# LEGISLATIVE COUNCIL

Wednesday 17 February 1988

The **PRESIDENT (Hon. Anne Levy)** took the Chair at 2.15 p.m.

The Clerk (Mr C.H. Mertin) read prayers.

## PETITION: PARKLANDS

A petition signed by 35 residents of South Australia praying that the Council request the immediate return of the area designated for a car park located in the south-east corner of the Botanic Gardens and urge the Government to introduce legislation to protect the parklands and ensure that no further alienation will occur before the enactment of this legislation was presented by the Hon. I. Gilfillan.

Petition received.

## QUESTIONS

### RADIOACTIVE MATERIALS

**The Hon. M.B. CAMERON:** I seek leave to make a brief explanation before asking the Minister of Health a question regarding the storage and disposal of radioactive materials which are no longer needed by public hospitals.

Leave granted.

**The Hon. M.B. CAMERON:** I have been contacted by people who are concerned about the adequacy of safeguards for the storage and/or final disposal of radioactive materials formerly used in nuclear medicine at Adelaide's public hospitals. I am informed that about 99 per cent of such low level radioactive material is sent to the Wingfield dump. I gather that some of the material stored there—such as iodine with short half-lives—is sealed in capsules but that some material, possibly in solution form, is stored in unsealed containers. I am told that 1 per cent of nuclear waste from our public hospitals, presumably high level radioactive material, is considered unsuitable for sending to Wingfield and that arrangements have been made for alternative disposal.

Members may recall media coverage late last year when at least four Brazilians died and another 60 people were badly contaminated after two men were able to remove disused radiotherapy equipment from an abandoned clinic during salvaging.

While not wanting to suggest for one minute that such an incident could occur in Australia, it does appear we cannot afford to be complacent. Only last December two Melbourne men were exposed to radium which was found in an old hospital safe bought at a hospital auction.

The storage of the radioactive material at Wingfield throws up a number of questions, not the least of which is whether in fact that site is appropriate. It was reported last September that the Federal Government was looking at a proposal for radioactive waste from all States to be stored at a site in the Northern Territory. Until it is determined whether that proposal is a reasonable idea, it seems that all the States are stuck with the problem of what to do with their radioactive waste. Accordingly, I ask the Minister the following questions:

1. What volumes and categories of radioactive materials are being stored at Wingfield and what are the long-term plans for such storage at that site?
2. Are the materials stored above ground or underground?
3. What measures have been put in place to ensure that such materials cannot be accessed by unauthorised persons, and what safeguards are there to prevent the materials leaking from containers?

**The Hon. J.R. CORNWALL:** It may well be that the Hon. Mr Cameron should contact the member for Hindmarsh, since they both appear to have an abiding interest in this area. I might say that it is an interesting double.

**The Hon. L.H. Davis:** John Scott, your friend.

**The Hon. J.R. CORNWALL:** Well, in this instance, it seems that he is Martin's friend. Mr Cameron has taken a short statement about the very low level waste, the overwhelming majority of which has a very short half life and which has been disposed of safely for many years at the Wingfield tip, and somehow extrapolated that to death and destruction in Brazil. I refer to the general arrangements that have been in place for the disposal of that very low level waste, most of which is in the form of radioisotopes, which are used, for example, in bone scans; those sorts of radioisotopes have a very low level of radioactivity. They are injected into the body as a contrast medium for various radiographic techniques. Obviously, they must be low level so that they do not cause the patient any harm. Not only do they have a very low level of radio activity but also, as Mr Cameron said, they have a very short half life; and that relates to 99 per cent of the material.

Far more attention needs to be paid specifically to the disposal of the other 1 per cent which obviously is used in radiotherapy, in other words, for the treatment of certain forms of cancer. In the past five years, or even recently, nobody has drawn to my attention that there is any concern or reason why there ought to be. However, as to volumes, the precise method of storage, and so on, I do not have the information at my fingertips. I will immediately refer those questions to the responsible authorities and bring back a reply.

With specific reference to the Federal Government's proposal for a national radioactive waste disposal depot, various sites around Australia have been examined over the past three years or so. We in South Australia have made very clear that we would prefer at least one site in the Northern Territory which was put forward as the preferred site.

At the moment we have no proposal before us for South Australia or any part of it to be used as a national disposal site for high level or even medium level radioactive material. Again, with regard to the specific disposal of relatively high level nuclear wastes from the radiotherapy departments, I will seek specific and detailed responses to those questions and ensure that I bring back a reply expeditiously.

### ADELAIDE SYMPHONY ORCHESTRA

**The Hon. L.H. DAVIS:** I seek leave to make a brief explanation before asking the Minister of Local Government, assisting the Minister for the Arts, a question on the Adelaide Symphony Orchestra.

Leave granted.

**The Hon. L.H. DAVIS:** Today I received a phone call from people with a keen interest in the Adelaide Symphony Orchestra. They were alarmed that financial cuts to the ABC could result in the ABC abandoning its $17 million a year subsidy to the six capital symphony orchestras. On page 1 of last Friday's *Age*, that is, 12 February, the ABC Managing Director, Mr David Hill, was quoted as saying

that the required cuts in the ABC meant that the ABC subsidy to symphony orchestras was particularly threatened. Mr Hill was quoted as saying that the symphony orchestras could be dumped.

The Adelaide Symphony Orchestra was formed in 1936, comprising just 17 permanent musicians, but now in 1988 provides permanent full time employment for 66 musicians who in 1987 gave over 120 performances. The Adelaide Symphony Orchestra performs at symphony concerts, plays for visiting companies such as the Australian Ballet and now plays for the State Opera. It has an important role in the 1988 Festival of Arts with four concerts and the opera *Fiery Angels.*

It also plays at family concerts, school and kindergarten concerts and pop concerts and tours country towns. The State Government contributes about $230 000 annually to its operation and the Adelaide City Council makes a small contribution. However, the annual subsidy from the ABC of $1.9 million is the main source of funding for the Adelaide Symphony Orchestra. To people with a love of music, a regard for the Adelaide Symphony Orchestra, and a recognition of Adelaide's reputation as the festival city, the demise of the Adelaide Symphony Orchestra is unthinkable.

It is understandably unnerving for Adelaide Symphony Orchestra musicians to hear of the possibility of the orchestra being wound up as they prepare for the Festival of Arts. The loss of the orchestra would also be an enormous blow to Australian composers and a cultural disaster for South Australia. It is unthinkable, if Mr Hill is to be believed, that the 1988 Festival may be the last at which the Adelaide Symphony Orchestra will perform. My questions to the Minister are as follows:

1. Has the Government had any discussions with the Managing Director of the ABC, Mr David Hill, about the ABC subsidy of the Adelaide Symphony Orchestra?
2. What steps has the Government taken to ensure the future of the Adelaide Symphony Orchestra?

**The Hon. BARBARA WIESE:** The Government would share the sentiments expressed by the Hon. Mr Davis with respect to the importance of the Adelaide Symphony Orchestra and would certainly want to do all in its power to ensure that the Adelaide Symphony Orchestra received sufficient funding from federal sources to enable it to continue its work. I am not aware of whether there have been discussions with Mr Hill about the future of the orchestra, and I am not sure whether representations have been made either to him, the ABC or any Federal Minister. I shall certainly make inquiries of the Minister for the Arts and his department to ascertain whether such representations have been made and will bring back a reply as soon as I can.

## MAGISTRATES COURTS DIVORCES

**The Hon. K.T. GRIFFIN:** I seek leave to make a brief explanation prior to asking the Attorney-General a question on magistrates courts divorces.

Leave granted.

**The Hon. K.T. GRIFFIN:** I previously raised the prospect of 'quickie divorces' being granted by magistrates, which was mooted by the Federal Government last year. It is now a real possibility under legislation presently before the Federal Parliament. The Bill in that Parliament will allow undefended divorces to be heard in magistrates courts, which are also to have jurisdiction to deal with property matters up to the limit of debt recovery in each of the States.

In South Australia I presume that that will be $20 000. Such a proposal will undoubtedly add considerable pressures to State courts—pressures which are already resulting in delays. The prospect is also that marriage will tend to be trivialised and that those seeking divorces and the settlement of property disputes will have to rub shoulders with criminals in the magistrates courts and jostle with those criminals to have their cases heard. My questions are as follows:

1. Has the State Government been consulted on this plan by the Federal Government?
2. Does the State Government agree with it and thus will make magistrates courts available for this purpose?
3. If it has been agreed by the State Government, what are the arrangements proposed and what resources are to be available from the Commonwealth?

**The Hon. C.J. SUMNER:** The first thing that needs to be said is that the honourable member is taking some licence with his description of the procedure that has been suggested by the Federal Attorney-General (Hon. L.F. Bowen). I do not think that it adds anything to the debate to refer to 'quickie' divorces and—

**The Hon. K.T. Griffin:** That's the whole object of it.

**The Hon. C.J. SUMNER:** That is not correct—it is not the whole object of it.

**The Hon. K.T. Griffin:** And to shift it across from the Commonwealth to the States.

**The Hon. C.J. SUMNER:** I assure the honourable member that it will not do that. It is to deal with basically uncontested matters relating to divorce hearings to try to relieve some of the pressure on the Federal Family Court. Of course, the Family Court will remain the principal forum in which divorce proceedings are dealt with, but the Federal Attorney believed that it was appropriate for some divorce cases to be dealt with by magistrates where there was no contest and there was nothing in dispute. I understand, as it was explained to me, that the Family Court will continue to deal with issues relating to custody and access where there is dispute; but, where the parties are in agreement, it is appropriate to deal with the matter before a magistrate to overcome the problems of potential delay in the Federal Family Court. Obviously if this proceeds there will be some additional work in the State courts.

I have made it clear to the Federal Attorney-General that we are not prepared to take on additional work in the State courts system without adequate recompense from the Commonwealth. Obviously such issues as which courts would deal with the matters and the like are still to be settled, as indeed are the financial arrangements which, it is my recollection, have not yet been finalised. The principle that we have stated is that, if it is the Federal Government's view that divorces of this category can be dealt with in the magistrates courts, we will not stand in the way of that—subject to adequate financial recompense to the State.

So the replies to the honourable member's questions are, first, we have been consulted; and, secondly, we do not agree or disagree with the proposal but, if the Federal Government believes that it is desirable, we have no objection to the State courts being given this power subject to proper and adequate compensation. My recollection is that the question of resources is still a matter for further discussion between the Commonwealth and the State Governments. However, if that has advanced at officer level further than my answer indicates, I will be happy to expand on the honourable member's last question at a later date.

## LAND OWNERSHIP

**The Hon. M.J. ELLIOTT:** I seek leave to make a brief explanation before asking the Attorney-General a question about land ownership in South Australia.

Leave granted.

**The Hon. M.J. ELLIOTT:** There have been many arguments, particularly in this bicentennial year, about the rights of Aborigines to land ownership and about what happened 200 years ago in Australia and a little over 150 years ago in South Australia. I am not sure whether or not the Attorney-General is aware of an article in the *Australian Law Bulletin* of December 1987, which comprised an excerpt from a book called *The Law of the Land* by Henry Reynolds. I do not wish to consider the philosophical side of the argument but simply the legal side. I shall quote some parts of the article to put my question in context.

The article refers to a meeting on 2 January 1836 between Colonel Robert Torrens, who was the Chairman of the South Australia Colonising Commission, and Lord Glenelg, the Secretary of State for the Colonies. After a meeting between those two men, Torrens came out and met up with Hindmarsh—another famous name connected with our State—and said that 'the only difficulty was that the Secretary of State insisted upon the rights of the Aborigines being properly taken care of . . .'. A draft plan was drawn up which said, in part:

> The Colonisation Commissioner for South Australia shall appoint an officer to be called the Protector of the Aborigines. This officer shall be resident in the province. The Colonial Commissioner, after having completed the survey of any portion of the public land, shall, before declaring the same open to sale, give notice to the Protector of the Aborigines whose duty it will be to ascertain whether the lands thus surveyed or any portion of them are in the occupation or enjoyment of the natives.

The article continues, and it makes quite clear that the lands cannot be put up for sale if it is being occupied or used by the Aborigines. The letters patent, which were given for the setting up of South Australia, said:

> Nothing in these letters patent contained shall effect or be construed to effect the rights of any Aboriginal natives of the said province to the actual occupation of enjoyment in their persons or in the persons of their descendants of any lands now actually occupied or enjoyed by such natives.

The article continues at some length, and examines what happened in New Zealand and North America—where at least they paid beads for the land. The article states, towards the end:

> Governor Gawler of South Australia in a despatch to England in 1840 observed that 'from time immemorial they had distinct, defined and absolute rights of proprietary and hereditary position.'

In other words, the Governor recognised that the Aborigines were quite clearly in possession of the land and therefore the intent of the letters patent should have been obeyed. Some questions were raised by Henry Reynolds, as follows:

> If it was officially accepted in the 1830s that the Aborigines were the original owners of the soil, how and when did they lose that status? How did it happen? There is absolutely no explanation in law in Australia as to how it could happen. They were British subjects. The English law was more concerned about rights of property than life itself.

I am interested in the legal aspects of this matter. Is land ownership in South Australia open to question?

**The Hon. C.J. SUMNER:** I am aware in general terms of the debate that is currently going on in some circles about this issue. I have not conducted a detailed examination of the issues raised in the book by Mr Reynolds. Suffice it to say that the legal position as has been and is expounded by the courts is that Australia was *terra nullius* and therefore it was not a situation involving occupation and conquering but a situation where there was a settlement of people from the United Kingdom in Australia.

That debate has been raised in the book to which the honourable member has referred, and I understand that the judgment of Mr Justice Blackburn in the Northern Territory case, affirming the view of the law relating to Australia at the time of settlement, is criticised by the author. But, as I understand the position, despite the debate, the law in that respect has not changed. Irrespective of what view one takes of that issue, the fact is that the South Australian Government has, since 1965 taken significant steps and, I think, probably the most significant in Australia, to redress the question of Aboriginal entitlement or Aboriginal title to land.

The first such initiative, which was quite pioneering at the time, was the Aboriginal Land Trust, established by the Parliament at the initiative of the Dunstan Government, I believe between 1965 and 1968.

**The Hon. M.J. Elliott:** I asked about the legal position.

**The Hon. C.J. SUMNER:** I am answering it. You do not want to hear, do you? That is a bit unfortunate, but you will get to hear about it, anyway. In the late 1970s the Dunstan Government promoted the Pitjantjatjara land rights legislation, which was taken up by the Tonkin Government and passed in the Parliament between 1979 and 1982. After that there was, of course, the Maralinga land rights legislation, which also passed the Parliament. So, in that respect, within the context of the existing law, in South Australia at least, beginning in 1965-68 there has been a positive attempt by the Parliament as a whole, by the initiatives that I have mentioned, to redress some of the injustices which have occurred with respect to Aborigines and the land in this State.

With respect to the legal position I can only reiterate that there is a debate but I do not think that the law, as expounded by the courts, has changed from that which has generally been considered to be the case. In other words, there is an argument in this book that a contrary point of view should be accepted; it has not been accepted by the courts, therefore, at present I presume one has to take a view that the decision of the courts on the status of Aborigines in Australia at the time of settlement stands. Whether that will be changed is a matter being examined by the Federal Government as I understand it. The Prime Minister, Mr Hawke, announced two or three months ago that he was looking at some kind of compact between the Government and the Aboriginal people. I am not sure how far that has advanced but it may be that that compact will address these underlying issues.

**The Hon. M.J. ELLIOTT:** I take it that the Attorney-General is telling me that nothing has happened in law other than the interpretation of the court based on the concept of *terra nullius*. That is the central question which needs resolution. Has nothing else happened by way of legislation that would alter the situation?

**The Hon. C.J. SUMNER:** I said that I was aware of the debate in general terms. I am not in a position to give a detailed analysis of the issues, except to say that my understanding is that the doctrine of *terra nullius* is still the doctrine that is applicable as the law in this country. If that is to be changed it either has to be changed by challenge through the courts to get the courts to put an argument that the original decisions in this respect were wrong or, presumably, it can be changed by legislation by some form of compact, which the Prime Minister has hinted at. But in answer to the honourable member's question, I am saying, without going into any details, that I understand that the legal position as expounded by the courts at the present time does embrace the doctrine of *terra nullius* for Australia.

## ABORTION DRUG

**The Hon. DIANA LAIDLAW:** I seek leave to make a brief explanation before asking the Minister of Health a question about an abortion drug.

Leave granted.

**The Hon. DIANA LAIDLAW:** I have received a number of anxious telephone calls and general inquiries since a report in the *Advertiser* on Monday that the Department of Community Services and Health has given tentative approval for trials of a French abortion drug, Mifepristone. Apparently, the drug allows pregnancies to be terminated up to 49 days after a missed period. It is not clear, however, whether the trial of the drug will be confined to inducing delivery in women following foetal deaths or extended to involve aborting live foetuses. Suggestions were made in the article that the drug could be used to induce abortions at home without the proper support of medical staff or adequate counselling.

A further report on the drug yesterday suggested that South Australian women could be involved in this trial to terminate pregnancies because abortion is legal in this State. As I am not aware of the procedures that are followed in determining approval by the Department of Community Services and Health for trials of such controversial drugs as Mifepristone, I ask, first, whether it is a practice of the Federal Government to determine the view of respective State Ministers of Health before approval is given.

If so, has the Minister's advice been sought in this matter and what was that advice and, if not, does the Minister consider that the characteristics that have been expounded and attributed to this drug and its potential for use in home abortions deem that the drug is an appropriate one for introduction into South Australia? Lastly, is the Minister aware whether it is proposed that South Australian women will be involved in this trial?

**The Hon. J.R. CORNWALL:** I think that a number of things need to be addressed. First, the allegation was made—and it came from Senator Harradine—that the drug would probably be trialled in South Australia because of what he termed our lax abortion laws. I must say that it causes me very considerable distress to see that Ms Laidlaw again is moving into that extreme right wing camp with Dr Ritson. Clearly—

**The Hon. C.J. Sumner:** Who introduced the law?

**The Hon. J.R. CORNWALL:** I will tell you about that in a moment. Clearly, she has been instructed in the Party room to get in there and kick some heads, and to line up with Dr Ritson, whose extreme right wing views on a number of social issues are very well known. Let me, if I may, refer—

*The Hon. Diana Laidlaw interjecting:*

**The Hon. J.R. CORNWALL:** A genuine concern it may be: I will address that in a moment.

**The Hon. Diana Laidlaw:** Raised on behalf of others.

**The Hon. J.R. CORNWALL:** Oh!

*The Hon. Diana Laidlaw interjecting:*

**The Hon. J.R. CORNWALL:** The Hon. Ms Laidlaw is recycling the same material that Senator Harradine raised nationally two days ago. The alleged lax abortion laws in this State, incidentally, have remained substantially unaltered since they were introduced in this Parliament as a private member's Bill by the then Attorney-General, Robin Millhouse, in the late 1960s.

**The Hon. C.J. Sumner:** Is he a Liberal?

**The Hon. J.R. CORNWALL:** He was at that time a Liberal Attorney-General, but let me stress that he introduced it as a concerned individual as a private member's Bill. That law has remained substantially unchanged since that time. It is by no means a lax law: many people of good conscience and good standing in the community believe that, in the late 1980s, it is relatively restrictive. Nevertheless, there has been no move towards easier abortion laws in this State for 20 years. So much for the foolish claim of Senator Harradine, to which the Hon. Ms Laidlaw attempts to give credence, that abortion laws in this State are lax.

With regard to the drug to which she refers, Mifepristone, or RU-486, which is the alternative code name for it, it has two principal actions. It is produced by Roussel, a French pharmaceutical firm, and its principal action is to assist in the expulsion of a foetus which has died *in utero*. It is used principally where there has been foetal death, and its use in that circumstance is specific.

It also has—and this is a secondary effect—significant potential as an early abortifacient. What has happened in Australia I think was best summarised by Dr Alex Proudfoot of the Federal Department of Community Services and Health in an interview on 5AN on 15 February, two days ago. He said, and I quote in part:

> In fact, we have had an application from Roussel Pharmaceutical for approval to conduct a clinical trial using the drug as an aid in expulsion of the foetus when there has been a foetal death *in utero*, and a permit will be issued to import the drug for that trial.

With regard to the other proposal which has been mooted, it transpires that the World Health Organisation has expressed interest in a multi centre trial of the drug as an abortifacient, a drug which could induce early abortion. It is possible—and the idea has been canvassed—that some centre in Australia may be invited by the WHO to participate in that trial. There has been no contact to date with any centre in South Australia—and this news was updated as recently, I think, as late on Monday evening or Tuesday morning. I am thinking particularly of the Queen Elizabeth Hospital and the Flinders Medical Centre; there has been no contact whatsoever to ask them to participate in any proposed trial.

In summary, the drug has two purposes: it has been approved for trialling as an aid to assist in the expulsion of the foetus where there has been a foetal death in the uterus, a perfectly legitimate and desirable use; and there is also a WHO proposal for a world wide multi centre trial. South Australia at this point has not been invited to participate in either of those two.

So, it really is very irresponsible of Senator Harradine and Ms Laidlaw to suggest that somehow or other we in South Australia are so lax or bankrupt, either legally, ethically or morally, that we would somehow be a chosen centre.

## MUSEUM

**The Hon. J.C. BURDETT:** I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Premier in his capacity as Minister for the Arts, a question about research into herpetology at the South Australian Museum.

Leave granted.

**The Hon. J.C. BURDETT:** I asked a question on this subject yesterday, and the Minister was kind enough to give a very extensive answer, for which I thank her. She did indeed answer one of the four questions which I asked and which were directed to the Premier.

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. J.C. BURDETT:** The question that she answered related to making the report of the relevant incident public.

She said that it would not be made public. My other questions, which I ask the Minister to refer to the Premier, are as follows:

1. Will the Premier exonerate Dr Schwaner from the implied total blame for the situation which the Premier's statement appears to attribute to Dr Schwaner?

2. Has the Premier informed himself about the serious situation at the Museum in any way other than by reading the report and, if so, in what other ways?

3. Will the Premier investigate means of enabling effective research into herpetology to continue either under Dr Schwaner or otherwise?

**The Hon. BARBARA WIESE:** I think I answered the honourable member's questions very extensively yesterday. I made it pretty clear what the Government's position on this issue was, as well as the position of the group of people who inquired into events at the South Australian Museum at the Government's request.

*The Hon. M.B. Cameron interjecting:*

**The Hon. BARBARA WIESE:** Shut up, I'll answer in my own way.

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. BARBARA WIESE:** With respect to the final question, I would have thought that it was the place not of the Premier as Minister but, rather, that of the professional people within the South Australian Museum to take appropriate decisions as to the continuation of the herpetology work at the South Australian Museum. They are the experts in the area and the people who will make appropriate professional decisions as to how that work might continue. I am sure that those decisions will be taken as and when necessary.

As to the other two questions, I have no idea whether or not the Premier was informed in any other way other than by setting up a very extensive inquiry, which I would have thought was an appropriate way of informing himself. However, I will refer that question to the Premier for his attention. I made very clear in my reply yesterday that I would have thought that the letter prepared by the Director of the South Australian Museum completely exonerated Dr Schwaner from entire blame, to use the words of the Hon. Mr Burdett, because it was an extensive and very glowing reference to Dr Schwaner's work. It did not refer in any way at all to any of the events of the past two years in the Museum. If that is not a statement of support for the professional work of the person concerned, then I do not know what is.

As I indicated, Dr Schwaner for some reason or other was not satisfied with that reference, and then he sent it back to the Director within about 24 hours of its receipt with an accompanying letter that can only be described as being rather petulant and rude. If that is his choice, then unfortunately that is the way it will be. I would have thought that, if he had taken the reference in the spirit in which it was offered, he would be satisfied that no stigma or reflection was attached to any of the decisions that were taken following his resignation. I will be happy to refer the honourable member's questions to the Minister for the Arts. If there is any further information that he wants to add to that, I am sure he will do so.

## WORKCOVER

**The Hon. PETER DUNN:** I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister of Labour, a question about WorkCover.

Leave granted.

**The Hon. PETER DUNN:** It has come to my notice that a different WorkCover rate applies to what I believe to be the same industry, namely, the shearing industry. I have been a farmer and, if I wrote out a cheque for my premium for WorkCover, I would note that it was 4.5 per cent of the total amount that I paid to the shearers. However, a contractor who does the very same job in the same industry told me that he pays only 3.8 per cent. Why should there be a variation? I understand that WorkCover is an industry based premium. Is the Government likely to correct that anomaly?

**The Hon. C.J. SUMNER:** Premiums are a matter for WorkCover and the Workers Compensation and Rehabilitation Commission. I will refer the question to the Minister of Labour and bring back a reply.

## LEGIONNAIRE'S DISEASE

**The Hon. M.J. ELLIOTT:** I seek leave to make a brief explanation before asking the Minister of Health a question about legionnaire's disease death.

Leave granted.

**The Hon. M.J. ELLIOTT:** In the past, we have had discussions on this matter in the Council. On 23 May 1986 a woman died from legionnaire's disease at the Queen Elizabeth Hospital. That person was 48 years old, and her husband was not told at the time about her illness and subsequent death; in particular, he was not told that it was related to legionnaire's disease.

On 17 June 1986 the Health Commission announced, through the *Advertiser*, that a 54 year old woman (as distinct from a woman 47 years old) had died from legionnaire's disease the week before, which was about two or three weeks after the actual death at the QEH. As it turned out, the husband made some inquiries and discovered that it was one and the same person. Some people suggested that the announcement of a false age and time of death was an obvious attempt by either the QEH, the people in it or the Health Commission—or all three—to cover up the cause of death, particularly from the husband, and from other relatives.

In fact, the Minister of Health, Dr Cornwall, said that, if it was true, it was regrettable, to put it mildly. I understood that he was going to make some inquiries as to how such mistakes could have been made. I am unaware of any public announcement having been made as to how those mistakes were made. I ask the Minister whether or not he now has ascertained the people responsible and what action or reprimand has occurred as a result.

**The Hon. J.R. CORNWALL:** Allegations were made by the Hon. Mr Cameron at the time of the alleged cover up. He went further and, by direct inference, accused me through the *Advertiser* of causing the woman's death. That matter will be dealt with by the courts. There was no cover up. The legionella organism is ubiquitous. The woman in question had her immune status compromised because, of course, she was a kidney transplant patient and was on immunosuppressant drugs. The whole matter became one of public controversy and, regrettably, was politicised in a very irresponsible way. It was of course investigated by the Coroner and his report has been made public. It is available to the Hon. Mr Elliott or anybody else who cares to read it. I totally reject the notion of any cover up. That was adequately dealt with by the Coroner. No culpability or liability was attributed to anyone, and I can only repeat that if the Hon. Mr Elliott wants a copy of the Coroner's report, it is freely available.

**The PRESIDENT**: Before taking a supplementary question, I remind all members that matters which are *sub judice* should not be referred to in this Chamber, however obliquely. A matter is *sub judice* as soon as a writ is issued.

**The Hon. M.J. ELLIOTT**: Who was responsible for getting the age and the date wrong?

**The Hon. J.R. CORNWALL**: The article referred to a 54-year-old woman instead of a 48-year-old woman. That is not a matter on which Royal Commissions are made and I also believe it referred to a recent death. I do not think that that is a matter upon which Royal Commissions are made. Any attempt to beat up this matter so far after the event is quite despicable, but not inconsistent with the normal method of operation of the parsimonious, sanctimonious Mr Elliott in this place.

*Members interjecting:*

**The PRESIDENT**: Order!

**The Hon. M.J. Elliott**: You are changing the subject because you cannot answer the question.

**The PRESIDENT**: Order! I call the Hon. Mr Elliott to order.

**The Hon. J.R. CORNWALL**: Why don't you name him?

*An honourable member interjecting:*

**The Hon. J.R. CORNWALL**: Abbott and Costello. Let me give an example of the sort of gutter tactics to which the Hon. Mr Elliott resorts—the sanctimonious one who is not averse to going into the gutter from time to time. He made reference to the fact that the husband was not told until some time afterwards. The simple fact is that he is inviting me to explore the domestic relationship that existed between the husband and the wife at that time which was not a particularly close one, but I am not about to explore that matter in this Chamber. It does him little credit to try to raise such matters. I will leave it there. He would be well advised to leave it alone and not try to use a gutter tactic to rake over matters that have been very thoroughly investigated by the Coroner and on which detailed reports are available.

## PERSONAL EXPLANATION: MATTERS *SUB JUDICE*

**The Hon. M.B. CAMERON**: I seek leave to make a personal explanation.

Leave granted.

**The Hon. M.B. CAMERON**: I took some exception to the Minister's reference to the matter which is the subject of litigation in the courts between himself and myself. The Minister has made allegations against me, which I have denied but which will be decided in the courts.

*The Hon. J.R. Cornwall interjecting:*

**The PRESIDENT**: Order!

**The Hon. M.B. CAMERON**: I take exception to the Minister—

*The Hon. J.R. Cornwall interjecting:*

**The PRESIDENT**: Order! That includes you, Minister.

*Members interjecting:*

**The PRESIDENT**: Order!

**The Hon. M.B. CAMERON**: The Minister has again made inferences about that situation, which I will not answer. However, I do take exception to him, as a Minister of the Crown, taking steps outside, as he has, and then referring to them in this place when there is no way of my answering him. I ask that you, Ms President, give a very clear indication to the Minister that he is right out of order.

**The PRESIDENT**: I have already drawn the Minister's attention to the fact that matters *sub judice* are not to be mentioned in the House. I do not need the Hon. Mr Cameron's advice to repeat my reminder to the Minister.

## SEX ABUSE KITS

**The Hon. R.I. LUCAS**: I seek leave to make a brief explanation before asking the Minister of Health a question on sex abuse kits.

Leave granted.

**The Hon. R.I. LUCAS**: I understand that on 4 March this year the Minister of Health plans to release publicly a kit for teachers as an aid to their identifying suspected cases of child abuse. The Minister might also be aware that last year, prior to the public release of information on the Drug Offensive, background information was provided to the Opposition political Parties at that time. My questions to the Minister are:

1. Has the Minister's office received copies of the kit?
2. What consultation has taken place in the preparation of the kit?
3. Will the Minister provide advance copies and a background paper, together with the details of consultation prior to the kit's release to the Opposition?

**The Hon. J.R. CORNWALL**: I do not know in any great detail what the honourable member is talking about. I do many launches. Is it for the Education Department specifically, the Rape Crisis Centre—

**The Hon. R.I. Lucas**: Teachers in schools. Will you make inquiries?

**The Hon. J.R. CORNWALL**: If the honourable member would care to rephrase the question and ask me to provide details, I will be pleased to do so. I have been asked to launch it. I have not yet had a briefing on it or received speech notes. To the best of my recollection I have not seen any specific material. That is not unusual. I receive requests from reputable organisations all of the time and it is only if there is any reason to make further inquiries into the background of the organisation or the individual making the request that we would make preliminary investigations.

Certainly, since this request has probably come from the Education Department or its officers it would be processed in the normal way, the material would come to me as will the briefing and the speech notes. If I have any queries at that time, I will raise them. Since the Hon. Mr Lucas has shown such diligence in his research and knows in advance what I am doing on 4 March, I will be pleased to seek additional information and provide it to him.

## INTERNATIONAL PANEL AND LUMBER

**The Hon. K.T. GRIFFIN**: Has the Attorney-General an answer to my question of 5 November last on International Panel and Lumber?

**The Hon. C.J. SUMNER**: The Government has not provided any additional funds to the South Australian Timber Corporation for on-lending to International Panel and Lumber (Holdings) Pty Ltd this financial year. The annual report of the South Australian Timber Corporation, tabled in the House of Assembly in November, sets out total advances of $17.915 million (including capitalised interest of $2.994 million) by the South Australian Timber Corporation to International Panel and Lumber (Holdings) Pty Ltd.

## CASINO MANAGEMENT

**The Hon. K.T. GRIFFIN**: Has the Attorney-General an answer to my question of 14 October 1987 on Genting?

**The Hon. C.J. SUMNER:** The South Australian Corporate Affairs Commission has contacted its counterparts in New South Wales and Western Australia on this matter and has been advised that no prosecution proceedings have been instituted or are to be instituted against the Genting group of companies, or either of the persons referred to in the question. In reply to the supplementary question raised, I advise that the agreement between Genting (S.A.) Pty Ltd and the Casino operator is not a document to which the Government or any of its agencies is a party although it has been examined by the Lotteries Commission and the Casino Supervisory Authority. Since it reflects a commercial agreement between the parties concerned, it would be inappropriate to table the document before Parliament.

## ELECTORAL BRIBERY LAWS

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

That this Council—

1. Expresses its concern at the possible ramifications of the narrow interpretation of the bribery provisions of the Commonwealth Electoral Act for elections conducted under the State Electoral Act in view of the similarity between the Commonwealth and State provisions.
2. Calls on the Attorney-General to obtain an urgent ruling from the Electoral Commissioner as to the scope of the State electoral bribery laws and determine, after discussions with the Electoral Commissioner, the need for amendments to clarify the law and report back to the Parliament.
3. Urges the introduction of any possible required legislative amendment prior to the next State election.

I know that it might be somewhat painful for members of the Australian Labor Party to refer back to the recently held Adelaide by-election when we all saw on 6 February the victory of Michael Pratt, working class hero for the Liberal Party. However, I will not go over all that sordid detail for the ALP and the ramifications that ensued for the State Labor Governments both here and in New South Wales and for the out-of-touch and arrogant Prime Minister Hawke and the Hawke Government. I will refer to one aspect of the Adelaide by-election, that is, what has become known as the infamous barbecue bicentennial bribery affair.

**The Hon. Peter Dunn:** Bannon's barbecue!

**The Hon. R.I. LUCAS:** Bannon's barbecue, if you like. I refer to what I see as, first, the disgraceful behaviour of, I believe, the Premier and other functionaries of the ALP, and also the disgraceful decisions of the Australian Electoral Commission and of the Office of the Director of Public Prosecutions. I also refer to what I see as negligence in the duty of some officers to investigate properly the complaint laid by the Liberal Party in relation to contravention of the Commonwealth Electoral Act. And I also refer to what would seem to be the actions of officers who appeared to fall over themselves to excuse the behaviour of the Premier and the ALP in this particular matter.

*The Hon. C.J. Sumner interjecting:*

**The Hon. R.I. LUCAS:** We will talk about that later. I believe that the background to the barbecue bribery affair began with a campaign technique by the working class hero, Mike Pratt, and his team of workers.

**The Hon. C.J. Sumner:** Andrew Jones the second!

**The Hon. R.I. LUCAS:** No, do not worry about that. The Liberal Party advertised a barbecue of its own for electors in the Federal electorate of Adelaide. However, the distinction was that the Liberal Party advertised a BYO (bring your own) barbecue so that electors could meet the candidate, the Federal Leader of the Liberal Party, John Howard, and other distinguished guests at a location in the Federal electorate of Adelaide. When Don Farrell and company—

**The Hon. C.M. Hill:** Who's this Don Farrell?

**The Hon. R.I. LUCAS:** I once thought that Don Farrell was a nice bloke, but anyone who can give up supporting West Adelaide and then pretend to support North Adelaide for political gain obviously has some defects in relation to potential for political office. I say no more about Mr Farrell than that. Obviously the ALP saw this campaign technique by the Liberal Party as potentially having some effect on the voters of Adelaide. At very short notice, on 12 January, Mr Farrell sent a letter to electors in Adelaide, and at around about the same time there was an invitation from Premier Bannon to attend a free bicentennial barbecue. Of course, the barbecue had nothing to do with the Federal by-election—and we will discuss that later—it was a barbecue to celebrate the bicentenary.

The invitation from the Premier was circulated to households in the State electorate of Ross Smith, which is wholly contained within the Federal electorate of Adelaide. It was an invitation from the Premier and it was in bold print. It apparently bore the signature of John Bannon and invited all recipients and not just electors—I make that point because it is important for later understanding—their families and friends to attend a free bicentennial barbecue. It contained no reference to the forthcoming by-election for the Federal seat of Adelaide. It gave details of the time, date and venue for the holding of the barbecue, which was Thursday 14 January—some three days prior to the previously advertised barbecue for the Liberal Party on the Sunday. As I indicated, a letter from Don Farrell on his letterhead and dated 12 January 1988 and signed by him invited recipients and their families to join with him and certain other persons, including such luminaries of the Labor Party as not only the Premier but also Mick Young, Mike Nunan, Angela Bannon, the candidate and others.

**The Hon. Peter Dunn:** What about the Attorney?

**The Hon. R.I. LUCAS:** No, I do not think the Attorney was invited. In fact, I think he may have been a little wiser than the rest and saw the trouble that could ensue as a result of this barbecue. The letter from Mr Farrell gave the time, date and venue for the barbecue and also stated:

> Throughout the election I am endeavouring to meet as many local people as possible. I feel the barbecue will be a good opportunity to get together informally and meet local families. I look forward to seeing you there.

The letter also contained references to the ALP. I will look at the facts before exploring the ramifications in relation to this particular barbecue. First, let us look at how many people were invited to this free lunch or free dinner provided by the ALP.

The Premier circulated his invitation to about 10 000 residences within the electorate of Ross Smith. If one looks at the basis that there are about 20 000 electors in that area it adds up to possibly 25 000 to 30 000 people being invited, if one includes the families and friends who would have been involved in the general invitation from the Premier to attend a free barbecue paid for by the ALP. The exact extent of the invitation contained in the letter from Don Farrell is unknown, although certainly the evidence provided to me indicates that it covered virtually all the Federal electorate of Adelaide apart from Ross Smith, which of course was covered by the Bannon invitation. We certainly know that it went to a good number of areas within the Federal electorate of Adelaide and was not just limited to a small number of suburbs.

The total number of electors in the Federal electorate of Adelaide is between 70 000 and 75 000. If the invitation went to all electors, and if we look at the calculation that

can flow from that with respect to children and others in each family, we are looking at over 100 000 people in the Federal electorate of Adelaide who received an invitation—an offer of a free meal and sundry extras from the Premier and the ALP.

Over 100 000 people in the Federal electorate of Adelaide were offered a freebie from the Australian Labor Party. That is the potential maximum extent of the offer. There have been varying media estimates of the attendance at that function—some as low as 300 and some as high as 1 500. People who have spoken to me have indicated that it is very hard to estimate the total attendance because people tended to come and go, have their free meal and then leave soon afterwards, soon to be replaced by eager hordes of other Adelaide electors who wanted to go for a free meal. I might add that a Liberal Party worker of longstanding in the Ross Smith electorate took up the kind offer of a free meal from the Australian Labor Party, and she did so on the basis of sending her husband and family along to be fed by the Labor Party while she spent a couple of hours letterboxing and door-knocking for Michael Pratt.

*The Hon. M.J. Elliott interjecting:*

**The Hon. R.I. LUCAS:** The Democrats have probably roughly the same membership in the Ross Smith electorate as does the Liberal Party. It is certainly manned by very hardworking officers of the Liberal Party, officers who have done the Liberal Party proud over past years in very difficult circumstances. All I can say is that at the headquarters of the working class hero Mike Pratt on that Saturday night those who were in tears were those from the Ross Smith electorate who had seen for the very first time Labor Party booths with Liberal Party majorities.

**The Hon. J.R. Cornwall:** Andrew Jones must have been there at least in spirit.

**The Hon. R.I. LUCAS:** All I can say is that, if the Labor Party looks on Michael Pratt as another Andrew Jones and leaves it at that, that will be a further indication of the arrogance and 'out of touchness', if I can use that phrase, of the Minister of Health and the Labor Party. Michael Pratt is certainly going to be around for quite some time. Those who attended this freebie from the Labor Party were offered free meat, bread, and sauce, as one would expect from the Labor Party.

**The Hon. J.R. Cornwall:** Rosella sauce.

**The Hon. R.I. LUCAS:** It was Rosella sauce, was it? Well, that is top quality sauce from the top end of the market, isn't it. Working class people cannot buy Rosella sauce; we go for the generic brands.

**The Hon. J.R. Cornwall:** Brand X!

**The Hon. R.I. LUCAS:** Brand X, yellow label. Also offered were soft drinks—not cordial but soft drinks—icecreams, mint lollies and sundry extras. So, it was not just a sausage with bread and dripping wrapped around it that was offered to a potential 100 000 people in the electorate of Adelaide. Quite a good meal was offered by the Australian Labor Party at no cost.

**The Hon. M.J. Elliott:** You heard about it too late, that's your problem!

**The Hon. R.I. LUCAS:** I was very disappointed. That night I was at the Ingle Farm Shopping Centre working hard for the working class hero. A very conservative estimate of the cost per head of that sort of meal is about $1—maybe up to $1.50 per head. So, if 1 500 people were there we are talking in terms of about $2 000 in food being offered free and gratis to the electors of Adelaide by the Australian Labor Party. Had there been a 10 per cent response—10 000 people out of the total of 100 000 potential recipients—the potential cost to the Labor Party, the potential extent of the electorate bribe, would have been $10 000 to $15 000. I would have thought that, based on the invitation being sent to a potential 100 000 recipients, a 10 per cent acceptance to a freebie meal would be something that the Australian Labor Party would have had to plan for, and that would have involved an electoral bribe of $10 000 to $15 000.

Whilst a 100 per cent response rate would be unlikely, nevertheless, in relation to the extent of the electorate bribe we must consider how many people could have gone. Potentially that was 100 000, and the potential cost to the Australian Labor Party of that bribe was $100 000 to $150 000. However, sensible planning would indicate that there would be nowhere near a 100 per cent attendance and that perhaps a figure of 10 per cent would be closer to the mark. Nevertheless, an offer went out from a political Party from a Premier who was prepared to twist every aspect of the electoral law to his advantage to try to get a poor candidate over the line for the Australian Labor Party.

At the barbecue the ALP candidate, Don Farrell, spoke, Mick Young spoke and Premier Bannon spoke. Young and Bannon spoke in support of Farrell's candidacy. They urged people present to vote for Don Farrell at the by-election on the 6th. They made adverse comments about the Liberal Party at that barbecue.

*The Hon. M.J. Elliott interjecting:*

**The Hon. R.I. LUCAS:** Exactly. Not only did they urge a vote for their candidate but they were snide and cynical about the Liberal Party. This was a bicentennial barbecue, but did any of the speakers refer to the bicentenary at all? I think that is a fair question. The evidence that has been provided to me indicates that not one of the speakers—Farrell, Young and Bannon—referred to—

**The Hon. Carolyn Pickles:** Were you there?

**The Hon. R.I. LUCAS:** No, I was working at the Ingle Farm Shopping Centre with the working class constituents of Adelaide with Michael Pratt.

**The Hon. Carolyn Pickles:** You wouldn't know a working class constitutent if you fell over one.

**The Hon. R.I. LUCAS:** Come on, Carolyn!

*The Hon. J.R. Cornwall interjecting:*

**The Hon. R.I. LUCAS:** John Cornwall knows the Housing Trust areas of Mount Gambier that I was born and raised in, Carolyn Pickles—let us hear a little bit about your background. I would be delighted to trade discussion about backgrounds if the honourable member wants to. Obviously, this matter stings the Australian Labor Party, and in particular Minister Cornwall.

**The Hon. J.R. Cornwall:** Your being a traitor is the thing that has struck me for a long time, and I know it weighs very heavily on your conscience.

**The Hon. R.I. LUCAS:** The Minister is the epitome of those in the Government that Premier Bannon has warned about—those who are arrogant and out of touch with the constituency that they are meant to serve. On 14 January a letter was forwarded from the State Director of the Liberal Party to Mr Brian Beggs, Divisional Returning Officer for the Division of Adelaide. I will not go through all the details, but attached to that letter was a leaflet distributed by the Premier and a letter distributed by Farrell. The salient features of this letter were:

> I draw your attention to section 326 (2) of the Commonwealth Electoral Act relating to bribery. It is the Liberal Party's contention that the facts described above constitute a breach of section 326 (2). Our contention can be supported by statutory declarations from people who received the invitation and attended the free barbecue.

So there is an offer of statutory declarations in supporting evidence to the claim being made by the Liberal Party. Let us look at the response from the Australian Electoral Com-

mission and from the Office of the Director of Public Prosecutions, a response that I have earlier described as being negligent, and I will seek to portray that. In my view it could be easily summarised as a disgraceful response and decision coming from officers and sections of the Commonwealth administration which are meant to enforce electoral laws and proper behaviour by politicians like Bannon, Young and prospective politicans like Farrell in relation to electoral behaviour.

**The Hon. T. Crothers:** Do you want a rerun?

**The Hon. R.I. LUCAS:** That is very kind of you Trevor, but no thank you. Ms President, this response from Colin Hughes, the Electoral Commissioner, to Nick Minchin on 22 January—some eight days after the Minchin letter—is an incredible response. It states:

> That advice was that in order to establish the commission of an offence against section 326 (2) *(a)* of the Commonwealth Electoral Act 1918 in the circumstances of the present case, it would be necessary to prove beyond reasonable doubt that the food and refreshments were offered, and subsequently provided, in order to influence or affect any vote of another person.
>
> Mr Bannon and Mr Farrell, and others who organised the barbecue, would undoubtedly claim that their purpose in providing free food and refreshments was not to influence voters but rather to attract people to the barbecue so that they could then be influenced by the speakers. If that was their purpose, and their only purpose, then there has been no offence against section 326.

That is absolutely outrageous. That is semantic gymnastics from the Electoral Commissioner and, I might say, based on advice from the Director of Public Prosecutions, so, I am not just accusing the Electoral Commissioner in this case.

What we are being asked to accept from the Electoral Commissioner and the Director of Public Prosecutions is, first, that Bannon and Farrell and the others who organised the barbecue would undoubtedly claim that their purpose in providing the free food and refreshments was not to influence voters but to attract them to the barbecue so that then they could be influenced by speakers, and we are meant to see some difference in that.

First, they make an assumption about the possible defence of Bannon, Farrell, Young and company. There is no indication at all (and I understand that there was no attempt to gather any evidence) as to what response there might have been from Bannon, Farrell and company. What the Director of Public Prosecutions and the Electoral Commissioner served up to us was that Bannon and Farrell would undoubtedly claim this. What they sought to do was to come up with some semantic legal nonsense to defend the case and say, 'Undoubtedly, Bannon, Farrell and company would adopt this particular defence'.

There was a very learned interjection from a colleague on this side of the House with a knowledge of the law as I read that opinion. The honourable member said that it was one and the same. How can you pretend that you have spent money—they actually spent $2 000 to $3 000, but potentially thousands more than that—for a bicentennial barbecue where no-one mentions the bicentennial. In the speeches from political leaders like Bannon and Young everyone urged people to vote for Don Farrell. Yet people were supposed to be invited to that barbecue not to be influenced.

**The Hon. R.J. Ritson:** And arranged at short notice, too.

**The Hon. R.I. LUCAS:** It was arranged at very short notice, as I indicated before. They were not invited there to be influenced in any way at all: they were invited to come along for a bicentennial barbecue and just perchance Bannon, Young and company happened to be there and they just happened to mention a few things in speeches about the fact that they should vote for Don Farrell and what a bad lot the Liberal Party were. Ms President, that is absolutely disgraceful.

**The Hon. C.J. Sumner:** Why don't you say that outside the House?

**The Hon. R.I. LUCAS:** I am raising these matters here; you can respond now. You have only just turned up. You can respond—

**The Hon. C.J. Sumner:** Are you prepared to say that outside the House?

**The Hon. R.I. LUCAS:** We will explore it outside. I quote further from the letter:

> It is possible that those who organised the barbecue hoped that the electors who attended and who received free food and refreshments would feel obligated to vote for Mr Farrell. However, there is no evidence to that effect in the material at hand and no reasonable prospect of such evidence becoming available.

What they are saying is that there is no evidence, yet in the letter from Minchin to the Electoral Commission there is an indication that there were witnesses who were prepared to sign and swear statutory declarations as evidence for this matter. That offer is in writing and the Electoral Commission has it. They go on to say that there is no reasonable prospect of such evidence becoming available. Ms President (I am sorry, I should have said 'Mr Acting President'; you have changed sex—sexual reassignment), I would have thought that it would be fair practice when a serious complaint was lodged by the State Director of the Liberal Party—a major political Party—about unfair practices under the Commonwealth Electoral Act that, before rejecting the claim, someone would seek to gather some evidence about the veracity of the claims that were being made.

Whether that is the job of the Director of Public Prosecutions or that of the Australian Electoral Commission I do not seek to pursue at this stage. However, I know that under the State Electoral Act, when there have been complaints about behaviour under that Act, the State Electoral Commissioner (Mr Andy Becker) has certainly sought to collect evidence at the time from the major political Parties before either accepting or rejecting the claim.

I would have thought that that was proper behaviour, and we accept that behaviour from Mr Becker. But, I certainly do not accept the negligence, in my view, of officers under the Commonwealth Electoral Act who say that there is no evidence to come to hand. They make no attempt at all to collect evidence and then conclude that there is no reasonable prospect of such evidence becoming available. The Liberal Party took legal advice and provided it to the Electoral Commission on 27 January, subsequent to that letter. That legal advice (page 4) states:

> We add that for there to be a breach of section 326 (2) it does not have to be shown that another person was in fact influenced or affected. Therefore we do not agree with any implication contained in the first paragraph 12 of the above described letter from the Acting Assistant Director of Public Prosecutions that evidence is required to show that the electors in fact felt obligated to vote for Mr Farrell; nor is evidence required to show that the electors in fact felt obligated to support Mr Farrell or to oppose the Liberal Party.

That is an important part of the legal advice obtained by the Liberal Party and provided to the Electoral Commission: what we are talking about is someone who seeks to influence. Whether, in the end, one is successful in influencing is a separate matter. What the electoral laws look at is whether political Parties or candidates seek to influence or affect the votes of electors in an election. If one can demonstrate that, or there is a chance of demonstrating it, then the bribery provisions of the Commonwealth Electoral Act need to be investigated very closely, and certainly with greater diligence than was done by the Australian Electoral Commission and the Director of Public Prosecutions.

I do not intend to go on with a couple more of these letters, because I do not want to take up too much time. I want to raise a couple of other matters with respect to the Electoral Act, as they are very significant. Nevertheless, there were subsequent letters on 1 February from Colin Hughes, Electoral Commissioner, in effect rejecting the further contentions of the Liberal Party, and another letter on 8 February from the Deputy Electoral Commissioner (Mr A. Cirulis), who rejected the further claims of the Liberal Party on that matter as well.

As I have indicated, in my view this is a sorry record of disgraceful behaviour in relation to this case. I want to look at the enormous ramifications that this decision potentially has for future State elections. I am looking at the next State election, potentially in two years, under the State Electoral Act. The Commonwealth Electoral Act provision on bribery and that of the State Act are very similar, although not exactly the same. Section 109 of the State Act provides:

A person who offers or solicits an electoral bribe shall be guilty of an indictable offence.

There is a penalty of imprisonment for two years, so it is a significant offence with a significant penalty under the State Electoral Act. I reinforce the fact that it is someone who offers: we do not have to demonstrate that that offer was successful. What one must show is that someone offers an electoral bribe to—

*The Hon. C.J. Sumner interjecting:*

**The Hon. R.I. LUCAS:** We'll have to, anyway. There is a lot of important stuff to do. You cannot silence me by threatening the fact that we have to sit tonight.

*The Hon. C.J. Sumner interjecting:*

**The Hon. R.I. LUCAS:** It is an important matter. Subsection (2) says 'in this section', and then defines 'electoral bribe'. It means:

A bribe for the purpose of *(a)* influencing the vote of an elector; *(b)* influencing the candidature of any person in an election; or *(c)* otherwise influencing the course or result of an election.

I will not read the similar provision under the Commonwealth Electoral Act, but suffice to say that it is very similar to the provision under the State Electoral Act. When one is operating under electoral law, because it is such a difficult area, courts and the electoral officers tend to refer to precedents under similar electoral law. Indeed, in the initial response of 20 January, when the Director of Public Prosecutions rejected the Liberal Party claim of bribery, he placed great weight on a provision of Victorian electoral law and a precedent established in the case of *Woodward v Maltby* (1959), under Victorian electoral law, in relation to a candidate who was distributing books of matches to electors. The Commonwealth people relied on a Victorian court decision of 1959, in part, to justify a rejection.

So, one cannot say that what has occurred under Commonwealth electoral law and the decisions that have been established thereunder do not have ramifications for State electoral law, because potentially they do and potentially State Electoral Commissioners and others charged with the responsibility of following matters through could refer to decisions under Commonwealth electoral law. The ramifications for the next election are enormous, as I said. What the Commonwealth electoral law and the provisions established by this decision have shown is that, first, the Australian Labor Party potentially can offer free meals and barbecues to all electors in marginal seats (they do not have to limit it to that, but I guess that is the area that they would be looking at) in the period leading up to the next State election. There is nothing in the decision from the Commonwealth Electoral Commission which would indicate a continuation of the practice.

Let us say that Premier Bannon was to offer in the week prior to the election a free barbecue to the eight marginal seats, each with 20 000 electors, and that he did so in each of the weeks prior to the next State election. If that was the case, there would be nothing in these decisions to indicate that the Premier would be prevented from continuing to provide free barbecues at the political Party's expense to electors or to anyone in those marginal seats prior to the next election.

Great play has been made of the fact that only soft drinks were offered at this barbecue. There is potentially nothing in the decisions of the Australian Electoral Commission which stops free beer and beer parties being offered in conjunction with the barbecues that Premier Bannon would want to offer as an electoral bribe. Indeed, there would be nothing on my reading, to prevent one offering free beer parties in hotels, as long as we are talking of a rough order of magnitude per head as this free barbecue cost Premier Bannon and others in the Federal electorate of Adelaide.

What is to stop a particular political Party, which has the money to spend, from staging free rock concerts? If the stage is reached of having $30 tickets for Whitney Houston and Frank Sinatra, the value of those tickets could possibly constitute an electoral bribe. But, if we are talking about local rock groups that are popular with young voters in marginal electorates, potentially nothing prevents political Parties with the money to spend staging massive free rock concerts for all the young people in the marginal seats or, for that matter, for all the young people in Adelaide.

That would be permissible, as long as the net cost per head for those concert-goers was around the cost established under this precedent, or possibly even a little higher. Who knows how much extra the Electoral Commissioner would be prepared to accept before saying that it was a figure of some significance and that it constituted an electoral bribe. That is the sort of thing that we are likely to see.

We will see a situation where political Parties or candidates who have the money, or who have control over large amounts of money, will almost be able to buy their way into political office through offers of free meals and barbecues on a continuing basis prior to the next election campaign—

*The Hon. I. Gilfillan interjecting:*

**The Hon. R.I. LUCAS:** It has got nothing to do with voluntary voting. That is a red herring. There would be free concerts and free beer parties for all electors or anyone else, as long as the net cost per head is about the figure that was offered to the electors in the by-election for the Federal seat of Adelaide.

**The Hon. C.J. Sumner:** You should have discussed it when the Bill came before Parliament.

**The Hon. R.I. LUCAS:** Exactly. There is no doubt that the electoral laws should not cover the situation of small groups of people who may have a drink with a mate in a bar. If you are a political candidate and you happen to buy your mate a drink, the electoral bribery laws should not cover that situation.

**The Hon. C.J. Sumner:** It's a matter of intelligence.

**The Hon. R.I. LUCAS:** Exactly, and the Liberal Party and the Labor Party support that concept. If I buy a beer for Mr Sumner, which is unlikely, and I am a candidate, that should not constitute a bribe. If I am a candidate and distribute boxes of matches or balloons, that should not constitute an electoral bribe. The Liberal Party and the Labor Party agree with that concept, and there is no dispute about it. However, when we get to the other extreme, where virtually an unlimited number of people are invited to come along for a free meal, that is the other end of the scale. The

Labor Party says that, under the Commonwealth Electoral Act, that is fair and above board.

We should not let ourselves get into a situation where candidates or Parties with plenty of money in their pockets have an unfair advantage over those who do not. Unless we have a good and hard look at the State electoral laws, in the light of this decision, that is the situation in which we will find ourselves. That is what this motion calls for. I am calling on the Attorney-General to have a chat with Mr Andy Becker, the Electoral Commissioner. I know the response, so the Attorney should not try to trot back to us that he cannot give us a definite set of guidelines, because people can institute prosecutions; that we can go to the Court of Disputed Returns; and that what he says does not necessarily protect the political Parties.

I believe that the Attorney should talk with the Electoral Commissioner. Perhaps the Electoral Commissioner could talk to representatives from the Parties and, if there is the potential—

**The Hon. C.J. Sumner:** I don't think anyone would do it again.

**The Hon. R.I. LUCAS:** The Labor Party has done it. You are always much more game in these matters than we are, because we are always more conservative on electoral matters.

**The Hon. Peter Dunn:** It's the filthy rich Labor Party!

**The Hon. R.I. LUCAS:** We do not have millionaire friends like Holmes a Court, Bond and Packer endorsing Prime Ministers or political leaders, but let us not get political on this matter. Andy Becker should sit down with representatives from the Parties. If there is potential for it to get out of hand as happened in the Federal by-election for the seat of Adelaide, we should sit down as a Parliament, along with the Attorney-General, the shadow Attorney-General and others who have an interest in electoral matters, and see whether we can protect, as we want to protect, Lucas buying Sumner a beer at the bar, or Lucas providing to electors free boxes of matches with my face on them saying, 'Please vote for me.' We can protect that sort of campaigning technique by the Party, and we can prohibit the sort of extension that we have just seen in the recent by-election.

I believe that, after we have had those discussions, we ought to try to suggest a form of words that major Parties, including the Democrats, can debate and discuss prior to the next State election so that we do not get ourselves into a situation where, if a political Party or a candidate has a lot of money, they have an unfair advantage over those persons who wish to contest political office but who do not have that particular advantage.

I urge that sensible debate and discussion take place on this matter over the coming weeks, and I hope that, after we have the to-ing and fro-ing in the Council, as I am sure we will, after we have each drawn blood if we have to, we can then talk sensibly to the Electoral Commissioner and get the political Parties talking to see whether we can arrive at a form of words which will prevent Parties from going down this particular path prior to the next election. Mark my words: unless we come up with a form of words that will do that, during the next State election campaign we will have a free-for-all where, whichever Party has the most money, will gain the unfair advantage for winning the next State election.

**The Hon. C.J. SUMNER** secured the adjournment of the debate.

## SELECT COMMITTEE ON ENERGY NEEDS IN SOUTH AUSTRALIA

**The Hon. I. GILFILLAN:** I move:

That the time for bringing up the committee's report be extended until Wednesday 30 March 1988.

Motion carried.

## SELECT COMMITTEE ON EFFECTIVENESS AND EFFICIENCY OF OPERATIONS OF THE SOUTH AUSTRALIAN TIMBER CORPORATION

**The Hon. T.G. ROBERTS:** I move:

That the time for bringing up the committee's report be extended until Wednesday 30 March 1988.

Motion carried.

## SELECT COMMITTEE ON AVAILABILITY OF HOUSING FOR LOW INCOME GROUPS IN SOUTH AUSTRALIA

**The Hon. CAROLYN PICKLES:** I move:

That the time for bringing up the committee's report be extended until Wednesday 30 March 1988.

Motion carried.

## SELECT COMMITTEE ON THE ABORIGINAL HEALTH ORGANISATION

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

That the time for bringing up the committee's report be extended until Wednesday 30 March 1988.

Motion carried.

## ELECTORAL ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 10 February. Page 2602.)

**The Hon. K.T. GRIFFIN:** I thank honourable members for their contribution to the debate on the second reading of this Bill. It has been on the Notice Paper since August in the hope that members could be persuaded that voluntary voting in State elections is the appropriate course to follow in South Australia. It should be remembered that this issue has not been voted upon during the life of this Parliament, although the issue was raised prior to the 1985 State election when considering amendments to the Electoral Act. On that occasion the Hon. Mr Elliott was not a member of this Council. So, the membership of the Council is different from the last time when the matter was the subject of a vote.

A number of matters have been raised by honourable members in their contributions to the debate. The Hon. Mr Gilfillan talks about *quasi* purchasing of votes being a concern if we have voluntary voting. The contribution of my colleague the Hon. Robert Lucas on the resolution this afternoon in relation to what happened during the Federal seat of Adelaide by-election is indication enough that it does not matter whether it is voluntary or compulsory voting, there will still be opportunities, provided the laws are not interpreted tightly enough, to undertake what is tantamount to bribery of electors through that sort of public function.

The Hon. Mr Elliott says that it will be worse with voluntary voting. I suggest that that is utter nonsense. He does not understand that the provisions of the electoral law relating to offences, whether it be bribery, obstruction, or ferrying in the sense of influencing voters, will remain. It does not matter whether it is voluntary or compulsory, the law will still provide for electoral offences. It is nonsense to suggest that the introduction of voluntary voting will in some way change the nature of the law so far as it relates to electoral offences.

*The Hon. C.J. Sumner interjecting:*

**The Hon. K.T. GRIFFIN:** It is nonsense because the electoral offences will remain. With voluntary voting one can ensure that politicians win the hearts and the minds of the people. There will no longer be any blue ribbon seats, so we will not have votes bottled up in Port Adelaide or Davenport and politicians and candidates will have to work for the vote.

**The Hon. C.J. Sumner:** In some cases only 40 per cent of the people vote.

**The Hon. K.T. GRIFFIN:** That is nonsense. In Canada's national election in 1987, with voluntary voting 76 per cent turned out. In West Germany, in 1985, 84.3 per cent turned out. In the United States presidential election in 1984, the turnout was 53.3 per cent. In the Netherlands in 1986 it was an 85.7 per cent turnout. In Sweden's most recent elections the turnout was 90 per cent. The people who do not turn out are not dispossessed: they have a choice of whether or not to vote. If they do not want to get out and vote, they have to carry the responsibility for that.

*Members interjecting:*

**The ACTING PRESIDENT (Hon. G.L. Bruce):** Order!

**The Hon. K.T. GRIFFIN:** If people do not want to go out and vote, they ought to have the choice of whether or not they do so, unlike the Adelaide federal by-election where 10 000 out of 70 000 electors did not turn out to vote. Most of that was because they were disenchanted with the Hawke Government, did not want to turn their vote against a Party they had traditionally voted for and so stayed at home. That means that 10 000 non-voters have to be followed up under the law as it stands presently and are sent a 'please explain' notice. If they do not explain, they receive a summons ultimately.

*The Hon. Carolyn Pickles interjecting:*

**The Hon. K.T. GRIFFIN:** They broke the law which says that they have to go to the polling booth and get their name marked off the voting roll. They did not want to participate in the electoral system and, if they do not want to do that, they should not be obliged to do so. It is nonsense to argue that it is a civil duty to turn up at the polling booth under threat of penalty and ultimately going to court.

*The Hon. C.J. Sumner interjecting:*

**The Hon. K.T. GRIFFIN:** All right, I did. Significant democracies—

**The Hon. C.J. Sumner:** You insulted them.

**The Hon. K.T. GRIFFIN:** Rubbish! I said that the major democracies of the world have voluntary voting. A handful, such as Italy, have compulsory voting, but they are in the very substantial minority. The majority of democratic nations have voluntary voting.

The Hon. Mr Gilfillan said that the Democrat amendment that he proposed when the Electoral Act was before us in 1985 was a happy medium between the view of the Labor Party that there ought to be compulsory voting and the view of the Liberal Party that there ought to be voluntary voting. I suggest that it did nothing to change the situation. One has never had to fill out the ballot paper.

*The Hon. C.J. Sumner interjecting:*

**The Hon. K.T. GRIFFIN:** No. It does not work that way. That is the problem with the Labor Party, it is paranoid about the choices that the electors will make if they are given a choice.

*Members interjecting:*

**The ACTING PRESIDENT:** Order!

**The Hon. K.T. GRIFFIN:** The Labor Party is afraid that if it gives people a choice, it will lose. That is an insult to the electors of South Australia.

**The Hon. C.M. Hill:** A democratic choice, too.

**The Hon. K.T. GRIFFIN:** It is a democratic choice. It is quite clear from the experience in other countries that where the democratic choice is given political Parties are stronger and minorities have a greater opportunity to promote their cause with no seat thereafter being safe. Every member and every candidate has to work for his or her election. The problem with the Labor Party is that it wants safe seats. It does not want too many people involved in its Party organisation as it will mean too many other people having an influence on decisions for which it presently has responsibility and influence. In all countries that have a democratic choice through voluntary voting, they have strong political Parties with a keener interest in the political process and a high turnout of voters.

**The Hon. C.J. Sumner:** You could not get a keener interst in the political process than in Italy.

**The Hon. K.T. GRIFFIN:** The political process in Italy is such that they have a change of Government every few months.

**The Hon. C.J. Sumner:** That is nothing to do with compulsory voting. It is a keen interest in the political process.

**The Hon. K.T. GRIFFIN:** It has something to do with the political system.

**The Hon. C.J. Sumner:** In the system, not the compulsory voting.

**The Hon. K.T. GRIFFIN:** Of course there is interest in whether it is a voluntary or compulsory voting system. If you give people the choice, that is the essence of a democratic system, in my view. If you go to the point of saying, 'You do not have to vote if you do not want to, but we will encourage you to vote, we will exhort you to vote and we will give you the necessary incentive to vote by giving you the sort of policies that will encourage you to vote for us and we will encourage you through that mechanism to come to a polling booth and exercise the responsibility of voting,' you should not do that under pain of penalty, prosecution and court appearances.

Finally, to repeat what I said earlier, the electoral law for voluntary voting remains as tough as it is with compulsory voting. There will still be electoral offences whether we have voluntary voting or compulsory voting. There will not be a greater opportunity to obstruct voters and there will be no greater opportunity to offer a bribe to encourage people to vote for you and the results will not be based on whim, as the Hon. Mr Gilfillan argued—an argument which I suggest is an insult to the intelligence of ordinary South Australians. You will have a vote based on a real desire to get out and do something in the political process and not only because if you do not do it you will be fined.

I get the message as to what the Democrats are likely to do on this occasion, along with the Government. They are afraid of a voluntary voting system. They prefer a compulsory voting system although I would suggest that for minority Parties, because they have a greater enthusiasm for the cause—sometimes a very narrow cause—their supporters are more likely to go to a polling booth than some supporters of major Parties because they will not be equally enthused about a broader range of issues which might be

relevant at the time of a particular election. So I commend the Bill to honourable members and urge support for it as an essential ingredient of a free and democratic electoral system.

The Council divided on the second reading:

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

Noes (11)—The Hons G.L. Bruce, J.R. Cornwall, T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Carolyn Pickles, T.G. Roberts, C.J. Sumner (teller), G. Weatherill, and Barbara Wiese.

Majority of 1 for the Noes.

Second reading thus negatived.

## STRATA TITLES BILL

Second reading.

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

It is the culmination of a complete review of the strata title provisions of the Real Property Act 1886. Those provisions have been in the Real Property Act since 1967 and over the years innumerable suggestions for amendments have been received and considered by the Attorney-General's Department and the Registrar-General. Various reviews of the legislation have been conducted and members may be aware that a Bill to effect significant amendments was introduced into Parliament in 1978, but subsequently lapsed. This Bill goes further and provides a complete and comprehensive review.

Strata title development is now common in South Australia. It is estimated that there are about 38 000 strata units in the State and some 60 000 people living in these units. This legislation will therefore have significant impact on a significant portion of the people of the State. Many other people have also taken a keen interest in the development of this Bill and many submissions have been received over the years.

As the Government started work on a revision of the Real Property Act provisions it soon became apparent that a completely new Act was appropriate. The impetus for a new and distinct approach to strata titling grew as various proposed reforms were married with existing provisions lifted from the Real Property Act. Comparisons were made with up-dated legislation in New South Wales, Queensland and Western Australia. Some benefit was gained from a report of the Western Australian Law Reform Commission and the draft South Australian legislation of 1978.

As part of this process, the Government released a draft Bill and discussion paper for public comment. The concept of a separate Bill was well received. Significant submissions were received from a variety of organisations, groups and individuals. These submissions were considered as drafting proceeded further. However, as this process developed, it became apparent that greater benefits could be gained by undertaking a comprehensive redraft of the whole measure. The provisions that had been 'picked-up' from the existing Act were increasingly seen to be excessively lengthy and unnecessarily detailed. A completely new approach was obviously required. Coupled with this was the view that the legislation should be presented as a simple and easily readable measure. There is no doubt that many strata title residents must continually refer to the legislation and it is imperative that they be presented with a measure that sets out their rights and responsibilities in a coherent form. This Bill will provide this, while maintaining the integrity of the present concepts and proposed reforms. The Bill has now been through another stage of public consideration and amendments made in the other place. The Government now considers that the Bill is acceptable to all interested parties and should be well received on its commencement.

Attention may now be given to various specific aspects of the Bill. Of particular interest will be the provision to allow the amendment of a deposited strata plan. The present Act does not provide any satisfactory solution where unit holders wish to do such things as extend units, amalgamate units, or swap units subsidiaries. These are common proposals and, provided other unit holders agree, should be possible to effect. The Bill accordingly provides that an application can be made to amend the plan with the consent of other unit holders (passed by unanimous resolution at a meeting of the strata corporation), the proprietors of registered encumbrances and the appropriate planning authorities. The plan will be able to operate as a conveyance and so a memorandum of transfer will be unnecessary.

Another provision will allow the amalgamation of strata plans where they are on adjoining sites. This provision should be of particular interest to persons wanting to develop unit schemes as it will allow the consolidation of a number of schemes. An application for amalgamation must be made with the consent of all unit holders and persons with registered interests over the units. To ensure that a unit holder cannot be compelled to consent at the time that he or she purchases the unit, the Bill provides that a provision of an agreement under which a party, as a member of a strata corporation, will consent to an amalgamation is void and unenforceable.

One problem that often arises is the delineation of a unit and the determination of the common property. This is revised in the legislation and greater clarity and precision is included. The concept of unit entitlement is also revised, simplified and clearly defined.

Parties wishing to strata title land have sometimes been prevented from doing so because parts of the building encroaches onto adjoining land. This problem should usually be resolved under other laws but the Bill gives a simple form of relief when the encroachment is over public land or is caused to a limited extent by footings, and the owner of the adjoining land consents to the encroachment remaining on the deposit of the strata title plan.

Many issues arise in relation to the ownership and occupancy of a strata unit. The Bill provides that each strata corporation must have a presiding officer, secretary and treasurer (although a person may hold more than one office). A management committee may be appointed, and its role is clearly and concisely defined. The corporation will be responsible for enforcing the articles and those articles will be binding on unit holders and occupiers. One issue that often arises is the fact that some tenants ignore their responsibilities when living in a strata community. While this can never be fully regulated, the Bill provides that a unit holder must take reasonable steps to ensure that an occupier of the unit, who is not another unit holder, complies with the articles. Problems may also arise if a person alters the structure of a unit, or its outside appearance. The consent of the strata corporation will be required to carry out such work and if a person acts in contravention of the Act, the

corporation will be able to require him or her to carry out rectification work.

Strata corporations are to be given new and revised powers, functions and duties. The Bill clearly sets out the duties of a corporation to insure the buildings and building improvements on the site to their replacement value. Insurance against liabilities in tort must also be taken out to cover a liability of at least $1 000 000.

Members of strata corporations will be encouraged to have a greater involvement in the affairs of the corporation. Proper financial statements will be required to be prepared by the corporation and insurance policies made available for inspection. The Bill proposes that the fair system of one vote per unit be adopted, and that voting according to unit entitlement be reserved for commercial or business developments.

Three issues that arose during the drafting and consultation stages of this Bill have not been included. The first is the proposal to appoint a Strata Titles Commissioner, with responsibilities to resolve and settle disputes. While the Government is well aware that disputes continually arise between unit holders, it considers that the expense of a Commissioner needs further consideration. The Government considers that, if established, a Strata Title Commissioner's office should be funded by the people who have an interest in strata units and should not be an imposition on the general revenue. During the consultation processes no viable funding proposal that could be easily and fairly implemented appeared. The Government considers that this matter should be the subject of further debate and research and will continue to explore other options, in consultation with interested parties. Other options which may be capable of development include providing for an expansion of the jurisdiction of the Residential Tenancies Tribunal. The Government is confident that this Bill will bring greater clarity and certainty into this area and many grounds of dispute may well have been done away with.

The second issue relates to staged development. The Government considers that this issue must be carefully addressed. Serious problems could arise if a development was not completed or did not proceed as planned. The provisions in the Bill allowing for the amalgamation of distinct schemes may assist in some cases and this is entirely appropriate—each scheme will be established and viable, and all unit holders protected. To go further in this Bill is considered unwise.

The third issue relates to strata managers. Some submissions considered that such managers should be licensed or otherwise regulated. The Government cannot see a need for this. Many managers are land agents and all strata corporations have the ability to control managers under general principles relating to master and servant or principal and agent. The Government does not consider that a sufficient case has been made out for regulation in this area.

The Bill contains many other reforms and revisions. The Government looks forward to its passage through Parliament and its successful implementation in the community.

Clause 1 is formal.

Clause 2 provides for the commencement of the measure.

Clause 3 sets out the various definitions required for the purposes of the Bill.

Clause 4 provides that the new Act and the Real Property Act 1886, operate as if the two Acts constituted a single Act.

Clause 5 provides that a strata plan is a plan dividing land into units and common property. A strata plan must relate to the whole of one or more allotments. The clause also sets out various provisions relating to the characteristics of a strata unit and defines the common property of a strata development.

Clause 6 relates to unit entitlement. The unit entitlement of a unit must be determined as a proportion of the aggregate capital value of all of the units defined on the relevant strata plan.

Clause 7 sets out the various requirements that are to apply in relation to an application for the deposit of a strata plan.

Clause 8 provides for the depositing of a strata plan in the Lands Titles Registration Office. On the deposit of a plan a new certificate of title is issued for each unit created by the plan and for the common property.

Clause 9 creates easements of support and shelter between the units and units and common property, and easements for the provision of services.

Clause 10 provides that the common property is held by the strata corporation in trust for the unit holders. The equitable interest in the common property attaches to each unit and cannot be alienated from the unit. The extent of the interest will be determined according to the unit entitlement of the particular unit.

Clause 11 will vest land that is to be a public road, street or similar thoroughfare in the local council.

Clause 12 will allow application to be made to the Registrar-General for the amendment of a deposited strata plan. The application must be made with the unanimous support of unit holders in a general meeting of the strata corporation. The application may constitute a conveyance.

Clause 13 will allow the Supreme Court to amend the strata plan where there is an error in the plan, where the unit entitlement should be varied, or where damage has occurred to buildings in the strata scheme.

Clause 14 relates to the necessity of obtaining the approval of the Planning Commission and the local council to a strata plan and strata amendment plan. It will be possible to grant provisional approval to a plan. A council must, in approving a strata plan, fix the address of the building or buildings erected on the site.

Clause 15 provides for appeals to the Planning Appeal Tribunal.

Clause 16 will allow the amalgamation of two or more deposited strata plans comprising adjoining sites. All unit holders of the relevant strata corporations must consent to the amalgamation. A new strata corporation is created on the amalgamation of the plans.

Clause 17 allows the cancellation of a strata plan by the Registrar-General or the Supreme Court. An instrument of cancellation must be endorsed with the approval of all of the unit holders.

Clause 18 provides for the name of a strata corporation and its membership.

Clause 19 provides that the articles of a strata corporation are set out in schedule 3. Other articles may be introduced, or the existing articles revoked or varied, by special resolution of the strata corporation. A copy of such a resolution must be lodged with the Registrar-General.

Clause 20 provides that the articles are binding on the strata corporation, unit holders and the occupiers of units who are not unit holders. A unit holder or mortgagee in possession must take reasonable steps to ensure that any occupier of the unit complies with the articles of the strata corporation. The Supreme Court may make an order enforcing the performance or restraining a breach of the articles.

Clause 21 provides that a pecuniary liability of a strata corporation is enforceable against unit holders jointly and severally. A right of contribution exists between unit holders

according to the respective unit entitlements of the various units.

Clause 22 regulates payments by the strata corporation to any of its members.

Clause 23 specifies that a strata corporation must have a presiding officer, a secretary and a treasurer. A person may hold more than one office. It will be an offence to allow any of these offices to remain vacant for more than six months.

Clause 24 relates to the manner in which a strata corporation may enter into contracts.

Clause 25 describes the functions of a strata corporation, being to administer and maintain the common property for the benefit of the strata community, administer all other property of the corporation, and enforce the articles.

Clause 26 sets out the general powers of a strata corporation. The corporation will be able to acquire property, including real property adjoining the site, if the property is reasonably required for the purposes of the corporation or for the use or benefit of the strata community.

Clause 27 relates to the raising of funds. It allows the imposition of levy contributions against all unit holders on the basis of unit entitlements or some other basis determined by the corporation.

Clause 28 will allow the strata corporation to require work to be carried out on a unit in accordance with the requirements of the articles or to remedy a breach of the articles. If the work is not carried out, the corporation may act to have the work carried out and then recover costs reasonably incurred from the unit holder.

Clause 29 provides that a unit holder must not carry out certain work on the unit unless authorised to do so by unanimous resolution of the corporation.

Clause 30 imposes a duty on the strata corporation to keep all buildings and building improvements on the site insured to their replacement value.

Clause 31 imposes other duties to insure. A strata corporation must insure against a liability in tort, the cover being for at least $1 000 000 ( or such other amount as may be prescribed).

Clause 32 will entitle a unit holder to inspect the insurance policies of the strata corporation.

Clause 33 relates to the holding of meetings. Fourteen days notice of a meeting must be given to all unit holders. An annual general meeting will be required to be held.

Clause 34 sets out the voting rights at a meeting. It is proposed that one vote be exercisable in respect of each unit unless the units are all commercial premises and the corporation resolves to adopt a voting system based on unit entitlements. A unit holder will be able to appoint a proxy to attend a meeting on behalf of the unit holder and it will be possible to exercise an absentee vote.

Clause 35 allows a strata corporation to appoint a management committee.

Clause 36 relates to the validity of acts of the management committee in certain cases.

Clause 37 will empower the Supreme Court to appoint an administrator of a strata corporation. An administrator will have full and exclusive power to administer the affairs of the corporation.

Clause 38 imposes certain duties on the original registered proprietor to convene the first general meeting of the strata corporation.

Clause 39 is a special power to enable the strata corporation to recover property of the corporation.

Clause 40 will require the strata corporation to keep certain records.

Clause 41 relates to the provision of information by a strata corporation to the owner or mortgagee of a unit or a prospective purchaser of a unit.

Clause 42 contains a power of entry to provide a unit holder with access to another unit in order to rectify or install various services and systems in relation to his or her unit.

Clause 43 contains a provision similar to the existing Act allowing for mortgages to be noted on insurance contracts and then providing for the paying out of the mortgage if the unit is damaged.

Clause 44 prohibits a unit holder entering into a dealing with a part of the unit unless the dealing is effected by amendment to the strata plan or relates to an easement. A unit holder will be able to grant a lease or licence over a part of a unit with the unanimous approval of the corporation.

Clause 45 will allow a guardian to be appointed on behalf of a unit holder who is under a disability.

Clause 46 makes each person who is a member of a management committee of a strata corporation liable in certain cases where the corporation commits an offence.

Clause 47 allows the Registrar-General to require that applications and plans submitted under the Act be in a form, and certified in a manner, approved by him or her.

Clause 48 relates to the service of documents.

Clause 49 provides that offences against the Act can only be commenced with the written consent of the Attorney-General.

Clause 50 relates to the making of regulations.

Schedule 1 sets out related amendments to other Acts.

Schedule 2 contains transitional provisions associated with the repeal of Part XIXB of the Real Property Act 1886.

Schedule 3 sets out the articles of a strata corporation.

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

## FRUSTRATED CONTRACTS BILL

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

**The Hon. C.J. SUMNER:** With your indulgence, Mr Acting Chairman, I will respond to some questions asked by the Hon. Mr Griffin. The Hon. Mr Griffin questioned the inter-relationship of clauses 6 (2) *(a)* and 4 (1) *(b)*. The situation is that they really deal with different things. Clause 4 (1) *(b)* provides that this Act will apply but subject to any provision in the contract as to the consequences of frustration. This means, for example, that the 'adjustment of losses' formula of clause 7 will be modified *pro tanto* by the express provisions of the contract itself. If parties possess the foresight and prudence to agree upon how things should be handled after an event of frustration then their agreement will prevail where it is inconsistent with this Act. However, and by contrast, clause 6 (2) *(a)* speaks to the effect of a frustrating event on a contractual obligation. If, on the proper construction of the contract, the obligation is to survive the frustrating event then it shall continue to survive and, for example, its inexcusable non-performance by the bound party will result in a claim for damages (or other contractual remedy).

In essence, therefore: *(a)* clause 4 (1) *(b)* allows the contract to govern how the parties will adjust their losses (after frustration) if the contract so provides; and *(b)* clause 6 (2) *(a)* allows contractual obligations to continue to survive and

persist (after frustration) as if the frustration had never occurred—if that is the proper construction of the contract—and for which the relevant party remains responsible.

As for clause 3 (4), I would agree with the Hon. Mr Griffin's comments that the common law is not clear as to the extent of negligence required before a party is denied a discharge on the grounds of frustration. This provision—especially clause 3 (4) *(a)*—is designed to clarify the law in this respect.

Clause passed.

Clause 3—'Interpretation.'

**The Hon. K.T. GRIFFIN:** I did take in some of what the Attorney-General had to say about the matters I raised in respect of clause 3 (4) but, to enable me to absorb it, would he mind summarising the advice again?

**The Hon. C.J. SUMNER:** In respect of clause 3 (4) I said that I agree with the statement that the Hon. Mr Griffin made in his second reading speech: the common law is not clear as to the extent of negligence required before a party is denied a discharge on the grounds of frustration. The provision involved, and this applies especially to clause 3 (4) *(a)*, is designed to clarify the law in this respect. In the Lindgren and others textbook (1986) *Contract Law in Australia*, the following quotation occurs in respect of self-induced frustration under the heading of 'Must the act or omission be deliberate?':

> Although there is no doubt that a deliberate act by one of the parties is sufficient to constitute self-induced frustration (assuming that the deliberate Act involves default) it is doubtful whether it is necessary for this to be the case. In *Joseph Constantine SS Line Ltd v Imperial Smelting Corp Ltd* Viscount Simon LC said that 'default' is a much wider term and in many commercial cases dealing with frustration is treated as equivalent to negligence. However, his Lordship left open the question whether, in a contract for personal services, personal incapacity arising from want of care would be sufficient.

Clause 3 (4) does make clear that a default may arise out of a negligent act or omission.

**The Hon. K.T. GRIFFIN:** I am content to let the matter rest there. I thought it was important to raise the issue. I suppose we are now really at the point where the Bill should pass and, ultimately, become law. If any difficulty does arise in the application of it, it is hoped that that can be reviewed fairly quickly and any amendments necessary can then be brought in. But I think we can give it a try. There are not a great many cases on frustration that come into the courts but, nevertheless, in the commercial area it is important. So, I am happy to leave it at that for the present time.

Clause passed.

Remaining clauses (4 to 8) and title passed.

Bill read a third time and passed.

## SEXUAL REASSIGNMENT BILL

Adjourned debate on second reading.

(Continued from 16 February. Page 2747.)

**The Hon. J.C. BURDETT:** I am prepared to support the second reading of this Bill to enable it to be referred to a select committee, but if it is not referred I will certainly oppose the third reading.

I have grave reservations about this Bill, particularly the provisions about public records, namely, birth certificates. However, I am keenly aware of the problems of people who have difficulties with their sexual identity and, rather than voting against the Bill at this stage and sweeping it aside, I would prefer to refer it to a select committee so that people with such difficulties—those who represent and support them, and those involved in their care—can give evidence about their problems and the various aspects of the Bill.

My first question about the Bill is why is it needed at all. A small number of so-called sex change operations have been carried out in Adelaide each year, so Adelaide cannot be called the sex change capital of Australia. It is not a booming industry. I have not heard that there have been problems in regard to the operation or the counselling or care of people who undergo it. I have not heard that problems have been created by over zealous practitioners in this area. In fact what I have heard has indicated a laudable caution in performing these operations and extensive counselling and support.

The Bill defines reassignment procedure as meaning:

> a medical or surgical procedure (or a combination of such procedures) to alter the genitals and other sexual characteristics of a person, identified by birth certificate as male or female, so that the person will be identified as a person of the opposite sex and includes, in relation to a child, any such procedure (or combination of procedures) to correct or eliminate ambiguities in the child's sexual characteristics.

It defines sexual characteristics as meaning:

> the physical characteristics by virtue of which a person is identified as male or female

These definitions do limit the concept of sexuality and require counselling as a necesary prerequisite for any sex change operation and this, at least implicitly, recognises the psycho-social dimensions of human sexuality. A more comprehensive definition of sexual characteristics ought to be given. For example, the Encyclopaedia of Bio-ethics Vol. 4 at pages 1589 to 1595 deals with sexual identity. I would summarise this passage as follows:

(I) biological sex—five categories need be considered
- *(a)* Chromosomal configuration (XX or XY)
- *(b)* ganadal sex (presence of ovaries or testes)
- *(c)* hormonal sex (androgen or estrogenn dominance)
- *(d)* internal reproductive structure
- *(e)* external genitalia

(I) gender identity
(III) sexual orientation

Being a sexual person entails all three components or areas. The latter two are social or cultural in nature and are not recognised in the definition in the Bill.

Parts II and III of the Bill provide for a sexual reassignment board and reassignment procedures. I have already questioned whether these are necessary. Practitioners are already bound by the rules of ethics of their profession and are subject to peer review procedures and the disciplinary provisions of the Medical Practitioners Act. The content of clauses 14 and 15 seems to be reasonable but I question whether it is necessary to bring in a Bill about it. Even if Part III is necessary, I state categorically that Part II is not. I understand that there are something like half a dozen or less sex changes a year in South Australia. To solemnly establish a board of six persons in two divisions to oversee the procedure is ludicrous, and if the Bill does proceed the oversight of the procedures will have to be radically simplified.

Clause 15 deals with reassignment procedures for children. The board is required to take into account the physical and psychological state of the child, the social and psychological environment of the child, the child's age and any other relevant factor. I find it astonishing that nowhere are the child's parents mentioned. There is no requirement for the consent of the parents or even consultation with the parents. Doubtless their wishes could be taken into account as any other relevant factor and doubtless the general provisions in regard to consent for minors' medical treatment would apply, but I would have thought that some recognition of the parents would be made in the clause on a subject like this.

Under section 6 of the Consent to Medical and Dental Procedures Act 1985, a minor over the age of 16 may give consent as if the minor were of full age and, in certain circumstances, this may happen even when the minor is below the age of 16. One would have thought that, in view of the mutilating nature of the procedure, the parents' rights ought to be written into this Bill if you are going to have specific provisions for these procedures at all. Parts I, II and III of this Bill are merely unnecessary and bureaucratic. Part IV is objectionable. Clause 18 says that where a recognition certificate is lodged with the Registrar of Births, Deaths and Marriages the Registrar must:

*(a)* register the certificate
*(b)* make such entries and alterations on any register or index kept by the Registrar as may be necessary in the view of the Registrar, and
*(c)* [and this is the vital bit] issue to the reassigned person (or, if the person is a child to his or her guardian) a new birth certificate recording the sex of that person as the sex to which he or she has been reassigned.

That seems to me clearly to mean that, say, in the case of the adult male who feels that he is a woman trapped in a man's body and who has had the procedure carried out a new birth certificate is issued *de novo* not referring to the history of his sexual status, but showing him as having been born a woman. If the clause does not mean that, I would be pleased if the Attorney would explain to me what it does mean. But if it does not mean that a new birth certificate will be issued showing the person to be a woman, and to have been born a woman, that meaning is not apparent and the drafting of the clause should be changed.

If the clause means what it says, the new birth certificate will tell a lie. The person was not born a woman. That is a lie. In fact, medically and scientifically the person still is a man. I refer to the wider definition which I have postulated. The procedures set out in the Bill do not change sex except in accordance with the narrow definition in the Bill and this definition is only for the purposes of the resulting Act, anyway. A statute cannot make black white and cannot make a man a woman.

I take great exception to a statute which gives authority to falsify public records. Public records should tell the truth and this would make them tell a lie. This compromises the integrity of our society. A society whose public records tell a lie is a sick society. There may be some existing examples where the public record tells a lie but this is no reason why this objectionable procedure should be further extended. I am totally opposed to clause 18.

My main objection is simply that I object to our South Australian public records telling a lie, but the lie can also have serious consequences. Can the person I have spoken about marry? I have not examined the *de jure* position in detail, but the person can produce a document issued under statutory authority from the State where he was born saying that he is a woman and was even born a woman. It seems to me to be likely that he can legally marry a man under the provisions of the Commonwealth Marriage Act. But be that as it may, it is certain that *de facto* he will be able to marry as a woman because he can produce to the marriage celebrant a document from the Registry saying that he is a woman.

The Commonwealth has not seen fit to legislate on the question of whether or not persons who have been through the sexual reassignment procedure should be allowed to marry in the reassigned sex. Marriage is under the exclusive jurisdiction of the Commonwealth, and a further objection that I have to this Bill is that possibly *de jure* and certainly *de facto* it makes it possible for a man who has had his sex reassigned as female to marry as a female. It takes the issue out of the hands of the Commonwealth although it is a Commonwealth issue.

One's sexual identity, like one's racial identity, is verified by the fact of being born male or female, Caucasian, Negroid or whatever. Moreover, one's sexual identity never changes any more than a continuous change or recycling of cells over a period of time can substantially change the personal identity of an individual. Certainly in the Judeo-Christian tradition on which our law is based, in the story of creation one's sexual identity is never seen as something incidental and arbitrary, much less as something to be changed at will. Rather it is constitutive of our very person.

**The Hon. C.J. Sumner:** It's hardly at will.

**The Hon. J.C. BURDETT:** It is, really. One makes a decision and, providing that one has been through the counselling procedures and the doctors have taken the necessary steps, it is at will. Proponents of this Bill have pointed to some of the problems of people who have had the reassignment procedure carried out. There has been the case reported in the press of the man who had gone through the reassignment procedure, had lived as a woman and had been sent to prison, and to a men's prison. The consequences were horrific and I certainly express sympathy for the person concerned. In order to resolve these serious problems it is not necessary to issue a new birth certificate. The matter could be rectified by the administrative process. Possibly regulations or even legislative change may be necessary, but this matter could and should easily be rectified without resorting to this Bill.

Other proponents of the Bill have pointed to the difficulty of persons who have undergone the procedures in obtaining a passport in a woman's name and with a woman's photograph. I have contacted the Commonwealth Department of Foreign Affairs and this difficulty has been overcome administratively without compromising any principles. By administrative change if such a person produces proof of change of name, and proof, normally in the form of a letter from the medical practitioner who carried out the procedure, that the procedure had been carried out a passport is issued in the female (or male) form with the appropriate name and photograph. A letter is sent to the person saying that the issue of the passport is not to be taken to indicate any policy on the matter on the part of the Commonwealth Government, but is a move to avoid embarrassment to travellers. This was a sensible way in which to overcome such problems. To falsify the public records is not.

I turn to the position where the applicant is a child. The situation may arise where at birth the indications of sex are ambiguous and a mistake may be made when a sex is assigned on the birth certificate. Section 68 (1) of the Births, Deaths and Marriages Registration Act already provides for the rectification of mistakes. It reads:

If the principal registrar is satisfied by declaration, or in any other manner he thinks fit, that any particular in any register of births, register of deaths, or register of marriages is incorrect, he may correct the register, which correction shall be signed by him and marked with the date upon which the correction is made.

If this provision is thought not to be sufficient it can be upgraded but the provisions of clause 18 are quite unnecessary to rectify mistakes in the assignment of sex at birth.

In regard to clause 18, I ask the Attorney in what name would the new birth certificate be issued. The applicant, if an adult, may change his name before applying for the issue of the new birth certificate. But, clause 18 in its terms does not give any indication in which name the birth certificate would issue. I think it should.

I refer to clause 25, the regulation making power. Clause 25 (2) *(b)* provides that regulations may be made making provision for the regulation of access to records kept by

hospitals and by persons who carry out reassignment procedures or provide associated treatment. It seems to me that this regulation making power is too wide and would enable quite draconian regulations to be made about a hospital's records.

To sum up, this Bill is not necessary at all. There is nothing wrong with the situation at the present time. There is no evil to be rectified. Moreover, the provision to falsify the public record is wrong. Because, in deference to the needs of transsexuals, I do not wish this Bill to be brushed aside, I will support the second reading so that it may be referred to a select committee where the needs of transsexuals may be addressed.

**The Hon. R.J. RITSON:** I will deal with two distinct areas of this Bill. First, I will refer to the administrative surrounds of the proposed board and the constraints and controls that it will oversee, including the administrative authority to the Births, Deaths and Marriages Registrar to alter certificates and, secondly, I will refer to the question of marriage. When I looked at the drafting which created this statutory authority, with a structure very much akin to the Guardianship Board, which is a very busy board dealing with thousands of cases, and when I saw all the humbug and codswallop to deal with four to five cases of adult sexual reassignment per annum, I really wondered what we were coming to.

The proposed new administrative structure has two distinct duties. On the one hand, it oversees certain statutory provisions as to what class of patients may be treated, under what circumstances they may be treated, and where and by whom they may be treated and, on the other hand, it performs the administrative function of assuring the Births, Deaths and Marriages Registry that certain cases are appropriate to have the documentation changed. In fact, the physically normal/psychologically abnormal adult patients who are operated on in South Australia are treated in only one major teaching hospital. There is a complete absence of private surgical treatment in this field. They are treated in only one major teaching hospital which is subject to its own administrative controls and its own institutionalised ethics committee. In addition, it is subject to criminal law, the common law of negligence, the ethics of the AMA and the provisions of the Medical Practitioners Act, together with being subject to the authority of the Medical Board and the Medical Complaints Tribunal. If that is not enough oversight of very conscientious and caring specialists working in one institution, I do not know what is.

Those mere handful of cases per year that are being treated are part of a series of 30 and, at the completion of those 30 cases, no more will be done. That cohort will be studied in the long term in an attempt to discover whether the operation is worth doing at all, because it is not clear that the alteration of the genitalia and appearance of these people provides a net increase in the sum of human happiness in that group. One must be very sensitive, compassionate and very understanding of the fact that these people suffer greatly through no fault of their own. They suffer psychological turmoil.

We have much larger groups in the community also suffering enormous psychological turmoil. People suffer from schizophrenic and manic depressive illnesses but, in relation to these people who comprise a very small group and who have multi factorial psychological problems, it is extremely difficult to determine which people may be helped by operation and which people may be made worse by operation. When a decision is made that perhaps some people may be made happier by operation, then this series of 30 cases (the only cases treated in this way in South Australia) will be studied long term, and the board that is set up to review, control and oversee medical practice in those four or five cases a year will soon be overseeing and supervising none of them once that quota of 30 is filled and the cohort studies begin.

**The Hon. C.J. Sumner:** Won't another medical practitioner be able to do this? Just because they have decided at that particular hospital to stop them doesn't mean they will stop—

**The Hon. R.J. RITSON:** The Attorney-General—

**The Hon. C.J. Sumner:** Just let me finish asking the question. There may be other hospitals, doctors or surgeons who want to do the procedures at the request of their patients.

**The Hon. R.J. RITSON:** The Attorney-General has interjected and said that other doctors in private practice may want to perform the operation at the request of their patients, but in fact that is not the case. I have spent the past few weeks telephoning and making inquiries. I have been able to find one or two practitioners who have perhaps received a request from someone to cut off their penis, or something like that, and naturally these practitioners invariably refuse such requests and attempt to refer the patients for appropriate psychological advice and counselling.

I am totally confident that this operation is not being done outside the teaching hospital structure. If it did occur, it would not be possible to conceal, because if it occurred in a private hospital, the whole nursing staff would know about it and it would be the buzz of the medical profession within half a day. Why we are legislating for a problem that does not exist, except in the minds of the Standing Committee of Attorneys-General, I do not know.

**The Hon. C.J. Sumner:** It exists in the minds of the people who have had the sex change operations, I can assure you of that.

**The Hon. R.J. RITSON:** What?

**The Hon. C.J. Sumner:** The problem.

**The Hon. R.J. RITSON:** The problem of?

**The Hon. C.J. Sumner:** Of their sexual identity and how it is recognised.

**The Hon. R.J. RITSON:** I am not saying that it is not.

**The Hon. C.J. Sumner:** That is why we are legislating—to clarify their status.

**The Hon. R.J. RITSON:** At the moment I am talking about the need or otherwise for a bureaucratic scientific control of who has the operation and who does not. Of course, the status of those who have the operation is another question, and I will come to that. However, the Attorney-General is leaping ahead. We will deal with that in a moment. My first point is that, given that there is no Dr Dollar doing private inappropriate operations in this State (and it is unlikely that there will be), and given that there are all those existing administrative, ethical and legal controls that I have already mentioned, I think that it is using a sledgehammer to crack an ant to build up a big board like this to oversee the standards and ethics of medical practice in regard to Flinders University, because that is all it means. It is not being done elsewhere. Of course, I refer to the physically normal/psychologically abnormal patient.

The other administrative function is that of transmitting to the Registrar of Births, Deaths and Marriages a sufficient reason for altering the certificate. Quite clearly, the Registrar is not technically competent to read clinical notes and assess whether or not someone is truly transsexual. Indeed, the question of medical confidentiality would indicate that neither should the Registrar have access to clinical notes to make that decision. So, the idea here is that a medical body,

in this case the board, should provide the authority for the Registrar to act. Here again, if it were decided that it is appropriate to change the certification and that there should be a medical body to issue the certificates, why we have to have this board to issue them is beyond me.

It is perfectly within the wit and wisdom of any one of the medical officers currently on the Health Commission payroll to review four or five sets of case notes per annum at no dollars and cents cost, compared with the sitting fees of this committee, and issue an appropriate authority to the Registry of Births, Deaths and Marriages. However, it is too simple to have one Government doctor who in each year sets aside half a day at the most gross time to review clinical records and make the appropriate certification. That is far too simple for a Government which wants to set up more and more complicated statutory authorities to do something simple like certifying that somebody is a true transsexual.

The next problem with the Bill is that there has been no consultation with the poeple in South Australia who are currently doing these operations. The Bill came as a complete surprise to us, to the surgeons at Flinders and to the senior surgeon in these matters at the Adelaide Children's Hospital. The Adelaide Children's Hospital, where children with anomalous genitalia or sexual disorders are treated, is faced with two sets of circumstances. One is the circumstance that the Hon. John Burdett mentioned where, perhaps due to the appearance of genitalia at birth, the child is registered in the wrong sex. Currently, provision exists for correcting that mistake. Secondly, a child may be registered in the correct sex but subsequent development is abnormal.

I will not bother the Parliament in talking about micropenises and various other technical situations, but it is possible for a child to be registered in its correct chromosomal sex, but its subsequent development is such that it is quite impossible for it to be brought up in its chromosomal sex because of its appearance and subsequent pubescence or lack of pubescence. Decisions are made to reassign some children to a sex other than the true chromosomal sex with which they were born. My advice is that the number of cases involved is two or three per annum. That is unlikely to stop, unlike the series of 30 cases of adult transsexual treatment.

So, we are looking at a board that will initially deal with seven or eight cases per annum, reducing to two or three cases per annum. That issue of using a sledgehammer to crack an ant with a huge bureaucracy to deal with a small number of cases is one issue. The other issue is the legal status of people who have been selected for this operation and who have apparently now begun to live life as a person of the opposite sex. I have great sympathy for these people and for the type of embarrassment that they suffer if they have to carry inappropriate documentation with an inappropriate sex on it. Life would be fairly distressing coming through Customs in a dress with documents stating that one is a male by the name of Fred.

My first impression on seeing the Bill was sympathy for the notion of providing appropriate documentation and appropriate legal status for these people, although I had no sympathy for the humbug dreamed up by the Standing Committee of Attorneys-General without consulting the South Australian surgeons. That is as sensible as a standing committee of gynaecologists drafting traffic laws for Tasmania.

I had some sympathy, but I then read a paper by Professor Finlay, from Monash University, who produced a study paper dealing with some of the legal issues that have been raised in litigation in the United Kingdom. The case of *Corbett v. Corbett* was particularly interesting because it required the court to decide what is 'sex'. Is it just the chromosomal sex with which we are born or is it a composite body and mind thing? The real problem is that our marriage law has never addressed this point. We have the assumption in the marriage law that everybody knows what is a man, what is a woman and what is marriage. However, it would appear that, if we are going to alter a birth certificate in a way that shows no sign of any alteration, transsexuals wishing to marry would be able to deceive a marriage celebrant. If there was a disruption to the relationship in future with subsequent litigation, one could end up in the sort of mess that was dealt with in the *Corbett v. Corbett* case referred to by Professor Finlay.

I am concerned about the State of South Australia, in the interests of compassion for these people, being asked to conduct a fiction which will enable people who are transsexual and wish to marry to deceive a marriage celebrant and enter a legal limbo where no-one really knows whether or not in terms of Commonwealth marriage law they are in fact married.

I believe that other countries have dealt with this by producing special legislation to provide a special contract to establish the status of such couples, but calling it something other than marriage. I suppose that there would be some problem with some of the mainstream churches and perhaps with some married people, whether or not they are religious, feeling upset that such a marriage based on a statutorily falsified certificate would be deemed to be a marriage in the same sense as their own marriage. I do not really know what public opinion is on that; I have not canvassed it. What I really believe is that if one of the consequences of this Bill is the ability of a couple to go through a form of marriage that may or may not be marriage in the light of Commonwealth law then that is a bad thing.

The proper way to tackle this is for the Commonwealth to bite the bullet—for the Attorneys-General who meet federally to represent their States on the Standing Committee to deal with the Commonwealth and say, 'For these people you must clarify the law and decide whether, if they go through the form of marriage on some other certificate, they are married or not married, and whether you wish to provide some other area of uniform law or create some *quasi* marriage or something like that for these people to enter into.' I think that the Commonwealth has a duty to clarify that and, once clarified by the Commonwealth, this Parliament can then enact some very simple law without a codswallop board that enables the Health Commission or the Minister of Health to delegate to an officer of the Health Commission the power to review case notes and advise the Registrar of Births, Deaths and Marriages which persons ought to be considered appropriate to have their documentation changed.

If that is done after the Commonwealth has decided what is marriage in this regard, then there will not be the element of deceit or the unknown (as to what will happen) if some of these couples go through a form of marriage to see the marriage celebrant and then seek an annulment, divorce or property settlement. This is the wrong way around. The Standing Committee of Attorneys-General is not noted for its productivity and perception. Like the elephant that labours mightily and brings forth a mouse, in many cases it takes years to produce results. I think that it could have inquired of the surgeons who perform the operations. I do not think that that is an unreasonable investigation.

**The Hon. C.J. Sumner:** The Standing Committee is not considering it. It dropped it.

**The Hon. R.J. RITSON:** A press report indicates that this legislation proceeds from matters considered by the Standing Committee.

**The Hon. C.J. Sumner:** It has certainly been considered by it but it has been dropped from its agenda.

**The Hon. R.J. RITSON:** They are not proceeding with it in the other States?

**The Hon. C.J. Sumner:** They may in some other States.

**The Hon. R.J. RITSON:** So you are not really raising the issue of uniformity?

**The Hon. C.J. Sumner:** No.

**The Hon. R.J. RITSON:** I think that you have gone about it the wrong way. You ought to get the Commonwealth to determine whether or not such people would be truly married if they married, and then have a simple medical administrative procedure for review of case notes and correct the legal status when we know what it will be in the light of federal law. Because this Parliament has not had the opportunity of talking to the surgeons, psychiatrists, statisticians, and the Births, Deaths and Marriages, it is basically ignorant of the issues involved. The case for a select committee is very strong. I understand that the Democrats will not support us in our argument for a select committee. I do not know whether they might have been persuaded by the wit and wisdom of my oration, but I here on the grapevine that they will not support us.

I would have thought that it would be salutory for the Democrats, amongst others, to listen to the psychiatrists, surgeons, medical administrators and lawyers explain it to them, so that the pros and cons of all the issues can be explained to the Parliament. As it is, we may be going into the Committee stage of a Bill that will be very difficult to amend because so many clauses are contingent on other clauses because the effect of the board flows through page after page. It will be technically difficult to amend this without heaps of errors creeping in because of members of Parliament attempting to multiply amend it. We will be doing it with most of us in ignorance of many of the issues involved. I think that we will cock it up, which is a bit sad.

I am sympathetic to the principle of these people having an appropriate legal status and appropriate documentation for their own sensibilities. On the administrative side it is top-heavy. In relation to the birth certificate and possible marriage, it is putting the cart before the horse for us to create this certificate that may be used to deceive marriage celebrants without the Commonwealth first clarifying the legal status of these people should they go through that form of marriage. I am very sad about the lack of consultation and about the reluctance of the Government and perhaps the Democrats—

**The Hon. C.J. Sumner:** It's been on the Notice Paper for three months.

**The Hon. R.J. RITSON:** Yes, and I have been consulting widely during that time but you have not. You have not spoken to any of the clinics, you do not know what is done and you do not know the pros and cons of why it may or may not be a good idea. It came as a total surprise to those people. I have been trying to consult, but the amount of consultation during the drafting stage before the Bill was put on the table was two-thirds of five-eighths of nothing.

**The Hon. C.J. Sumner:** It was put on the table for two months for people to consider it.

**The Hon. R.J. RITSON:** Yes, but it was not considered by the Government. It does not matter how much consideration I give it or the surgeons or the psychiatrists give it, the Attorney knows that he has the numbers and that it will get through without consultation in the form in which it was drafted.

**The Hon. C.J. Sumner:** I don't know whether the Democrats will support it.

**The Hon. R.J. RITSON:** I would be delighted if the Democrats stood up and said, 'How dare Dr Ritson presume our opinion—we are actually going to support a select committee.' I would be delighted if that happened—it would be the most pleasant bit of humiliation that I have suffered for a long time. However, I do not think that that will happen. I remain firmly of the view that this Parliament should have a select committee so that it can hear from psychiatrists, lawyers, the Registrar of Births, Deaths and Marriages, surgeons and gynaecologists so that it can have some understanding of what it is voting on because at present I do not think Parliament has that understanding.

**The Hon. M.J. ELLIOTT:** The Democrats support the second reading of the Bill. It appears to me that the Liberal Party supports many of the broad principles encompassed within the Bill.

**The Hon. K.T. Griffin:** That's not right.

**The Hon. M.J. ELLIOTT:** I think I said 'many'. I do not think that I need canvass all the issues now, but I will address the question of a select committee. There are many Bills which contain contentious issues but which are not referred to a select committee. I am not convinced that the issues involved in this matter are of sufficient complexity to require the select committee process. Last night there were attacks in this place on select committees and those that are operating at the moment, but I believe that all of them are doing an important job and are worthwhile. However, we also need to be careful that we do not set up a select committee whenever there is something that is a little contentious.

As the Attorney-General noted, this Bill has been on the Notice Paper for some months, and I have not been approached by a single person expressing any concern about this Bill whatsoever. That is most unusual. The Aboriginal Heritage Bill, the Agricultural Chemicals Act Amendment Bill and many other Bills which created a great deal of heat and contention saw many people lobbying on all sides. However, on this matter there has been no-one at all doing so. I am not saying that my mind is closed on any of these matters. In fact, quite clearly I am happy to sit down with any individuals who wish to raise particular matters. However, I do not believe that the need for a select committee is anywhere near justified, and the Democrats will not support it.

**The Hon. C.J. SUMNER (Attorney-General):** I thank honourable members for their contributions and seek leave to conclude my remarks later.

Leave granted; debate adjourned.

## ADJOURNMENT

At 5.15 p.m. the Council adjourned until Thursday 18 February at 2.15 p.m.