have been frivolous or vexatious.

The procedure provided for under subsection (6) of new section 31 will ensure that employees are given fair warning about the possibility of costs being awarded. Given the rarity of such actions and the protections to employees to be written into the Act, the Government is prepared to accept the amendment.

Amendment carried.

The Hon. M.B. CAMERON: The two small amendments made to this clause are an improvement on the original clause, but it does not get over the Opposition's objection to the whole clause, which introduces the concept of compensation. Eventually that will be, in the opinion of the Opposition, a very heavy cost on employers in this State. I predict that in years to come we will look back and wonder why on earth we let this concept enter into our industrial law because there is no doubt that it will grow. In future years, it could well rival other problems that industry has in the State.

There is absolutely no need for there to be intervention in this area by way of compensation because, already, if a person is ordered to be reinstated and it is found that there is incompatibility between parties, there is always a settlement, which is based on agreement between the parties concerned. However, this clause will make it almost automatic that there will be a claim for compensation. The additional costs arising out of that will grow like topsy, as will applications. We will end up with a heavy cost on employment opportunities, on profits and on employers. The end result will be that this State will once again lose some of its competitiveness.

Small employers will wonder where on earth they are going with this provision. Anyone who claims to support small business should look carefully at this provision as it will indeed have a heavy effect on small employers and business in this State. If this clause is not deleted, I will be having something to say later about the effect of this clause and other provisions remaining in the Bill relating to employment and profit of companies in this State. I ask members to reject the clause.

The Hon. L.H. DAVIS: This is another example of this orgy of economic madness that the Government seems intent on pursuing during the course of its attack on the existing Industrial Conciliation and Arbitration Act. The provisions of clause 21 are far reaching. Let us first examine the Federal Jurisdiction. The Employers Federation, in its submission, made a relevant observation, namely:

> There are no provisions to provide for reinstatement in the Federal jurisdiction and the proposed provisions go well beyond any powers which have been exercised by the Federal Commission when acting as a private arbitrator. Indeed, it is our opinion that these provisions alone will be enough to force employers from the State jurisdiction into the Federal jurisdiction.

That is one aspect to the debate. Another aspect which to me is perhaps even more important is the perception that existing employers and potential employers have of South Australia as a place to set up business or to expand their business operation. No encouragement is given to the employer. The observation has already been made that this is a one-way Bill and a Trades Hall Bill. It is not an even-handed approach to industrial and conciliation matters. Although one may say that this side could be accused of representing interests other than labour, I think—

The Hon. M.B. Cameron: You haven't got any choice with this Bill. There is nothing else in it.

The Hon. L.H. DAVIS: That is right, there is nothing else in it. For our part, we are conscious that employer/employee relations have to be preserved and strengthened if this State's economy is to prosper. However, no encouragement is given to that in this provision. I suggest two or three defects of this clause. First, the provisions quite clearly do not encourage settlement. It is a positive encouragement quite clearly for claims to be made. Secondly, it is a clause which will create litigation. The lawyers will be the winners: the employers certainly will not win. It will not help employment. It does not have any economic merit. Thirdly, under subclause (5) the Commission may make an order for costs against an applicant, but only if the application is frivolous or vexatious.

That provision is limited to frivolous or vexatious applications. If one looks at the existing state of affairs one can see that frivolous and vexatious actions are extremely rare. It is not a common action and at present the court has an unlimited power to award costs, so subclause (5) restricts severely the power of the Commission in making awards for costs, and I think that that is a retrograde step. Fourthly, under subclause (3) *(b)* the Commission can order the employer to pay the applicant an amount of compensation determined by the Commission. That is an open-ended provision: there is no cap on that at all. The Attorney-General has relied on Cawthorne when it has suited him and, of course, has ignored Cawthorne when it has not been to his advantage.

Cawthorne, as I remember it, put a limit on compensation which could be granted. This has no limit. I am uneasy about that provision. In summary, it can be seen that clause 21 is distinctly biased in favour of the employee. It has severe gaps and some very unfair provisions, and I join with the Leader in indicating my opposition to the whole clause.

The Hon. R.I. LUCAS: In seeking to interpret what might happen should this clause of the Bill pass (and that appears likely), the Cawthorne discussion paper gives an indication as to how the United Kingdom legislation has been interpreted with respect to compensation. Basically, without reading all of it, it provides for the payment of an award on two grounds: a basic award and a compensatory award. The basic award applies in a similar way to redundancy payments based on years of continous service, and the compensatory award is based on quite a number of things—an estimate of the employee's loss arising out of a dismissal, including factors such as loss of unfair dismissal rights, loss of a longer period of notice, future loss of wages, and loss of pension rights.

The future loss of wages is an interesting concept. Finally, there is loss of pension rights, loss of company house or car and use of telephone, and so on. As the Hon. Mr Davis pointed out, there is no guidance to the Commission under this provision as to what the level of compensation will be. I imagine that the Commission in its determination would, I suppose, look around and see how other tribunals or bodies have interpreted similar provisions. The other matter I will touch on briefly was raised by the Hon. Mr Davis in relation to the open-ended nature of the level of compensation. As the Hon. Mr Davis said, the Government has chosen to quote Cawthorne at length when Cawthorne has supposedly supported the view that the Government was putting. However, when he does not support the Government's views there is no mention of that report. I read from the final part of the Cawthorne Report (page 32), the one paragraph that Cawthorne devoted to this particular matter, as follows:

> Given the bitter opposition of employers to the compensation question and the reservations expressed by some lawyers who practise on the labour side about the potential of unlimited awards of compensation, it would seem desirable to impose a maximum limit on an award of compensation. The nature of the limitation is obviously a question of value judgment and perhaps is more appropriately a matter for Parliament. However, it would seem desirable to relate the limit to a number of weeks' pay rather than a fixed amount. As a guide to the amount, consideration could be given to a maximum compensation limit of 52 or 26 weeks' pay.

That was the final recommendation of industrial magistrate Cawthorne, which has been conveniently overlooked by the Attorney-General and the Government. Will the Attorney-General say why the Government chose not to accept this particular Cawthorne recommendation or at least seek to

compromise on what is obviously a vexed question between employer and employee associations by placing some level of cap on the amount of compensation that could be awarded, as recommended by Cawthorne?

The Hon. C.J. SUMNER: The Government did not consider that to be necessary. In Western Australia between 1 June 1983 and 31 December 1983 there was a total of 47 cases for reinstatement including five appeals. In 15 of those 47 cases compensation was awarded. The compensation amounts were as follows: in two cases, one week in lieu of notice; four cases, one additional weeks pay; two cases, half pro rata long service leave entitlement; one case two weeks' additional pay; one case, $312; one case, $500; and, four cases, compensation settled between parties. In the light of that, it appeared to the Government that any limitation was unnecessary. That is hardly going to constitute a great economic burden on anyone.

The Hon. G.L. BRUCE: I support the Bill. I was involved with reinstatement cases five or six years ago. Compensation was reached by mutual agreement between parties.

The Hon. R.I. Lucas: That is supporting Mr Cameron.

The Hon. G.L. BRUCE: No. In a lot of cases the employer is only too willing to pay compensation and the employee is just as willing to accept it because the conditions under which that employee has worked and which led to the dismissal that was 'harsh, unjust and unreasonable' still prevail when that employee goes back. This is a better settlement in many cases. This provision gives flexibility to the Commission to make a monetary award. I see nothing wrong with the clause at all and cannot understand why members opposite are getting upset about a practice that is already occurring.

The Hon. M.B. CAMERON: I thank the honourable member for supporting exactly just what I said earlier, that is, my statement that these matters are normally resolved in almost every case between the two parties, and we do not have to have an intervention by the Commission.

The Hon. G.L. Bruce: Yes you do; it still has to go to the Commission.

The Hon. M.B. CAMERON: I thank the honourable member for his contribution. The Attorney referred to the situation in Western Australia, but as he would well know the Industrial Commission in South Australia tends to be more radical about such events than the Western Australian Commission. The South Australian Commission does not hold the employer's prerogative in the same esteem as does the Western Australian Commission. So, one cannot make a simple comparison State by State. In fact, I am informed that advocates from Western Australia are amazed at the Commission's attitude towards employers in South Australia.

I do not accept that one can make the sort of comparison that the Attorney made. All I can say is that these provisions will be a sufficient incentive to force employers from the State jurisdiction to the Federal jurisdiction and they will be a positive discouragement to employers coming to or expanding in South Australia. The Attorney can say what he likes; that is exactly what will happen, and members opposite really do not give a continental about that, as long as the jobs of the people who support them are okay. They are not worried about expansion or the problem of unemployment— if they were, half of them would not still be where they are. If this sort of provision is left in the Bill it will be a disincentive to industry and employment in this State.

The Hon. I. GILFILLAN: I can quite understand the disquiet that people may feel about the added cost inherent in this provision. From that point of view, we have tried to assess the matter as accurately as possible. Many matters are settled out of court and that obviously involves a transfer of cost which may be borne by the employer, but statistically it is shown that in South Australia during 1982 (and I am referring to Chamber of Commerce figures) out of 290 applications, at least 30 went to trial and 270 were settled out of court.

It would be quite naive to expect that these cases do not cost industry anything. If they are settled that would usually mean a transfer of money, that certainly would not be from the employee to the employer. I suggest that this amendment is not likely to cost industry in South Australia very much extra money. I think a very serious suggestion was put forward by the Hon. Mr Burdett, as well as others, that there should be a ceiling. After reflecting on that matter and having discussions with others, I consider that there is a risk that a ceiling would become the standard. The Cawthorne Report stipulated that the ceiling could be between 26 and 52 weeks.

The Western Australian figures indicate that that would be some 10 times more than the current penalty. So, I think that the provision adds the opportunity to avoid the imposition of an unwilling employee being thrust back into an unwilling employer's industry or business, and I do not think it will add significantly, if at all, to the cash costs of South Australian industry. Providing this as a reasonable alternative will avoid the counter productive situation (involving a hidden cost) of having an unhappy and unsatisfactory work place.

The Hon. L.H. DAVIS: I really do not think that the existing situation can be taken as an indication of what will happen in future, because subclause 3 *(b)* provides that, where it is impractical for the employer to reapply the applicant in his position, the Commission can order the employer to pay the applicant an amount of compensation.

It is an open-ended clause. Quite clearly, where there has been a scrap an employee may try to avoid the provisions relating to re-employment that are set out in paragraph *(a)* and opt with the encouragement of his union to seek compensation, knowing that it is an open-ended amount. What happens if a storeman has been there for 10 years, is dismissed and it is not practicable to be re-employed in that position, he is 50 years of age and not on superannuation, he cannot get another job and goes to the Commission, saying, 'I want compensation; I have been looking for a job for six months; I cannot find one; my chances are slim'?

As the clause now stands—let us not beat around the bush on this—it could be well argued that the Commission would be able to say, 'You will be unemployed for 10 years. We will impute a value as to the wages lost over that period.' It is quite feasible. I think that the Hon. Mr Gilfillan would agree that the clause as it now stands could be construed in that fashion.

The Hon. I. Gilfillan interjecting:

The Hon. L.H. DAVIS: I am not particularly concerned about the past, because we are dealing with a new situation. One does not have to have too many neurones, even at 2.7 a.m., to appreciate that this open-ended provision will encourage unions to suggest that dismissed employees travel the route of clause 21 (3) *(b)* and seek compensation. There can be no quibble about that. I would not even have thought that the Attorney would respond to that, if for no other reason than that he is not here, and notwithstanding his new found prowess on economic matters I would like his response to that if he agrees that my interpretation is correct with respect to subclause (3) *(a)* and *(b)*. I want to take up another matter in relation to subclause (3), paragraph *(a)* (ii), which reads:

> Where it would be impracticable for the employer to re-employ the applicant in accordance with an order under subparagraph (i),—

which refers to an order for the applicant to be re-employed in his former position—

or such re-employment would not, for some other reason, be an appropriate remedy—the Commission may order that the applicant be re-employed by the employer in a position other than his former position on conditions (if any) determined by the Commission;

The Hon. G.L. Bruce: Plus the amendment: 'if such a position is available'.

The Hon. L.H. DAVIS: Right, if such a position is available. That clause as amended certainly is an improvement on what was originally there. I do not take such strong objection to those provisions—*(a)* (i) and (ii)—as they now stand, given especially the amendment to paragraph *(a)* (ii), but I really express concern about subclause (3) *(b)* because that amount of compensation, as I have suggested, would almost certainly mean that there will be a dramatic change in the approach to reinstatement and a 'try on' by employees. I have no doubt about that whatsoever.

The Hon. G.L. BRUCE: I cannot see that there will be. The Hon. Mr Davis said that someone has been employed for six months and will make a case, but that clause commences by providing that action must be taken within 21 days. We could say 'If you don't take the action within 21 days, you're down the plug hole'. The honourable member has forgotten about clause 3: the only way to instigate an action is for harsh, unjust or unreasonable dismissal. One has to prove that fact when going before the Commission, and if it is shown to be a frivolous action then one is liable for costs. No employee will enter into this lightly.

So, what the honourable member is saying is that these cases will be coming out of the woodwork. How can they, if one has to live up to the three words at the bottom of the paragraph: 'harsh, unjust or unreasonable'? The honourable member seems to think that any dismissal will warrant an action for compensation. I assure the honourable member now that there will be monetary settlements because both sides, irrespective of whether there is a job available or not, will avail themselves of the opportunity to take the money and bail out.

The worker, if he has been unreasonably sacked, will be resentful, irrespective of what the Commission does. If the worker goes back to work he will be aware of it and the employer will be aware of it. If there is a cash settlement floating around, nine times out of 10 the employer will prefer to pay that cash settlement rather than give a job back to the worker. The worker will be resentful that he has been treated harshly, and will be eager to accept the settlement. All the worker is getting is his just desserts, to which he is entitled if the dismissal is harsh, unjust or unreasonable.

If the honourable member could have seen some of those harsh, unjust or unreasonable dismissals come about, as I have, he would see that there is no mucking about. When the case has gone to trial before the Commission, that has been recognised, and a cash settlement has followed. The Hon. Mr Gilfillan has read out figures to indicate that there will be no dramatic increase in harsh or unjust dismissals. Everyone will be more aware and more conscious of the possibilities, and there will be some protection for the worker. I cannot see why the honourable member is getting uptight about it.

There is the matter of long service leave, where people who reach the six-year period are sacked when coming up to the seventh year, where they start to qualify for long service leave. They are dismissed to avoid the payment of that leave. If one can prove that one can not only receive the long service leave but also, through establishing harsh or unjust dismissal, one can get the job back.

The Hon. Diana Laidlaw: Does it apply to casual, part-time and full-time employees?

The Hon. G.L. BRUCE: It covers all employees. I do not understand what the honourable member is getting uptight about: it is enshrining what is happening in the industrial arena.

The Committee divided on the clause as amended:

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

Noes (8)—The Hons J.C. Burdett, M.B. Cameron (teller), L.H. Davis, R.C. DeGaris, Peter Dunn, C.M. Hill, Diana Laidlaw, and R.I. Lucas.

Pairs—Ayes—The Hons Frank Blevins and J.R. Cornwall.

Noes—The Hons K.T. Griffin and R.J. Ritson.

Majority of 1 for the Ayes.

Clause as amended thus passed.

Progress reported; Committee to sit again.

[Sitting suspended from 2.19 to 10 a.m.]

Clause 22—'Representation of parties, etc.'

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

Page 11—

Line 29—Leave out 'Where' and insert 'Subject to subsection (4), where'.

After line 33—Insert new subsection as follows:

(4) The United Trades and Labor Council shall not be entitled to intervene in proceedings under subsection (3) if—

(a) a registered association of employees that is a party to the proceedings;

or

(b) a person who is a party to the proceedings by virtue of the fact that he is an employee in a particular industry, objects to the intervention of the United Trades and Labor Council.

The Committee may make more progress this morning, because I note that the Ministers are not with us. I am delighted to see that there has been a palace revolution and the Hon. Mr Bruce is now on the front bench. My amendment seeks to improve the clause, although I am completely opposed to it, anyway. I think it should be understood that, whilst I seek support for my amendment, it may be appropriate to vote against the clause in any event.

I do not agree that the UTLC should have an automatic right to intervene in any proceedings in respect of the interests of an association; that is, where a union or members of a union affiliated with the UTLC are affected. But if the majority of the Council is to support that proposition, I would want to have a safeguard in that the entitlement of the UTLC to intervene should be subject to any objections to that intervention by a union which is party to the proceedings or a person who is party to the proceedings. The UTLC should not be able to intervene where, in fact, in some instances that intervention may be against the wishes of a particular union or person appearing before the Commission. The amendment to that extent allows the employee-type party to have a very real and direct involvement in whether or not the UTLC ought to be able to step in and, in fact, argue contrary to the position being put by that party. It is a good safeguard and one which I would hope that all members of the Committee will support.

The Hon. C.J. SUMNER: The amendment is opposed. It attempts to limit the right of the UTLC to intervene in proceedings before the Industrial Commission by denying that right where a registered association of employees and an individual employee, being parties to the proceedings in question, object to that intervention. This is merely a device whereby unregistered associations can get to and in fact stop the involvement of the UTLC in proceedings before the Commission. The Cawthorne Report stressed the importance of giving the UTLC that formal right of intervention because of the role played by that body and the fact that it cannot become formally registered as an association under the Act.

For those reasons the Government is opposed to the amendment.

The Hon. L.H. DAVIS: Section 34 of the parent Act provides:

In proceedings before the Commission any party may be represented by a legal practitioner or agent.

This provision seeks to give no special favour to any party that may be affected by a dispute but clause 22 seeks to add new subsection (3) to existing section 34 and provides that the UTLC can appear before the Commission, irrespective of whether the parties subject to that dispute want the ULTC to intervene. No corresponding power is given to the employer and, again, this clause is yet another example of the one-sided nature of the Bill. The proposed new subsection provides that the UTLC can intervene whether the registered association that is affiliated with the UTLC is affected either directly or indirectly by the proceedings. The UTLC can appear at any time.

The Hon. K.T. Griffin: It is not discretionary—it is an entitlement.

The Hon. L.H. DAVIS: That is right. It is an open-ended right to the UTLC to appear before the Commission.

The Hon. C.J. Sumner interjecting:

The Hon. L.H. DAVIS: If the Attorney-General has another construction, I will be pleased to hear it, but, as it now stands, the clause is clear. The amendment proposed by the Hon. Trevor Griffin quite rightly seeks to narrow that very broad power by requiring that the United Trades and Labor Council will not be entitled to intervene if a person who is party to proceedings objects to the intervention or if a registered association of employees who is a party to proceedings objects to that intervention. Existing section 34 is clear that any party to proceedings is entitled to be represented. Why give an open-ended power to the United Trades and Labor Council to be present at any dispute? It is typical of this legislation, which leaves the employees one up in virtually every situation of consequence.

The Hon. I. GILFILLAN: Before indicating our position, I ask the Attorney-General whether the Chamber of Commerce, being a registered association, has the right to intervene if one of its member associations is involved.

The Hon. L.H. Davis: No.

The Hon. C.J. SUMNER: If the Chamber of Commerce establishes an interest in proceedings, it has a right.

The Hon. L.H. Davis: It is not written into legislation like this is.

The Hon. M.B. CAMERON: That is an important point and the answer confirms what I believe, namely, that the Chamber of Commerce or any other employer association would have to establish an interest. They do not have an automatic right of entry, but under this clause the UTLC would have an automatic right.

The Hon. K.T. Griffin: They do not have any rights.

The Hon. M.B. CAMERON: That is exactly right. So, two bodies will be representing a union—the union involved in the proceedings and the UTLC, whilst the employers will have to establish an interest.

The Hon. C.J. SUMNER: The UTLC is not a registered organisation and cannot be registered. This new subsection facilitates what already occurs. The Chamber of Commerce is registered as an organisation representing employers and therefore can appear by establishing an interest before the Commission. It is not an open-ended clause as honourable members allege. It provides the UTLC with the right to appear in circumstances where the interests of a registered association that is affiliated are affected.

The Hon. R.I. Lucas: Who makes that decision?

The Hon. C.J. SUMNER: The Commission will make the decision as to whether it is legitimate for the UTLC to appear. It is not absolutely open-ended. The interests of a registered association affiliated with the UTLC have to be affected.

The Hon. I. GILFILLAN: The questions and answers reaffirm what we had assumed to be the situation. The point at issue is whether the conciliation and arbitration process is facilitated by having the right of the UTLC to be present at these hearings. Whatever the niceties of its having an extra favour, it does represent many of the registered associations. It cannot enjoy the same status because it cannot be registered itself, but, because in many cases it would be to it that many of the registered associations would turn when involved in disputes, it seems to us to be a more efficient and reasonable way to have it enjoy the opportunity of presenting the argument directly. Democrats believe that that is a satisfactory situation and will oppose the amendment.

The Hon. R.I. LUCAS: On a point of clarification, I interjected and asked who makes the decision as to whether, under this clause, the interests of registered associations or members of registered associations are affected? Who makes the decision as to whether the UTLC can appear? The Attorney says that the Commission makes the decision. On my reading I cannot see how that comes about. Can the Attorney explain that and, further, does that mean that the UTLC would have to make application to the Commission and justify first to the Commission that the interests of the registered association or the members of a registered association affiliated with the UTLC are affected and then be given permission by the Commission to appear?

The Hon C.J. SUMNER: I have answered the question. It is clear. I do not know why the honourable member does not read the section. In order for there to be intervention the criteria in the new clause will have to be established before the Commission. If the interests of a registered association affiliated with the UTLC are not affected, the Commission will not grant the UTLC the right to intervene. It is up to the Commission, acting in accordance with the legislation, to determine whether the criteria for intervention are established under the Act.

The Committee divided on the amendments:

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

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

Pair—Aye—The Hon. Peter Dunn. No—The Hon. J.R. Cornwall.

Majority of 1 for the Noes.

Amendments thus negatived.

The Hon. M.B. CAMERON: I do not wish to prolong debate on this matter because everything has been said about it that can be said. This clause should be opposed. It is clearly a clause that can be described as a 'Their Master's Voice' clause, because it is really designed for the Trades and Labor Council. I ask members to oppose this clause because it is merely adding to the privileges given to the U.T.L.C. by giving it a privileged place while penalising unregistered associations.

The Committee divided on the clause:

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

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

Pair—Aye—The Hon. J.R. Cornwall. No—The Hon. Peter Dunn.

Majority of 1 for the Ayes.

Clause thus passed.

Clauses 23 to 31 passed.

Clause 32—'Jurisdiction of Committees.'

The Hon. I. GILFILLAN: I move:

Page 15, line 18—After 'thinks fit' insert ', after giving the employer notice prescribed by the award,'.

This amendment intends that an employer will have notice of a union representative's intention to visit the workplace. We believe that this will improve relations between the parties. In our opinion it adds to the effectiveness of the intention of the Bill.

The Hon. M.B. CAMERON: The Opposition supports the amendment. At this stage I think it is appropriate to indicate that I will not be proceeding with my amendment to this clause. Those matters have been debated previously and the Committee has made a decision. However, I will support the Hon. Mr. Gilfillan's amendments to this clause, including his amendment associated with preference to unionists. The Hon. Mr Gilfillan's amendment will improve the present situation.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 15, lines 40 to 45 and page 16, lines 1 to 16—Leave out subsections (3), (4) and (5) and insert new subsections as follows:

'(3) A Committee may, by an award, direct that preference shall, in relation to such matters, in such manner and subject to such conditions as are specified in the award, be given to such registered associations or members of registered associations as are specified in the award.

(4) Notwithstanding the terms of a direction under subsection (3)—

(a) an employer is only obliged by the direction to give preference to a member of a registered association over another person where all factors relevant to the circumstances of the particular case are otherwise equal;

and

(b) no employer is obliged by the direction to give preference to a member of a registered association over a person in respect of whom there is in force a certificate issued under section 144.'

This amendment is a mirror of an earlier amendment relating to preference to unionists, so I will not repeat that argument.

Amendment carried; clause as amended passed.

Clauses 33 to 36 passed.

Clause 37—'Aged, slow, inexperienced or infirm workers.'

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

Page 17, line 42 and page 18, lines 1 to 6—Leave out paragraph *(b)*.

This clause deals with the powers of the Commission to vary conditions governing aged, slow, inexperienced or infirm workers. We oppose new subsection (1a), which will require the Commission to notify trade unions when any application is made under this provision and so invite industrial considerations. The provision does not involve an industrial matter, or a dispute situation. Other parties should not be invited to participate. In fact, doing that would invite dispute, because they would not ignore an invitation. Inevitably, they will appear and a situation that should not be in dispute should not result in an invitation to disputation.

The Hon. K.T. GRIFFIN: I support the amendment, because I find it quite incredible that the Government professes to have the rights of the disabled foremost in its policy in respect of Government action in this area. This is an appalling derogation from that attitude. This provision in the principal Act is a useful provision to enable an aged, slow, inexperienced or infirm worker who cannot otherwise obtain work at award rates to be able to work for something less than award rates, and thus make a useful contribution to society and contribute to his independence. At the present time that mechanism is without formality, and there does not have to be a long, drawn out, expensive and energy consuming hearing. The Government's proposal will formalise the application for such a permit and give a union the opportunity to get in there boots and all and oppose it. That will either deter people who seek permits from proceeding with their applications or cause them great expense and concern.

I find it quite inconsistent with the general principles of enhancing the rights of persons with disabilities that the Government should seek to so prejudice their opportunities to work. This provision will become an added burden rather than a relief from the provisions of an award; a relief that has been accepted for many years as a proper provision in the parent Act. I do not know why unions want to become involved in this area. It seems to me that it is very much against the interests of a person with a disability. For that reason, I strongly support the amendment.

The Hon. C.J. SUMNER: The provision will not be against the interests of people with a disability. That is arrant nonsense from the honourable member. It should not affect the situation at all.

The Hon. K.T. Griffin: You're not sure.

The Hon. C.J. SUMNER: It should ensure that there is not exploitation of disabled people. The amendment seeks to delete the provision whereby the Commission has to give an interested registered association seven days notice for an aged, slow, inexperienced, or infirm worker's licence. I point out that this provision was inserted in the Bill in response to a Cawthorne recommendation to this effect after Mr Cawthorne found that employer organisations accepted that unions have a special interest in the application of certain standards to their members and they have legitimate concerns, if it is proposed to vary these standards in any way. That is what the Bill does. I do not believe that the honourable member or anyone else would want to see exploited working conditions. *Bona fide* applications, just as they are now considered by the permanent head of the Department of Labour, will now be considered by the Commission. The provision will add an extra protection against employers exploiting aged, slow, inexperienced or infirm workers.

The Hon. K.T. GRIFFIN: There is no evidence at all that this provision in the parent Act has ever been used to exploit persons in the work force. I think it is a red herring that has been drawn across the path of what is a very substantial curtailing of the rights of persons with a disability. At present, a person who wants a licence to work at a wage less than that fixed by the award, where that person is aged, slow, inexperienced or infirm, has merely to apply to the permanent head of the Department or any officer authorised by him, and the permanent head or authorised officer has to be satisfied that the worker is by reason of age, slowness, inexperience, or infirmity unable to obtain employment at the wage fixed by the award. There is no formality in that.

There is a proper safeguard, because the matter is decided by an independent person—the head of a Government Department. I have no objection to the Commission making that decision. However, I do object to so restricting the rights that it becomes a drawn out formal procedure where the unions opposing an application are backed against a poor defenceless aged, slow, inexperienced or infirm worker.

What they are seeking to do is to allow the full force of the resources of the unions to intervene. That is quite disgraceful. Deleting the provision which allows the unions to get involved is not going to make any difference to the question of exploitation because neither the permanent head, the department nor the Commission is going to allow exploi-

tation. The fact is that this is a deterrent to anyone seeking an application for such a licence, and I think that it is disgraceful.

The Hon. I. GILFILLAN: I can understand the Hon. Mr Griffin's concern for people who are handicapped. We acknowledge that the unions may feel as strong a sense of concern for those people as anyone else in society.

The Hon. L.H. Davis: Do you know what their track record is? You have used track records in the past

The Hon. I. GILFILLAN: I am not here to cast aspersions on any association or individual. I do not think there is any serious disadvantage to those who are applying, and we will be opposing the amendment.

The Hon. M.B. CAMERON: I express my great disappointment at the attitude of the Hon. Mr Gilfillan on this matter. I almost wonder whether he will join a union after this because he is clearly on their side.

The Hon. I. Gilfillan: I am a member of the UF and S.

The Hon. M.B. CAMERON: That is a reasonably responsible body, but some of the unions that will be involved as a result of this amendment are not responsible bodies. If the Hon. Mr Gilfillan does not understand that, then he really does not understand what occurs in industrial matters in this State. It is a very serious matter indeed that this provision will now go into law. What the Hon. Mr Griffin said should be listened to and the Hon. Mr Gilfillan should reconsider his position. He should look at the situation where there are unemployment schemes in this State. Surely the honourable member remembers what occurred under schemes where unemployed persons had a temporary job given to them as a result of the schemes and had to pay funds to unions. It was incredible. We had people who would be out of a job again at the expiry of the scheme who were forced to join a union.

The Hon. Diana Laidlaw: It's no different with the CYEP scheme.

The Hon. M.B. CAMERON: Yes. The unions just cannot keep their sticky fingers out of anything. They have to get a quid out of it whenever they can (to use a well known expression). Although there are some responsible unions that will take a responsible attitude, some will not and they will be in there trying to stop these provisions being used to ensure that people who are aged, infirm and slow from being able to get work as a result of this provision. It is a sad day if the Hon. Mr Gilfillan does not change his mind on this matter.

The Committee divided on the amendment:

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

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

Pair—Aye—The Hon. Peter Dunn. No—The Hon. J.R. Cornwall.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clauses 38 to 41 passed.

New clause 41a—'Rights of appeal.'

The Hon. I. GILFILLAN: I move:

Page 19, after line 19—Insert new clause as follows:

41a.—Section 96 of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) For the purposes of hearing and determining an appeal against an award or decision of the Commission on an application under section 31, the Full Commission shall be constituted of at least two Presidential Members.'

This amendment includes an instruction that the Full Commission when hearing an appeal against wrongful dismissal shall be constituted of at least two presidential members who are Supreme Court judges. It is an attempt to allay some of the fears of employers that the new opportunity for compensation and wrongful dismissal will be awkward and an embarrassment to employers and they may need to use the appeal provision. We believe that with two presidential members it makes it a very strong judicial body for the employers to appear before to get a fair hearing for their appeal.

The Hon. M.B. CAMERON: For what it is worth, the Opposition supports the amendment, but our views will be expressed on this whole matter of changing from the Judiciary at an earlier stage when the real decisions are made, to the Commission or to a Commissioner. This is in the opinion of the Opposition closing the door after the horse has bolted. However, I guess it could be said to improve slightly the situation that will now exist, I will say more about the compensation provisions later.

New clause inserted.

Clauses 42 and 43 passed.

Clause 44—'Parties to industrial agreements.'

The Hon. M.B. CAMERON: The Opposition opposes this clause, which seeks to prevent an unregistered association of employees from being a party to an industrial agreement after the commencement of the new Act. The Opposition sees this as a matter of fundamental rights, guaranteeing all groups equality before the law. The Government has ignored the Cawthorne recommendations, as it does so often when they do not suit it. The Government quotes Cawthorne when it suits it, but ignores him when it does not suit it. Cawthorne said:

I am not persuaded at this point that there should be any absolute prohibition of the right of an unregistered association to enter into an industrial agreement.

It surely should be the basic right of groups of individuals, in consultation with their employer, to enter into agreements. If they do so willingly and freely, that should be their right. This clause seeks to take away that right.

I urge members to oppose this clause. The Commission can review already and ensure reasonable compatibility with awards, so there is no need for other parties to be involved. It is an important part of our industrial system that small groups and unregistered associations can enter into agreements, and it has always been so. No acceptable reason has been given by the Government, certainly not in the second reading explanation, for the situation to be changed.

The Hon. I. GILFILLAN: The proposed amendment is the same as the Democrats intended to move, and we support it. It clearly defends the right of people who are not in unions to organise to negotiate and accept agreements which will be registered and accepted in the commission. The classic case is the Independent Schools Staff Association which has chosen to remain outside SAIT and which wants to have an arrangement which reflects the fact that their conditions of employment vary from those of many other teachers.

This is worth support on its practicality, and it is important that there be the ability to reflect different situations. It certainly stands high as a human right for groups of people to be able to negotiate and have agreements standing, without their having to be compelled to join an association. We support the proposal.

The Hon. C.J. SUMNER: The Government supports the clause. South Australia is the only State that permits industrial associations to enter into industrial agreements. The proposal would seek to restore the current position whereby unregistered associations of employees and employers can enter into industrial agreements. This is contrary to Government policy of recognising the importance of registrations by providing that no new agreements should be able to be made by unregistered unions.

Clause negatived.

Clause 45—'Allowances and expenses'

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

Page 20, lines 13 to 15—Leave out subsection (2) and substitute the following subsections:

(2) The Commission shall not—

(a) approve an industrial agreement to which an unregistered association of employees is a party unless it is satisfied that its terms are fair and reasonable;

(b) approve an industrial agreement (to which either a registered or an unregistered association of employees is a party) if—

(i) levels of remuneration or monetary allowances for which provision is made by the agreement are inferior to those prescribed by a relevant award; or

(ii) the other conditions of employment for which provision is made by the agreement are, in the opinion of the Commission, when considered as a whole, inferior to corresponding conditions prescribed by a relevant award.

(2a) In subsection (2), a reference to a relevant award in relation to an industrial agreement means an award governing conditions of employment of employees who do the same, or substantially the same, work as the employees to whom the industrial agreement relates.

This amendment is necessary as a consequence of the amendment moved by the Democrats to clause 44 which will allow unregistered associations to continue to be able to enter into industrial agreements. To ensure that such unregistered associations do not contract out of awards and thereby undermine established Commission standards, the amendment provides that the Industrial Commission shall not approve such industrial agreements unless they provide for conditions of employment that are in broad terms at least equivalent to those prescribed by relevant awards, covering the same or substantially the same type of employee. Under the *Port Pirie Taxi Service (Question of Law) Case* decision reported in volume 46 of the South Australian Industrial Reports, the Full Industrial Court has construed the existing section 29 (1) *(f)* of the Act as not sanctioning the making of an industrial agreement when a relevant award pre exists, so as to oust what would otherwise be the operation of that award from particular persons. That decision, however, left certain matters up in the air. Thus, it is not clear whether an industrial agreement filed after an award and which at a particular time is more beneficial in all of its terms than the relevant award would prevail over that award. The Bill under clause 47 seeks to amend section 110 to put that question beyond doubt so that such an agreement which is more beneficial in its terms would in fact prevail. This amendment will pick up the thrust of the existing law, but at the same time will provide for greater flexibility than exists currently and will, when taken together with the changes proposed under clause 47, allow agreements that are approved by the Commission to prevail over any relevant awards.

Cawthorne in his discussion paper at page 147 canvassed this particular matter and argued that there was a case for unregistered associations being able to continue to enter into industrial agreements if the agreements entered into offered to members wages and conditions of employment which were, for example, not less beneficial overall than the terms of appropriate awards. Cawthorne also was of the view that, if parties wish to have an agreement which is enforceable before an industrial tribunal then it is only proper that the terms of the agreement be no less favourable than—

(1) general awards of the Commission which might otherwise bear upon the area of employment embraced by the agreement; or

(2) general standards of the Commission in an area which is award free; or

(3) alternatively is in all the circumstances fair and reasonable.

Cawthorne argued that, if such a procedure of vetting industrial agreements were adopted by the Commission prior to registration, it would tend to ensure that the members of unregistered associations not *au fait* with industrial terms and conditions of employment and unskilled in negotiation were not exploited by unscrupulous employers; furthermore it would ensure that advantages won by the trade union movement were not eroded by agreement.

The Hon. M.B. CAMERON: The Opposition strongly opposes the amendment, which cuts right across the ability of unregistered associations or groups of people to make agreements. It cuts right across the thrust of freedom for those groups altogether, so really makes nonsense of the previous deletion. Already the Industrial Commission can ensure reasonable compatibility with existing awards. Surely that is sufficient. There is no need for this amendment. However, it will cut right across any agreement between individuals and does not have absolutely the same effect as existing awards. That really makes a nonsense of the whole ability of unregistered associations to have agreements. I strongly urge the Committee to reject the amendment. I urge the Australian Democrats also to reject it, as it will have a deleterious effect on the whole position of industrial agreements being entered into by unregistered associations.

The Hon. Diana Laidlaw: It undermines their earlier amendment.

The Hon. M.B. CAMERON: That is right. It totally undermines it and makes nonsense of it.

The Hon. R.I. LUCAS: I understand that teachers employed by the Catholic Education Office do not receive the full rate that SAIT teachers receive. Will the practical effect of this clause be that the Catholic Education Office will have to pay its teachers the rates paid by the Government?

The Hon. C.J. SUMNER: The honourable member has seen the amendment. If there are comparable rates they would have to be paid them—yes.

The Hon. R.I. LUCAS: This opens a whole new can of worms. Have the Attorney and the Government had any representations or, in effect, given—

The Hon. Diana Laidlaw: Are they aware of it?

The Hon. R.I. LUCAS: That is the question: are they even aware? I imagine that it is not just the hundreds and possibly thousands of teachers employed by Catholic education. I know that Catholic education, for example, does not pay its teachers any less because it wants to make a profit for itself and rip the system off; it is trying to provide a service. It does not do it with any motive of ripping the system off as a nasty and terrible employer; it does it because it has limited funds. The number of students moving into the non-government sector, as the Attorney is aware, is increasing and will continue to increase for a variety of reasons which we need not explore at the moment. Funds are limited for Catholic education. My knowledge of the situation with respect to the other independent schools is not such that I am aware whether possibly the same situation occurs with them. Has the Attorney or the Government, more importantly, engaged in any sort of discussion with these groups which will be vitally affected by this provision that the Attorney has introduced at the eleventh hour?

The Hon. C.J. SUMNER: The Independent Schools Board made representations on this topic to the Cawthorne Inquiry. The Board in its submission said that many schools had entered into industrial agreements with unregistered associations of employees, but that no attempt had been made to impose inferior rates of pay or conditions on the employees concerned. If unregistered associations were able to enter into industrial agreements that completely undermined award conditions and rates of pay that had been achieved in industries generally, that could lead to a situation of exploi-

tation, discrepancy and inconsistency between the conditions and wages paid to people doing equivalent work. That is what is sought to be overcome by the amendment that I have moved. The matter was drawn to the attention of the Cawthorne Inquiry by the Independent Schools Board.

The Hon. I. GILFILLAN: The consultations that I have been able to have with the only unregistered association which approached us and with which we had an opportunity to directly discuss the matter have shown no positive reaction against the—.

The Hon. M.B. Cameron: When did you have this amendment?

The Hon. I. GILFILLAN: Not this amendment. I have been discussing it with the Independent Schools Board from the moment that I started dealing with the Bill. The conditions under which the unregistered associations would be able to continue to hold agreements registered with the Commission and be accepted within the general ambit of the industrial situation in South Australia had to be considered in the broad canvass, not just in one isolated case. Contributing to our reaction to this amendment is certainly the Cawthorne opinion, and apparently the very strong legal judgment that was brought to light in the Port Pirie taxi cab case.

Another factor involved in this is that if an agreement is entered into it will not be affected by further indexation or amendments to the award for as long as that agreement stays in existence, which means that there can be, as in the particular case that we discussed with the Independent Schools Staff Association, the reasonable arrangement in which the different holiday situations and other circumstances of employment can be adjusted and they can have an agreement that will hold as long as the term of that agreement is stipulated.

The Hon. R.I. Lucas: Is that after this amendment as well? Is that your understanding?

The Hon. I. GILFILLAN: Yes, my understanding of the amended Bill would be that.

The Hon. R.I. Lucas interjecting:

The Hon. I. GILFILLAN: As I understand, the whole influence of the Bill in its effect on the Act.

The Hon. R.I. Lucas interjecting:

The ACTING PRESIDENT (Hon. C.M. Hill): Order! The Hon. Mr Gilfillan must address the Chair.

The Hon. I. GILFILLAN: I am sorry. I think that the Hon. Mr Lucas is asking whether the opinion that I am giving, namely, that the agreements remain intact and will not be automatically affected by the adjustments to the award, is sound. It is on the basis on which we have accepted that the amendment does not so dramatically interfere with the right of unregistered associations to enter into their agreements that it becomes unacceptable. We have been obliged—and I am not apologising for it—to discuss this matter with John Lesses of the United Trades and Labor Council. It is obvious that if we were to bring in a situation that would cause serious disquiet and great suspicion in the trade union movement it would not do anything to encourage industrial peace and harmony. Although we have talked as widely as we could with groups, we have not been able to get from any particular groups specific objections to what we have outlined as what we see will result from this Bill.

I can accept the point that the Opposition has raised, namely, that there will be limitations on the terms under which the industrial agreement can first be established. That involves specifically the actual remuneration or money allowances, but the conditions and the other arrangements of the terms of employment are subject to ebb and flow and give and take, and it seems to us that that is a reasonable situation to allow to exist. It will have the added advantage that it will carry on indefinitely, free from any movements of the award. It is also my understanding that any existing agreements with unregistered associations remain immune from any interference from adjustments to the award.

The Hon. DIANA LAIDLAW: I ask the Attorney-General about the application of the amendment to those voluntary agencies that are associated with SACOSS, for instance. In many instances the staff of those voluntary agencies are paid under award wages. Their conditions also in many instances are different from the award conditions, and voluntary agencies have no choice in this matter essentially because of their funding situation. The Attorney would be aware that in recent times the President of SACOSS has written impassioned pleas to all members of Parliament and to the Government seeking increases in funds not only to carry on services but also to look at the remuneration of staff.

This remuneration of staff of voluntary agencies is a point that has been highlighted, particularly since the CEP programme was introduced, because any person employed under that programme who works for a voluntary agency is paid award wages, unlike some permanent staff members of voluntary agencies. In many instances there has been resentment about that fact. Can the Attorney say whether or not this amendment will be applicable to voluntary agencies?

The Hon. G.L. BRUCE: I would like to put the other side of the coin. One sometimes sees a viable industry going along quite nicely and then an agreement is reached in a like industry about wages: the next thing the viability of the first-mentioned industry is put to the wall, and people who have been employed in a stable, viable industry find that they are no longer in that industry because of that agreement reached undercutting award rates built up over a period of years. Agreements reached on that basis should be considered by the Commission to bring equity into the work force in the same jobs.

The Hon. C.J. SUMNER: This situation involving independent schools, Catholic schools, or the volunteer agencies that the honourable member has mentioned is not affected unless the body is involved in applying for registration of an agreement. The organisation can pay the rates currently paid if it is outside the agreement situation and does not seek registration of that agreement. However, if the unregistered association seeks registration of the agreement in accordance with a clause we have already considered, then the provisions of the amendment I am moving apply, if they do not seek registration of the amendments then the current situation applies.

The Hon. R.I. LUCAS: Is the Attorney-General aware of the groups that the Hon. Miss Laidlaw has raised being registered at the moment? Are there agreements by these groups that are registered?

The Hon. C.J. SUMNER: I do not have details of how many groups there are. Presumably, if they do not register an agreement—

The Hon. L.H. Davis: You have got to know the answer to that.

The Hon. Diana Laidlaw: That is quite a dramatic effect.

The Hon. C.J. SUMNER: If they do not have a registered agreement then, or do not register the agreement, they may have registered agreements at the moment; but if they do not have a registered agreement in the future they will not come within the terms of this clause.

The Hon. L.H. Davis: How can you hope to debate this matter if you do not know the answer to this question?

The Hon. C.J. SUMNER: The answer is irrelevant to the debate.

The Hon. R.I. LUCAS: We are being asked by the Attorney to support a pig in a poke. How on earth do we know whether a quite vital section of the South Australian com-

munity will be affected or not. I do not know whether there are such agreements. I know that there are about 152 agreements registered, according to the Minister in another place, but there is no breakdown of the groups. As to whether the groups being asked now are being covered or not, I do not know. The provisions of the Attorney's amendment ought to be looked at in two distinct sections. There is provision *(a)* under which the Commission cannot approve the agreement unless it is satisfied its terms are fair and reasonable. That, I believe, would cover the point that the Hon. Mr Bruce is trying to make, that there should be a fair and reasonable agreement. Provision *(b)* goes a lot further than being fair and reasonable. There may be many of those 152 industrial agreements that could be construed as fair and reasonable for a wide variety of reasons.

One example I raised was in respect of Catholic education, if they have a registered agreement (and I guess that they probably do). I know that on occasions they have had to pay less than the current going rate for teachers paid by the Government. Whether or not that is the case at the moment, I do not know. I know that they seek to pay the award rate. The Attorney is waving his hand about saying, 'Forget about Catholic education! Forget about voluntary agencies! I do not know the answer, so do not raise the point in this Council. Why does the Attorney not get some answers?

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: I have made two contributions to this debate in an hour and 10 minutes. The Attorney wants the debate over by lunch time, and we will probably get there—so don't get your knickers in a knot!

The Hon. C.J. Sumner: There is no point in continuing. If the honourable member sits down, I will give him an answer.

The Hon. R.I. LUCAS: The point we are making to the Attorney is that the difference in this clause between *(a)* and *(b)* is quite significant. The Hon. Mr Bruce's point is covered in *(a)*—that it ought to be a fair and reasonable agreement. However, under *(b)* what on earth is the point of having the ability to register an agreement as an unregistered association if there are not going to be some variations from award conditions?

The Hon. Diana Laidlaw: Do you think that one of the consequences is that they will not register their agreements?

The Hon. R.I. LUCAS: I do not know what the consequences will be. That may well be one of the options. That is what we are trying to find out from the Attorney. Let us take the instance of Catholic education. On certain occasions it has not been able to comply with award conditions paid to teachers, not because it is ripping the system off but because it just does not have the money to provide the service that it wants to. What the Attorney is saying is that they would have to pay award wages and conditions. If that is the case, they will have to employ less teachers—that is a simple fact of life.

The Hon. M.B. Cameron: It will be more costly for parents.

The Hon. R.I. LUCAS: It either raises costs to parents or reduces the level of services provided by the Catholic education system to children.

The Hon. Diana Laidlaw: One can't see the Federal Minister of Education having much sympathy here.

The Hon. R.I. LUCAS: Certainly not! This ought to be looked at in respect of *(a)*, and perhaps the Hon. Mr Cameron may explore the possiblity of moving an amendment to remove subclause *(b)* from the Attorney's amendment. I hope that, if the Hon. Mr Cameron does, the Hon. Mr Gilfillan, in his consideration of this Bill, will give urgent consideration to supporting such an amendment.

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

To amend the Attorney-General's amendment by striking out proposed new subsection (2) *(b)*.

My reason for moving this amendment is that, clearly, the Hon. Mr Lucas has raised a very serious question. What I would like to see happen, because I believe the matter is so serious, and because we have not had an opportunity to discuss the effect of this provision with the people affected by it, is that the Attorney report progress and give us time to contact some of these organisations to make them aware of the impact of this clause on them. If this amendment is passed, it really makes nonsense of the Democrats' support of the previous amendment because it cuts right into all industrial agreements reached by unregistered bodies and registered with the Industrial Commission. I ask the Attorney and the Hon. Mr Gilfillan to give serious consideration to taking out *(b)*, which will cure the present serious problem we have with this amendment: if they will not do that, will they at least give the Opposition the opportunity of taking this matter to the people affected, people such as the Catholic education body.

The Hon. Diana Laidlaw: And SACOSS.

The Hon. M.B. CAMERON: And SACOSS, and many other organisations that will be affected by this provision. It is not proper for this sort of provision to be landed in this Council without an opportunity for proper discussion about it with the people affected by it.

I ask the Hon. Mr Gilfillan to support the amendment and delete *(b)*; alternatively, I ask the Attorney-General to allow us time to discuss this provision with the people concerned.

The CHAIRMAN: It appears that new subsection (2) *(a)* would also need to be deleted, otherwise it would not make sense.

The Hon. M.B. CAMERON: Yes, Mr Chairman.

The Hon. L.H. DAVIS: Let us look at the practical application of the amendment to clause 45 placed on file by the Attorney only yesterday. It is as follows:

(2) The Commission shall not—

(a) approve an industrial agreement to which an unregistered association of employees is a party unless it is satisfied that its terms are fair and reasonable;

That is further strengthened by *(b)*, which provides:

(b) approve an industrial agreement (to which either a registered or an unregistered association of employees is a party) if

(i) levels or remuneration or monetary allowances for which provision is made by the agreement are inferior to those prescribed by a relevant award;

I refer to a practical example. At the moment I know of at least two leading independent schools which are highly regarded for their teaching at both primary and secondary levels and which pay their teachers 95 per cent of the equivalent award in State schools. Many of the teachers at these independent schools are ex-State school teachers and are happy to take 95 per cent of the award that is given to State school teachers, because they like the conditons which exist in independent schools, and they like the freedom and greater ability to do their own thing and the flexibility that goes with the general ambience associated with those schools.

I refer to clause 45 (2) *(a)* and *(b)*, which will mean that unregistered associations will be ruled out immediately, because they will not meet the criteria provided. There can be no question about that. Does the Attorney agree or disagree with the example I mentioned, which will have the effect of ruling out agreements made with teachers in independent schools? That is one example that I can come up with straight away, and I am sure that there are many others.

The Hon. C.J. SUMNER: I have already answered the question. The fact is that under this amendment, if unregistered associations want to attempt to register agreements which are out of line with the general levels of remuneration and conditions of employment for a particular industry,

those registered agreements will not be approved by the Commission under my amendment.

The Hon. R.I. Lucas: That is disgraceful. What an admission!

The Hon. C.J. SUMNER: There is no admission; that is what I said when I introduced the amendment. I am not sure that there is anything particularly startling about that, because I said it about half an hour ago. I also pointed out that it does not mean that an unregistered association cannot pay its employees at a lower rate; it does not mean that it cannot have conditions that are less than those that apply in the industry generally; and it does not mean that they cannot have an agreement with their employees. It means that an agreement will not be registered—that is the difference. The provision will not preclude SACOSS or independent schools from entering into agreements or from doing what they are doing at the moment. The only difference is that they will not be able to register an agreement. That is clear. That is what I said when I moved the amendment. There is a difference of opinion between the Government and the Opposition.

The Hon. K.T. GRIFFIN: If unregistered associations, for example, teachers in a private school, want to join together as an association and negotiate with an employer, and then arrive at an agreement in respect of conditions which are not as favourable perhaps as an award, why should not they be able to do that?

The Hon. C.J. Sumner: They can.

The Hon. K.T. GRIFFIN: Why should not they be able to register such an agreement? The consequences of non-registration mean that members of an unregistered association will not be able to take proceedings in the Industrial Commission to enforce it. I suppose they could still do that at common law, but they will not have any of the advantages in those circumstances as apply in the Industrial Commission. That really concerns me. If they are entitled to negotiate an agreement, why should not they be able to have it registered to protect the terms and conditions of that agreement? I find it absolutely incredible that the Government seeks on the one hand to allow unregistered associations (and I am not quarrelling with that at all, because I think it is good in principle) and then on the other hand deny them access to the Industrial Commission. It almost appears that the Government wants to make the Industrial Commission a closed shop.

The Hon. L.H. Davis: Almost!—it is.

The Hon. K.T. GRIFFIN: It looks like it, yes. I suppose that is consistent with the Government's attitude in relation to other provisions of the Bill, that there ought to be closed shops, compulsory unionism and that benefits should only be given to registered organised unions. I find that approach contrary to natural justice and contrary to the rights of ordinary individuals freely to determine their own destiny. An unregistered association negotiating something with an employer less than the award does not mean that the members of that association are being exploited. In fact, perhaps they are showing a bit of common sense, which registered associations and unions are not showing in relation to wages and conditions at the moment.

I certainly oppose this amendment, because I believe that it is contrary to all basic principles of justice and the freedoms that ordinary individuals ought to have to assemble and organise themselves in whatever way they think fit, provided that it does not impinge upon the rights of others. This clause does impinge upon those rights and seeks to make that imposition a matter recognised in legislation to the advantage only of organisations such as the South Australian Institute of Teachers, which is currently involved in an ambit claim.

The Hon. L.H. DAVIS: Can the Attorney name any unregistered associations which currently have registered industrial agreements and which will not be allowed to continue with those agreements?

The Hon. C.J. SUMNER: No, obviously not.

The Hon. L.H. Davis: If the Attorney cannot name any unregistered association that presently has registered industrial agreements that will not be allowed to continue, why is he seeking to change the legislation?

The Hon. C.J.SUMNER: I do not know of any. I do not have that information. The principles involved in this clause are clear, and I have outlined them. Honourable members opposite disagree with them. They can continue to nitpick about the clause for as long as they like.

The Hon. K.T. Griffin: It's not nitpicking.

The Hon. C.J. SUMNER: Members opposite have their point of view and I have mine. I explained the amendment when I moved it, and I explained it again after honourable members opposite objected. Opposition members disagree with the amendment, which they are entitled to do. It just comes down to a matter of principle. The Government believes that, if someone receives the benefits of the registration procedure in the legislation, there should be some *quid pro quo* in terms of paying rates and looking to conditions which are common in the industrial arena.

That is a perfectly defensible and reasonable principle. If you do not want the protection of the Act, if you do not want the benefits (such as they are) of industrial registration, then you are still able to enter into agreements outside the regular industrial relations machinery. That is not precluded, as honourable members opposite tend to suggest. All I am suggesting is that there is no point in getting unduly agitated. I have noted your point of view, but I do not agree with it. All I am saying is that, as far as the Government is concerned, if you want the benefits of the industrial legislation and registration then you should be willing to cop the normal—

The Hon. L.H. Davis: 'Cop' is the right word.

The Hon. C.J. SUMNER: Yes. You ought to be able to accept the normal industrial conditions and wage rates determined by that Commission for industries generally. That is all I am saying. If you do not want those conditions then you are perfectly free to negotiate agreements outside the Commission but not to seek registration.

The Hon. R.I. LUCAS: The Hon. Mr Gilfillan has had the benefit of listening to our arguments but, by this provision, the Attorney will affect all children and parents involved in the non-Government school sector—

The Hon. G.L. Bruce: Not if they are registered.

The Hon. R.I. LUCAS: There is no doubt that the provision will affect all parents and children in the non-Government school sector, for a start. As I indicated earlier, what is going to happen is one of two things: first, either some teachers will have to be sacked and laid off as a result of this Government's action (a Government which is supposed to be looking after the workers and employment in South Australia) or, secondly, the level of service provided in the non-Government school sector will have to be reduced.

That would mean increasing to a greater degree class sizes and the like. That would be the effect. I am not sure whether the question in respect of SACOSS comes within it, but the Hon. Miss Laidlaw has already covered that. It could be affected. Certainly in respect of the first point concerning the non-Government schools sector, parents and children will be affected by this provision. The Hon. Mr Griffin made the other telling point in rebuttal of the Attorney's argument. The Attorney says (and I use independent schools as an example) that, because teachers in independent schools may be willing to work for 5 per cent less than Government teachers, they do so on the basis that the intrinsic advantages of working in the independent school sector are calculated

by them to be greater than the loss of 5 per cent, possibly, so they see greater advantage in working in the independent school sector for reasons other than remuneration and award conditions compared with the possible loss of 5 per cent of their award.

The Attorney claims that the solution is that they do not have to register their agreement. But that means that all those teachers and workers in South Australia in unregistered associations who cannot register their industrial agreements do not have the protections afforded under the Industrial Commission and Industrial Court. The Attorney is saying, 'Let them fight for themselves. We are not going to worry about those workers because their agreements are not registered.'

The Hon. M.B. Cameron: They cannot have protection.

The Hon. R.I. LUCAS: Yes, they will have to fight at common law and become involved in expensive legal claims. That is their protection. The Attorney says, 'Do not worry about those workers at all.' Yet this is a Government and a Minister who are meant to protect workers. This is the view of the Government, which is represented by the Hon. Mr Bruce, who talks about the protection of workers. What about workers in unregistered associations? The Attorney says, 'Do not register the agreement. Do not worry about any protection for them at all.' For these two reasons I urge the Hon. Mr Gilfillan to support the move of the Hon. Mr Cameron to amend the Attorney's amendment.

The Hon. L.H. DAVIS: I would like to look at the practical consequences of this proposal by the Government. The Attorney has designed an amendment which will have the effect of saying to teachers in independent schools, 'You do not get the protection of the Commission. However, you get the protection of the Commission if you register.' Of course, that will encourage the teachers to register. There was an interjection across the Chamber from the Attorney that teachers could seek an award. I predict that if they did that it would increase pressure through unions and through the teachers themselves when they see that their rights have been eroded by this amendment if it comes into law. It will increase pressure for them to seek an award which has already been prescribed for State school teachers.

The effect of this on independent schools will be to see wages increasing by 5 per cent (if one accepts the example that I cited earlier). I predict that it will mean in time that parents of children at independent schools at the top end of the range will be paying an extra $150 a year for the education of their children in a private school. If this amendment is carried with the Democrats' support it will in time lead to employees rightly wanting some protection for an agreement which is not provided for in this amendment. So, they will naturally seek award conditions to bring them within the ambit of the legislation, the protection of the Commission. I am appalled to think that this Government is so hellbent on levelling everything to the ground so that everyone has a carbon copy arrangement. Where is the freedom of choice? Where is the individuality which makes the nation strong? I am opposed bitterly to this amendment and I urge the Democrats, certainly the Hon. Mr Milne, who has some understanding of the independent schools system which is prominent in these unregistered association arrangements, to oppose the clause.

The Hon. M.B. CAMERON: I am not sure where the Attorney is, but I want to ask him a question. It is difficult to do that when he is not here. Will the Attorney report progress? It is all very well for the Hon. Mr Gilfillan, who has had the opportunity of discussions (I will not go any further than that) with the Government on this Bill, to indicate that he has had discussions with groups affected by the Bill, but we have not had knowledge of the deal done in respect of this amendment. So, we have not had the opportunity of discussing the amendment with the people who will be affected. It is a drastic amendment indeed. By way of interjection the Hon. Mr Bruce made it plain that he did not care that these people will be thrust outside the protection of the Industrial Commission—that is exactly what is happening. They will be thrust out. Obviously, he does not care about that or about those people at all. At least the Hon. Mr Bruce is honest. He does not care about people unless they accept total award wages and conditions. Without that, he believes they cannot get the protection of the Industrial Commission.

So, he does not care about Catholic education or about the people who are prepared to work for less than award wages. He believes that, unless they are prepared to accept the award wages, they cannot get agreements—out with all their protections! That will be an interesting argument indeed for him to put to the Catholic education authorities if this clause is passed and will also be an interesting argument for the Hon. Mr Gilfillan to put to the Catholic education authorities if this clause is supported by him. Will the Attorney-General report progress to enable us to take up this matter with the people who will be affected and ascertain their views and at least give them the opportunity of input into the Government and the Hon. Mr Gilfillan in order to indicate what I believe would be their displeasure at what will be done to them as workers in at least the field of Catholic education and, no doubt, in many other areas?

The Hon. C.J. SUMNER: The answer is 'No'. However, I move:

That consideration of this clause be postponed and taken into consideration after clause 65.

Motion carried.

Clause 46—'Adding parties to agreements.'

The Hon. M.B. CAMERON: The Opposition strongly opposes this clause, which is consequential on earlier clauses relating to the restriction on the ability of an unregistered association to appear before the Commission. The Government has ignored the views of Mr Cawthorne, other industrial authorities and major employer groups and has sided with the view of the UTLC, which seeks to strengthen the power of the trade unions at every turn. It is another attempt to restrict unregistered associations and, for that reason, the clause should be strongly opposed.

The Hon. C.J. SUMNER: The Government supports the clause.

Clause negatived.

Clause 47—'Effect of industrial agreement.'

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

That consideration of this clause be postponed and taken into consideration after clause 65.

Motion carried.

Clauses 48 to 50 passed.

Clause 51—'Insertion of new section 143a.'

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

Page 23, after line 6—Insert new paragraphs as follow:
(ca) an action for trespass to goods or to land;
(cb) an action for nuisance;

The Opposition wishes to indicate that it will be opposing the whole clause. In case this clause is supported, we wish these additional areas of tort action to be included as part of these procedures.

The Committee divided on the amendment:

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

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

Pairs—Ayes—The Hons R.C. DeGaris and Peter Dunn. Noes—The Hons J.R. Cornwall and C.W. Creedon.

Majority of 1 for the Noes.

Amendment thus negatived.

The Hon. I. GILFILLAN: I move:

Page 23, lines 9 to 17—Leave out subsection (3) and insert new subsections as follows:

'(3) Where—

(a) an industrial dispute has been resolved by conciliation and arbitration under this Act;

or

(b) the Full Commission determines, on the application of any person, that—

(i) all means provided under this Act for resolving an industrial dispute by conciliation and arbitration have failed;

and

(ii) there is no immediate prospect of the resolution of the industrial dispute,

a person may bring an action in tort notwithstanding the provisions of subsection (1).

(4) The Full Commission shall, in hearing and determining an application under subsection (3) *(b)*, act as expeditiously as possible.'

This amendment puts into effect what I indicated in my second reading speech, namely, that no employer who wishes to sue for economic damage will be restrained by what we believe is quite an unacceptable restriction.

Pointing to subclause 2 *(b)*, where in brackets it says 'not being economic damage', that is the restraint for an employer to file papers for an action to recover damages for economic loss. So, we are amending line 16, which provides:

the Commission may authorise the applicant to bring an action in tort notwithstanding the provisions of subsection (1).

We believe that there is no justification for the Commission to have that power and that the employer should be free to proceed with his action without any 'Yes' or 'No' from the Commission. It is probably appropriate to discuss the consequences of this in slightly wider terms than just that particular qualification.

The concern that has been expressed to us is that the Supreme Court injunctions will not be able to be used as an influence in the case of an industrial dispute. Recognising that there may well be argument for employers wishing to retain that right to seek a Supreme Court injunction as soon as an industrial dispute is established, the fact still remains that this Bill is aimed at industrial conciliation and arbitration, and the Commission is given a very big responsibility for it. It has several quite substantial areas of influence that it can bring to bear on unions that in its opinion are not complying with the normal procedures and requirements of the dispute.

The enforcement processes that are available to the Commission are: in the first instance, there will be an application from the employer for an order for return to work. Then, if that is the case, and he has persuaded the Commission, there will be a handing down of the order by the Commission. A breach of order by staying on strike amounts to an offence under section 154, and there will be prosecution in the Industrial Court; enforcement of the court's decision by the Magistrates Court; deregistration procedures may be commenced in the Industrial Court by the Registrar, a registered association, a member or a former member of the association only in so far as the relevant association is concerned on the grounds that the association has 'wilfully neglected to pay any judgment or award of the Commission'.

The influence that the Commission can bring to bear is substantial, and the responsibility that the Commission shoulders is bigger under the effect of this clause and our amendment in ensuring that the resolution of unacceptable practices is dealt with as expeditiously as possible. We have a minor amendment later to add that fact: the Full Commission shall in hearing and determining an application under section 3b act as expeditiously as possible.

Our encouragement—I have said this before in the second reading debate—is that the Commission, in realising its full responsibility for the distress that could be experienced by an employer, will take the time factor into consideration and, if it can see that there are very good reasons why swift and effective action should be imposed, it only has to declare that the conciliation process or the arbitration process has failed and the employer can immediately file papers and the injunction from the Supreme Court can be operative in a very short period if the Supreme Court has been so persuaded.

The Hon. K.T. Griffin: Under your amendment, conciliation and arbitration.

The Hon. I. GILFILLAN: It is a typographical error. My amendment is specifically 'conciliation or arbitration'.

The CHAIRMAN: We have that correction here.

The Hon. I. GILFILLAN: In that case I ask honourable members to change their own copies. In new subsection (3) *(a)* where it reads 'conciliation and arbitration' it should read 'conciliation or arbitration under this Act', and in new subsection 3 *(b)* (i) it should read in the second line 'conciliation or arbitration'. We are conscious that there is still disquiet. As I said yesterday in my speech, it is now the most serious concern that employer groups still have in the Bill. I repeat that our reaction is on the basis that this is legislation to encourage the conciliation and arbitration process. We must and do pay the Full Commission the respect that it will treat this, as it should any situation, with the utmost seriousness. If there are reasons for quick action and there is no resolution of the dispute, it only needs to declare that the conciliation or the arbitration has failed and immediately the Supreme Court injunction can be brought to bear. I have spoken to the reasons for new subsection (4) and emphasise the remarks that I have made about encouraging the Full Commission to deal with applications immediately.

The Hon. M.B. CAMERON: The Opposition will support this amendment. I use the word 'reluctantly' because although it is an improvement it will cause a major problem. It will nullify to a very large extent the effect of the tort provisions; that is, that employers can take injunctions immediately, and that in many cases this is one of the major stopping points for disputes. The effect of this will be, in the opinion of the Opposition, to lengthen disputes. It will wipe out that very important part of the tort provisions, which is the ability of the employer to take out an injunction.

I point out to the Hon. Mr Gilfillan that if he succeeds with this amendment and then fails to delete the clause as a whole he will be responsible for the extension of industrial disputes in this State; he will be responsible for problems arising for employers in this State as the result of industrial disputes extending. I also intend to address my remarks to the clause as a whole and to the amendment that I have that the clause be deleted, to save time in this debate, because they are one and the same thing eventually. We will support this amendment but intend to oppose the whole clause. I wish to speak to that as a whole. Clause 51 seeks to put the trade unionist outside the law of this land. We have all seen the end result of that. We all remember the Kangaroo Island case in which a person who became a member of this Council caused extreme disruption to a community; yet under this provision, even though that occurred, that person and that union could not be brought to book for the economic damage that they had done.

Section 143a (1) provides:

Subject to this section, no action in tort lies in respect of an act or omission done or made in contemplation of furtherance of an industrial dispute—

except for certain provisions.

In all cases economic damage is cut out. What they are really saying to the union movement, in the attempt to insert this amendment is: 'Go out and do your worst to the employer in trouble with the dispute! Do all the economic damage you can because we will protect you from having any action taken against you afterwards! You can do your worst, but it won't cost you a penny afterwards because you will be protected by the law.' That is scandalous! It epitomises the attitude of this Government towards the whole Bill—it is a pro-union Bill. The Government is, in fact, acting on the instruction of its masters on South Terrace. They have said to it: 'We need protection for the damage we do to industry in this State. Let us do our worst and not be subject to the rigors of the law. Let us go outside the law. Let us make illegal and unlawful acts. Let us do our worst.' That is not a proper provision to put in any Bill in this State, or in this country. People who go outside the law and do economic damage should be subject to recovery of that damage. It is improper for the Government to bring this sort of ridiculous legislation forward.

I urge members to vote against this clause. I urge the Hon. Mr Gilfillan to have another think about his position in relation to this clause, because what he will do is ensure (in fairness to him) that tort actions can still be taken. However, it is very rare that a tort action is taken because damages stop at the beginning of a dispute because an employer can take out an injunction. What he will do is cut across that and return the situation to a stage where an injunction can only be taken out after the Commission has gone through the process of attempting to resolve a dispute. He does not understand how useful this provision is in resolving industrial disputes in this State. If he believes that this is not going to cause a lengthening of disputes he is incorrect because that certainly will be the case if he does not change his mind and help to delete this clause as a whole.

The Hon. K.T. GRIFFIN: Like my colleague, the Hon. Martin Cameron, I will support the amendment in an attempt to improve the clause before we try to toss the whole thing out. I think that the amendment is an improvement, but it still leaves the Full Commission with an opportunity to make a decision as to whether or not common law action should be allowed. It is not the court but the Full Commission that is involved in a conciliation and arbitration process. It should not have responsibility for deciding whether or not a person who alleges that he or she has a cause of action against a union or any citizen is able to proceed with that cause of action in the ordinary courts of the land. The Full Commission, it might be remembered, under earlier amendments may constitute two commissioners and one presidential member or two presidential members and one commissioner. In that instance it may be that there are two lay people and one legally qualified person, who is also a member of the Industrial Court, who will make the decision as to whether or not a citizen is entitled to pursue his or her rights in the ordinary courts of the land. I find it objectionable in principle that some body other than our properly and lawfully constituted courts should have the right to determine what access there shall be to those courts. Whether it is an industrial dispute, a dispute over compensation for loss, damages or injury, or whether it is any other aspect of civil litigation, the ordinary courts of this State, and of the land, ought not be deprived of jurisdiction.

It is a cardinal principle of justice that if there is a cause of action one ought to be able to pursue one's rights to the highest court in the land. That, in this State, is the High Court of Australia, although there is still the concurrent right ultimately to go to the Privy Council. I am very much opposed to this whole clause. The Committee has been reminded of the case of *Woolley v. Dunford* where resort to the Supreme Court was required to bring some common sense into the attitude of the union on that occasion. We have also, as I mentioned in the second reading speech, the matter of *Adriatic Terrazzo and Foundations Pty Ltd v. Robinson, Owens and Australian Building and Construction Workers Federation, South Australian Branch* where Robinson and Owens ultimately went to gaol. When they did there was not much of an outcry from the union movement. They subsequently went before Mr Justice Hogarth, apologised and purged their contempt. By that time the dispute was over. There is also the matter of *Davies and Davies v. Nyland and O'Neil* involving the Seven Stars Hotel.

Only two weeks ago we had the Federal Court (in the exercise of its Federal jurisdiction) granting Continental Airlines an injunction against Australian unions that were blackbanning that airline because of disputes in the United Kingdom. What is to stop unions in South Australia taking the same attitude in respect of an overseas dispute involving, for instance, Actors Equity or some other overseas union? If they go on strike and impose bans in South Australia in sympathy with the actions of unions overseas this clause, even when amended by Mr Gilfillan's amendment, will mean that the full Industrial Commission will have the final say as to whether or not anybody affected by that strike will be able to take action in the Supreme Court. I find that a gross abrogation of the rights of those citizens.

It is, of course, always thrown back on those who propose common law action that injunctions and restraining orders, and any other order by a Supreme Court, will not do anything but inflame a dispute. I challenge that statement. There may be, in the short term, in some instances, some inflammation of the dispute, but in other instances it acts as though heads were being knocked together and ultimately assists in bringing unions to their senses. In any event, there is the consequence that disruption will have some civil ramifications. I believe that those civil ramifications, whether for economic loss or any other loss or injury, ought to be able to be pursued in the ordinary courts of the land. I support the amendment because it improves the clause, but it does not deal with the basic question that I find is the issue upon which I will ultimately make my decision to vote against the clause—that is, that it impinges quite dramatically upon the normal legal and constitutional rights of citizens in respect of industrial disputation. Industrial disputation should not in any way prejudice the ordinary rights of citizens of this State.

The Hon. L.H. DAVIS: There is something sinister about a provision which seeks to remove a right of action which exists in the courts in the case of an industrial dispute. There is something sinister about a provision which puts unions beyond the existing law. It seems quite contrary to natural justice to absolve unions from any responsibility where they cause economic loss. However, that is the purport of this provision, which states:

> No action in tort lies in respect of an act or omission done or made in contemplation or furtherance of an industrial dispute.

The Minister of Labour in another place during debate on this matter claimed that industrial disputes will not be settled by legal action in the Supreme Court. However, the Hon. Mr Griffin supplied good examples of cases where the action in tort has facilitated the resolution of an industrial dispute by bringing the parties back to conciliation and arbitration.

During the second reading debate I referred to the example of the Fridgmobile dispute with the Storemen and Packers Union, which took place in the past few months. Certainly, action in tort is not taken often: it is a weapon that can be used as a last resort; it is a weapon that can be used to protect an employer from economic loss. To remove the action in tort is an open invitation to prolong industrial

disputes, to send employers to the wall. It is not too much to suggest that the only thing missing from this clause is a bag of lollies.

The Hon. C.J. SUMNER: The Government supports the amendment and will support the clause as amended.

Amendment carried.

The Committee divided on the clause as amended:

Ayes (9)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, C.W. Creedon, M.S. Feleppa, I. Gilfillan, Anne Levy, K.L. Milne, and C.J. Sumner (teller).

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

Pairs—Ayes—The Hons J.R. Cornwall and Barbara Wiese. Noes—The Hons Peter Dunn and Diana Laidlaw.

Majority of 1 for the Ayes.

Clause as amended thus passed.

Clause 52—'Conscientious objection.'

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

Page 23, after line 18—Insert new paragraphs as follow:

'*(aaa)* by striking out from subsection (1) the passage "has, by reason of his religious belief, a genuine conscientious objection" and substituting the passage "genuinely objects on grounds of conscience or other deeply held personal conviction".

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

(1a) An application for a certificate under subsection (1) shall be determined by the Registrar with a minimum of formality, and no registered association shall be entitled to appear before the Registrar in relation to the application.'

This clause deals with conscientious objectors to membership of unions. As a result of this Bill the present preference to unionists clauses or compulsory unionist clauses (as the Hon. Mr Bruce honestly referred to them last night) will remain in the legislation. The attempt by the Hon. Mr Cameron on behalf of the Liberal Party to remove preference to unionists clauses has not been successful. Therefore, the current situation will substantially remain. The problem involved with conscientious objectors and union membership remains. Once again, the Government's stance on this provision is substantially different from that recommended by Industrial Magistrate Cawthorne. Once again, as he has done on many occasions, the Attorney has referred to the Cawthorne Report when it best suits his argument (as is his right), but has neglected to refer to it when it does not support him.

Page 30 of Cawthorne's final report recommends two things. The report recommends that the grounds for conscientious objection to union membership should be widened substantially. He states:

It was widely acknowledged that the present provision which restricts conscientious objections on religious grounds only is too narrow. My own view is that the ground should be widened to one of conscience generally. A further step would be to allow an exemption to be granted where a person genuinely objects on the grounds of conscience or other deeply held personal conviction to being a member of any trade union whatsoever or of a particular trade union.

The last few words were taken from British legislation. To be fair to Cawthorne, he goes on to say that the words 'whatsoever or of a particular trade union' takes it a little too far. However, in his report Cawthorne clearly argues that the present restriction is too narrow. I understand that there are only about 15 current conscientious objectors who have gone through the long procedure to obtain a certificate of exemption. The reason for such a small number is that they can only object on the basis of religious grounds. Any other deeply held personal or passionate convictions against being a member of a trade union because that amounts to supporting the Australian Labor Party by way of fees, levies or whatever cannot be considered. A whole range of other deeply held convictions, other than religious convictions, equally cannot be considered as a reason for a certificate of exemption.

So, Magistrate Cawthorne has recognised the problem and has recommended that the position should be made more flexible. My amendment is substantially along those lines. The amendment says, 'genuinely objects on grounds of conscience or other deeply held personal conviction'. The difference between my amendment and Magistrate Cawthorne's is that he says, 'to be a member of any trade union whatsoever or of a particular trade union'. On taking advice I was told that the way in which the amendment has been phrased will cover all the points that should be covered for those seeking certificates of exemption.

The second part of the amendment relates to the procedures to be adopted for a person wanting to obtain a certificate of exemption. Again, it follows the recommendation of Magistrate Cawthorne, who points out that at present in the State arena it is a very formal procedure and the particular union or registered association can become involved so that the person who must argue for the certificate of exemption has to engage in formal argument against the union advocate or representative in a formal hearing in open court. Magistrate Cawthorne points out that in the Federal arena the procedure is much more flexible and informal and that, in his view, it is obviously much more preferable. Magistrate Cawthorne says that the action is commenced just by a straightforward approach to the Registrar who makes his decision following a personal interview with the applicant in his chambers, without the relevant union or registered association being present. So, the person who is seeking to obtain a certificate of exemption does not have to get involved in complex and formal argument with representatives of the union, and in Magistrate Cawthorne's view and in my view that should apply.

It is an argument about a deeply held personal conviction of the person. It is up to that person to convince, in the Federal arena, the Registrar or the appropriate person in the State arena, about that deeply held personal conviction. Really, there is no need at all for the relevant union to be involved. The union has no knowledge of what the person's personal convictions may or may not be, and it ought not to be involved at all. The amendment attempts to give some guidelines to introduce informality and says:

shall be determined by the Registrar with the minimum of formality and no registered association shall be entitled to appear before the Registrar in relation to the application.

They are the two provisions in my amendment. They are supported by Magistrate Cawthorne, and I believe that, in all justice, now that we will still have the iniquitous preference to unionists clauses or compulsory unionism clauses in the legislation, the Committee ought to make it at least a little easier for those who have a genuine personal conviction that they do not want to be compelled to join a union. The procedures should be made more informal so that these persons can obtain their certificates of exemption and not have to be a member of the relevant trade union.

The Hon. C.J. SUMNER: The honourable member's amendment is opposed by the Government, which believes that it goes too far in terms of what criteria can be established for conscientious objection. Generally, that is confined to religious conviction. That has been the tradition in the law in South Australia for some time. There does not seem to be a large number of complaints by people who have been unable to get exemptions in respect of deeply held personal convictions. The religious conviction is covered and, in the Government's view, that is adequate.

The Hon. K.T. GRIFFIN: I support the amendment. If they reflect on the days of conscription and conscientious objection, honourable members will note that conscientious

objection was not limited to objection on religious grounds, although those grounds seemed to be predominant as the grounds for various applications for exemption for military service. Although religious grounds in this State have for some time been the basis for conscientious objection it does not mean that the grounds for conscientious objection ought to be limited for ever and a day to those grounds.

The Hon. Robert Lucas should be commended for raising this issue because, in consequence of this Bill, quite serious impositions will be placed on employers which many employees of goodwill will not want to see placed on them. Undoubtedly, unions will have a great deal more muscle than they have at the moment and there will be much greater incentive, and much less deterrent to use that muscle. It is quite likely that the way in which unions operate under the terms of the principal Act as amended by this Bill will be quite objectionable to ordinary, reasonable citizens of South Australia.

If a person has a basic conscientious objection to joining a union on grounds other than religious grounds, then that person ought to be at liberty to exercise that right. There is provision for that to be tested under the Act, so it is not as though a person merely says that he has objections. If persons are put to the test they can be required to develop the grounds upon which they have their conscientious objection. So, the broadening of the grounds for conscientious objection are in my view quite proper and become much more necessary as a result of the very serious restrictions on rights imposed by this Bill.

The Hon. G.L. BRUCE: From my experience, the deeply held personal conviction will be the hip pocket nerve. People object mainly to having to pay out money to join a union or an association and if the requirement to pay money is waived, they would join the union without worry. I suggest that in widening the provision to encompass a deeply held personal conviction we will get into the area where every Tom, Dick and Harry goes before the court to save his hip pocket nerve.

The Hon. R.I. LUCAS: The Hon. Mr Bruce has missed the import of the amendment. He talks about the deeply held conviction being the hip pocket nerve. A person who is lucky enough to obtain a certificate of exemption will still have to make the same financial contribution as an individual member. If the fee is $80 a year, it still has to be paid, but it does not go to the union. There was an argument about whether it goes to charity or the coffers of big Government. The Hon. Mr Bruce claims that that is a reason to avoid having to make any payment. The person still has to make the same payment of, say, $70 or $80. That does not enter into the argument.

The Hon. G.L. Bruce: My point is that when they find that out they are quite happy to join the union, anyway.

The Hon. R.I. LUCAS: Why oppose it then?

The Hon. G.L. Bruce: Because they thought that they would not have to pay any money.

The Hon. R.I. LUCAS: If there is no problem, the Hon. Mr Bruce should be on this side with us supporting the amendment. If those people are not going to be worried about it, then he should support the widening of the provisions. Rather than criticising the Hon. Mr Bruce as I was just about to do, I will compliment him again and say that the honourable member has made an honest contribution in this debate. We look forward to seeing him support this amendment.

The Attorney says that not many people are worried about this provision so that there is not much to worry about. At the moment only about 15 people have qualified under the religious objection clause. The reason for that is not because other people would not like to have a conscientious objection certificate, but because the provisions are too narrow. If the Attorney had read the contributions that were made during the second reading debate, he would have noticed evidence that contradicts the view that he puts. While the Attorney is in the Chamber, I will again quote from an article headed 'Changes in union membership in the 1970s and beyond' by D. W. Rawson from the Australian National University. On page 40, the following appears:

> Secondly, there is a substantial and perhaps growing minority of unionists who belong only because they believe they must do so in order to retain their jobs. A survey in 1976 suggested that about 25 per cent of unionists were unwilling conscripts to unionism . . .

So, the figure from a 1976 survey was only 25 per cent. As I indicated during the second reading debate which, obviously, the Attorney did not bother to read, I have not been able to find a copy of the survey methodology to ascertain whether the sampling mechanisms or questionnaire design were satisfactory. So, we are taking it on the basis of this article. It continues:

> . . . and that the proportion was probably higher in some of those unions which had grown most rapidly during the 1970s, sometimes because of closed shop agreements between their unions and their employers. Data not yet published from a survey in 1979 suggests an even higher figure.

So, Rawson is suggesting that a higher figure than 25 per cent are unwilling conscripts to unionism. Of those, obviously not all will qualify under the provision of a deeply held personal conviction, because it is not automatic: they will have to convince the appropriate person of their deeply held personal conviction. For the Attorney, too, off the top of his somewhat balding head, to suggest—

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: What about 'Rob the blob' and 'magic mushrooms' from your colleague? Did you say anything about that?

The CHAIRMAN: Order!

The Hon. R.I. LUCAS: You made no comment at all.

The CHAIRMAN: Order!

The Hon. R.I. LUCAS: The Attorney has suggested that no-one is really concerned about this provision and that, therefore, we need not support it because there is no demand for it. That is wide of the mark. There is evidence here. I ask the Attorney to provide his evidence for his off the top of his head assertions that there is no support for these provisions.

The Hon. K.L. MILNE: I have listened previously to the discussion on what should happen to the money that is to be paid by conscientious objectors.

The Hon. R.I. Lucas: We are not on that provision. We are widening the provisions for conscientious objections.

The Hon. K.L. MILNE: Even if you are, I want to put in the minds of members in this Council that the correct place for contributions from conscientious objectors is surely the welfare fund of a union, so that that money will help the union but not give the person membership of that union. It is quite illogical for the money to be paid to the Children's Hospital or into general funds when that person is asked to help the union. That person has an obligation to help the union or the people belonging to the union, as his working conditions have been obtained by that union. Such persons should be pleased to donate to the welfare fund of that union where the money could be spread amongst the members, but not with membership being a condition.

The Committee divided on the amendment:

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

Noes (9)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, C.W. Creedon, M.S. Feleppa, I. Gilfillan, Anne Levy, K.L. Milne, and C.J. Sumner (teller).

Pairs—Ayes—The Hons J.C. Burdett and R.J. Ritson. Noes—The Hons J.R. Cornwall and Barbara Wiese.

Majority of 1 for the Noes.

Amendment thus negatived.

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

Page 23—
Line 20—leave out 'section' and insert 'sections'.
After line 25—Insert new subsection as follows:
'(3a) No person shall harass or intimidate another person on the ground that he is the holder of a certificate under this section.
Penalty: Five hundred dollars.'

I should have thought that there would be no argument with the amendments, as it is important in any industrial field that there be no harassment of individuals by any person.

The Committee divided on the amendments:

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

Noes (9)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, C.W. Creedon, M.S. Feleppa, I. Gilfillan, Anne Levy, K.L. Milne, and C.J. Sumner (teller).

Pairs—Ayes—The Hons J.C. Burdett and R.J. Ritson. Noes—The Hons J.R. Cornwall and Barbara Wiese.

Majority of 1 for the Noes.

Amendments thus negatived.

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

Page 23—
Line 29—Leave out 'Amounts' and insert 'Any amount'.
Lines 30 and 31—Leave out 'into the General Revenue of the State' and insert 'to a charitable organisation nominated by the person from whom the amount is received'.
After line 31—Insert new subsection as follows:
'(96) In this section—"charitable organisation" means a body established on a non-profit basis for charitable, religious, educational or benevolent purposes.'

The effect of these amendments is to ensure that the money received from people who are conscientious objectors is paid to a charitable organisation. Frankly, the Opposition does not see any reason for the Government to receive the funds to be paid by these people. We believe that it is only proper, as has always been the case, that charitable organisations be the beneficiaries. It has absolutely nothing to do with the Government and is an amendment which I believe the Committee should support.

The Committee divided on the amendment:

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

Noes (9)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, C.W. Creedon, M.S. Feleppa, I. Gilfillan, Anne Levy, K.L. Milne, and C.J. Sumner (teller).

Pairs—Ayes—The Hons J.C. Burdett and C.M. Hill. Noes—The Hons J.R. Cornwall and Barbara Wiese.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clauses 53 to 62 passed.

Clause 63—'Moneys for this Act to be paid out of moneys appropriated by Parliament.'

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

Page 26, lines 4 to 11—Leave out all words in these lines.

The Law Society put a submission to the Opposition on this matter as follows:

> We cannot understand the reason for the proposed insertion of section 174 (2) by clause 63 of the Bill. This would require all prosecutions for breaches of awards to be commenced only by leave of the Full Commission. There appears to be no reason for this, and it would render the business of the Court and Commission quite unworkable.

The Metal Industries Association stated:

> This provision is, in our opinion, quite impractical. As it stands there is an obligation on the Full Commission to sanction any action for an offence and remit same to the Industrial Court. In our view a joining of judicial and arbitral functions in this fashion is without precedent.

I ask members to support the amendment.

The Hon. K.T. GRIFFIN: I support the amendment. A report in the *Advertiser* this morning stated that a spokesman for the Attorney-General had said that the Government had not received any submission from the Law Society. In fact, that submission is dated 2 March and was addressed to the Hon. Mr Wright.

It was not just in respect of this matter, but in respect of unlawful dismissal and appeals matters on which the Law Society felt very strongly. I read the submission into *Hansard* during the second reading debate. This is an appropriate opportunity to say that the Government had the Law Society submission on 2 March and that the spokesman for the Attorney-General was wrong; it was probably languishing somewhere in Mr Wright's office. It is wrong that if offences have been committed the Full Commission, which has responsibility for conciliation and arbitration and not for judicial determination, should be in a position to determine whether or not a prosecution should be launched. Again, it is not a function of the Full Commission and, even if it were, I would still oppose the proposal in the Bill because once an offence is established it ought to be up to the Attorney-General of the day (or other person authorised by Statute to commence the proceedings), to take that decision without interference by, in this case, the Full Commission.

The Hon. C.J. SUMNER: I oppose the amendment. It seeks to remove the provision to require leave of the Full Commission before a prosecution for breach of an award or order of the Commission can be commenced. This was a specific recommendation of the Cawthorne Report and was aimed at using the facilities of the Commission to resolve the issue before proceeding to the prosecution stage in the Industrial Court. Not only does this make good industrial sense, but it is also in keeping with the general direction of the traditional sanction approach that was highlighted in the Cawthorne Report. One of the problems raised by Mr Cawthorne was the easy availability of arbitration. The Government has accepted this proposal as a means of encouraging the resolution of industrial disputes at an early stage. The amendment is opposed.

The Hon. I. GILFILLAN: We support this amendment, which is similar to the one that we have drafted. I will not repeat the argument, but just indicate that we will support the amendment.

Amendment carried; clause as amended passed.

Clause 64 passed.

Clause 65—'Amendments to the Judges' Pensions Act, 1971.'

The Hon. K.T. GRIFFIN: This relates to the amendment which was the second amendment that we considered in Committee: that is in relation to non-judicial members of the Commission being deemed to be judges for the purposes of the Judges' Pensions Act. Because that first amendment was defeated by way of division there is no point in proceeding with my amendment.

Clause passed.

Schedule passed.

Clause 45—'Approval of Commission in relation to industrial agreements'—further considered.

The Hon. M.B. CAMERON: I do not intend to proceed with the amendment that I moved earlier. I will just oppose the whole clause.

The Hon. I. GILFILLAN: We have considered this matter and taken in the contribution to the debate by members of the Opposition. It appears that there is good reason to reconsider the significance of the amendment by the Attorney-General. As I said earlier, we had misgivings as to this

consequence, but in balance we believe that the argument for it is countermanded by the damage that it could have on unregistered associations entering into agreements which suit their circumstances. Our intention is to oppose the Attorney-General's amendment.

The Committee divided on the Hon. Mr Sumner's amendment:

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

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

Pair—Aye—The Hon. J.R. Cornwall. No—The Hon. J.C. Burdett.

Majority of 3 for the Noes.

The Hon. Mr Sumner's amendment thus negatived.

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

Page 20, lines 27 to 31—leave out subsection (4).

This provision means that the Registrar shall give the registered association that has, according to him, an interest in the matter the right of entry into the application. These agreements are between the parties and should not be subject to outside intervention. This will cause difficulty every time an application for agreement is taken up. Surely we must have faith in the Registrar to carry out his work. We do not want any of these situations exacerbated by the entry of an outside party.

The Committee divided on the amendment:

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

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

Pair—Aye—The Hon. J.C. Burdett. No—The Hon. J.R. Cornwall.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clause 47—'Effect of industrial agreement'—reconsidered.

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

Page 20—

Line 41—After 'Subject' insert 'to subsection (3) and'.

After line 44—insert new subsection as follows:

(3) Where an industrial agreement was in force immediately before the commencement of the Industrial Conciliation and Arbitration Act Amendment Act (No. 4), 1983—

(a) subsection (2) does not apply to the agreement as in force immediately before the commencement of that amending Act;

but

(b) where the agreement is varied after the commencement of that amending Act, any provision of the agreement shall then operate to the exclusion of inconsistent provisions of an award.

This amendment is a transitional arrangement to cover existing agreements that have been registered prior to the commencement of the changes proposed in this Bill and which therefore have not been subject to the vetting provisions under the new section 108 *(a)*. This transitional arrangement will mean that in so far as existing agreements are concerned the law as it now stands in relation to the overlap of awards and industrial agreements will apply until such time as those agreements are varied and vetted in accordance with the procedure under the new section 108 *(a)*.

The Hon. K.T. GRIFFIN: Does this mean that, if new subsection (2) does not apply to an existing agreement, the existing agreement, if inconsistent with an award, is overridden by the award, or is there some other consequence to that? I can understand the need for some sort of transitional arrangement but the exclusion of the application of subsection (2) does not necessarily leave the law as it is at the present time.

The Hon. C.J. SUMNER: I understand that the position is as outlined in the Port Pirie taxi case where the Full Court construed the existing section of the Act as not sanctioning the making of an industrial agreement when a relevant award pre-exists so as to oust what would otherwise be the operation of that award for particular persons. The law established in that case will apply to agreements that had been entered into prior to the coming into existence of this Act.

The Hon. K.T. GRIFFIN: I do not have any objection to the law as it is presently applying to agreements made before this Bill comes into operation. However, it seems to me that the consequences of the amendment are that present subsection (2) no longer has any effect, so there can be neither protection nor powers granted by that subsection and vested in the Industrial Commission. With the present situation all we will have will be section 110 (1) and nothing more. I am trying to come to grips with the consequence of, in effect, suspending the operation of subsection (2) when it repeals the present subsection (2).

[*Sitting suspended from 1.5 to 1.45 p.m.*]

The Hon. K.T. GRIFFIN: Before the luncheon break I raised some questions about the amendment. I have now had an opportunity to further consider my doubts. With the benefit of consultation, I am now satisfied that the Attorney's amendment seeks to do no more than provide that the present provision in respect of awards, *vis-a-vis* industrial agreements, remains, notwithstanding the passage of this Bill. I think that is quite appropriate in terms of a transitional matter, and I am prepared to support it. It does not prejudice future variations to the agreement which may have been made before the day that the Bill comes into operation; nor does it create any prejudice for future agreements. Therefore, I have resolved the doubt that I had about the amendment.

Amendment carried; clause as amended passed.

Title passed.

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

That this Bill be now read a third time.

The Hon. M.B. CAMERON (Leader of the Opposition): I want to take this opportunity of saying a few words about the Bill as it now stands after coming out of Committee. The best one can say about it is that it is slightly improved upon the Bill with which we were presented initially. Certain provisions are no longer in the Bill. The subcontractors, the area where the Government attempted to step into, are no longer there; the demotion provisions are no longer there; preference to unionists remain as provisions we believe go too far; and small associations can still be joined to industrial agreements. However, that does not alter the fact that this Bill still has major problems for this State and for employers.

The attempt in earlier times for the Government to say that this was a balanced Bill is shown by the Bill as it has come out of Committee as absolute nonsense. It is the result of an ambit claim put in by the Government which was subject to some agreement with representatives of employer groups but that agreement was on an ambit claim. We now have some slight improvement again on the ambit claim. Nevertheless, the whole thrust of this Bill has turned towards the union movement. There is no benefit for employers in the Bill and I doubt whether there is any benefit for employees. It is a union Bill. It has been designed purely to increase union power.

In respect of employment opportunities in South Australia it will have serious effects. The retrospectivity provisions are still in the Bill and there is no doubt that that will create severe problems for employers in respect of awards made. This means that employers will not know where they stand in respect of awards. They will not know whether awards are going to be backdated beyond the date of application, they will not know when awards in the Federal jurisdiction will apply, at what time they will apply, or when they will become applicable to the State jurisdiction.

The question of compensation is another area where, I predict, there will be severe problems for employers in South Australia. The Government has stepped into an area, supported by the Australian Democrats, where it is totally unnecessary. I predict that this will become a major financial problem for employers. Why the Government needed to step into this area when on most occasions when reinstatement provisions have been considered agreement was reached between the two parties concerned, I do not know. No, the Government has to have a jurisdiction for it and the jurisdiction will now operate on compensation. The Government will have to wear that, too, along with the Australian Democrats. The question of torts will still be a problem and there is no doubt that industrial disputes in this State will go for much longer as a result of the removal of the ability to take out an immediate injunction.

That ability has now gone and disputes will start and finish before an injunction can be taken to stop economic damage to the employer. Inevitably, that will lead to problems with disputes, exacerbation of disputes, lengthening of disputes and problems in courts afterwards because the disputes will become so expensive for employers that they will be forced into tort action and forced to recover economic loss.

On most occasions in the past tort action was not necessary as the injunction stopped the economic damage occurring because the dispute was stopped. There is no doubt that, as a result of this Bill, employers will suffer loss of profit and employees will suffer loss of employment opportunities in this State.

I am surprised to find the Hon. Mr Milne and the Hon. Mr Gilfillan supporting so much of the Bill because they indicated quite clearly in the first place—the Hon. Mr Milne in particular—that they would not support any measure that reduced this State's competitiveness. Well, they have just done that in supporting the provisions that they supported. I am surprised that the Hon. Mr Milne did not stick to what he said originally but went back on his statements made prior to the introduction of the Bill. There is no halfway measure: one is either for employment or against it. In this case the Australian Democrats have shown themselves to be against ensuring that our competitive edge compared with other States is kept.

The Opposition will be opposing the third reading. Nothing will be lost if this Bill is lost. In fact, the State will gain. I urge members, including the Australian Democrats, to reject this Bill.

The Hon. K.T. GRIFFIN: I place on record my concern that this Bill appears to be on the verge of passing and bringing into law a quite substantial erosion of the rights of citizens of South Australia. The Bill impinges on their right to belong or not to belong to a union as they see fit. It imposes substantial penalties for breaches of the Act. The Bill also takes out of the court and puts into the hands of lay persons the right to determine matters involving unlawful dismissal, with no limit on the amounts that can be awarded by way of damages, and with very limited rights of appeal.

I see that as a very clear and unequivocal infringement of basic rights of the citizens of South Australia. There are a number of other areas which cause concern. I do not want to dwell on them, because I have alrready spoken at length in this respect. Suffice to say that this Bill will not only create quite a considerable additional cost for employers which will flow through to the ordinary members of the community but will also impinge most significantly on the rights of individuals within the work place—not only those on the employing side, but employees.

I believe that it now takes industrial disputation beyond the normal civil law and places it in the hands of a slow and tedious conciliation and arbitration process with no sanctions, rights and/or remedies available in the ordinary courts of the land. So, it puts unions and union members and officials above the law and gives to an untrained body, in terms of judicial decision making, the right to determine what a citizen may or may not do in the ordinary courts of the land. So, I predict that the results of this Bill, when it becomes law, will directly affect the people of South Australia by placing limitations on their existing freedoms and by the additional impost which it will undoubtedly create as a result of the significant move into the pockets of the unions of South Australia. I, too, oppose the third reading. I protest most vigorously, although it looks as though the Bill may become law as a result of the actions of the Labor Party and the Australian Democrats.

The Hon. I. GILFILLAN: I am sorry that there is so much apprehension about and fear of the passing of this Bill. It is reasonable to observe that the Democrats do not share the entire freedom of a Party in Opposition. Although there may be in any Bill that comes before us aspects with which we might not entirely support or agree, because of our invidious position (and it will be the same if the members currently in Opposition are in Government), the Government will be looking to us for tolerance and understanding, and we guarantee to give that to it. That in no way diminishes what I regard as the positive features of this Bill, because there has been a serious attempt to continue to maintain South Australia's premier position as the State with the lowest industrial dispute record. That is a positive plus for all involved in manufacture or any other form of business or industry in South Australia. No doubt exists that an atmosphere in which the workforce and the employers feel that the climate is one of co-operation, rather than one of confrontation or conflict, will result in a better economic performance.

The Hon. Trevor Griffin and possibly the Hon. Martin Cameron also said that we have recognised that one of the prime concerns of South Australia is to ensure that it does not increase the cost to its industries and employers. We have attempted in our amendments to reduce to a minimum any possible increases in costs. We have asked specifically for increases in costs to be spelt out for us by those who are much closer to the industrial scene than are we. Having asked for that information, we have not had anything concrete presented to us to suggest that there is a precise example of where the cost to industry will rise as a result of this Bill. However, as predicted by Opposition members, we will be supporting the third reading.

The Bill offers many people other than employees an optimistic future for industrial relations in South Australia. It is not the definitive word and there is no reason why we should not continue (in fact, it is our responsibility, to do so), to look at the way in which Acts affect the lives of South Australians. We are certainly not a closed book on the subject, and I hope that we have illustrated our ability to be receptive to ideas and arguments from wherever they come. Indeed, we welcome them. I congratulate the Government on the way in which that it has dealt with this Bill in this Chamber. It has listened to and taken heed of

viewpoints other than those emanating from parties for whom the Opposition infers the Government is virtually operating, namely, the trade unions. I see no reason why the Government should disguise that fact. It is a massive area of its support and representation and we expect that it will be sensitive to the needs of trade unions in the industrial scene. I believe that there is a balance. Reports from all sides of the spectrum are that there are many pluses in the Bill. The Democrats believe that we have reduced, if not eliminated, the faults, and we support the third reading.

The Council divided on the third reading:

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

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

Pairs—Ayes—The Hons J.R. Cornwall and C.W. Creedon. Noes—The Hons Diana Laidlaw and R.J. Ritson.

Majority of 1 for the Ayes.

Third reading thus carried.

Bill passed.

ADJOURNMENT

At 2.8 p.m. the Council adjourned until Thursday 12 April at 2.15 p.m.