LEGISLATIVE COUNCIL

Thursday 12 April 1984

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

QUESTIONS

LINEAR PARK

The Hon. M.B. CAMERON: I seek leave to make a short statement before asking the Attorney-General a question about the Linear Park project on the Torrens River.

Leave granted.

The Hon. M.B. CAMERON: Members would be aware that the Linear Park proposal along the banks of the Torrens has been in place for some time. Correspondence has been received from the Corporation of the City of Enfield indicating that some of this land is being disposed of. The letter states:

Dear Sir,

Disposal of land forming part of the Linear Park O.G. Road, Klemzig:

This council at a meeting held on 2 April 1984, became aware of a proposal to dispose of a significant portion of land adjacent O.G. Road, Klemzig, which has formed part of the Linear Park proposals within this council area. The subject land is situated on the western side of O.G. Road adjoining properties on the southern side of Tregoweth Court.

The council has resolved that I write to you and other members of Parliament to express its grave concern at the manner in which the transfer of land has occurred without consultation with the council, and more importantly, at the proposed disposal of land which has formed part of the Linear Park proposal for several years.

It is most disturbing to read and learn that it seems that a decision has been taken, first, to dispose of part of the land set aside for the Linear Park and, secondly, to do it without consultation with a council that would be directly affected.

Is the Attorney-General aware of this decision to dispose of part of Linear Park along the banks of the Torrens River, and will he take steps to suspend that disposal of land until discussions can take place with the Enfield council and any person affected by the disposal?

The Hon. C.J. SUMNER: I will obtain an urgent report on the matter and bring down a reply.

LOITERING LAWS

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

Leave granted.

The Hon. K.T. GRIFFIN: A week or so ago I asked questions about the likely outcome of prosecutions against protesters at Roxby Downs as a result of a decision by Mr Justice Cox to dismiss a case against a protestor charged with loitering on what most people would regard as private property at Roxby Downs. This morning's *Advertiser* indicates that the Attorney-General may have received an opinion from the Crown Solicitor agreeing with Mr Justice Cox's decision and perhaps making a recommendation for closing any loophole in the Police Offences Act.

There is also reference in that report to the Crown having obtained leave from the Full Supreme Court to appeal but that the hearing of the appeal has not yet been heard and a decision as to whether or not to proceed has not been made by the Attorney. In the light of that report, which raises some interesting questions about the 200 prosecutions still pending before the courts, has the Attorney received an opinion from the Crown Solicitor? Does it support the decision of Mr Justice Cox? What recommendations, if any, does it make for the closing of any loophole in the Police Offences Act and, in respect of the decision of Mr Justice Cox, has the Government yet made a decision as to whether or not to appeal to the Full Court?

The Hon. C.J. SUMNER: I have not received a formal opinion from the Crown Solicitor on the matter. I have had some informal discussions and received some advice. Mr Justice Cox in giving his decision indicated that he would grant leave to appeal (that leave has now been granted) so as to protect the Crown's position, but the granting of leave does not mean that automatically the Crown will in fact appeal. All I can say to the honourable member is that no decision has been taken as yet on this subject, which needs careful consideration. The Crown's rights to appeal are protected and, at the appropriate time, after I have given full consideration to the legal advice before me, a decision will be made.

TEACHER EXCHANGE

The Hon. C.M. HILL: I seek leave to make a brief statement before asking the Minister of Ethnic Affairs a question about teacher exchange with Yugoslavia.

Leave granted.

The Hon. C.M. HILL: Part of the Minister's rather lengthy overseas tour—

The Hon. C.J. Sumner: Rubbish!

The Hon. C.M. HILL: It exceeded eight weeks.

The Hon. C.J. Sumner interjecting:

The Hon. C.M. HILL: Eight weeks and two days. You have given me the dates.

The Hon. C.J. Sumner: You cannot add up.

The Hon. C.M. HILL: I can add up all right. Part of the Minister's lengthy overseas tour included an official visit to Yugoslavia. In the press here one of the reasons he gave for that visit was to investigate the possibility of teacher exchange with that country. Some members of the Yugoslav community in South Australia have expressed some concern to me about the Minister's intentions in respect of arrangements for teacher exchange. That concern is based upon the fact that Yugoslavia is a communist country.

The Hon. C.J. Sumner: You went there.

The Hon. C.M. HILL: Yes, I went there quite willingly. What I have stated are the facts.

The Hon. C.J. Sumner: It was a bit more expensive than my trip.

The Hon. C.M. HILL: I spent more time in Yugoslavia at work and not so much time skiing on the Dolomites.

The PRESIDENT: Order! I draw the honourable member back to his explanation.

The Hon. C.J. Sumner interjecting:

The Hon. C.M. HILL: You can quote it all—

The PRESIDENT: Order! The Hon. Mr Hill asked leave to explain.

The Hon. C.M. HILL: He should not be interjecting.

The PRESIDENT: I am asking you, now that I have got you quiet, to go on with your explanation.

The Hon. C.M. HILL: As I said, members of the Yugoslav community here are somewhat concerned as to what the Minister and his Government are going to do on the question of teacher exchange with Yugoslavia.

What discussions were held in Yugoslavia concerning teacher exchange? Were any arrangements concluded with any Republic concerning teacher exchange? If definite arrangements were not able to be made, has the Minister had further discussions with the Minister of Education in

this State? Are arrangements in train for such an exchange to be concluded? If so, can the Minister explain, for the benefit of my South Australian constituents, the basis of the arrangements he hopes to bring to fruition?

The Hon. C.J. SUMNER: Teacher exchange is an important part of the policies of the Government concerning ethnic affairs and multi-cultural education. Unfortunately, in the past we have not been able to organise satisfactory teacher exchange arrangements with those countries from which many of our non-English speaking migrants come. There are teacher exchange arrangements with Canada and the United States that are working satisfactorily and a form of teacher assistantship with Germany and France. To the present time we have not been able to enter into satisfactory arrangements with Italy, Yugoslavia or Greece.

One of the important aspects of multi-cultural education, which has been part of the policy of Labor Governments in this State for some time—indeed, those policies were pioneering in Australia—is the teaching of community languages in schools, including primary schools. Historically the emphasis in Australia and, indeed, in South Australia, was on French and German. Since the war many people from other countries have come to Australia who speak other languages. The Italians in South Australia and Australia are the largest non-English speaking group. Therefore, in the community there is a resource of languages. Italian and Greek are living languages in Australia.

As part of the multi-cultural policies developed over the past 10 years in teaching these community languages in the schools, it is important that individuals from minority backgrounds maintain contact with the language and culture of their country of origin. It is important from the community's point of view because people who do not speak those languages can have contact with them and learn them. My daughter, who has just commenced primary school, already takes lessons in Italian. It is an advantage to the whole community—people not being able to speak community languages have access to them. Further, there is the advantage of broadening Australians' notions of the importance, in the global village of today, of speaking other languages. The Government has attempted to develop this policy. Although more can be done, I believe it has been done with some success. In order for that policy to be successful it is important that there are qualified teachers able to speak those languages well.

One way of assisting that is to have a teacher exchange scheme. That means, for instance, that if a teacher comes from Italy to Australia for 12 months, the students of that teacher have access to a native speaker for the whole of that year. The person who goes from Australia to Italy provides Italian students with the advantage of being taught by someone who is competent in English and that person, because of 12 months spent in Italy, is able to return to Australia with a better knowledge of that language. So, a teacher exchange scheme provides an influx of people to the South Australian Education Department who are competent and fluent in their native language. It provides a double advantage.

If we can organise such arrangements with those countries, we should do so. Unfortunately, it has not been possible to the present time. In 1977 I visited Rome and had discussions with the Minister in the Department of Foreign Affairs concerned with immigration, Mr Foschi. We discussed the question generally but, at that time, there did not seem to be a great deal of enthusiasm from the Italian Government. So, the matter has not proceeded further. However, I can advise the Council that, on this occasion, I had discussions with representatives of the Italian Government, the Slovenian Republican Government in Yugoslavia, the Croatian Republican Government, the Serbian Republican Government, and the Macedonian Republican Government as well as with the Governments of Greece and Cyprus, on teacher exchange.

One of the main problems we have had in this area is in trying to get a satisfactory arrangement when the salary levels between countries with which we are involved are so different. That means that there would need to be some subsidy to the teacher who comes from Greece or Italy to Australia as the salary levels in those countries are not as high as they are here. All those problems were explored. I have not been able yet to formalise arrangements with any of the countries but, certainly, an arrangement with Greece is well advanced and will be based on something that has already been negotiated by the Victorian Government. There was a good deal of enthusiasm in Cyprus for such an exchange and I believe the Italian Government is now taking a more favourable attitude to an exchange with that country.

As far as Yugoslavia is concerned, teacher exchange arrangements are in operation between some of the Republican Governments of Yugoslavia and the Governments of New South Wales and Victoria. There are many fewer people from Yugoslavia in South Australia. When one takes the different languages of the six republics of Yugoslavia, the number is reduced even further. Nevertheless, the question was explored fully by me with representatives of those Governments. As far as Slovenia is concerned, there is no firm proposition. They have not made any arrangements with other States yet.

As far as Croatia is concerned, arrangements exist with the Victorian Government and a teacher from Croatia has been in Victoria for the past 12 months and Victoria has sent a teacher to that republic. I do not believe that the situation is as well developed as with Slovenia but with Macedonia there is an exchange with the Victorian Government. That has to be analysed to see whether it is justifiable in South Australia, given the smaller number of people. I have had discussions with the Minister of Education on all necessary issues and, if it can possibly be done, the Government believes that in terms of contact with countries of origin and in terms of development of multi-culturalism, the development of community language in South Australia is a desirable policy.

Greece is well advanced and Cyprus is enthusiastic. With Italy I made significant advances. With Yugoslavia it is less advanced, and some doubts were expressed by the Croatian Government about the nature of a teacher exchange scheme, but they have someone in Victoria. The next step, as far as Yugoslavia is concerned, is to discuss the matter with the Victorian Government and with the teacher from Croatia who is in Victoria and to then work out whether or not any exchange can be entered into. But, we do not have a large number of teachers of Croatian, Serbian or Serbo-Croatian origin in South Australia. Therefore, because of those limited numbers, it may not be as practicable as it could be for some of the other larger groups. So, that is as full an outline as I can possibly give on the discussions that I have had. There are no firm arrangements at this stage.

The Hon. R.I. Lucas: You can't accuse anyone else of being long winded after this.

The Hon. C.J. SUMNER: The honourable member wanted the information.

The Hon. C.M. Hill: Simply about Yugoslavia.

The Hon. C.J. SUMNER: I thought that the honourable member, as shadow Minister for Ethnic Affairs, might be interested in the other things.

The Hon. C.M. Hill: I knew it all.

The Hon. C.J. SUMNER: You did not know it all.

The Hon. C.M. Hill: I asked about Yugoslavia.

The Hon. C.J. SUMNER: I am telling you about Yugoslavia and putting it into context—telling you about Italy, Greece, Cyprus and the other places.

The Hon. Peter Dunn: Sounds like Dorothy Dowling.

The Hon. C.J. SUMNER: I think that the honourable member and the Hon. Mr Hill would probably be my best customers if I did. Those were the discussions. There are no firm arrangements, but I am hopeful that there will be with some. I have taken up the matter with the Minister of Education and as soon as there are any further developments, the honourable member will hear about them.

The PRESIDENT: The media has asked permission to film without sound in the Chamber this afternoon. I am not too sure what their interest is, but I thought that I would alert honourable members to the fact that there is one camera in the Chamber already.

CEP

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister of Labour, a question about the effectiveness of the CEP programme and its objective to create jobs in areas of high unemployment.

Leave granted.

The Hon. DIANA LAIDLAW: The objectives of the Commonwealth Employment Programme note that special preference will be given to projects that create employment opportunities in areas of high unemployment. To date, however, the majority of projects approved and the bulk of the funds that have been distributed in South Australia have not been directed to the areas that have the highest unemployment levels. I understand that, despite the Minister's concern about this situation and in more recent times the forceful pleas of officers within the CEP unit in this State to councils in those areas of high unemployment that they submit projects for funding, these same councils have not been in a position to oblige. Such councils tend to be the least financially viable councils in this State because of their low revenue rate base. Accordingly, they find it difficult to meet the CEP guidelines, which require councils to contribute at least 30 per cent of the total budget cost of any project that they sponsor.

To meet these criteria these councils would be required to resort to raising an additional loan and later finding the funds for the extra debt servicing commitments. In order to encourage councils in areas of high unemployment to sponsor more projects, will the Minister support a suggestion that for a selected number of such councils the council contribution to a project be determined on a sliding, needs based scale, with the criteria of need being that used by the Local Government Grants Commission?

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

MIDDLE EAST TRADE

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of Agriculture a question about Middle East trade.

Leave granted.

The Hon. L.H. DAVIS: The Minister is well aware of the developing trade between South Australia and Middle East countries in primary industry products and equipment. Indeed, in recent days he has received a delegation from a Middle East country. He would also be well aware of the success of established companies such as John Shearer in developing an operation in South Africa and supplying its well regarded agricultural implements to Middle East countries. However, there is another market that I believe offers great potential for South Australian companies—that is, the area of native flora, trees and shrubs.

I am sure that the Minister is aware of companies such as SANPEC which are attempting to develop a niche in this important market. To give some indication of the scope and potential of this market, one can look at the Saudi Arabian budget, which in one year provides A$200 million to be spent on landscaping. It is generally thought that South Australia has an ideal climate in which to provide flora that is desired in Middle East countries. Nevertheless, some of the companies that have been attempting to establish themselves in this field have had difficulty breaking into this market. Will the Minister say what specific encouragement the Government has given companies involved in the export of native flora from South Australia in the past 18 months and what success those companies have achieved in developing a market in Middle East countries?

The Hon. FRANK BLEVINS: As the honourable member stated, I am aware of the potential throughout the Middle East for South Australian native flora for decorative, landscaping and other purposes. I do not know whether the Hon. Mr Davis is aware of the fact, but we have already supplied quite significant amounts of our native flora to the Middle East. I think about eight or 10 weeks ago a reasonably large shipment of native flora was sent, I think from memory, to Abu Dhabi. I do not have the figures for the consignment with me, but I would be pleased to get them for the Hon. Mr Davis. The shipment was supplied by the Woods and Forests Department and private nurseries. The Woods and Forests Department works closely in assisting private nurseries to develop trade wherever there are opportunities, including the Middle East. As I do not have the figures in my head, I will certainly be pleased to get them for the honourable member and inform him of them next Tuesday.

MOUSE CONTROL

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister of Agriculture a question about mouse control.

Leave granted.

The Hon. PETER DUNN: Mice are presently increasing to plague proportions in the western areas of the State. It is four years since they were last in plague proportions, during which time they created one of the worst nuisances that I have ever experienced.

To give honourable members an idea of the problem, I refer to the *West Coast Sentinel* of Wednesday 4 April, as follows:

> Penong farmer, Bruce Page, described the mice numbers on his property as 'fairly thick'. He said that at night mice in the farmhouse ceiling kept his family awake and he had found dead mice in the rainwater tank. 'Mice are coming into the houses and sheds and creating a bit of a problem,' he said. 'It is probably not a plague now but it is getting to that stage.'

It appears that very little work has been done on mice in this country, and we need more research done on the matter. To emphasise the problem I refer to another article on Mr Don Oakley, a pest officer from Ceduna, who has said that he has been attempting to gain more information on the build-up of the mice population. The article states:

> While mice plagues have been occurring since before most people can remember, the scientific and statistical data on the common mouse is limited. After the plague of 1980 the relevant authorities decided that more information was required that might enable people to predict when a plague was likely.

It is the statistics from the two-year study that revealed the potential for a plague in the region. In a period of two years up to 31 December 1983, only four mice were caught in the stubble paddock. In the first three months of 1984, an alarming 68 mice were caught in the same paddock. On two nights last week, Don caught 73 mice, many of which had been cannibalised. According to Don, everything was eaten bar the bones, a sure sign that life was getting tough for the rodents out on the paddock.

'There is a lack of available information on what is happening prior to a mice plague—whether the numbers explode or if there is a gradual build-up—and no-one can define what a plague is and when it starts,' Don said. 'The statistics are important so a pattern can be established to see if a mice plague is imminent.'

My questions to the Minister are as follows:

1. What position has the Department of Agriculture adopted in monitoring the mice problem and keeping residents in the area informed of potential outbreaks of mice?

2. Has the Department of Agriculture any organised mechanism to deal with the problem in this State, and has it made any endeavours to find a biological control for this persistent pest?

3. If not, are there any future plans to monitor and control this pest?

The Hon. FRANK BLEVINS: Obviously, most members of the Council would have the highest regard for the Department of Agriculture and its head. I pay a tribute to the Department of Agriculture, but to hope that it could ever control mice plagues, I think, takes us back to the realm of nursery rhyme. I am sure that the Hon. Mr Dunn could have gone on quite extensively in his explanation by telling us of the many occurrences of mice plagues and the reasons for them over the years that he has been involved in agriculture. In fact, he probably knows as much as anyone about the problem. The Government and the Department give this matter a high priority. We have at least one officer, and probably more, working full time on this question.

The Hon. L.H. Davis: A mouse patrol.

The Hon. FRANK BLEVINS: Yes. Research into mice and what makes them tick—

The Hon. C.M. Hill: Send them overseas to Portugal.

The Hon. FRANK BLEVINS: If we thought that would be of benefit we would. We regard the matter as being serious. It is a complete and utter nuisance to the people affected, and it makes living conditions very difficult. We have had an extraordinarily good season with fairly significant quantities of grain, hence food is lying around for mice. If the climate is appropriate (a very cool summer) research officers in my Department advised me some time ago that there was a likelihood of a considerable build-up in mice numbers. However, there was not a great deal that I could do about that information although it was quite interesting. I broadcast that information throughout the State through press releases and media interviews, including television: that farmers should take normal farm hygiene measures (and we hope they take them all the time) and be particularly careful around their farms, keeping them clean and keeping grain spillages to an absolute minimum in the hope that that would minimise the number of mice. From a completely lay person's point of view, I guess that those precautions do not make very much difference—when they are on they are really on. There is not a great deal that we can do about it. However, we are spending considerable amounts of money on research to see whether there is any possibility of gaining some control.

The Hon. M.B. Cameron: Send them to Portugal.

The Hon. FRANK BLEVINS: I suppose we could try them on a diet of millipedes to see whether we could achieve the ultimate biological control of mice and millipedes—bring them together and hope they damage each other. That would be very pleasant and helpful.

The Hon. K.T. Griffin: Feed the mice poisoned millipedes.

The Hon. FRANK BLEVINS: Stranger things have happened. I have not heard of any biological control agents that would be suitable for mice. However, I will ask the research officer in the Department, who has considerable expertise in this area, whether there are any avenues worth pursuing. If there are, I assure the Council that we will pursue them, just as we are doing with millipedes.

The answer to the honourable member's third question is 'Yes'. We have quite an extensive research programme which is constantly monitored. As a result of that monitoring I was able to warn residents in rural areas several weeks ago that there would be a difficult season because all the conditions were right for mice to breed. When the seasonal conditions are not right, the mice will do as they have done for as long as mice and men have been around—they will find their natural level and will not be a significant problem to the people of the West Coast and other parts of the State. I will obtain an extensive report from the research officer on mice in my Department in relation to what is known about the problem, what we are doing about it, how much we are spending and whether there are any lights on the hill in regard to controlling the problem or otherwise. I will present that report to the Council or, alternatively, I will forward it to the Hon. Mr Dunn privately.

PEACE EDUCATION

The Hon. ANNE LEVY: I seek leave to make a brief statement before asking the Minister of Agriculture, representing the Minister of Education, a question about peace education.

Leave granted.

The Hon. ANNE LEVY: This Sunday is Palm Sunday and, in following a long established tradition, there is to be a peace march on that day which has been widely publicised and which many people are expected to attend. I have heard that similar marches are being held right around Australia, and it is expected that about 150 000 people in Australia will demonstrate their commitment to peace this Sunday.

Interests in peace are not of course limited to peace marches and moves are being made in a number of States to consider a syllabus for peace education to be taught in our schools. I understand that in Victoria the Education Department has a full-time officer engaged in preparing a curriculum for peace studies for use in schools. In Western Australia I understand that there are two full-time people employed in the Education Department preparing a curriculum for peace studies. In South Australia I understand there has been an interest expressed in developing a curriculum for peace studies but that, as yet, not the same commitment of resources by the Department in preparing such a curriculum has been given. Will the Minister consider increasing the effort of our Department in developing a peace studies curriculum for the benefit of all the children in this State, perhaps modelling our efforts along the lines of those in Victoria and Western Australia?

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

DRUG SURVEY

The Hon. R.I. LUCAS: My questions to the Attorney-General concern market research into drug related issues, and are as follows:

1. Does the Attorney-General support the Minister of Health's contention that it is proper for blatant political

survey questions, such as personal approval of the Minister, to be included in taxpayer-funded surveys?

2. Does the Attorney-General accept the Minister of Health's claim that the survey in question did not include a question on State voting intentions?

3. Will the Attorney-General request the Premier to advise all his Ministers not to include blatant political survey questions, such as personal approvals of Ministers, in future taxpayer-funded surveys?

The Hon. C.J. SUMNER: As I understand it, the honourable member's first question is based on a wrong premise. There was not a question included in a taxpayer-funded survey—

Members interjecting:

The Hon. C.J. SUMNER: The Minister indicated yesterday, and I cannot take the matter any further than that, the circumstances in which the survey was taken on drug related issues, and the circumstances in which a question or a survey was taken about his approval rating.

The Hon. J.C. Burdett: It was included in the same way as the other questions.

The Hon. C.J. SUMNER: It was not, as I understand the Minister of Health's answer yesterday, a part, as such, of the survey.

The Hon. R.I. Lucas: He admitted—

The PRESIDENT: Order! You asked the question. Now listen to the reply. You can ask a supplementary question if you like.

The Hon. C.J. SUMNER: The honourable member and I have a different interpretion of what I understood to be the Minister of Health's answer yesterday. If that is the case, the honourable member can indicate at the appropriate time what is his view of the Minister of Health's answer. My impression is that there was a question relating to the Minister's personal approval rating but that it was not part of the commissioned questions and answers that were requested by the Minister and that the payment was agreed to—I understand that the Minister said yesterday that that was concluded—

The Hon. M.B. Cameron: They were so generous!

The Hon. C.J. SUMNER: The honourable member can make any contribution he wishes at the appropriate time. I merely indicate what I understand to be what the Minister of Health said yesterday and, doubtless, if honourable members are under any misapprehension, they can ask him when he returns from the Ministerial business on which he is currently engaged. All I am indicating to the honourable member and the Council is what I understood to be his answer. There was a question related to his personal approval rating which was not part of the official survey and it was not paid for as part of the official survey. The money paid covered the official survey on drug related issues. The honourable member asked a second question.

The Hon. R.I. Lucas: The second question was whether you accepted the Minister of Health's claim that the survey did not include a question on State voting intentions.

The Hon. C.J. SUMNER: In respect of the second question, I have no evidence or knowledge of that one way or the other.

The Hon. R.I. Lucas: You will not support it?

The Hon. C.J. SUMNER: That is not what I said. What I said—

The Hon. R.I. Lucas: You would not want to.

The Hon. C.J. SUMNER: I am not in a position to comment on that one way or the other. It is not a matter within my personal knowledge. I am not in a position to answer the question and I do not intend to, except to say that it is not a matter that is within my personal knowledge. I can neither confirm nor deny the proposition put by the honourable member (assuming that he is putting a proposition). Finally, the honourable member asked me whether I would discuss the matter with the Premier. I do not know that there is any need for me to discuss the matter with the Premier, because he is fully aware—

The Hon. C.M. Hill: He has already discussed it.

The Hon. C.J. SUMNER: I do not know whether he has discussed it or not. As you will appreciate, the Minister left last evening on a Ministerial visit. I do not know whether the Premier has discussed it with the Minister. There is nothing that I can add to the third question. The Premier is aware of the situation.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: The Premier is aware of the situation, as the honourable member would know.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: That is a matter for the Premier.

LOCAL GOVERNMENT SUPERANNUATION

The Hon. DIANA LAIDLAW: I seek leave to make a brief statement before asking the Attorney-General (in the absence of the Minister of Health) representing the Minister of Local Government a question about local government superannuation.

Leave granted.

The Hon. DIANA LAIDLAW: On Tuesday evening when the local government superannuation Bill was debated in Committee I missed the opportunity to ask a question on clause 3 concerning the administration of the scheme. In his second reading explanation the Minister stated:

> The scheme will be administered initially by a life office appointed by the board.

I wanted to ask then and I ask now why the Minister in his second reading explanation saw the need to add the qualification 'initially' if he envisages that a life office will always be administering the local government superannuation scheme? Which body or bodies will administer the scheme in the future?

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

MARKET RESEARCH ON DRUG RELATED ISSUES

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Attorney-General a question concerning market research on drug related issues.

Leave granted.

The Hon. R.I. LUCAS: As was revealed yesterday and Tuesday last as a result of questioning, the Minister of Health has personally been engaged in a cover-up for the past six months concerning a gross abuse of his Ministerial position in using a $32 000 taxpayer-funded survey by a market research company associated with the Australian Labor Party to poll his personal approval level. Whilst the Minister of Health will have to answer, when he returns to the Chamber, for his part in that cover-up, it was aided and abetted, either directly or indirectly, by the Attorney-General.

On 26 October last year during the Appropriation Bill Debate I put a series of questions to the Attorney as the Minister in charge of the Appropriation Bill—six of those in relation to the survey under debate. The fifth of those questions asked for the release of the questionnaire. Five months later I received a reply from the Attorney under his signature and on Attorney-General's Department letterhead saying 'No'. So, the Attorney-General would not release the questionnaire used in this taxpayer-funded survey. It is to be remembered that the taxpayer-funded survey questionnaire would have included all the drug related questions

and the question regarding personal political approval rating of the Minister, irrespective of the Minister's contention that it really was not taxpayer-funded. So, some five months after initially being asked, the Attorney refused to release the questionnaire.

The Hon. C.J. Sumner: It is not within my power to release it.

The Hon. R.I. LUCAS: On Tuesday I asked the Attorney whether he was prepared to ascertain whether or not the questionnaire he was refusing to release included a question regarding the personal approval rating of the Minister of Health. The Attorney, in a long-winded reply, refused to answer the question and refused even to seek information—

The Hon. C.J. Sumner: I didn't. I asked you to refer it to the Minister of Health.

The Hon. R.I. LUCAS: —whether or not the questionnaire had contained that question. In this Chamber the Attorney is Leader of the Government.

The PRESIDENT: The honourable member's explanation should be related to the question. We are not debating the issue.

The Hon. R.I. LUCAS: The explanation is related to the three questions I shall put to the Attorney. First, when the Attorney answered my question on 20 March this year, was he aware that the Minister of Health had included a question on his personal approval rating in the survey? Secondly, on Tuesday last when the Attorney refused to seek an answer to my question, was he aware that the Minister of Health had included that question in the survey? Thirdly, why, on Tuesday last, did the Attorney refuse to seek a response to the question I put as to whether or not he would ascertain whether that question was included in the questionnaire?

The Hon. C.J. SUMNER: The honourable member has made a whole lot of assertions about aiding and abetting some cover-up. I completely and utterly deny that. It is nonsense. It should be put on record that instead of going through a series of 40 questions during the Estimates consideration in the Chamber in October last year the honourable member inserted the questions in *Hansard*. Had he asked the questions individually he would have asked individual Ministers for their responses. As I was in charge of the Bill he asked me some 40 questions. They ranged, as I recall, over almost every portfolio in the Government. Some were mine, which I attempted to answer. He asked some questions of the Minister of Health, and other Ministers. When I received the questions I sent them to the Departments concerned. As he says, that is what took so long, although no longer than what I have had to wait at times. An enormous amount of work had to be done to collate all the answers. I collated the answers from the various Departments and put them in my answer to the honourable member. I would have thought that that was clear. Concerning the second allegation, that I refused to answer the question on Tuesday, that, too, is incorrect. The honourable memberber will see this if he peruses *Hansard*. I said that it was not a matter within my Ministerial responsibility and that he could refer the matter to the Minister of Health who was then in this Chamber.

The Hon. R.I. Lucas: Who refused to answer.

The Hon. C.J. SUMNER: He did not refuse to answer. From my recollection of what happened the question was answered. The fact is that the question has been answered. I was merely doing what I thought was not unreasonable. When the Minister responsible for a particular portfolio is in this Chamber it seems to me that asking me something involving that Minister's responsibility is not appropriate. I said that it was not within my Ministerial responsibility and suggested the honourable member take the matter up with the Minister of Health, which he did. I refute that I failed to answer or did not answer that question.

I do not know the status of the questionnaire. I have not seen it and do not know whether the Minister of Health has seen it. As I understand, he may not have seen it. I understand that when polling of this kind is done the polling organisation is responsible for the method of polling and the preparation of the questionnaire. In so far as I was given information that the questionnaire would not be released, I do not know whether or not it was in my power. It certainly was not individually within my power to release the questionnaire because I have not seen it and have no knowledge of it as such. It was a matter for the Minister of Health. I am not even sure whether he has seen the questionnaire. I do not know whether or not that is the case. It is quite likely that he did not have the questionnaire and was not in a position to release it. The honourable member opposite shakes his head. That is a matter that he will have to take up with the Minister of Health. Certainly, I am not in a position to answer that the Minister of Health knows about the questionnaire. He may; I do not know. I am not in a position to say.

It would be quite consistent with normal practice for the Minister not to have it but to have the final report. I do not have any personal knowledge of the questionnaire. I do not know whether it is with ANOP or the Minister of Health. I recollect some discussion at the time that this matter was finalised about the Minister of Health's personal approval rating, but I certainly did not know anything more than general discussion about that—

The Hon. R.I. Lucas: When did you know that?

The Hon. C.J. SUMNER: That was a matter discussed some time—

The Hon. R.I. Lucas: Last December?

The Hon. C.J. SUMNER: I cannot recall whether or not it was last September, or when it was. Certainly, I had no official discussion with the Minister of Health.

The Hon. R.I. Lucas: You were aware of it?

The Hon. C.J. SUMNER: I am not aware of the questionnaire.

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I do recall some discussions on the Minister of Health's personal approval rating. That is the extent that I know—

The Hon. R.I. Lucas: Before this week?

The Hon. C.J. SUMNER: Of course before this week.

The PRESIDENT: Order! I call the Attorney-General's attention to the time.

The Hon. C.J. SUMNER: Yes, I will complete the question. Apart from that general discussion I do not know what was in the questionnaire, nor have I seen it. In my correspondence to the honourable member in November I merely indicated that the questionnaire would not be tabled. I did that because it was not within my capacity to table it. It was a matter for the Minister responsible to make that decision. That decision was made by the Minister responsible and I conveyed it to the honourable member along with a lot of other information for which he asked.

PRESIDENT'S RULING

Adjourned debate on motion of the Attorney-General:

That the ruling of the President be disagreed to.

(Continued from 11 April. Page 3472.)

The Hon. C.J. SUMNER (Attorney-General): I moved last evening, Mr President, that your ruling in relation to

the expression of non-concurrence with the passage of the Planning Act Amendment Bill be disagreed with. I did that last evening and the matter was adjourned for debate today. I moved that dissent because the matter was considered by this Chamber on a previous occasion, namely, last December, when the Maralinga Land Rights Bill was before us. On that occasion, because there had been some discussion about the powers of the President in relation to section 26 (3) of the Constitution, it was my duty, it having been brought to my attention that there was some doubt about the power of the President under section 26 (3), to obtain an opinion from the Solicitor-General. I tabled that opinion in December when giving a lengthy Ministerial statement. That Ministerial statement asserted, backed up by the opinion of the Solicitor-General, that the President does not under section 26 (3) of the Constitution Act have the power to have a deliberative vote on the third reading of any Bill, but that the expression (which is what it is) of concurrence or non-concurrence is confined to those Bills which require an absolute majority. In tabling that opinion of the Solicitor-General I also mentioned two other opinions, those of Mr J.J. Doyle, QC, of the Adelaide Bar and Mr Castan, QC, now of the Melbourne Bar. I take the opportunity now of tabling those two additional opinions and seek leave to do so.

Leave granted.

The Hon. C.J. SUMNER: I will deal with those opinions later. The correct way to approach the debate is first to look at the intention of the Parliament when section 26 (3) of the Constitution Act was included in the legislation. I refer to the debate of 1973. Indeed, it is worth while for all honourable members and, for you, Mr President, in particular, to realise why it was felt necessary to introduce such a provision. With the change in the method of voting for the Legislative Council to a system of proportional representation throughout the State and with half of the members being elected every three years, there was a possibility that a Party could win a majority of seats on each occasion—that is, six out of the 11 at one election, six out of the 11 at the subsequent election, and provide on the floor of this Council 12 Government members and 10 Opposition members.

The consequence of that would be that, if the Government then provided the President, the President only having a casting vote, any Constitutional Bill (one requiring an absolute majority) could not be passed because there would be no way that the President could exercise any concurrence or vote in those circumstances, because the vote on the floor would be 11 to 10. Whilst that would be sufficient to ensure the passage of an ordinary Bill, it would not be sufficient to ensure the passage of a Bill requiring an absolute majority—Bills dealing with section 8 of the Constitution (the Constitution powers and the like of the Legislative Council and the House of Assembly).

That is the historical reason why it was felt necessary to bring in section 26 (3), to cover the problems of achieving an absolute majority in the Legislative Council with a system of proportional representation, even when the Government had won two elections and achieved 12 members in the Council. That was introduced in the context of the debate around the changes to the structure and the voting system of the Legislative Council. I referred to *Hansard* in my Ministerial statement of 8 December 1983, but I will emphasise one part of it. Mr Dunstan, the then Premier, on 20 June 1973 stated:

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

That is the statement of the Minister in charge of the Bill at that time. That was the intention put before the Parliament in 1973. That statement from the then Premier, Mr Dunstan, seems to be clear in evincing the intention of the Parliament about this matter. I submit very strongly to the Council that that is a very significant factor to take into account when considering as you are, Mr President, in this political context, what you do with section 26 (3). In doing what you have done, Mr President, you have ignored the statements and intentions outlined by Mr Dunstan in 1973.

The Hon. K.T. Griffin: They are irrelevant to statutory interpretation.

The Hon. C.J. SUMNER: The honourable member says that they are irrelevant to statutory interpretation. They are irrelevant in the sense that a court does not take into account under the current rules of statutory interpretation what is said in Parliament. This is not a court—it is a Parliament.

Surely it is possible—indeed sensible—for members of this Council and you, Mr President, in particular in determining what was intended by section 26 (3) to take into account the statements made and the intention of the Parliament at the time. It is not a court of law with which we are dealing here; this is the Parliament, and the Parliament is able to make up its mind on this point, taking into account the statements made in 1973 by the then Premier, Mr Dunstan. I have read that statement. That evinces the intention of the Parliament at the time.

The Hon. K.T. Griffin: That was Mr Dunstan's intention; he did not achieve it.

The Hon. C.J. SUMNER: It was not contradicted by anyone at that time. It was stated by the Premier at the time and he, after all, was the Premier of the Government that introduced the legislation.

The Hon. K.T. Griffin: That does not give him any special status.

The Hon. C.J. SUMNER: It does not give him any special status, except that in determining the intention of the Parliament I would have thought that it was very important to have a statement such as that from the Premier, the Leader of the Government that was responsible for introducing the legislation. That is the first point that needs to be made. On the political point of what was the intention of the Parliament, I say to the Council and to you, Mr President, that that intention is made clear by the statement of Mr Dunstan in 1973.

Turning to the legal situation, again I will refer to the opinion of the Solicitor-General, which was tabled in this Council in December and part of which reads:

> It is the learned Solicitor-General's opinion which this Government accepts that—
>
> *(a)* the provisions of section 26 (3) only apply to Bills that fit the description of those to which section 8 of the Constitution Act applies;

That, you will recall, Mr President, was exactly what Mr Dunstan said. It goes on:

> *(b)* the President of the Legislative Council possesses no deliberative vote, but a casting vote only which is solely exercisable in the event of a tied division on the floor of the Council; and
>
> *(c)* the President of the Legislative Council may not express either his concurrence or non-concurrence in the second or third readings of the Maralinga Tjarutja Land Rights Bill, as it is not a Bill to which the provisions of section 8 of the Constitution Act applies;

That is a situation in relation to the Maralinga Tjarutja Land Rights Bill, which was on all fours with what happened yesterday. That was the clear opinion of the Solicitor-General.

Turning to the other opinions that I have tabled today, I refer first to the opinion of Mr Castan, who on 5 December 1983 said:

In these circumstances, I have come to the view that in the case of the Bill which is presently under consideration, which deals with the Maralinga lands, and which, as I understand it, does not involve any alteration to the Constitution, an indication by the President of his concurrence or non-concurrence in the passing of the second or third reading will be of no relevance.

The provisions of section 26 (2) will apply in accordance with their terms, the question being decided by a majority of votes of the members of the Council who are present, exclusive of the President. Only if the vote is tied will the President be allowed a casting vote, which may decide the matter.

That again agrees precisely with the opinion of the Solicitor-General. It is not qualified; it is a firm legal opinion given by Mr Castan who, I now understand, is a silk practising at the Melbourne Bar.

Further, one of the most respected silks in Adelaide, one of the most respected and eminent barristers in South Australia, Mr Doyle, QC, has this to say:

It therefore seems to me that if, for example, there was a vote 11-10 in favour of a piece of legislation and the President were to express his non-concurrence with the proposed legislation, the legislation should still be regarded as having been passed. In my opinion section 26 (2) in particular requires that the passage or otherwise of legislation be determined by the votes cast for and against the proposal.

In other words, that is another opinion from another eminent barrister to the effect that what you purported to do yesterday, Mr President, was not available to you.

It is general and has been common practice in this Parliament for some time for the President to seek and take the advice of Crown law officers. In this case, I felt constrained to draw it to your attention and to the Parliament's attention so that everyone knew what were the views of the Solicitor-General. It appears that you have not sought, but have ignored, the advice of the Solicitor-General. I find that somewhat disturbing, particularly as in responding yesterday and making your ruling no counter positions were put.

The Hon. K.T. Griffin: It is not an option.

The Hon. C.J. SUMNER: All I am saying is that that has been the convention in this Parliament.

The Hon. K.T. Griffin: Since when? He takes his own advice.

The Hon. C.J. SUMNER: He is taking it from the honourable member, I suspect. I suspect that he may be much better advised to take the advice of Mr Gray, Mr Doyle and Mr Castan than to take the advice of the honourable member opposite. All I am saying is that that has been done in the past. I know that Crown law advice has been sought by the Speaker on a number of occasions and by Presidents of this Council on a number of occasions. In this case that advice which has been tendered has apparently been ignored.

I now address one political question that has been raised by the Hon. Mr Cameron. He has attempted to say that somehow or other the actions taken by the Government are depriving you, Mr President, of a vote and that this in some way or another is undemocratic. All that I can put to you and to the Council is that the conventional situation in the Westminster system is that the Presiding Officer does not have a deliberative vote; he has a casting vote. In the House of Commons it has been a long tradition that the Speaker, when becoming a Presiding Officer, divorces himself from politics, that the Speaker's seat is not contested by the Opposition Party at a subsequent election, and that the Speaker exercises a casting vote only.

If you, Mr President, look at the Australian Federal Constitution you will see that in the House of Representatives the Speaker does not have a deliberative vote; he has a casting vote. In the Senate the situation is slightly different because the Senate represents the States and in that circumstance the President of the Senate was given a deliberative vote but not a casting vote—no situation where Presiding Officers cast two votes. The tradition in the Westminster system has been for the Presiding Officer taking that position to have a casting vote and a casting vote alone.

So, there is nothing in the political observation of the Hon. Mr Cameron that somehow or another we are out to deprive you of a vote. In taking the responsibilities of Presiding Officer, that is one of the consequences that would normally follow. You have a casting vote and you are able to express a concurrence in Bills dealing with constitutional matters where an absolute majority is required because of problems that were seen to exist with the new structure of the Legislative Council in 1973.

I believe that section 26 (2) of the Constitution Act refers to a casting vote, and what you, Mr President have. I assert that you have a casting vote and a casting vote only. In relation to section 26 (3), you are able to express your concurrence or non-concurrence in a Bill relating to the Constitution where an absolute majority is required as it is in section 8 of the South Australian Constitution Act. The word 'concurrence' is used in section 8 and in section 26 (3), but the primary responsibility is that established in section 26 (2), which states that you, Mr President, have a casting vote, and a casting vote alone. I believe that on all those grounds the correct approach for you to adopt is to withdraw your ruling. I believe that the overwhelming weight of opinion tabled in this House, if it counts for anything (and there are three learned opinions), should sway your views on this matter. The opinions include one from those traditionally given the responsibility of advising you, Mr President—the Crown Law officers, and in this case the Solicitor-General.

I recapitulate that, if one looks at the intention expressed in 1973 by the then Premier, Mr Dunstan, one sees that section 26 (3) is to be used in relation to Bills that require an absolute majority. That has been explicitly (and I repeat, 'explicitly') confirmed in the three opinions that I have established, so both in terms of intention of the Parliament as agreed from the *Hansard* record and of the legal opinions obtained by reading the Statute, both come to that conclusion. In that light, I believe that your proper course of action, Mr President, is to withdraw the ruling that you gave and to allow the passage of the Planning Act Amendment Bill.

The Hon. M.B. CAMERON (Leader of the Opposition): It is a sad day when the Attorney-General of this State stands in this House of Parliament and attempts to persuade a President not to exercise his proper role, which enables him to vote in this House. I must express outrage at the attitude of the Attorney-General about the powers of the President to indicate his concurrence or non-concurrence with any Bill at its second reading or third reading stage. For the Attorney to attempt to go through a series of *Hansard* records from another place and by quoting a former Premier try to prove that the power you have exercised, Mr President, does not exist is quite outrageous. It has absolutely nothing to do with the Act or with this debate. The Attorney went on to imply that you, Mr President, were obtaining advice from the Hon. Mr Griffin. I think, Mr President, that, quite frankly, that is an insult to you as President.

The Hon. Anne Levy: He would have more sense, would he?

The Hon. M.B. CAMERON: No, Mr President, because you do not need advice from people on this side, and you showed that yesterday. You did not seek advice from the Hon. Mr Griffin, me or any other person, because it was not necessary for you to do so. You, Sir, are aware, as we are all aware, that you have this right. I am concerned about this issue for two reasons: first, this power has been exercised previously and at that time was not questioned by any person in this Council, any member of the Government or the Opposition, or by the person in charge of the Bill.

The Hon. Anne Levy: It was a private member's Bill.

The Hon. M.B. CAMERON: I thought that somebody would say that. Is the honourable member saying that the President has this power to concur or not concur in a private member's Bill but not on a Government Bill? What a preposterous situation! By saying that, the honourable member has just confirmed that she believes that the President has this power, but selectively.

The Hon. Anne Levy: No I didn't.

The Hon. M.B. CAMERON: Yes, you have, by saying it was a private member's Bill. What on earth has that to do with the present situation? It was a Bill before this Council and the President exercised his power. I will read from the *Hansard* record of 29 November 1973, which relates to the Criminal Law (Sexual Offences) Amendment Bill, the third reading. The Hon. B.A. Chatterton, member for Midland, moved the following motion:

> That this Bill be now read a third time.

The Council divided on the third reading, and the President then stood and said the following:

> I remind honourable members that Act No. 52 of 1973, which I reported having been proclaimed in the *Government Gazette* of 22 November 1973 (that is, the Constitution and Electoral Acts Amendment Act, 1973), provides at section 12 *inter alia:*
>
> (3) Where a question arises with respect to the passing of the second or third reading of any Bill and in relation to that question the President, or person chosen as aforesaid, has not exercised his casting vote, the President, or person chosen as aforesaid, may indicate his concurrence or non-concurrence in the passing of the second or third reading of that Bill. Accordingly—

and listen to these words—

> I intend to exercise the power conferred on me by that section and now indicate to the Council that I do not concur in the passing of the third reading of this Bill. The numbers are now equal on both sides, and the Bill must therefore be allowed to lapse.

Before the President indicated his concurrence the numbers were unequal. I repeat that nobody rose at that time and raised an objection to that step, so we have a precedent properly set down and properly exercised, because there is no doubt that the President of that time had that power. The *Hansard* record for the period of the passage of the Bill that led to this situation indicates quite clearly that some of the Ministers, at least, believed that this power lay in the hands of the President. I refer to what was said by the Chief Secretary of the time (Hon. R.F. Kneebone), who was responsible for the handling of the Constitution and Electoral Act Amendment Bill in the Council. He referred to section 26 of the Constitution Act and the voting powers of the President at that time, saying:

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

Mr Virgo, in a debate on the same matter in the other place, said the following:

> It is a lot of rubbish to say that, because a person has entrusted on him the high office of Speaker or President, he should cease to represent his electors. Is that what Opposition members believe when they say that the Speaker should not have a vote or a say in what is taking place?

These comments from Ministers of the day make clear the President's power as seen through the eyes of those involved in allowing him to indicate his concurrence or non-concurrence. In 1973 the precedent was established in this Council. The Government of the day did not question the power of the President to exercise a vote, which Sir Lyell McEwin used at that time, and nor did any other member. That occurred in 1973, which is over a decade ago. In that time there have been over eight years of Labor Government. Not one Attorney-General, not even the present Attorney-General (until recently), questioned the power of the President or took the opportunity that was clearly available to them to amend the Constitution, if they believed that situation to be wrong. If any of the successive Labor Governments had seriously felt concerned about the power of the President to indicate his concurrence or non-concurrence on any Bill, the option was available to make changes. A decade was available for changes to be introduced—but they have not been. Now we find the Attorney-General with a new found degree of concern. One can only doubt the sincerity of the Attorney-General's protestations.

My concern about the present disagreement with your powers, Mr President, relates not only to the precedent that has already been established, but equally importantly to the desire of this Government, which has made such a great play of issues such as one vote one value and the rights of democratically elected representatives, to eliminate the right of you or any future President to exercise a vote on any second or third reading. As Chairman, you do not have that opportunity, except in tied votes, at the Committee stage. Now the Government wants to deprive you of that right at the second or third reading. That is an incredible situation.

Mr President, in 1984 this Council is a fully democratically elected body. Every member is responsible to his or her electors, which is exactly the same situation as the Federal Senate. The President of the Federal Senate does have a deliberative vote. I am glad that the Attorney-General has confirmed that. The President is in exactly the same position as any other member of this Council.

The Hon. Anne Levy: A casting vote.

The Hon. M.B. CAMERON: A deliberative vote—it is the same thing. If the Government opposite wants to deal with variations between one House and another, let us look at the situation in the British Parliament, which was mentioned by the Attorney-General. That is an incredible situation that the Attorney-General inferred should exist here. Is the Attorney suggesting that the President should no longer stand for election while he is President? If the Attorney is going to make a comparison, that is the type of situation that should exist.

No member is appointed or elected under some restricted franchise. As a result, every member has a right to freely exercise a vote on behalf of his or her electors on any issue where that member sees fit. That power should be no less the President's as any other member of the Council. The Attorney-General has referred to opinions of Queen's Counsel on this matter and of the Solicitor-General. I would suggest that the Attorney-General as a lawyer would be aware that on almost any issue of law it is possible to find prominent and eminent practitioners who could justify a variety of viewpoints. They properly hold those viewpoints all very sincerely, but it is possible to obtain a variety of viewpoints on any matter. If that were not so, there would be no need for the courts.

If the Attorney-General really wants to conduct the affairs of Parliament by waging a battle of Queen's Counsel opinions and counter-opinions, that is for him. The Opposition could just as easily present a host of counter-viewpoints. But the real issue, Mr President, relates to the two points which I have already made. There is a precedent for the exercise of the powers which you used last night, and there is the right of all democratically elected members of Parliament to represent the views of their electors. The Attorney-General would seek to make the President a Parliamentary neuter, if he could, unable to properly and adequately represent his views and the views of his electors.

The Attorney-General has, in passing, referred to the situation in the United Kingdom, as I mentioned earlier. Is the Attorney-General seriously suggesting that at the next election you should not stand for election, Mr President?

As I have said, that is quite different. That is quite different from the election of a President to this Council, who is chosen by the electors as a member of Parliament to represent them and stand at each election at which he or she would normally be required to stand. If the Attorney-General seeks to change the procedures for electing or appointing the President, that is an issue for another debate, but he should not introduce it here in an effort to fudge what should be a very clear issue. The Premier indicated today, I gather, that he intends to fight this matter in the courts. I suggest that such an attempt would be quite improper. Instead of trying to usurp the power of democratically elected members of Parliament and this Council, the Premier should be using the forum of Parliament to argue his case. He threatens to bypass the due Parliamentary process in an effort to win his way. That will bring no credit to the Premier, the Government or the Attorney-General.

The Hon. K.L. MILNE: I rise on a point of order, Mr President. In fact, I seek clarification. I ask the Attorney-General whether he will please inform the Council in precise terms of the ruling that you, Mr President, gave and to which the Attorney is moving dissent. If possible, will the Attorney quote the ruling verbatim?

The PRESIDENT: Order! There is no point of order. However, if the Attorney-General cares to answer, that is quite all right.

The Hon. C.J. SUMNER: The ruling is simply that you, Mr President, have the right to express non-concurrence with the Planning Act Amendment Bill and by thereby expressing that non-concurrence that is considered to be a vote which ties the numbers in this Council on that point and, therefore, leads to the defeat of the Bill.

The Hon. K.T. GRIFFIN: I was about to make the very point that there is no ruling on the decision about which the Attorney-General can move disagreement. Although I do not intend to defeat this motion on that basis, I think it is important to have it on the record that there is no ruling or decision of the President against which Standing Orders will allow the Attorney-General to move disagreement. Mr President, what you have done is to vote by indicating your non-concurrence at the third reading of the Bill. Once that is done there is no decision upon which the Standing Orders will then come into effect. Notwithstanding that, the critical issue is what is the meaning of section 26 of the Constitution Act and what is the meaning of section 8 of that Act. Section 26 provides:

(1) The Legislative Council shall not be competent to proceed with the dispatch of business unless there are present, including the President, or the person chosen to preside in his absence, at least ten members of the Council.

(2) All questions which arise shall be decided by a majority of the votes of those members of the Council who are present exclusive of the President or the person chosen as aforesaid, who shall be allowed a casting vote.

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

Section 8 of the Constitution Act provides:

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.

It should also be noted that while section 26 deals with the power of the President of the Legislative Council there is almost an identical provision in section 37 relating to the powers of the Speaker of the House of Assembly. This question is not just a question of the power of the President but also a question of the power of the Speaker.

The Hon. C.J. Sumner: Does section 26 (3) talk about votes?

The Hon. K.T. GRIFFIN: We will get to that. Section 26 (2) states:

All questions are to be decided by a majority of the votes of those member of the Council excluding the President who is allowed a casting vote.

Obviously, that subsection not only relates to the handling of Bills but also to motions, resolutions and consideration of Bills during Committee. It is interesting in that context that the decision is to be made by a majority of votes of the members of the Council exclusive of the President, so it suggests that, while the President has a casting vote, he is not to vote on that occasion. Section 26 (3) deals with the position where the question arises 'with respect to the passing or the second or third reading of that Bill'.

It is interesting that it refers to any Bill. It does not say 'any Bill seeking to amend the Constitution Act' or 'any Bill seeking to amend the Constitution Act which affects the power of the Legislative Council or the House of Assembly'. It says 'any Bill'. Quite obviously, in the context of section 26 (3) there is no limitation on the sort of Bill upon which the President can indicate his concurrence or non-concurrence in the passing of the second or third reading of that Bill. The Attorney-General and the Solicitor-General have claimed that concurrence is not a vote.

I assert that they have missed the point. If their interpretation is correct then, of course, section 8 has some rather curious terminology in it. Under section 8 it is not lawful to present to the Governor for the Sovereign's assent any Bill amending the Constitution unless the second and third readings of that Bill have been passed with the concurrence of an absolute majority of both Houses. Therefore, any Bills to alter the Constitution Act in the context of section 8, where members voted in favour but have not indicated their concurrence, could be said to have not conformed with that section.

If the opinions of the Attorney-General and the Solicitor-General are correct that the President may only indicate his concurrence or non-concurrence in the passing of the second reading or third reading of a Bill to amend the Constitution Act, what are the other members constituting the absolute majority required to do? How do they indicate their concurrence?

They indicate their concurrence by voting and, if the other members indicate their concurrence by voting, then the use of the word 'concurrence' is interchangeable with the word 'vote'. For the purposes of the Constitution Act, when one reads section 8 and section 26 together, 'vote' means 'concurrence'. Any attempt to limit section 26 to apply only to section 8, second and third readings, while it may be convenient for the Government, ignores the logical use of the English language and the proper interpretation of the Constitution Act. Concurrence in section 8 includes 'vote' and the only interpretation of section 26 (3) is that 'concurrence' also means 'vote'. The meaning is identical in both sections.

The Attorney has referred to the 1973 debates in relation to section 26 (3). He has attempted to assert that we should have regard to what the then Premier said in introducing

the Bill. He also said that we should draw a distinction between the way the courts interpret the Constitution Act and any other Act and the way that this Council ought to interpret the Constitution Act. That is nonsense.

Whether it is a Parliament, whether it is a House of Parliament or whether it is a court, the only proper method of interpreting a Statute is to have regard to what is in the Act itself. That is the intention of Parliament. You do not take into consideration extraneous matters which may have been referred to in *Hansard* and the newspapers and which may have been referred to by Parliamentary reports—

The Hon. C.J. Sumner: That is a ludicrous argument.

The Hon. K.T. GRIFFIN: It is not a ludicrous argument. If you knew your law you would know that the only way to interpret Statutes is to look at the words in the Act.

The Hon. C.J. Sumner: This is not a court of law—it is Parliament.

The Hon. K.T. GRIFFIN: If we were to have regard to everything that was said in *Hansard* to interpret a Statute—

The Hon. M.B. Cameron: By the Premier!

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: By the Premier or anyone else, we would have every member of Parliament making his point of view in respect of a Bill and, when the Bill was passed, we would have plenty of work for lawyers. The legal aid system would be short of money and lawyers would be wealthy and driving Rolls Royces because they would have to do so much research that they would not have time to go into court.

The Hon. C.J. Sumner: That is one thing that you'll never have to do.

The Hon. K.T. GRIFFIN: That is your opinion. It is ludicrous to suggest that we ought to have regard to the debates in Parliament in order to interpret the Constitution Act or any other Act of Parliament. It may be appropriate, if you pass a Statute as has been passed in the Commonwealth arena, that in interpreting the Statute the courts have to have regard to the purposes and objects of the legislation. That is not the position in South Australia.

It may be that, if you go as far as the Victorian Government is proposing to go, by introducing a Statute which would require the courts to have regard to all Parliamentary debates, committee reports and everything else which affects a Statute, then that is a different question. In South Australia that is not the law. Parliament has to interpret the law just as it would be interpreted out in the community. The fact that Mr Dunstan may have said something in Parliament that the Attorney may now want to use to support his point of view is quite irrelevant. If this Council is to contravene the provisions of a Statute in respect of the rights, obligations and duties of its members, it has to be done by an Act of Parliament which passes both Houses of Parliament and is assented to by the Governor. That is clear in section 9 of the Constitution Act, which provides:

> Parliament may by any Act define privileges, immunities and powers to be held, enjoyed and exercised by the Legislative Council and House of Assembly and by the members thereof respectively.

That requires an Act of Parliament to aggregate the rights of any member. It is clear on the face of it that you, Mr President, or whoever occupies the position of President or Speaker from time to time under the Constitution Act, has a right to indicate concurrence or non-concurrence at the second or third readings of any Bill and that those two words are synonymous when voting for or against a Bill. The Premier in this afternoon's *News* is reported as saying that if he does not get his way he will go to court. Let him go to court, but he will find that on all the cases he will not be able to be heard because the court will not interfere in the way in which Parliament goes about its affairs. Otherwise, you put the courts above the Parliament.

The Hon. C.J. Sumner: You are putting Parliament above the law.

The Hon. K.T. GRIFFIN: No. Let the Premier go to the Supreme Court, because it will be fought every inch of the way if it ever gets off the ground. I suggest that what the Premier is seeking to do is to bluff us.

The Hon. L.H. Davis: Has he had legal advice from his Attorney-General?

The Hon. K.T. GRIFFIN: He might have had advice but it was not proper legal advice. The other suggestion I have heard is that, if the Premier cannot get his way in court, he will go to the Governor. That raises some very interesting constitutional questions about how, first of all, this Council's vote will get to the Governor.

It has to get there after the President sends a message to the House of Assembly indicating that the Bill is returned with the support of the majority of the Legislative Council. That cannot occur. If it does not occur then in some way or another it suggests that the Premier is going to endeavour to get a message to the Governor saying, 'Notwithstanding we have not heard from the Legislative Council, I give you my certificate as Premier and as a politician that this Bill has been passed by both Houses of Parliament.' That puts the Governor in an invidious position because, constitutionally and ordinarily speaking, he would be required to act in accordance with the advice of his Ministers. But, he is also subject to directions and instructions from the Sovereign and to the letters patent. They certainly do not allow the Governor of the day to assent to legislation when it has not been properly passed.

So, we are going to have a very interesting constitutional crisis on our hands later if the Premier decides to usurp the power of the Parliament and give the Governor a message indicating that the Bill has been passed by a majority of both Houses. It will raise other interesting questions, too, because there will have to be two certificates which go with that Bill to the Governor; one by the Attorney-General certifying that the Bill has been passed according to the proper procedures of Parliament and is in order for assent by the Governor; and the other by Parliamentary Counsel in similar terms. That will raise some interesting questions for the chief law officer of the Crown, apart from him occupying political shoes, because he should have an independent status in that context. It will raise very interesting questions for Parliamentary Counsel.

If the Premier wants to precipitate a real crisis, let him go ahead and usurp the traditional responsibilities of the Parliament. If he wants to go to the Supreme Court let him, because my prediction is that he will not get far—he will be lucky to get a foot in the door and, if he does, he will not be able to get it open. Therefore, I oppose the motion.

The Hon. K.L. MILNE: I rise to indicate the views of the Democrats on the situation that has arisen because, on the third reading of the Planning Act Amendment Bill, you, Mr President, exercised a deliberative vote and, as far as I understand, the Bill did not pass.

The Hon. C.J. Sumner: It was not a deliberative vote.

The Hon. K.L. MILNE: This was challenged by the Attorney-General and the Council is obviously required to make a decision. In the various Acts, Standing Orders, speeches and opinions on the question of the President's voting rights, the words 'concurrence' and 'non-concurrence' appear from time to time. In our opinion the word 'concurrence' is synonymous with the word 'vote'. I am glad to see that the Hon. Mr Griffin agrees with this. From time to time there is confusion as to whether members are voting or showing concurrence. I say that they are the same thing. I gain this impression from section 8 *(a)* of the Constitution Act, which provides:

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:

I fail to see how members of any Chamber can show concurrence to a Bill without voting. The question has arisen as to the meaning of the amendment to section 26 of the Constitution Act in June 1973. Subsection (3) states:

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.

The important thing is that it concerns the passing of the second or third reading of any Bill. I believe that if the intention of the Government had been that it would only refer to Bills amending the Constitution Act, then it would have said so. But, it did not say so.

The Hon. C.J. Sumner: Any Bill dealing with concurrence; refer back to section 8 of the Act.

The Hon. K.L. MILNE: Through the Attorney's courtesy I have spoken with the Solicitor-General and he has not convinced me that there is any difference between the words 'concurrence' and 'vote'. Furthermore, if we refer to *Hansard* we should refer to what the Hon. Mr Dunstan's second reading explanation said on 19 June. The Attorney has quoted from what he said on 20 June, the day after.

The Hon. C.J. Sumner: Both quotes are in my Ministerial statement I gave in December.

The Hon. K.L. MILNE: Both were mentioned during the Ministerial statement, but not this afternoon. On 19 June the then Premier made it quite clear that he thought that the situation as it existed before the amendment was unfair. He said:

This seems fundamentally wrong, since it can be hardly argued that by reason of holding office as President, the President is no less a member of the Legislative Council. Accordingly, it is intended that the President . . . if he wishes to express his concurrence or non-concurrence in the passing of a second or third reading of a Bill in any case—

and I repeat, in any case—

where he is not called on to excercise his casting vote.

Knowing the Hon. Mr Dunstan, I believe that that was what he meant—that the President would have a vote. I would like to know who got to him because the next day he changed his mind. His first speech was much more convincing. Knowing him, he would be prepared to stand up to a decision like that. Members were reminded last night that the new amendment, to which I have just referred, was then taken up in Standing Order No. 231. The following paragraph was added:

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.

This is what the President did. From my interpretation of the legal jargon, when the President is voting or showing concurrence, he is entitled to either a deliberative vote, or on other occasions, when there is equality of votes, he is entitled to a casting vote. Not both—one or the other. The President chose to use his deliberative vote. From what I can see I think that the President was entitled to rely on Standing Orders.

The Attorney-General was kind enough to write to us today enclosing his Ministerial statement of 8 December 1983. I will not read the letter but I thank the Attorney-General for it, for the enclosures and the courtesy which he extended to us. Of course, it having only reached us today, we were not in a position to examine the legal opinions which he has given us from the counsel on which he relies and therefore we are left in a dilemma. We have had discussions with the Hon. Mr Sumner and the Solicitor-General, which was a courtesy, but it was too brief—it was only during the half hour for lunch. We have also had the opportunity of discussing the matter with two lawyers—the Hons John Burdett and Trevor Griffin of this place. It is difficult for us who are not lawyers, who are not Liberal or Labor, to decide whether or not they are biased and I frankly do not think that any of them are biased. The Attorney-General has gone to a great deal of trouble to tell us that his QC's opinions are not biased and I do not think they are. I believe that they are genuine. I do not want to suggest that anyone is being biased for political or other reasons in this debate. It is a matter of getting it right.

We have also had advice from the President, which we are entitled to take. It is obvious that the advice from the Clerk and the Assistant Clerk is that he was acting within his rights. Therefore, our dilemma is that some people agree with you, Mr President, and some do not. If the matter has to be decided now, we will come down on the side of your decision, Mr President, and it is our intention to support you in your interpretation of your voting right. We intend to support legislation to sort out this complicated position of the President's voting rights in the future. I am sure that the Council will be able to debate the matter in due course.

The Hon. Barbara Wiese interjecting:

The Hon. I. GILFILLAN: I happened to overhear a comment from the other side about political survival. Those who are conscious of the situation would realise that the so-called 'balance of power' that the Democrats have would be put much more at risk in the course of action that my colleague has proposed. That is not the issue and I believe that there is a genuine attempt by this Chamber to assess the situation now confronting us honestly and impartially. It is a dilemma. I want to comment because I have had the chance to look through *Hansard* reports of last night and it appears to be unclear as to what was before us. At a late stage of the debate the Attorney-General stated that he was taking the point that you, Mr President, had not cast a vote. That may be significant. The Attorney-General moved:

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

You, Mr President, then stated:

I did not give that ruling.

The Attorney-General then stated:

I ask you to give a ruling . . .

Further on in the debate you, Mr President, stated:

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

The Hon. Mr Sumner stated:

I appreciate that.

Mr Burdett interjected:

That is not a ruling.

After there had been a conflict of opinion as to whether or not there had been a ruling, the Hon. Mr Sumner stated:

There is a ruling.

The President stated:

Do not go on. It is not necessary; if you ask me for a ruling, I will give you one.

I assume that that means that a ruling was not given. The Hon. Mr Sumner then stated:

There is a ruling, and I move dissent from that ruling.

The Attorney-General did in fact move dissent from your ruling, Mr President. It is my impression that you had not given a ruling. How is it, then in order for the Attorney-General to move dissent to a ruling which does not exist?

The PRESIDENT: The Hon. Mr Gilfillan asked whether I gave a ruling. I believe I merely interpreted the Standing Order as it appeared to me.

The Hon. I. GILFILLAN: On a point of order, is not the matter before the Council out of order?

The PRESIDENT: I am not going to rule that it is out of order. There has been so much debate on the matter it would be just as well if it were put to a vote.

The Hon. C.J. SUMNER (Attorney-General): In conclusion, there had to be a ruling in order for the President to purport to exercise his non-concurrence with the Bill. The point of order I raised was under the Standing Orders and the Constitution Act. This Council is entitled to dispute the ruling or the interpretation of the President in relation to those Standing Orders. That is clear and in fact is what you, Mr President, agreed to yesterday when you said, 'I will give you a ruling'.

The PRESIDENT: Did you ask for it?

The Hon. C.J. SUMNER: Yes, and the ruling was that the President assumed to himself that he had the power to defeat a Bill by expressing non-concurrence with it pursuant to section 26 (3). That expression of opinion is what we disagreed with, and that is legitimate.

The Hon. I. Gilfillan: It is a dissent to an interpretation.

The Hon. C.J. SUMNER: That is all that rulings are: rulings are interpretations of Standing Orders. That is what Presidents do. They interpret Standing Orders in relation to the debate or the issue before the Parliament. The Council can disagree with the ruling of the President. That is what it is all about. It is the duty of the President to conduct the Council in accordance with Standing Orders, as he interprets them, and in accordance with the Constitution Act, if that is broader than the Standing Orders. If there is disagreement with the way the President conducts the Council, makes rulings, decisions or interpretations of Standing Orders, the Council can disagree with those rulings and interpretations. That is what we would do. That motion has been accepted. There should not be any more about that.

The precedent to which the Hon. Martin Cameron referred is there. It was in the Ministerial statement that I made on 8 December 1983. The opinions are subsequent to that. We have obtained and tabled those opinions that clearly disagree with it. The question of a court challenge has been raised by the Hon. Mr Griffin and I do not want to make any comment on whether or not that is a course of action that might be taken by the Government. There has been some speculation about it, but the honourable member purported again to be the expert in that area of law as he has apparently purported to be in relation to the whole question, without any independent opinion. Nevertheless, the opinion of Mr Castan which I tabled stated:

> In my view the Supreme Court of South Australia would clearly have jurisdiction to determine whether or not the Bill had been passed, if a majority of the votes of the members of the Council who were present exclusive of the President have cast votes in favour of the Bill. The question is a simple one arising on the construction of sections 26 and 8 of the Constitution and is clearly justifiable.

That is an opinion by Mr Castan, blithely ignored by the Hon. Mr Griffin. I am not expressing a view on what the Government might do about it but point out that, once again, the honourable member's interpretation of the law is wrong.

The Democrats have decided, for their own reasons, to support your interpretation, Mr President. What I find extraordinary and amazing is that not one opinion has been produced in this debate since my submission of the Solicitor-General's opinion was tabled in 1983, backed by the opinions of Messrs Doyle and Castan. Not one opinion has been produced in this Council by the Opposition, the Democrats, or you, Mr President.

The Hon. M.B. Cameron: How many do you want?

The Hon. C.J. SUMNER: The honourable member may have obtained his own advice. All that I know is that in terms of the evidence that is before this Council as far as the debate is concerned they are the opinions that we are addressing. I find, Mr President, that you have ignored the opinion of the person who traditionally has been given the job of advising the President. So, it is not just that there is one opinion: there are two. I have tabled the others today and they confirm clearly what I said in December.

What I did in December I had to do. When we were debating the Maralinga Tjarutja Land Rights Bill, it was drawn to my attention that these opinions about your right, Sir, to express your non-concurrence on the third reading of the Bill were drawn to my attention. When I realised that, I obtained the opinion of the Solicitor-General. To do otherwise would have been grossly irresponsible. I would not have been doing my duty to the Parliament or to the people had I not clarified that situation. So I sought the opinion.

As soon as opinion became available I tabled it in the Council with a full Ministerial statement. To do otherwise would have been irresponsible, as I said. So, in that respect, I have attempted to place before Parliament all the information that was legally available to me on this topic: the opinion of the Solicitor-General, the opinion of Mr Doyle, QC, whom most people in this place know, and the opinion of Mr Castan, QC. All that I can say is that that is the evidence that we have, combined with the evidence of the Parliamentary debates and the statement of Mr Dunstan, on which to make up our minds on this point.

For reasons that I can only assume are best known to them, honourable members opposite and the Democrats have decided to ignore that evidence and cast them aside. What has been placed before the Parliament is absolutely of no moment.

The Hon. K.T. Griffin: We have considered them.

The Hon. C.J. SUMNER: You have considered them and ignored them.

Members interjecting:

The Hon. C.J. SUMNER: All that I am suggesting is that the evidence before the Council is overwhelmingly in favour of the opinion that I expressed in my motion of dissent. That is clear.

The Hon. K.T. Griffin: That is your opinion.

The Hon. C.J. SUMNER: No, that is a fact. The evidence before the Council is overwhelmingly in favour of the view that I have expressed. The legal opinions and the statements from *Hansard*, while open to some ambiguity—I refer to the statement of Mr Dunstan—clearly indicate what he believed was the intention of the new section 26(3).

I suggest that that was the evidence with which you, Sir, were confronted, and you chose to ignore it. One can only raise the question of why you chose to ignore it. If one wanted to speculate, Mr President, obviously honourable members opposite do not want you deprived of that concurrence, because that would not be in their political interests. From the Democrats' point of view, it would not be in their interests, as they see it, for you to resign. So, what we have is an exercise in ignoring the evidence placed before the Council.

The PRESIDENT: I have not spoken, but I could if the honourable member really wanted to draw me into it.

The Hon. C.J. SUMNER: All that I am suggesting is that one may need to look beyond what has come out in the open in this Council and what evidence has been presented, because anyone looking at the evidence and at the statements that have been made would come to the opinion that I have

come to. I came to that after being alerted to the issue in December and after obtaining the opinion of the Solicitor-General. So, I ask the Council to approve the motion that I have moved, disagreeing with your ruling, Sir, in interpreting the Standing Orders and the Constitution Act.

The Council divided on the motion:

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 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, and K.L. Milne.

Pair—Aye—The Hon. J.R. Cornwall. No—The Hon. R.J. Ritson.

Majority of 3 for the Noes.

Motion thus negatived.

The Hon. C.J. SUMNER: I rise on a point of order. The Government is of a view, as I indicated in the debate, that the vote—

The Hon. R.I. Lucas: What Standing Order?

The Hon. C.J. SUMNER: The same one that I raised only yesterday.

The Hon. L.H. Davis: We have resolved that.

The Hon. C.J. SUMNER: There is another point of order in relation to it, which is that the Government, as I indicated in the motion that we have just determined, believes that you, Sir, could not have a vote in relation to the Planning Act Amendment Bill that was before us last night and that you can only express concurrence or non-concurrence, and that that applies to Bills under section 8. That being the Government's view, which has been disagreed with by the Council, it is still the Government's view that the Bill is properly before the Parliament. I therefore move:

That the Bill do now pass.

The Hon. K.T. GRIFFIN: I rise on a point of order. It is not competent to move that motion, because Standing Order 315 states:

So soon as a Bill shall have been read a third time, the President shall, except as provided in Order No. 282, without permitting discussion, amendment, or adjournment, put a question 'That this Bill do now pass': Provided that, if the title does not conform to the contents of the Bill, the same may be first amended.

Under this Standing Order, the Attorney-General's motion is out of order.

The PRESIDENT: The Attorney-General has moved 'that the Bill do now pass', but it has already been dealt with, and I do not think it is competent for this Council to accept that motion.

The Hon. C.J. SUMNER: I disagree with that ruling. My normal course in such circumstances would be to move dissent from that ruling. However, the situation is that you have ruled that my motion that the Bill do now pass is not competently before the Council. You have done that on the basis that, in your view, the Bill has not been given a third reading. In my view, and the Government's view, that decision of yours was incorrect. We believe that the Bill has passed its third reading because of the vote that was taken on it and that, therefore, it is now competent for me to put to the Council the motion 'That the Bill do now pass'. However, I accept that the issue has been debated on a previous motion of dissent with your ruling. I therefore do not intend to dissent with your ruling again, but wish to make the point of order quite clear: that in the Government's view it is now competent for this motion to be put and for the Bill to be passed. To enable that to be done, I would have to move dissent with your ruling.

The Hon. M.B. Cameron: What are you mucking around for?

The Hon. C.J. SUMNER: I want it on the record. In the light of the previous vote on my motion of dissent, any further dissent with your ruling, Mr President, would, I believe, achieve the same result.

I raise this point of order because I believe it is competent. You have ruled that it is out of order to proceed with the motion that the Bill do now pass. I disagree and dissent with that ruling, as do all honourable members on this side of the Council. However, in the light of the previous vote, I will not move formally to dissent with your ruling.

The Hon. I. GILFILLAN: Can I speak to the point of order, Mr President?

The PRESIDENT: That issue is now finished.

The Hon. I. GILFILLAN: Can I raise a point of order, which seems to be the privilege of most members?

The PRESIDENT: Yes.

The Hon. I. GILFILLAN: My point of order is that I believe that Standing Orders offer an opportunity for the Bill that failed last night to be reintroduced into the Council, that the Attorney's proposition is not appropriate and that I agree with your ruling. I have taken this opportunity, perhaps in a somewhat unorthodox manner, to indicate that this Bill can be reintroduced and after an adjournment be given a chance to be reconsidered by this Council.

The PRESIDENT: I am not sure that that is a point of order. Certainly, however, the honourable member has expressed an opinion.

The Hon. I. GILFILLAN: Then I will make it a question. Is my understanding of Standing Orders accurate? Could that occur? Does Standing Order 281 apply?

The PRESIDENT: I take this opportunity to say that if a Bill dealing with vegetation clearance was introduced and it made sense it would certainly have my support.

BREAD INDUSTRY AUTHORITY BILL

The Hon. FRANK BLEVINS (Minister of Agriculture) obtained leave and introduced a Bill for an Act to establish an authority to be known as the 'Bread Industry Authority'; to define its functions and powers; to provide for the registration of bread producers; to make provision for the orderly development of the bread industry in the State; to amend the Industrial Code, 1967; and for other purposes. Read a first time.

The Hon. FRANK BLEVINS: I move:

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

The purpose of the Bill is to draw together under one independent statutory authority a range of functions which, until now, have been shared between the Department of Public and Consumer Affairs and the Department of Labour. Problems in the bread industry can be traced back at least to the early 1950s when metropolitan bakeries made their first significant inroads into country areas. By the early 1970s a number of further problems had developed, and the extent and intensity of these problems were considered serious enough for the Government to initiate a major inquiry. Essentially, that committee of inquiry identified a range of problems, and a number of appropriate industry stabilisation and development functions, which bear a striking resemblance to the powers and functions of the Authority which this Bill attempts to create. It is very clear that the issues which characterised the early 1970s, and led to the

recommendation that an Authority be established, have actually increased in intensity and urgency since that time. This is the reason why, even though the idea of an Authority was permitted to lapse in the 1970s, the present situation is such as to have convinced the Government that an Authority should be established as a matter of urgency.

To cite some examples of the increased severity of the industry's problems, it is clear that sustained discounting particularly of house-brand bread in comparison to bakery-branded bread, the further potential for sporadic discounting of both generic and bakery-branded bread, the level of credits for unsold bread, and the scope for labour redundancy through reinvestment in new, capital intensive plant, all call for the creation of an Authority to balance the interests of the various groups involved, and attempt to restore a degree of order to the industry. The creation of a Bread Industry Authority with a relatively comprehensive range of powers and functions, but with an appropriate system of checks and balances, is intended to ensure that a viable, efficient bread industry is encouraged, such as to protect the basic interests of consumers, manufacturers and retailers, and their employees. The Bill is deliberately broad in scope, and, drawing upon local and other sources, creates a comprehensive range of potential activities to cope with the problems recently experienced in South Australia, with problems recently or currently faced in other States, and with potential issues raised by interested parties who gave evidence to the working party created last year to develop a recommended structure and functioning of the Bread Industry Authority.

It should be noted that the Bill creates powers rather than obligations, and there is little prospect of a sudden spate of influential decisions by the Authority such as to cause significant upheaval in the industry. Indeed, the degree of control, especially in the financial area, over the scope of the Authority's operations gives the Government ample opportunity to limit the growth of the Authority and thus prevent the emergence of excessive bureaucratic involvement. However, it must be understood that such Government reserve powers will leave the day-to-day operations of the Authority, and its influence over various industry problems, clearly outside the political arena, as well as beyond the influence of interested parties.

Clause 1 is formal. Clause 2 provides for the commencement of the measure. Clause 3 provides the definitions required for the purposes of the Act. Included are definitions of bakery, bread and registered bread producer. Clause 4 allows the Minister, by notice in the *Gazette*, to exempt persons or classes of persons from some or all of the provisions of the Act. Clause 5 provides for consequential amendments to the Industrial Code, 1967. Clause 6 provides that there shall be a Bread Industry Authority, being a body corporate. It is proposed that the body be able to deal with property and hold that property on behalf of the Crown. Clause 7 prescribes the membership of the Authority. It is proposed that there be three members of the Authority. One person is to be appointed as Chairman of the Authority, one is to be appointed to represent the interests of the manufacturers and one is to be appointed to represent the interests of employees in the bread industry. Deputies may be appointed also.

Clause 8 provides that a member may be appointed for a term not exceeding five years. Clause 9 allows members to receive remuneration, allowances and expenses, as determined by the Governor. Clause 10 relates to the procedures of the Authority. A quorum of the Authority is to be two members. Accurate minutes must be kept of business conducted at meetings. Clause 11 provides that acts of the Authority shall be valid notwithstanding a vacancy in its membership or a defect in appointment. A member will not attract personal liability, any liability attaching to the Crown. Clause 12 provides that a member must disclose an interest in any contract before the Authority. Clause 13 sets out the functions and powers of the Authority. The principal function of the Authority is to assist in the orderly development of the bread industry. The Authority is to be able to consider matters relating to bread, monitor technical innovations in the industry, promote the sale of bread, exercise a research function, inquire into and report to the Minister on any matter, and exercise other necessary powers. The Authority shall, in the performance of its functions and the exercise of its powers, take into account the interests of the producers and consumers of bread.

Clause 14 provides that advisory committees may be established by the Authority. Clause 15 allows the Authority to delegate, with Ministerial approval, any of its functions or powers to a member or employee of the Authority, an inspector, or a public servant. Clause 16 provides that the Authority shall be under the general control and direction of the Minister. Clauses 17 and 18 relate to the staff of the Authority. Staff may be appointed by the Governor under the Public Service Act, 1967, or by the Authority with the approval of the Minister. The Authority may use the facilities of departments of the Public Service. Clause 19 allows the Authority to borrow moneys from the Treasurer or, with approval, from some other source. Liabilities will be guaranteed by the Treasurer. Surplus moneys may be invested in a manner approved by the Treasurer. Clause 20 requires the Authority to prepare an approved budget. Clause 21 requires the Authority to keep proper accounts. An annual audit must occur. Clause 22 will require persons who carry on the business of producing bread to be registered under this Act. (As will be appreciated, this is a separate registration requirement to that in the Bakehouses Registration Act, 1945, which is concerned principally with matters of public health.)

Clause 23 sets out the procedures for registering under the Act. An applicant for registration must furnish the Authority with such information as the Authority may require. Clause 24 provides that registration of a bread producer will remain in force until its cancellation or suspension, or the producer dies or, if a body corporate, dissolves. Clause 25 requires a registered bread producer who ceases to carry on business to notify the Authority of that fact within 21 days. This will enable the Authority to keep accurate records and will release the bread producer from liability to pay the proposed new fee. Clause 26 allows the Authority to impose conditions in respect of the registration of a bread producer. A condition may limit the amount of bread that a bread producer may produce at a specified bakery, or regulate the sale of bread produced by a bread producer by reference to zones determined by the Authority. Conditions may be varied or revoked. It will be an offence to contravene, or fail to comply with, a condition. The Authority is to have power to recommend to the Minister that the registration of a bread producer who fails to comply with a condition be suspended. A bread producer may object to such a recommendation. Suspension may be for an indefinite period, or for a period specified by the Minister upon the recommendation of the Authority.

Clause 27 provides for the creation of return periods on a monthly, quarterly, half-yearly or yearly basis, depending on the amount of bread produced by a bread producer. Clause 28 provides that every bread producer must furnish returns to the Authority after the end of return period, specifying the amount of bread produced by him for the relevant period. The return's prime purposes will be to supply information necessary to calculate the proposed registration fee, and to enable the Authority to assess whether production quotas (if any) are being observed. Furthermore,

it is considered of importance that the Authority be able to monitor trends and developments in the industry. Information contained in returns provided under this section will greatly assist the Authority in this regard. Clause 29 provides that a registered bread producer is liable to pay a fee in respect of each return period. It is proposed that the fee be five dollars, or such other amount calculated in accordance with the regulations, whichever is the greater. The fee is to be imposed so as to recoup the costs of the Authority under this Act. Clause 30 allows the Authority to reassess a fee if it has been assessed incorrectly.

Clause 30 allows the Authority to reassess a fee if it has been assessed incorrectly. Clause 31 provides a procedure whereby a registered bread producer may object to an assessment of the Authority of the amount of a fee payable by him. It is proposed that the objection be made to the Minister, who is to appoint an investigator to inquire into the objection and either confirm or vary the assessment. Clause 32 sets out the powers of the Authority if a registered bread producer fails to pay a prescribed fee. The final sanction will be the suspension of the bread producer's registration. Clause 33 provides that where a bread producer who is required to be registered under this Act fails to do so, he is liable to pay an amount equal to the fee that would have been payable had he been so registered. The amount may be recovered as a debt due to the Crown. Clause 34 empowers the Authority to fix prices of bread by order published in the *Gazette*. It is proposed that the order may fix prices by reference to different classes of sales, may fix maximum and minimum prices, may vary according to other factors specified in the order, and may provide for exemptions. The Authority is directed to take into account specified matters. It is envisaged that prices orders will no longer be required under the Prices Act. The Authority will be protected from the operation of the Trade Practices Act (Commonwealth) by virtue of the fact that it is an Authority of the Crown that should enjoy the shield of the Crown in right of the State.

Clause 35 makes it an offence to sell bread at a price that contravenes a prices order. Clause 36 provides that prices or charges payable pursuant to a contract that are inconsistent with a prices order are deemed to be varied so far as is necessary to make them consistent with the order. This will therefore protect contracting parties whose agreements would otherwise have been illegal in their performance. Clause 37 allows the Authority to regulate, by order published in the *Gazette*, baking times, times at which bread may not be collected from bakeries, times at which bread may not be delivered to shops, and times for the delivery of bread to the public. All these powers have been recommended as being potentially necessary for the proper control and advancement of the industry as a whole. Baking times are regulated presently by the Industrial Code (consequential amendments to that Act are provided in the schedule to the Bill). Regulation of delivery times from bakeries and to shops and the public may become necessary in the future in order to protect fragile areas of the bread industry. Clause 38 empowers the Authority to consider and act upon consumer complaints. The Authority would be able to request parties to attend a conference in an effort to resolve the matter. The Authority could refer the matter on to another person or body (such as the Commissioner for Consumer Affairs). Furthermore, it has been submitted that a power to receive and investigate consumer complaints would provide the Authority with 'feed-back' on the industry's activities in the market place, and is consistent with the approach adopted by several other industry authorities. Clause 39 allows for the appointment of inspectors to assist in the proper administration of the Act.

Clause 40 sets out the powers of inspectors. In particular, an inspector may enter premises that he reasonably believes are being used for the production of bread. An inspector will be entitled to carry out inspections and tests, take photographs and ask questions in connection with his investigations. Clause 41 provides immunity to inspectors acting in good faith. Clause 42 is a secrecy provision. Clause 43 creates an offence of failing to furnish information in accordance with the Act, or of making a false or misleading statement or representation. Clause 44 relates to offences generally. A person who is guilty of an offence for which no penalty is specifically provided shall be liable to fines ranging up to $50 000, depending on the number of previous offences (if any). Proceedings will be disposed of summarily. Clause 45 relates to offences by bodies corporate and provides that where a company is guilty of an offence each responsible officer is also guilty of an offence unless he proves that he could not by the exercise of all reasonable diligence have prevented commission of the principal offence.

Clause 46 is an evidentiary provision that relates to the appointment of inspectors, delegations, whether or not a person was registered on a particular day, and amounts owing to the Authority under the Act. Clause 47 relates to the service of notices or other documents on bread producers. Clause 48 provides that an annual report must be submitted to the Minister by 30 September, and then laid before both Houses of Parliament. Clause 49 requires the Minister to initiate a quadrennial review into the operation of the Act. The review must be carried out by an independent person and a copy of the resultant report laid before both Houses of Parliament. Clause 50 is a regulation-making provision. The schedule provides amendments to the Industrial Code, 1967, that are consequential upon the enactment of this measure.

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

LOCAL GOVERNMENT ACT AMENDMENT BILL (No. 3) (1984)

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

CONTROLLED SUBSTANCES BILL

Returned from the House of Assembly with amendments.

URBAN LAND TRUST ACT AMENDMENT BILL

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

STATE BANK OF SOUTH AUSTRALIA ACT AMENDMENT BILL

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

[*Sitting suspended from 4.50 to 5.35 p.m.*]

ADJOURNMENT

At 5.35 p.m. the Council adjourned until Tuesday 17 April at 11.30 a.m.