HOUSE OF ASSEMBLY

Wednesday, October 18, 1972

The SPEAKER (Hon. R. E. Hurst) took the Chair at 2 p.m. and read prayers.

LAND AND BUSINESS AGENTS BILL

His Excellency the Governor's Deputy, by message, recommended to the House of Assembly the appropriation of such amounts of money as might be required for the purposes mentioned in the Bill.

CREDIT BILL

His Excellency the Governor's Deputy, by message, recommended to the House of Assembly the appropriation of such amounts of money as might be required for the purposes mentioned in the Bill.

CONSUMER TRANSACTIONS BILL

His Excellency the Governor's Deputy, by message, recommended to the House of Assembly the appropriation of such amounts of money as might be required for the purposes mentioned in the Bill.

QUESTION

IRRIGATION

Mr. WARDLE: Will the Minister of Works consider a plea from irrigators for additional water for the next few months during the summer whilst feed is in short supply? I am sure it is obvious to the Minister that people in certain parts of South Australia are facing great hardship because of drought conditions, and, if the present circumstances continue, many dairymen between Mannum and the lakes will be unable to obtain their normal supplies of baled hay during this season. However, I believe that it will help many if they can use their existing equipment in order to plant probably small areas and produce additional green feed. If approval were given, I believe that these people would be able to make good use of secondary irrigation for the purpose of providing fodder.

The Hon. J. D. CORCORAN: I shall be willing to allow diversion permits to be issued on the strict understanding that such permits will be temporary, allowing for the production of fodder that is not available from other sources because of any prevailing drought conditions. Private applications for temporary diversions should be made in writing to the Director and Engineer-in-Chief, Engineering and Water Supply Department, Adelaide. Lessees of Government-controlled reclaimed swamp areas should also address applications to the Director and Engineer-in-Chief but forward them through the District Officer, Lands Department, Murray Bridge. The extent to which applications can be approved will depend on the availability of water from the river or from irrigation and drainage channels (water can be pumped from the channels to the areas concerned) as well as on the need for fodder in any emergency situation. I am happy to be able to tell the honourable member that, after considering the matter, I am willing to allow diversion licences to be issued on the understanding that I have already outlined. I should appreciate it if people who were intending to apply for these temporary diversion licences would do so as quickly as possible so that we could assess the overall effect and then decide how many licences should be issued. However, I must reiterate that these licences will be issued on a temporary basis only, and only because of the emergency situation that has arisen as a result of drought conditions.

STANDING ORDERS COMMITTEE

The SPEAKER: I refer to the honourable member for Mitcham's question yesterday asked of me, regrettably, during my momentary absence from the Chair. The honourable member for Mitcham asked when the Standing Orders Committee would be called together to review the practice of members reading newspapers in the Chamber. The matter was voiced in the House originally by the honourable member for Hanson on September 14 last. I considered the question raised by him not to be of compelling urgency, because it related to a practice tacitly approved by honourable members over many years; and, further, because on its consideration by the Standing Orders Committee a number of years ago the committee decided to take no action. For my own part, I am not willing at this stage to express an opinion on the practice of reading newspapers in the Chamber, as it is, in my view, a proper matter to be considered by the Standing Orders Committee. However, my principal reason for not calling together the five-member Standing Orders Committee is the absence overseas of one of its members, the honourable member for Alexandra, who is the "father" of the House. I felt it would be wrong to hold a meeting in his absence to consider a matter

that I believe most honourable members would agree was not of pressing urgency.

CAPITAL TAXATION

Mr. GUNN (Eyre): I move:

That, in view of the adverse effect of capital taxation on primary producers and small business concerns, this House recommend to the Government that it take immediate action to:

(a) abolish all rural land tax;
(b) reduce land tax on all industries which operate in country areas or are prepared to establish in country areas;
(c) reduce greatly State succession duties to a more realistic level which would allow business concerns to continue their undertakings;
(d) bring South Australian gift tax legislation into line with Commonwealth legislation; and
(e) reduce Crown land rents on all developing Crown land leases.

Opposition members (and I sincerely hope Government members) have by now realized the detrimental effect on small businesses of the iniquitous kinds of taxation that I have outlined in my motion. The first area of concern is rural land tax. Since I have been a member, this matter has often been raised in the House. I am pleased to say that my Party has taken the enlightened step of deciding to adopt, as a matter of policy, the abolition of rural land tax. That is one measure that we will put into effect after the next State election that will give some relief to people who have been facing many difficulties.

Mr. Keneally: If you can—

Mr. GUNN: We are aware of the honourable member's great knowledge of rural matters. However, I suggest that, if he wishes to speak in this debate, he should wait until he has an opportunity to do so. As I was saying, my Party believes that it is important that rural land tax be abolished. My motion also recommends that the Government seriously consider extending land tax relief to all secondary industries, especially those that are willing to establish themselves in country areas. We hear much talk from the Treasurer and other members opposite about decentralization. I sincerely hope that these members want to assist industries that are already established in country areas. Because of the unfortunate rural recession, several small secondary industries based in the country have been forced to close, so that a valuable form of decentralization has been lost. If the Government were willing to give some small measure of relief in this area, it would be a step in the right direction. However, I doubt whether the Treasurer or the Government would be so generous.

The major bone of contention that I wish to raise again in this House is the effect that State succession duties have on people engaged in private industry. In its last Budget, the Commonwealth Government took the enlightened step of not only reducing Commonwealth estate duty but also reducing the burden of gift tax. Unfortunately this Government is on record as not only failing to appreciate the problems that succession duties create for people engaged in private industry but also increasing State succession duties. Admittedly, minor concessions were provided for very small estates, but in no way did they take care of the needs of most rural properties, which are drastically affected by succession duties. I challenge the Treasurer or anyone else to show the justice of forcing a beneficiary under a will to sell perhaps the most productive part of his enterprise to pay succession duties.

Such a policy cannot be justified; in many instances a person who has worked for most of his life on a farm or in a small business can suddenly be forced out of business or forced to borrow a large sum to continue his operations. As a result, his farm or business may become completely uneconomic. When the Government introduced succession duties legislation, the Stockowners Association issued a statement, part of which is as follows:

> The passing of the succession duties Bill with increased duties foreshadowed, except in relation to small uneconomic properties, is complete evidence that the State Government is either unaware of the difficulties facing primary producers or it is unsympathetic to them and is prepared to ignore them. On either count the Government should be ashamed of itself.

That is a rather strong statement, but I strongly endorse it because, if the Government is aware of the problem, it has a responsibility to correct it. However, if the Government is unsympathetic in this respect, the Treasurer and his Ministers should not go around the country shedding crocodile tears. At the farmers' march the Treasurer promised to take action in connection with land tax and succession duties, but he has failed to keep that promise.

The Hon. D. A. Dunstan: Nonsense! You know it's nonsense, too.

Mr. GUNN: It is not nonsense. The Treasurer knows full well—

The Hon. D. A. Dunstan: I did exactly what I said I would do.

Mr. GUNN: The Treasurer has not kept the promises he made.

The Hon. D. A. Dunstan: What evidence do you have for that statement?

Mr. GUNN: The Treasurer took the opportunity to make a good fellow of himself, and he used the occasion for political purposes. The evidence is in *Hansard* when the Bill was explained.

Mr. Burdon: All you are doing is grandstanding.

Mr. GUNN: I am not grandstanding: I am ventilating a matter of great concern to my constituents and, I believe, to most rural people and those involved in small businesses in this State. State succession duties and Commonwealth estate duty do not have any significant effect on large companies. It is complete nonsense for the member for Mount Gambier to say I am grandstanding.

Mr. Mathwin: He really means that you are upsetting the Government.

Mr. GUNN: I am not upset if I can do that.

Mr. Clark: Tell the truth!

Mr. GUNN: I stand by what I have said about the Treasurer's statement at the farmers' march.

Mr. Clark: You're not game to quote what the Treasurer said:

Mr. GUNN: Many people in South Australia wish to put their financial affairs in reasonable order so that State succession duties and Commonwealth estate duty will not have a crippling effect on beneficiaries. In the short term the easiest way to get rid of some assets is to give them to relatives. Unfortunately, Commonwealth and State gift duty makes this very expensive. However, the enlightened Commonwealth Government, which we all know will soon be re-elected, recognized the problem and increased to $10,000 the exemption in connection with gift duty. I believe that this Government should, as a matter of urgency, look at this legislation. Although the Treasurer was not the architect of the South Australian gift tax legislation, I hope that in the future we can have this tax struck off the Statute Book, because I consider that it is a step in the wrong direction. If the Government faced its responsibility fully, it would take such action.

The Hon. D. A. Dunstan: I accepted the responsibility of supporting the L.C.L. Government which introduced it, and I stand by that now.

Mr. GUNN: I now refer to a matter concerning not only constituents in my district but also those in the District of Flinders and other areas where scrub blocks have recently been released and have been taken up by people wishing to take up farming. Unfortunately, during the period of office of the former Labor Government the Government enforced to the letter the terms of the leases applying to those blocks, and it forced the people holding leases to commit themselves heavily by borrowing money from banks and stock firms to develop those blocks. If those people had not fully complied with the terms of the leases, which in my opinion were too strict, they would have lost their blocks. The leaseholders concerned were also forced to pay completely unrealistic Crown land rent, in many cases up to $1,000 or $1,100 on a 3,000-acre block. Any person with knowledge of the wool industry would know that such a rental was completely unrealistic.

Several concessions to these people were made by the member for Alexandra during his term as Minister of Lands, and the present Minister has reduced a certain number of rentals, but I have recently been approached by several constituents who are still faced with problems relating to this matter. This is another example of the unrealistic nature of capital taxation. That tax is in no way related to income, and I believe that any form of taxation should be related to the amount of produce obtained from a property, or related to income. There is the added burden of bad seasons, and the people involved are still committed as a result of heavy capital taxation even though they have only a small income, and this applies especially on properties where maximum productivity has not been obtained. Much has been said in the press, and by the United Farmers and Graziers association and other rural-based groups, about this problem. I refer now to the Rural Economic Report of the Economic Research Committee established by the United Farmers and Graziers association.

The Hon. D. H. McKee: Are you a member of that union?

Mr. GUNN: It is not a union: it is an organization representing rural producers in this State. I point out to the Minister that no form of compulsion is associated with that organization and that the decision whether or not to join it is left entirely to the individual. There is also no preference—

The Hon. D. H. McKee: You're not going

Mr. GUNN: I will not reply to any more of the interjections of the Minister, because they are in no way linked to the motion. The

report made by the committee of the association has much to say about capital taxation and its effects. I refer members to page 16 of the report as excellent reading, although I doubt that some members opposite could comprehend what is in the report. However, the report refers to problems affecting this section of the community and problems that it will continue to face—

Mr. Keneally: You should give a copy to the member for Bragg.

Mr. GUNN: The member for Bragg does not need a copy because, if there is a matter about which he seeks further information, he is willing to confer with any of his colleagues who are fully versed in the matter. We are 20 members of the Liberal and Country League.

Members interjecting:

Mr. GUNN: We are a united Party.

Mr. Langley: How do you spell it? "United" means strength, but you have no strength.

Mr. GUNN: I do not wish to embark on a debate with the honourable member. I shall quote from this excellent report, which states:

> Although we must acknowledge capital taxation as an accepted method of obtaining revenue for governmental, or semi-governmental purposes—

I believe that the only form of capital taxation that can be supported is council rates, and at present many councils are in financial difficulties. Because of the situation in many parts of the State, councils cannot increase their rate revenue, and thus a problem is created. The report continues:

> . many anomalies are created, more particularly in respect to the man on the land. If capital taxation is to continue to maintain its importance within our national economic structure as a means of raising revenue, it is extremely necessary to recognize that rural asset backing is no longer a criteria of wealth.

This is an important point. I understand that Government members believe that people should not have the right to own private property, and that, if a person owns a property worth $30,000 to $40,000, and even up to $100,000 (which is only a reasonable property today), he must be a millionaire.

Mr. Keneally: Have you sold this year's wool clip yet?

Mr. GUNN: My motion has nothing to do with this year's wool clip. If the honourable member wants to be constructive and take part in this debate he is entitled to do so, but he should not interject and argue about personalities. He and the Minister of Labour and Industry love to dwell on personalities, but it ill behoves them to act in this way.

Mr. Clark: You should now get on to Socialism.

Mr. GUNN: I have some interesting documents on Socialism, but I did not intend to refer to them. However, if the honourable member wishes me to do so, I shall be pleased to quote from them. In conclusion—

Mr. Clark: It's time!

Mr. GUNN: —I sincerely hope that the Government will consider my propositions. I raise them not for any personal benefit but because they are matters of great importance to the rural community and to small business concerns of this State. My Party, of which I am proud to be a member, has made several recommendations on this matter, and I should like to quote one or two. The Labor Party has made no recommendations, and if one reads its literature about rural matters or listens to the nonsense spouted by Mr. Grassby—

The SPEAKER: Order! The honourable member should confine his remarks to his motion.

Mr. GUNN: I abide by your ruling, Sir. I quote from a recent L.C.L. publication, which is an excellent document, in which is discussed capital taxation and its effect on private owners of rural land.

The Hon. G. R. Broomhill: Is that the same as the Liberal Movement policy?

Mr. GUNN: The document states:

> Individual private ownership of land is a basic principle of the L.C.L.'s rural policy. But if it is to survive there must be a reduction and—in some cases—abolition of certain forms of capital taxation.

I entirely agree with this statement, as do my colleagues on this side and, I believe, as do most people in this State. The document continues :

> The high incidence of application of death duties is unduly inhibiting the continuing economic operation of individually owned private properties. Land tax is a contributing factor to the uneconomic state of individually owned private farms. Because of anomalies in the system of assessing the values of rural land, we believe that land tax on rural land should be phased out as early as possible.

These are enlightened suggestions that we will put into practice after the next State election. I hope sincerely that members will support the motion, because it is moved in an attempt to bring to the attention of the Government the problems that affect the man on the land.

Mr. RODDA (Victoria): I support the motion moved by the member for Eyre, who sets out to bring to the notice of the Government on this last occasion in this Parliament

the effects of capital taxation. I do not minimize or fail to recognize the difficulties of the Treasurer when someone wishes to reduce taxation. For 12 short weeks I enjoyed the glory of the portfolio of Minister of Works, and I know how revenue has to be replaced when action is taken to reduce it on one line.

Mr. Payne: Where do you suggest we start?

Mr. RODDA: Many reductions could be made, but capital taxation is necessary at this time in order to provide the Treasurer with revenue. I was interested to read in the Constitution of the State Labor Party that it intended to amend the Commonwealth-State financial arrangements and to derive more finance in order to discharge its responsibilities adequately. The Party of which I am proud to be a member has as its policy the abolition of rural land tax, and if a future Government comes from this side that policy will be introduced.

I have many problems in my district with rural land tax, and many anomalies occur in its application, particularly where sales are made of properties that are unrealistically valued. This situation reacts adversely on landholders, even though wool prices are higher at present. The Government must consider this matter. The mover of the motion also seeks to reduce land tax in respect of all industries operating in country areas and on those that establish in country areas. This is a worthwhile recommendation to the Government, because we are now encouraging decentralization. I am sure that at least one member of the Cabinet would see this motion as a means of decentralization, which is so vital to the State. Reducing succession duties to a more realistic level would allow many business concerns to continue their undertakings.

On this last day of private members' business, it is important that we take the opportunity once again to draw the Government's attention to the unfair imposition of succession duties. Beneficiaries in the rural sector are confronted with dire problems through having to find money in order to pay this duty. Although I know that the member for Heysen has previously drawn attention to the need for the individual to make arrangements in this regard during his lifetime, all too often we see sad things occurring when estates are assessed for the purpose of imposing this duty. I believe that the Commonwealth Government has set a worthwhile example by making further allowances in regard to maintaining a living area. This situation could be applied to business undertakings; indeed, it would help to minimize the effect of the present high impost and of the need to raise the necessary money. The member for Eyre, drawing attention to the effect of the South Australian gift tax legislation, asked that it be brought into line with the Commonwealth legislation. Bearing in mind the Labor Party's platform, I think that this should be done in order to ensure that viable industries are not bogged down as a result of having to cope with large mortgages.

Finally, the motion refers to reducing Crown land rents relating to all developing leases. I remember when we were in Government the difficulties that the former member for Eyre had when continually bringing this matter to the notice of the House, stressing that there should be a realistic approach to the high charges levied in respect of developing leases. The present member for Eyre has not moved this motion for the fun of it: this is the last opportunity he will have this session to draw the Government's attention to these matters.

The Hon. D. A. DUNSTAN secured the adjournment of the debate.

LOTTERY AND GAMING ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from October 11. Page 1978.)

The Hon. L. J. KING (Attorney-General) moved:

That this debate be further adjourned.

The House divided on the motion:

Ayes (23)—Messrs. Broomhill, Brown, Burdon, Clark, Corcoran, Crimes, Curren, Dunstan, Groth, Harrison, Hopgood, Hudson, Jennings, Keneally, King (teller), Langley, McKee, Payne, Simmons, Slater, Virgo, Wells, and Wright.

Noes (18)—Messrs. Allen, Becker (teller), Carnie, Coumbe, Eastick, Evans, Ferguson, Goldsworthy, Gunn, Hall, Mathwin, McAnaney, Millhouse, and Rodda, Mrs. Steele, Messrs. Tonkin, Venning, and Wardle.

Pairs—Ayes—Mrs. Byrne and Mr. Ryan. Noes—Messrs. Brookman and Nankivell.

Majority of 5 for the Ayes.

Motion thus carried; debate adjourned.

MITCHAM ZONING REGULATIONS

Adjourned debate on the motion of Mr. Evans:

That the Metropolitan Development Plan Corporation of the City of Mitcham planning regulations (zoning) made under the Planning and Development Act, 1966-1971, on July 13, 1972, and laid on the table of this House on July 18, 1972, be disallowed.

(Continued from October 11. Page 1982.)

The Hon. G. R. BROOMHILL (Minister of Environment and Conservation): I oppose the motion. I do not intend to take up time on this matter, in view of the fact that Order of the Day (Other Business No. 6) also deals with Meadows zoning regulations, and I have dealt with that previously, making clear why these regulations should not be disallowed. The same argument applies in this case. Accordingly, I ask the House to oppose the motion.

Mr. MILLHOUSE (Mitcham): As the Minister says, this motion is similar to the other Order of the Day to which he has referred. I support both motions but, as I need speak on only one, I will say what I have to say on this motion. The object of these motions is to preserve from possible subdivision the Craigburn estate, which, as it straddles the Sturt Creek, is in the area of Mitcham and Meadows. I confess that I have been in some doubt whether or not to support the disallowance of these regulations. Technically, if they are disallowed, for the moment it will be easier for subdivision to take place than if the regulations remain. On the other hand, there is no way that I can see in which this House can express an opinion on the desirability or otherwise of retaining Craigburn as an open area other than by supporting the disallowance of these regulations.

I have come down finally and decisively in favour of the disallowance. I have done that after discussing the matter with the Town Clerk of the city of Mitcham (Mr. Harvey Hayes) whom I have known for many years and on whose judgment I have often relied. I respect the views he has put to me in support of the regulations and against the disallowance. I regard the whole matter of the preservation of Craigburn as so important as to justify the disallowance of these regulations in the hope (even though in the short term it may mean that it is easier to subdivide) that finally we will get preservation intact of this area. I am fortified in that, since I know that Minda Home Incorporated, the owner of Craigburn, does not intend immediately to subdivide any of the land. Some blocks which were formerly in the District of Mitcham and which I know well have been subdivided. However, Minda Home Incorporated does not intend to do that soon, so we have time to have another look at that matter. Another reason why I have come down decisively in favour of the disallowance of these regulations is that yesterday the Minister made available, after much prodding, the report of the Jordan committee.

The Hon. G. R. Broomhill: It wouldn't have been made available earlier, prodding or otherwise.

Mr. MILLHOUSE: We received copies of the report only yesterday. The Opposition Whip has now given me one of the two copies we have, for me to look at. In the last half an hour or so I have looked through it to see just what references there are to the problem before the House. Some members may wonder why I was on the floor looking at it. It is in proof form and is so heavy and awkward to handle that the only way to look at it is to get on the floor with it.

Mr. Hopgood: I didn't—

Mr. MILLHOUSE: The honourable member obviously had advantages that were not available to me.

Mr. Hopgood: No.

Mr. MILLHOUSE: I was not shown this report until 2 p.m. I looked first at the recommendations at the end of the report, as everyone with experience of long reports does. Then I worked back to find the reference in the body of the report. Recommendation 28 states:

> The Adelaide Metropolitan Development Plan should be revised to incorporate many matters concerned with the quality of the environment.

Recommendation 28.1 states:

> The inclusion of green belts of substantial area wherever possible and especially at the present limits of urban expansion.

Craigburn is at the present limit of urban expansion in the southern Hills. Recommendation 38 states:

> An inventory of all land resources should be prepared and a plan for the use of land developed.

Recommendation 39 states:

> Further open spaces should be provided on the Adelaide Plains, along the hills face zone, in the Mount Lofty Ranges, and at the boundary of present urban development.

Therefore, the report clearly indicates that we should preserve what we have before it is too late. The Jordan committee was set up during the last months of the term of office of the Government of which I was a member. We set it up because we believed that the Government (whether our own or a subsequent Government, as it has turned out) should be guided by a committee of experts who had considered this matter in as great a depth as it was possible in this State to consider it. We now have that report, the Government

having had it for some months. The Minister must be aware of these recommendations, which clearly support the retention of an area such as Craigburn for open space.

I will now turn briefly to the body of the report supporting the recommendations to which I have referred. At paragraph 2.124 of what will be page 63 of the report, under the heading "Lands for Recreational Areas, Parks and National Parks", the following passage appears:

The claims for the reservation of land to satisfy recreational, aesthetic and cultural needs have tended with some notable exceptions to be given a low priority in any development scheme because they appear to have the lowest economic justification. The need for areas of land both within and adjacent to cities for recreational pursuits of all kinds has long been recognized. Most established towns and cities contain parks, gardens and areas set aside for a great variety of sporting activities. However, in recent suburban development, following the rapid growth of population, adequate provision of such recreational areas has often not been made ... If left too late, the cost of reserving significant areas of land as parks and sports fields is so high that it becomes unacceptable. Not only should the planning of new urban communities and the planned development of existing cities incorporate adequate provision for recreational parks or "green belts", but Governments and municipal authorities should use powers which many already have for compulsory acquisition of land to be reserved for such purposes.

The report, which continues in the next paragraph to canvass the advantages of parks, states in part:

A national park may be regarded as having two main functions; these may be alternatives or both may be incorporated in the one park. First, it is a place of natural beauty to which people, particularly urban dwellers, may go to escape the oppressions of their daily lives and there obtain physical, mental and spiritual recreation. Secondly, it conserves for posterity samples of the natural environment which are of scientific and cultural importance on account of their floral, faunal, geological, pedological, anthropological and related values.

That is a reference of a general nature to the preservation of open spaces. I now refer to chapter 8, paragraph 8.8 on what will be page 177, as follows:

In its report, the Town Planning Committee states that the open spaces in the metropolitan area are not adequate and provides for new open spaces. This committee believes that this provision is still inadequate and the opportunity should be taken to obtain areas of land, particularly at the boundary of present urban development to establish extensive parkland.

That is precisely what Craigburn could become. The report continues:

Areas of special historic and scientific interest should be preserved along with areas of outstanding beauty.

Craigburn is a place of historic interest. I remember reading some years ago a report in either the *Advertiser* or the *Register* describing a journey taken by a reporter in the 1860's from Adelaide to Coromandel Valley and beyond. The reporter described the journey up the Old Belair Road. Having reached the top, he said that about three miles south along the ridge one entered the farm of Craigburn through the white entrance gates on the right. Those white entrance gates on the right are still there. Craigburn, an old farming development, is a place of great historic interest to South Australia. The report continues:

Such areas should be zoned now so that pressures from revaluation and higher rates are prevented, and the stimulus to subdivide is avoided.

8.9 The implementation of the recommendations lies in the hands of the local authority in each area. Councils, accepting the plan as the work of an expert group, may not see it as their duty to consider its deficiencies. The acquisition of land for open spaces may be costly and once a reserve has been created it is not a source of rate revenue. In fact the reserve will involve some maintenance costs. There is always financial pressure tending to maximize the area of land subdivided in any local government area. State Government assistance and bold planning are therefore required to assist these pressures and so secure the open spaces required for the future.

The Government has the report and it knows what it contains regarding this matter. I now hope that all members know what it contains regarding this matter, because I have read them the few relevant paragraphs I have been able to find in the last half hour or so. It would be wrong for us not to do whatever we can to preserve the Craigburn estate as open space. I know that that will require expenditure either by the Government or by local government.

The Hon. G. R. Broomhill: Have you any idea how much?

Mr. MILLHOUSE: Of course it will be a very substantial amount, but does that interjection from the Minister mean that, when we have what I regard as an opportunity to obtain open space that will be literally priceless to the people of this city, we should dismiss the matter out of hand merely because it will be expensive? I hope the Minister does not mean that, but I could not put any other interpretation on his interjection.

The Hon. G. R. Broomhill: I wonder if you knew—

Mr. MILLHOUSE: I do not suggest for one moment that Minda Home, which is a charitable institution of great value and the supporters of which I have the highest regard for, should have to bear that cost. Of course, it should not. However, the fact remains that this is one of our last opportunities in the southern Hills to obtain an extensive area of park land, not in its natural state (because it has been cleared for farming over the last 100 years), but still in an open state. It would be criminal negligence on our part not to take this opportunity. Those are my reasons for supporting the motion. I hope that, as members have now seen the committee's report and know the recommendations contained in it, the motion will be supported.

Mr. EVANS (Fisher): My motion is for the disallowance of the zoning regulations submitted by the Mitcham council. The Minister said today that this debate would be virtually the same as that regarding the zoning regulations applying in respect of the Meadows District Council, but that is not true. When I moved the motion I referred to several matters of concern, especially the fact that the regulations did not allow the Postmaster-General's Department to build an exchange in the area because no classification had been provided in the zoning regulations for the department to erect such a building.

There are other points which I raised and which the Minister has not answered. He has taken the easy way out, as did the Attorney-General earlier this afternoon. He has tried to bluff private members, knowing that today is the last day for private members' business and that votes will probably be taken on the last night of the session at, say, 2 a.m. or 3 a.m. That is why the Minister was not prepared to stand up and debate the issue and defend his attitude, which I hope is not the Government's attitude. I hope that the Government is not going to say that the Jordan report, which has been submitted, is not worth considering. The Minister has had time to study it, because it came into his possession at least before yesterday, since which time he has been kind enough to forward two copies to me to make available to my Parliamentary colleagues. He did that yesterday.

Where do we stand? Once these regulations become law and a large part of the Craigburn estate is allowed, in effect, to be subdivided, can the Minister guarantee that it will never be subdivided? He cannot, and he admits that. Nor can the board of Minda Home give a guarantee of that, because the members of the present board will not live forever. The membership of the board will change and different lines of thinking will be introduced. I know that over $3,000,000, even up to $5,000,000, is required, but money has been found for other projects. Indeed, we spend far more than that on the arts alone in one project, and the Adelaide Festival Centre could be built at any time. True, the previous L.C.L. Government committed a large part of the expenditure on that project. Money has been found for projects when it is needed, and the time has come when we need the money for this project, and I believe that it can be found.

Another argument can be put that we need not buy the property; that it can be rezoned as an area to be farmed by Minda Home and, if ever the home disposes of it, it will become park land, a national park or open space. I believe that the Government should offer an annual subsidy to the home for keeping it as an open-space area. Surely that is a fair compromise. My motion, if carried, will disallow the regulations and enable us to look at the matter again. We should sit down with those concerned with conservation and with the preservation of our environment, the Mitcham council, the State Planning Authority, the Government and any other organizations or individuals whose advice we can obtain.

This piece of land should not be subdivided, because the community is now aware of the overcrowding of open spaces and the sprawl of the city. The Government has stated that it intends to build a new town near Murray Bridge and another on the peninsula, but, when Belair National Park and other major national parks are becoming overcrowded, the time has come when we should preserve Craigburn for the future. More than 6,000 people signed a petition and, in addition, petitions were handed to the Minister from secondary school children in the area. Young people are concerned about preserving the future environment, and I believe that it is not unreasonable to disallow these regulations so that this matter can be reconsidered.

This Government claims it is interested in the environment. It received a report from a committee (which was set up by my Party's Government) that recommended preserving such areas, but the present Government threw out the report. The report suggested that this land should be preserved, but if this Government has its way that will not occur. Minda Home Incorporated works for the betterment of, and to help, the handicapped, and we respect and admire the home for that work. We know

that the higher the value that can be placed on this property the greater is the potential of the organization to borrow, and the Commonwealth Government offers a $2 for $1 subsidy in respect of the cost of any major development. If the property is worth $3,000,000, it could be worth up to $6,000,000 as a subdivision. I know that I could speak for the remainder of the afternoon without affecting the thinking either of the Minister or of the Government.

Mr. Millhouse: One wonders how keen he is on conservation.

Mr. EVANS: The people who signed the petition were genuinely concerned that a large part of this area would be zoned for housing, and they were concerned about Minda Home as an organization, because they respect and admire the organization for the work done at that home. We are supposed to be responsible members and statesmen and, as such, we should reconsider this matter. I ask the Minister to disallow these regulations in order to save Craigburn. If this action is not taken, I doubt that it will remain an open-space area. In future the board could dispose of the property or give the Government the first right to purchase it at a much higher price than it is worth today, and then the community would miss out on an area that should have been conserved. I ask members to support my motion.

The House divided on the motion:

Ayes (17)—Messrs. Allen, Becker, Carnie, Coumbe, Eastick, Evans (teller), Ferguson, Goldsworthy, Gunn, Hall, Mathwin, McAnaney, Millhouse, and Rodda, Mrs. Steele, Messrs. Tonkin and Venning.

Noes (23)—Messrs. Broomhill (teller), Brown, Burdon, Clark, Corcoran, Crimes, Curren, Dunstan, Groth, Harrison, Hopgood, Hudson, Jennings, Keneally, King, Langley, McKee, Payne, Simmons, Slater, Virgo, Wells, and Wright.

Pairs—Ayes—Messrs. Brookman and Nankivell. Noes—Mrs. Byrne and Mr. Ryan.

Majority of 6 for the Noes.

Motion thus negatived.

ADVERTISING

Adjourned debate on the motion of Mr. Becker:

That, in the opinion of this House, all Government and semi-government advertising should be placed with Australian and preferably South Australian owned and controlled advertising agencies.

(Continued from October 11. Page 1990.)

Mr. BECKER (Hanson): I thank those members who have spoken to this motion. I do not intend to answer certain statements made by the Premier, because I believe that previous speakers on this side have more than adequately covered the matters he has raised and have demolished his argument. In his usual way, the Premier glossed over the whole principle of the motion and did not answer the charges that the Government was corrupt or make any attempt to say why the State was placing its advertising with oversea firms. Further, the Premier did not indicate whether the Government would in future consider this matter, the whole principle of which is set out in the motion. I commend the motion to the House.

The House divided on the motion:

Ayes (18)—Messrs. Allen, Becker (teller), Carnie, Coumbe, Eastick, Evans, Ferguson, Goldsworthy, Gunn, Hall, Mathwin, McAnaney, Millhouse, and Rodda, Mrs, Steele, Messrs. Tonkin, Venning, and Wardle.

Noes (24)—Messrs. Broomhill, Brown, Burdon, Clark, Corcoran, Crimes, Curren, Dunstan (teller), Groth, Harrison, Hopgood, Hudson, Jennings, Keneally, King, Langley, McKee, McRae, Payne, Simmons, Slater, Virgo, Wells, and Wright.

Pairs—Ayes—Messrs. Brookman and Nankivell. Noes—Mrs. Byrne and Mr. Ryan.

Majority of 6 for the Noes.

Motion thus negatived.

CONSTITUTION ACT AMENDMENT BILL (ELECTORAL)

Adjourned debate on second reading.

(Continued from Ocober 11. Page 1993.)

Mr. CLARK (Elizabeth): Over the last few weeks the rumour current through the lofty halls and passages of this place is that this is a new Bill of Rights for the Legislative Council. Having over the course of 20 years watched and noted with some interest the destructive and deleterious effect of that Chamber, I would be the first to agree that a Bill of Rights is necessary, if not for the Council itself then for the people of South Australia, who would like things to be somewhat different. However, I do not believe that this legislation is that Bill of Rights or that it performs the purpose that I would like to see it perform with regard to that Chamber. Therefore, I must oppose this Bill.

Mr. Gunn: Why?

Mr. CLARK: A fortnight ago, during the course of this debate, I did something that I should not have done and interjected when the

member for Eyre was speaking (I always have a strong temptation to interject when he is speaking), saying that I thought this Bill was silly. I was wrong, first, because I know I was out of order in interjecting (it is not something I make a habit of doing) and, secondly, because this is not a silly Bill. I appreciate that, on first reading the Bill, anyone may be inclined to think that it is silly. Indeed, they may think it is inane or even asinine, but it is not. Since then, I have been able to study the Bill, and it is serious because it has a purpose, which I believe is deep, deadly and even evil.

Members interjecting:

The SPEAKER: Order! The honourable member for Elizabeth does not deserve to be shown such discourtesy by honourable members who are interjecting. The honourable member generally conducts himself in this Chamber in a dignified manner, and I will not allow continual interjections.

Mr. CLARK: Thank you, Sir, for those kind remarks, even if they are not completely merited. I tried to live in this place for many years when there was an Assembly gerrymander, and I can assure honourable members that that is a soul-destroying experience. Now a form of Council gerrymander has been brought before us. I should say that it is an additional Council gerrymander because, after all, the Council has been gerrymandered since before I was born, and that was a long time ago.

I intend to deal with the arguments of members opposite whom I regard as intelligent. I will not bother about the others, and they are in the majority. I will refer to speeches made by Opposition members whom I normally regard as responsible and intelligent members of this place, even though they are Liberals. I find it hard to believe that those members are really sincere in what they say or that they can possibly believe the arguments they have put forward in supporting this Bill. Because I class them as intelligent, I find this hard to believe. I intend to do something I am not given to doing, and that is to make much use of quotations from speeches of members opposite. This will not be because I agree with what they have said or because I want to stress it; it will be only because I want to attempt to convict them out of their own mouths. As I have said, I will quote only from members whom I believe to be intelligent, and I may be wrong.

Mr. Mathwin: You usually are.

Mr. CLARK: The honourable member is always wrong, so there is some slight difference. Although I have promised to quote from only the intelligent Opposition members, I may be tempted to quote some remarks of the member for Glenelg, even though I did not intend to do so at first.

Mr. Mathwin: If I lived in your district, I might vote for you.

Mr. CLARK: If the honourable member lived in my district, it would not matter whether he voted for me or not. Fortunately, a large volume of constituents in that area has always had the good sense to support me. This Bill is designed to increase the membership of the Council to 24 members, and frankly I have not much disagreement with that. I doubt whether a Legislative Council of 24 members, under the conditions set out in the Bill, would work any better than the Council works now with 20 members. Before members opposite start referring to abolition, let me say that I do not care whether the Council is abolished or not. If we let people have the same voting rights and franchise that House of Assembly voters have (if we provide equality in that way), I shall be happy to let the Legislative Council stay, even though I believe it to be a complete excrescence on the face of progress, and a waste of time.

Mr. Gunn: That's nonsense, and you know it.

Mr. CLARK: The honourable member appears to have a licence to speak nonsense whenever he likes. He also has an objectionable habit these days of jumping up every few minutes and taking points of order. Yesterday, I felt like getting up and suggesting to you, Mr. Speaker, that you might provide one or two members opposite with a typewritten sheet explaining what a point of order is, for it is fairly obvious that they do not know what it is.

The Bill also provides for two new districts (a town area and a country area) for the Council, and this I detest. I believe this is the sort of thing that causes an unnatural division amongst the people of South Australia, and I have always deplored that. I believe South Australia should be one State. One of the things that annoys me most is that at least two or three members of this place can perhaps best be described as believing in the country and in nothing else. I believe they are widening differences that should not exist in this place with regard to town and country districts. I will not wear at all a ratio of 2½ to one between the metropolitan district and the country district.

Thirdly, the Bill provides for proportional representation of a sort; members will remember that there are many sorts of proportional representation, apart from true proportional representation. *Hansard* is available to prove that at one time I believed in proportional representation, but years of bitter experience have taught me otherwise. The Bill provides that Legislative Council elections be held on a different day from the day for House of Assembly elections. I do not think there is much need for me to say anything about that: it is just silly. The Leader of the Opposition quoted some authorities in favour of the bicameral system, but he could have quoted just as many noted authorities who oppose that system. I hope members will correct me if I misquote them, because I do not intend to do so. The Leader of the Opposition said:

It is reasonable that the elections be separate, because the issues before the public in choosing a Government are entirely different issues from the issues in the selection of members to serve in a second Chamber.

I draw attention to the phrases "choosing a Government" and "selection of members"; the Leader has made an unfortunate use of words, because most members would think that both Houses should be elected. Indeed, I believe that both Houses should be elected by all people over the age of 18 years. The Leader's speech was mainly a rehash of the speech of the Leader of the Opposition in the Legislative Council.

Dr. Eastick: It is normal practice.

Mr. CLARK: Yes; it means that, if the man in the other place gives a bad speech, the poor chap here who has to follow him also gives a bad speech. The member for Torrens, for whom I have a high regard, said:

The Legislative Council is willing to consider, review and amend when necessary any legislation that, in its opinion, needs improving. This is one of the fundamental purposes of the Legislative Council in this State, and a true role of Upper Houses throughout the free world.

I draw members' attention to the phrases "in its opinion" and "when necessary". How can the judgment of the other place be fair, in view of the way it is elected? Further, how much worse will its judgment be if it is elected under an even more biased system? I am surprised to find the member for Torrens mentioning the free world in relation to the Legislative Council. After all, the Legislative Council is almost unaware that there is an outside world, and it knows nothing whatever about the free world. So, I believe that those two expressions in connection with the Council are meaningless. The member for Torrens also said:

This Bill proposes that a proportional voting system should be introduced, with voluntary enrolment and voting, and suggests a novel and new system be introduced concerning the Legislative Council boundaries. I admit that an alteration to these boundaries is long overdue.

I applaud the honourable member for the last sentence that I quoted, but I do not agree that the system advocated is novel and new (the two words mean much the same). Surely a novel and new form of gerrymander is really meant. A revision of boundaries was due 100 years ago, and we should not be a party to a re-gerrymander under an even more gerrymandered system. The member for Torrens also said:

By way of interjection, members have referred to an imbalance and to a gerrymander, but such situations will not apply under this Bill.

I find it hard to believe that the honourable member really thinks that.

Mr. Gunn: It is hard to follow you.

Mr. CLARK: It would be hard for the member for Eyre to follow anyone: he does not have the capacity. The member for Torrens has told us that there will be no imbalance; however, if a ratio of 2½ to 1 between the two districts is not an imbalance, I do not know what it is. What a fair idea it is to have elections for the two Houses on different days! Surely no-one would believe that that is reasonable; it appears to be a sop to the blind, deaf and dumb. However, the member for Torrens is not blind, deaf or dumb. I do not think he managed to convince even himself, and he certainly did not convince any Government members. The member for Kavel, a man to whom I usually listen with much interest and respect, followed in this debate the member for Ross Smith, who was in pretty good vein. However, the member for Kavel does not share my opinion about the speech of the member for Ross Smith, because the political ideas of the two members are somewhat different. The member for Kavel spent half his speech trying to prove that the speech of the member for Ross Smith would not stand up to scrutiny, but the member for Kavel singularly failed in his attempt. The member for Kavel said:

There is no division of opinion whatsoever in my Party concerning the usefulness of the Upper House as a House of Review.

It is unnecessary for me to refer to the unhappy events that have been taking place in the last few months in the honourable member's

Party. I can safely say that there is a difference of opinion regarding the usefulness of the Upper House, but there should not be, because the Upper House has over the years been used most usefully by members opposite. Indeed, I suggest that the usefulness of which they speak is not to the State but to the Party of which they are members. This Bill seeks to make another place even more useful to members opposite and to perpetuate that usefulness in the future. Little wonder that all members opposite support the Bill, or at least they all should. The honourable member continued :

I am convinced that the South Australian public is convinced that the Upper House is a House worth keeping.

I am afraid that the honourable member convinces fairly easily, but I do not convince so easily and I am not convinced. Frankly, I believe that a large percentage of people in South Australia scarcely know that the Upper House exists, and we must blame the existing electoral system of the Upper House for that apathy. I do not believe that the proposed Bill of Rights will reduce the apathy towards that House.

The member for Kavel talked about voluntary voting and voting on another day. The latter would inhibit the numbers voting (he did not say that, but I do). He suggested that the member for Ross Smith "obviously has no confidence in the citizens of South Australia in regard to being given the responsibility of deciding whether or not they want to vote". I should say that the honourable member accurately judged the feelings of the member for Ross Smith in this matter. I believe, as do my colleagues, that voting is far too important to be left to chance, that all should vote, and that all must vote (even for the Legislative Council), even though it means little to those concerned. Of course, that will affect the way members in another place go into that place. Indeed, I suggest that it would mean much more to those who do vote if they had to vote for the Legislative Council, and more still if they voted on the same day as that for voting for the election of members in the Lower House.

To elect members of the Upper House on another day is a cunning move to ensure that the uninterested remain uninterested and do not vote. I believe, however, that the uninterested should be encouraged to become interested and that they must vote and, if there is no other way of ensuring it, that they should be made to vote. I do not believe that a large proportion of the uninterested people will vote unless this is done and I do not believe that they will be educated to know what government is about unless they vote compulsorily.

Mr. Mathwin: That is democracy.

Mr. CLARK: I do not intend to quote the member for Glenelg, although I might refer to that remark—

Mr. Mathwin: You have got—

Mr. CLARK: —but there is not time now. However, I have the honourable member's name down in my little black book from which there is no rubbing out. The member for Kavel said:

Obviously the Labor Party is frightened of voluntary voting.

He should have said, "Obviously the L.C.L. is frightened of compulsory voting." I think that is the real point he was trying to make. This Bill is concrete evidence of that fright. In fact, it appears that members opposite are frightened to the point of desperation and panic. The remainder of the honourable member's speech is based on the assumption that the Senate is a perfect Upper House that is elected in a perfect manner, but I do not believe that even members opposite believe this.

Mr. Goldsworthy: That is a fairly widely held opinion.

Mr. CLARK: It is a view that is widely held by the honourable member. One can proceed from the known to the unknown and obtain accurate results when making postulations, but one does not do so well when starting off with a basis that is not factual or correct. To obtain a conclusion from a wrong hypothesis has put members in the soup, and the member for Kavel has himself in the soup with his specious arguments. The honourable member said:

If the people of South Australia were given a fair account of the way in which the Legislative Council operates, I do not think they would complain about the Legislative Council either.

I am firmly of the opinion that, if we could find a person who could give the people of South Australia a fair account of how the Legislative Council operated (a person who could give an unbiased account—not the honourable member for Kavel or one of his colleagues), we would find that the Legislative Council would be abolished overnight. As I have said, I am not agitating—

Mr. Goldsworthy: You could have fooled us.

Mr. CLARK: I now refer to my last quote from the honourable member's speech, as follows:

Members opposite should look at this Bill honestly.

That is what I am trying to do. I suggest that it is almost impossible to look honestly at matters that are conceived in dishonesty and devised for a completely dishonest purpose. I do not believe that it is easy to look at this matter honestly (although I believe that is what I have done), because I believe that this Bill seeks to increase and perpetuate the existing imbalance of voting for the Legislative Council. I believe that the Bill is designed to hamstring the present Government and any other future Governments of the same political complexion. I believe it is designed to assist the Party that is now in opposition.

I am sorry that the member for Glenelg has had to leave the Chamber, because he was begging me to quote him. His final remark in the debate was this:

If the Government is sincere in its declaration about democracy, it will support the measure.

"Democracy" is the most maligned word in the English language, and, if this Bill represents democracy in action, I do not know what the word means. The most commonly used definition of democracy is that of Abraham Lincoln, as follows:

Government of the people, by the people, for the people.

I do not think that this Bill would satisfy any of the three criteria that Lincoln laid down as basic to democracy. I believe that members should be as ashamed as I am to be in a House where such specious arguments can be advanced and such a specious Bill can be introduced in the guise of being a serious contribution to democracy. I think that such words make a mockery of democracy. We are not as gullible as that, nor are most of the people in South Australia. I oppose the Bill and urge all members to oppose it with me. I think most of them will.

Mr. EVANS (Fisher): I strongly support the Bill, as I have no doubt that the method of electing members of the other Chamber will have to change in future, if for no other reason than because of increased population. We have a major difference between the two Chambers: voluntary voting compared to compulsory voting. The member for Elizabeth said he preferred compulsory voting: because of that method more people would take a keener interest in politics or Government. However, this has not been the case, and people in this country are no more interested in what happens in Parliament than are people in England, America, or in any other country that uses a voluntary system of voting. Generally, we have a compulsory system of voting in this country. The attitude of many people is that, as they have to vote, they stick to the Party ticket, or follow down the card, or write rude words on the ballot-paper telling all the Parties where they should go. We should not force people, especially Australians, into being interested in something in which they have no interest.

However, we encourage people by compulsion and by the threat of a fine! Members on this side object to that system because of the compulsory aspect, as we believe that the individual should make up his own mind whether he should go to the polling booth. Some people do not have faith in a candidate who is supported by a political Party in their area. Many people in my district would not have a bar of me, and the member for Ross Smith would be in the same position. Some people will not have a bar of the A.L.P. candidate or of any other candidate. However, they are compelled to visit the polling booth and go through the motions of having their names crossed off the roll. If they do not intend to vote, why put them to that expense? Having to vote may interfere with their family activities.

Mr. Crimes: They are more important!

Mr. EVANS: To some individuals they are: it is important to the individual that he should be able to decide whether he should use time to cast a vote.

Mr. Jennings: They are the people who ring at midnight and complain about something.

Mr. EVANS: That is their right. As members of Parliament we expect to receive telephone calls at all hours of the day, but that does not alter the fact that we are compelling a person to do something.

Mr. Clark: We do that all the time in hundreds of ways.

Mr. EVANS: Some of these people may have a greater sense of responsibility than have many members of Parliament. Because of religious beliefs, some people do not believe in Governments, but believe in God's government.

Mr. Jennings: Steal something from their houses and you will find out whether they will ring the police.

Mr. Clark: They don't have to enrol.

Mr. EVANS: They do for the Commonwealth but not for the State. Other people object to compulsion, but I do not think any person objects to voluntary voting. This legislation provides for an increase in the number

of members in the Upper House from 20 to 24. Before the previous State election there were 39 members of this Chamber, but we now have 47, and the increased number suggested for the Upper House is parallel to the increase made in this Chamber. The member for Elizabeth and other Government members have argued that the ratio between city and country members is unfair. I have said before that I believe there should be an equal number of electors in districts, if all else is equal. We represent human beings, but a member of Parliament should be given every chance to give the same representation to his constituents. My district is supposed to be a city district but it is half country. How does this compare with the district of Mitcham? In virtually every part of my district there is a church, a school committee, a sporting club, and a progress association, and in the district of Mitcham the number of such organizations would be less. As part of our responsibility, we attend school committee functions or visit schools, and this duty involves more time being used, especially with a greater number of functions.

However, the country member has vast distances to cover between towns. He may visit many small communities, all of which are important when we consider the aspect of decentralization. The person living in the country should receive better representation than that given to the city person, in order to encourage people to live in country areas. Surely, that is the sort of benefit we should be offering. We should not be encouraging people to come to live in the city. We should at least be affording equal opportunity of representation, but that is not being achieved if we make the number of electors in each district equal. If the situation ever arose in which Senators, for instance, regardless of the State whence they came, were to represent the same number of electors, we would find that under present-day circumstances 10 South Australian Senators would be representing about 1,250,000 people, compared to about 40 New South Wales Senators and over 30 Victorian Senators.

Mr. Hopgood: You don't talk about States if you're going to talk in those terms.

Mr. EVANS: I believe that we do talk about States. Had the member for Mawson listened to what Senator Murphy of the A.L.P. has said on this subject, he would have heard the Senator say that he believes in retaining the federal system. If we start discussing equal numbers in districts to be represented by Parliamentarians, automatically we were putting this State at a disadvantage. I challenge Labor members to say that they believe New South Wales should have four times as many Senators and that Victoria should have three times as many Senators as South Australia may have. If that were the situation, people would soon realize that they were being disfranchised and inadequately represented, and this applies especially to people living in the more sparsely populated areas of the State. Country people suffer a disadvantage especially through lack of schools, including access to a university and, as a result, their children must live away from home, a situation that is often detrimental to their way of life. If the present concessions enjoyed by country people were not available, half the people at present living in the country would come to live in the city.

Mr. Hopgood: This is all an argument against the present distribution of seats in the House of Representatives.

Mr. EVANS: I am saying that we must consider people in those areas that are not so densely populated.

Mr. Hopgood: Well, what do you think of the present Commonwealth distribution?

Mr. EVANS: I hold the view that the member for Elizabeth used to hold. Proportional representation gives minorities at least a remote chance of being represented in Parliament.

Mr. Clark: Look at France and see what sort of minorities exist there—about 15 or 20.

Mr. EVANS: I do not think that France is in a much bigger mess than we are in. I still believe in democracy and in giving minorities an equal opportunity.

Mr. Hopgood: We were a minority once.

Mr. EVANS: And you got your opportunity! However, I refer especially to other minorities. A gentleman in Western Australia entered the Senate on his own account after the last Senate election.

Mr. Hopgood: He's a "oncer".

Mr. EVANS: That does not matter. The system of electing members to the Senate afforded him that opportunity, and there is no reason why a similar system cannot be introduced here. Indeed, this Bill advocates the introduction of a similar system. I support a system of proportional representation that gives people in a minority an equal opportunity. I know that all the two major political Parties have to worry about is the name of a minority group candidate to see whether they can gain an advantage through the preferential system of voting. I think that, if it were not for this slight

advantage, the two major Parties would put their heads together to make sure that the minorities were squeezed out of existence. I know that before any change can be made to the existing legislation the Government will have to support the Bill and that seems unlikely at this stage. However, if the situation ever arises whereby members of the Upper House, regardless of their district, represent an equal number of electors (if country members represent the same number of people as that represented by city members), it will induce country people to come to live in the city, because their voting strength will have disappeared. As the years go by, the country voting strength and its effect will become less with regard to both sides of politics. I ask members to support the Bill, as I do.

The Hon. HUGH HUDSON (Minister of Education): Over a period, we have listened to some absolutely appalling rationalizations from members opposite in support of the Bill. For example, the member for Fisher had the gall to say that a ratio of 2½ votes to one in favour of the country was justifiable because it was more difficult to represent a country district than it was to represent a city district. He did not bother to say that country districts in this House have enrolments on average of about 9,500, whereas city districts have enrolments averaging 16,000. Therefore, with regard to this House there is already a 60 per cent margin in favour of the country, with the country vote having a 60 per cent higher weight than the metropolitan vote. For the Legislative Council, that is not good enough. According to the member for Fisher, we need a weighting in the Legislative Council of 2½ times in favour of the country voter as against the metropolitan voter. The only reason for this Bill, other than an attempt to ensure that the Liberal Movement can never get significant representation in the Upper House—

Mr. Coumbe: No.

The Hon. HUGH HUDSON: If the honourable member does not appreciate that the DeGaris-Eastick alliance against the L.M. is involved in relation to this Bill, as well as the attempt to ensure a permanent majority for the Liberals in the Upper House, he had better think about the matter more carefully than he has done. This Bill is designed to ensure in all circumstances a permanent majority for the Liberal and Country League in the Upper House. The Bill is crook. It has been designed by people who are concerned only with gerrymandering, reverting back to the worst characteristics of the Playford days. They are saying that in no circumstances will the Labor Party ever gain a majority in the Upper House.

As the honourable member who purports to be Leader of the Opposition and who should have some degree of basic honesty about this matter will know well, there are no circumstances in which the Labor Party scores a majority of votes in the country area of the State, as defined in the Bill. Therefore, under this arrangement, it will always be the case that, when five members are to be elected for the country area, at least three will be L.C.L. and, when seven members are to be elected, at least four will be L.C.L. Under the system of proportional representation, it is not possible for the Labor Party in the metropolitan area to get more than four members when seven members are elected, or more than three members when five members are to be elected. Under the Bill, it is therefore impossible for the Labor Party ever to get more than 12 of the 24 members, and it is unlikely that it would ever get 12 members. The Bill has been specifically designed to see that the Labor Party does not get a majority. That is why it is a gerrymander and why it is an attempt to sustain the permanent will of the people in the form of an L.C.L. veto in the Upper House. That is why the Bill is a disgrace and why the Leader should have refused to sponsor it in this House, instead of carrying on with a great degree of gobbledegook and pathetic rationalization in explaining it.

Not only were the designers of the Bill interested in seeing that the Labor Party could not get a majority in the Upper House: they also wanted to ensure that the Labor Party could never get 12 of the 24 members in the Upper House by asking us to agree that all Upper House elections be held on a separate day. Where else in Australia does that occur? We are told that this is necessary to give the Upper House a different character so that it can really be a House of Review. However, the reason why this Bill provides that Legislative Council elections should be held on a separate day and that there should be voluntary voting is to ensure that the L.C.L. vote will be higher than it would otherwise be and that the Labor Party cannot secure even 12 of the 24 members. It is worth noting that under the proportional representation system, if there are seven vacancies, in order to secure a quota a candidate must have one-eighth of the total vote. That means that, in order to win four seats out of seven, a Party has to win

50 per cent of the total vote and, in order to get a fifth member, it has to win 62½ per cent of the total vote. The Labor Party has never secured the latter kind of vote, even in the metropolitan area.

If only five members are to be elected, the quota for one member is one-sixth. In order to secure three of the five members, a Party must win 50 per cent of the total vote and, in order to get four of the five members, it has to secure 66⅔ per cent of the vote. Again, that latter vote cannot be achieved by one Party. This means that the Labor Party cannot hope for more than four of seven members in the metropolitan area when seven are to be elected, or more than three of five members when five are to be elected. The argument could be said to apply in reverse. It could be said that it would therefore be likely that the L.C.L. would gain a majority in the country and the Labor Party a majority in the city, so that the Upper House would forever be divided with each Party having 12 members. However, this is where the technique of a separate polling day and voluntary voting comes in. In those circumstances, the DeGarises of this world have worked out that the L.C.L. can expect to get more than 62½ per cent of the vote in the country, if seven members are to be elected, or possibly more than 66⅔ per cent of the vote, if there are five members to be elected. The only possibility of this happening would be if the Legislative Council election was on a separate day from the House of Assembly election and if the voting system was voluntary. The only Party given a chance of getting a majority under this Bill is the L.C.L. The Labor Party would never get a majority, no matter how the people voted, and no matter whether the majority of people in South Australia were willing to vote for Labor Party members for the Legislative Council. That is why this Bill introduces a gerrymander deliberately designed to secure a permanent L.C.L. veto in the Upper House.

The position is worse than that. How many members of the L.M. would be elected to the Upper House? The L.M. might get one or two members in the metropolitan area, but there the Labor Party would be securing the majority of the votes. In the country areas of the State, despite the fine example of the member for Flinders and the quixotic example of the member for Gouger in Goyder, the L.C.L. members (anti-L.M. in character) would carry the day with regard to Party preselection. The member for Bragg can shake his head and suggest that this cannot happen but, as he will discover when the preselection ballots are held in country areas, it will be the L.C.L. and the old guard that will carry the day when voting takes place in country areas.

Mr. McAnaney: What's this about the old guard? There isn't any.

The Hon. HUGH HUDSON: Under this kind of system the L.C.L., the DeGaris-Eastick alliance (the joint Party machine), which I understand was kept in power today, will secure a majority of the L.C.L. members elected to another place. Already the means of securing the permanent downfall of the Liberal Movement and the permanent minority status of the L.M. is provided for in this Bill. If the Leader did not know when he introduced this measure that this was a characteristic of the Bill, I assure him that the Leader in another place (Hon. R. C. DeGaris) knew where the sixpences were when he introduced it.

Dr. Eastick: You have a vivid imagination.

The Hon. HUGH HUDSON: Not at all, but I do know when people who have the gall to call themselves democrats introduce a Bill to gerrymander the electorate, to hold voting on a separate day, and to allow voting on a voluntary basis for no other reasons than to secure a higher L.C.L. vote and to secure a greater representation for the L.C.L. section of the Party. The L.M. members say that they agree with it.

Mr. Clark: We didn't hear many of them speak on this Bill.

The Hon. HUGH HUDSON: We will see how they vote. I hope that the lessons which they will have learnt today and which they learned last Wednesday will help them realize that their opponents in the L.C.L. will stop at nothing in order to secure their position. They do not accept any democratic notions whatsoever and, even though some measure of electoral reform was introduced in House of Assembly elections only two and a half years ago, they will go along with an attempt to revive a previous gerrymander in order to sustain their position. It is about time that the L.M. members who call themselves progressives stood up and exposed this kind of crookery, because that is what it is: designing electoral districts purely to secure a political advantage. When it is introduced with all the gobbledegook, the false history, and the quoting of authorities that the Leader has indulged in, it is dishonest as well.

Mr. Jennings: As well as being crook?

The Hon. HUGH HUDSON: I always make a distinction between people who just cannot help themselves and people who set out to do things deliberately. I believe in this instance not only that the Opposition cannot help itself but also that members opposite are being dishonest in their whole approach.

The Hon. J. D. Corcoran: Do you think that they have been encouraged by the Hon. Mr. DeGaris?

The Hon. HUGH HUDSON: Yes.

The SPEAKER: Order! The honourable Minister should get on with his speech and not reply to interjections.

The Hon. HUGH HUDSON: For the benefit of the Deputy Premier, I was explaining in detail how this Bill was designed to cook the goose of the L.M. and to make sure that, even if the L.M. members in this House became a little rump, the joint meetings of members opposite from both Houses would be sufficient to obtain a majority of L.C.L. members in both Houses.

Mr. McAnaney: You have got your homework wrong.

The Hon. HUGH HUDSON: It is right. There is no way under this Bill that the L.M. can get more than four members in the Upper House, yet the L.C.L. can hope to get as many as 10 members there, so that at a combined joint meeting this sort of democratic machinery that has just been thought of—

Mr. GUNN: I rise on a point of order, Mr. Speaker. I ask you to tell the Minister to confine his remarks to the Bill under discussion. There is nothing in the Bill about joint Party meetings.

The SPEAKER: I cannot sustain the honourable member's point of order. The honourable Minister of Education is telling members what effects he considers this legislation will have on the electoral system of the State.

The Hon. HUGH HUDSON: I must have touched on a sore point as far as the member for Eyre is concerned. Members on this side have been told over the years that the Upper House is a House of Review and that, because it is a House of Review, the L.C.L. members of the Upper House are a separate Party and that, in no circumstances, can their decisions be influenced by these dreadful people in the L.C.L. in the Lower House. Of course, now that the L.M. has come on to the scene and it is likely that the L.M., if left to its own devices, would get a majority of members of the L.C.L. members of this House after the next State election and displace the present Leader of the Opposition, the joint Party meeting became a necessity to preserve the present Leader of the Opposition and his cohorts, or as many of them as will be left. So we are to forget about the Upper House being a House of Review and the need for L.C.L. members there to meet as a separate Party.

Mr. McAnaney: If that happens, you will be in Opposition.

The Hon. HUGH HUDSON: The member for Heysen is out of order, not only because he is interjecting but also because he is out of his seat; he is also irrelevant and obtuse.

The SPEAKER: Order! I will call the honourable member if he is out of order.

The Hon. HUGH HUDSON: I am trying to encourage the L.M. members to vote against this Bill because, now that we have a joint Party meeting, the L.C.L. in the Upper House is no longer to be independent.

Mr. Payne: When were they ever?

Mr. Simmons: They're going to run this show.

Mr. McAnaney: You cannot even add up two and two.

The Hon. HUGH HUDSON: They have run the honourable member for a long time The honourable member calls himself an independent chairman of his Party, but I can see whose shots he is firing and who has been loading them for him. It is clear what he is up to.

Members interjecting:

The SPEAKER: Order!

The Hon. HUGH HUDSON: If the arrangements for the joint Party meeting were not organized by the Hon. R. C. DeGaris in co-operation with one or two members of the L.C.L. in this House, in particular the Leader—

Mr. McAnaney: That is a fairy story.

The Hon. HUGH HUDSON: I ask members opposite to rise and deny it. Apart from that, this proposal suggests that the Upper House, because it is a House of Review, must have an election on a separate day and now, in order to rescue the L.C.L. from the depravity of the L.M., there must be a joint Party meeting between the two Houses, so that the House of Review aspect is forgotten. When it comes to the crunch, what we are being told about the activities that have gone on in the L.C.L. Party room in the last two weeks is simply that the House of Review notion does not matter. It is only a convenience. When the issues are crunch issues, the Tories in the L.C.L., either in this House or in the Upper House, will combine to ensure that the "right

things" are done, and that is what is taking place. What has happened to the L.M. makes clear—

Mr. Gunn: There is nothing about the L.M. in the Bill.

The Hon. HUGH HUDSON: —that that is what it is all about. I know that the member for Eyre is disappointed because I am revealing the facts about this matter, but he is asking us to support a Bill that has, as its basic concept, some notion that the Upper House is a House of Review, and associated with that is the notion that the members of that House are to be considered entirely separate. He does this publicly in this House, but when he gets into his Party room, where the daggers can be wielded with impunity, his actions show that he does not believe that the Upper House is a House of Review because he wants the right members, the Tories, from that House in his Party room so that he can clobber the member for Gouger and his supporters. I could believe that the previous member for Eyre would not have known what was going on, but the present member is an intelligent human being, and he knows what his colleagues are up to. He must know that.

I hope that I have said enough. I know that I am being encouraged by members of the L.M. to say more and I can understand their feelings on this matter. However, I believe honestly (and I say this sincerely to members of the L.M.) that this Bill can now be seen as part of the grand design of those forces in the L.C.L. which have been associated with the gerrymander for years in South Australia, which have been associated with all the anti-democratic conditions that existed previously in South Australia, and against which they are voting in the L.C.L. Party room. This is part of the weapons they will use if they get into a position of power again and are able to use them. This is a taste of the tactics of the L.C.L. section, or the sort of reactionary section of the L.C.L., the anti-L.M. section, and I hope members of the L.M. will see it for what it is and, like us, vote to throw it out.

Mr. KENEALLY (Stuart): He would be a brave man or a fool who would follow such a speech as that of the Minister of Education, and, as everyone knows, I am not very brave. Whilst the Minister of Education was speaking I wished that I had said those things, but if I had said them I would not have said them so well. The Minister has laid bare the plans of the L.C.L. to gerrymander the districts so that there will be permanent L.C.L. control of the Legislative Council. No doubt this Bill is one of convenience. Had the situation prevailed today that prevailed four or five years ago, when Opposition members saw no threat to their continuing domination of the Legislative Council, there would have been no reason to introduce this Bill. It has been introduced merely because L.C.L. members now see a possibility that the membership of the Legislative Council will change at the next two or three elections, so that a majority of A.L.P. members may be elected to that House. That would never be accepted by members opposite.

This is a proposition for a new gerrymander to replace the old one. When the Leader of the Opposition explained this Bill, the first three-quarters of his contribution was not relevant to the matter we are discussing. He justified the existence of a second House in a bicameral system, but that is not what we are debating. He suggested that, if members of the Government considered it necessary, they could move an amendment that would split the State into two districts (and this is what the Bill provides) and each would be half city and half country. The Leader suggested that, if Government members would like to see equal representation numerically in each district, they should support that proposition or move that sort of amendment. However, we will not support the Bill. If Opposition members consider that that is a more democratic system they should move such an amendment. It would be an interesting proposition to view the position that would arise if there were two districts for the Legislative Council split in the way that has been suggested.

It would certainly be more democratic and it could return an interesting result, but it would return a result that would indicate the opinions of the people of this State: it would not return a result that was loaded in favour of one sector of the community, and that is what this Bill provides for. The Minister of Education exploded the myth that the Legislative Council is merely a House of Review. For many years it has been convenient for the supporters of the Council to proclaim that it is a non-Party political House, that it merely acts as a House of Review, and that it does not wish to be a carbon copy of the House of Assembly or that its members do not represent the same view as that represented by members of the House of Assembly. Of course, this was all poppycock. The Australian Labor Party and the Government has never suggested that Labor members in the Legislative Council do not have the same basic philosophy

as we have and that they would not vote as we do. The same situation applies to members opposite. No matter what they say, it is clear that L.C.L. members in the Council have exactly the same philosophy as have L.C.L. members in the House of Assembly, and that L.M. members in the Legislative Council hold the same views as do L.M. members in this House. Basically, I believe that the philosophies of both groups are the same and that what we are seeing in South Australia is not a contrast of philosophies but merely a power struggle. The L.C.L. has shown itself to be a Party of convenience; it is not a Party of principle at all. This Bill has been introduced as a matter of convenience, because that Party thinks it is losing control of the Upper House.

The farce perpetrated for many years, that the Legislative Council is a House of Review acting independently of the House of Assembly, has been exploded, because the L.C.L. would now have joint Party meetings of members of both Houses, members of both Houses no longer being independent. I think the Minister of Education clearly exploded the myth that may have existed in certain sections of the community concerning this matter. I represent a country district which, numerically the largest in South Australia, comprises a reasonably large area. However, I believe that members who represent numerically large city districts are probably called on to work harder in those districts than are country members, simply because city members can be easily contacted by their electors, who often wish to take advantage of this situation. On the other hand, country people are much more tolerant of their isolated situation.

Those members representing the fast-expanding districts of Mawson, Tea Tree Gully, Playford, and possibly Fisher will find that they will have to deal with many more problems than are dealt with by members representing the more settled districts, where the problems of housing, water and sewerage connections and roads, etc., are fewer. The member for Fisher said that some people were opposed to the idea of compulsion, but we know that even members opposite, who would oppose certain forms of compulsion, support other forms of it when it suits them. As the Premier clearly said, we believe that every citizen in this State should have an equal opportunity to elect members of Parliament, and we do not advocate this policy simply because we think it will benefit us electorally. However, the Bill is introduced with the simple object of benefiting the L.C.L. electorally, and for no other reason.

This Bill certainly will not receive the support of Government members; I honestly cannot see how L.M. members can support it; and I cannot see how any member of the L.C.L., who has any principles at all or who believes in democracy, can support it. I suggest that the only members who will support this attempt at trickery are those who would try to obtain an electoral advantage at the expense of the people of this State. That, of course, would be a politically immoral act, which could not be supported. I certainly do not support the Bill, and I trust that the House will reject it.

Dr. EASTICK (Leader of the Opposition): I do not intend to try to stoop to the gutter tactics of which we have had an exhibition this afternoon from the Minister of Education.

The Hon. L. J. King: I do not think that anyone who supports this Bill should talk about gutter tactics.

Dr. EASTICK: The Minister of Education made a whole host of criticisms and loud protestations that bore no relationship to the Bill. It was accepted by the member for Elizabeth, by way of interjection, that the manner of presentation was that normally accepted in relation to any Bill coming before the second House, whether it be this House or the Upper House.

Mr. Payne: You don't believe that DeGaris—

Dr. EASTICK: The member for Mitchell has had his say, and he will have an opportunity to have a further say when he supports the amendment on file to provide for full adult franchise as part and parcel of the Bill. Just what little regard Government members have paid to this measure is indicated by the fact that they have no amendments on file to strike out or alter any of these provisions. The Minister of Education said that the Bill was an attempt to introduce a gerrymander. The Minister has introduced a limited number of Bills, compared to the number introduced by other Ministers, but he should know that a Bill does not necessarily contain everything that is acceptable to both sides. Opportunity is provided in the second reading debate, and in questions, discussion and amendments in Committee, to deal with alterations that are acceptable. However, as members opposite obviously do not want this, I will not hold up the business of the House by repeating what has already been said, as is often done. I ask members to support the second reading so that, in Committee, we may consider the amendments on the file.

The SPEAKER: As this is a Bill to amend the Constitution Act and as it provides for an alteration to the Constitution of this Parliament, its second reading requires to be carried by an absolute majority. In accordance with Standing Order 298, I will count the House. There not being present in the House the required number of members, the Bill lapses.

Dr. Eastick: A couple more members have just come in.

The SPEAKER: I will count the House again.

The Hon. HUGH HUDSON: On a point of order, Mr. Speaker. You have already counted the House twice.

Mr. Goldsworthy: Sit down and bag your head. We've helped you in the past.

The SPEAKER: Having counted the House again and there now being present an absolute majority of the whole number of the members of the House, I put the motion "That this Bill be now read a second time." As I hear a dissenting voice, it will be necessary for the House to divide.

The House divided on the second reading:

Ayes (17)—Messrs. Allen, Becker, Carnie, Coumbe, Eastick (teller), Evans, Ferguson, Goldsworthy, Gunn, Hall, Mathwin, McAnaney, Millhouse, and Rodda, Mrs, Steele, Messrs. Tonkin and Wardle.

Noes (25)—Messrs. Broomhill, Brown, Burdon, Clark, Corcoran, Crimes, Curren, Dunstan (teller), Groth, Harrison, Hopgood, Hudson, Jennings, Keneally, King, Langley, McKee, McRae, Payne, Ryan, Simmons, Slater, Virgo, Wells, and Wright.

Pairs—Ayes—Messrs. Brookman and Nankivell. Noes—Mrs. Byrne and Mr. Ryan.

Majority of 8 for the Noes.

Second reading thus negatived.

The SPEAKER: Order! Will the honourable member for Glenelg say which way he voted in that division?

Mr. MATHWIN: I voted in favour of the second reading.

The SPEAKER: I will correct the division list accordingly.

NATIONAL PARKS

Adjourned debate on the motion of Dr. Eastick:

That the regulations (general) under the National Parks and Wildlife Act, 1972, made on June 29, 1972, and laid on the table of this House on July 18, 1972, be disallowed.

(Continued from October 4. Page 1819.)

Dr. EASTICK (Leader of the Opposition): I ask members to support this motion. The Minister has said that various regulations under the National Parks and Wildlife Act are needed, and no member on this side denies that need. However, we have pointed out several times in recent weeks the deficiencies in the regulations.

In the *Sunday Mail* of October 7 appeared an article about the problems associated with the trapping of parrots. The article, by William Reschke, was headed "Parrot Pirates". The points made in the article were valid, and not one member on this side condones the activities outlined in the article, whether those activities are carried out in an organized way or by people operating individually. However, I find it difficult to understand why the Minister said in the article that the Opposition had been responsible for holding up the regulations. The Minister might have given the impression that the Opposition, spearheaded by me, had condoned the type of activity dealt with by the article.

In speaking to this motion, Opposition members have drawn attention to anomalies in the regulations that are causing considerable concern. The article said that the Minister's view had been influenced by the South Australian Ornithological Association, which had reported its abhorrence of the activities of parrot pirates. Unfortunately, that association informed me of its complaints only simultaneously with the release of the Minister's comments. Prior to that time I had had no direct communication from the association about its fears. When I finally received the association's letter, I found that it simply put the association's viewpoint; it did not suggest that the association was concerned about the activities of the Opposition. The letter, which was dated October 6, is as follows:

Discussion has been taking place recently in Parliament concerning the regulations to the National Parks and Wildlife Act, 1972. I noticed in *Hansard* that my association was quoted by the Minister, and I feel it in order to write to you concerning our position in regard to both the Act and regulations.

We feel that it is a privilege to be allowed to keep rare fauna. Accordingly, responsibility must follow in the form of record-keeping and other regulations which may in some cases seem tedious. We feel that the inconvenience caused by legislation pertaining to rare birds is in the best interest of wildlife in South Australia. One of the two aims of our association is the conservation of native birds and to this aim we see the regulations provided as a necessary complement to the Act.

There is no dispute about that. I come back to the point I made earlier, that the association has not shown any positive concern that the Opposition is allegedly unfavourably affecting the activities outlined in the article. The Minister, in his speech on this motion and by interjection, said that the department had had long and fruitful discussions with members of the South Australian Ornithological Association during the preparation of the Act and the regulations. I have no doubt that the information was given to him gladly. However, the South Australian Avicultural Society would also have given information to the Minister, other than by way of a submission to the Subordinate Legislation Committee, if it had been given the opportunity. The membership of the two organizations is vastly different. The South Australian Ornithological Association has a much smaller membership, although it has a longer history. The South Australian Avicultural Society, which was formed in 1928, has considerable standing and has made a very useful contribution to many aspects of aviculture. I am led to believe that it has cooperated wholeheartedly with inspectors from the Minister's department. The Minister clearly showed the difficulty of accepting arguments advanced in respect of two species of bird; because those species are in the schedule to the Act, their deletion from the regulations is not possible. I accept that point. The Minister said that regulation 56, dealing with labelling, was clearcut and it was not intended that it would apply other than between dealers. Quite apart from what the Minister believes the effect of the regulations to be, there is considerable concern among people involved in the trade that the regulation is not clearcut. It is farcical that a label 16 cm by 20 cm must be attached to each parcel that contains nominated living species or preserved species. The regulation provides:

(1) Notwithstanding that any other marking may be required under these regulations, any person consigning or conveying or causing to be consigned or conveyed, any protected animal or the carcass, skin or egg of a protected animal from his place of business to any other place shall, before consigning or conveying such animal, carcass, skin or egg, securely attach or cause to be securely attached to the sides or top of the receptacle or package containing such animal, carcass, skin or egg, a label not less than 16 cm by 20 cm on which is written in clear legible print—

(a) his name and place of business;
(b) the number of his permit to keep and sell protected animals;
(c) the name and address of the person to whom the animal, carcass, skin or egg is being consigned or conveyed;
(d) the number of the consignee's permit to keep and sell protected animals.

I suggest to the Minister that the misleading portion of this regulation is the portion referring to "any person consigning or conveying or causing to be consigned or conveyed" and "the number of his permit to keep and sell protected animals". These two paragraphs apply to many people other than dealers, and they are causing confusion to many people in the industry, and subsidiary to it, who seek clarification. I have been told that "any person" means anyone who is directly responsible for consigning or conveying or causing to be consigned or conveyed and also anyone who is in possession of a permit to keep and sell protected animals. Many of the persons making these points admit that a vague clue is given in the reference to a place of business, which could apply to dealers, but it does not necessarily apply only to them. Even if the Minister cannot and will not accept the submissions (and I accept responsibility for including the whole of the regulations instead of one or two specific regulations; it is an error on my part) I like to believe that, even if the Minister cannot accept the spirit of this motion, he will, through his department, see fit to alter the administrative procedure for the consideration of this House soon. On behalf of all people interested in aviculture, I believe that it would have been advantageous to study advice from the Avicultural Society of South Australia at the same time as support was obtained from the South Australian Ornithological Society. I ask members to support the motion.

The House divided on the motion:

Ayes (17)—Messrs. Allen, Becker, Carnie, Coumbe, Eastick (teller), Evans, Ferguson, Goldsworthy, Gunn, Hall, Mathwin, McAnaney, Millhouse, and Rodda, Mrs. Steele, Messrs. Tonkin and Wardle.

Noes (25)—Messrs. Broomhill (teller), Brown, Burdon, Clark, Corcoran, Crimes, Curren, Dunstan, Groth, Harrison, Hopgood, Hudson, Jennings, Keneally, King, Langley, McKee, McRae, Payne, Ryan, Simmons, Slater, Virgo, Wells, and Wright.

Majority of 8 for the Noes.

Motion thus negatived.

MEADOWS ZONING REGULATIONS

Adjourned debate on the motion of Mr. Evans:

That the Metropolitan Development Plan, District Council of Meadows planning regulations (zoning), made under the Planning and Development Act, 1966-1971, on July 6, 1972,

and laid on the table of this House on July 18, 1972, be disallowed.

(Continued from October 4. Page 1813.)

Mr. EVANS (Fisher): I express the same views in relation to the Government's attitude in not accepting this motion as I did in relation to the motion for the disallowance of the regulations in the zoning plan for the Mitcham District Council. This motion also relates to Craigburn. I have no complaint about the regulations except as they relate to the part of Craigburn that lies within the area of the Meadows District Council. The Minister has said clearly that the Government will not give way, and that it believes that this area should be left as zoned by the council to enable it to be developed to a degree in future, if the board of Minda Home Incorporated decides to do so. It would be a waste of time for me to say anything further, except that I am disappointed at the Government's attitude, as I believe are many other people. I believe that the attitude shown by the Government proves that it is not concerned about what will happen to this area. It is possible that the board, comprising different members, may wish to develop the land, and that situation seems to be accepted by the present Government. I ask members to support the disallowance of these regulations now that they have been able to study the environmental report that was tabled after the Minister's speech opposing this motion.

The House divided on the motion:

Ayes (16)—Messrs. Allen, Becker, Carnie, Eastick, Evans (teller), Ferguson, Goldsworthy, Gunn, Hall, Mathwin, McAnaney, Millhouse, and Rodda, Mrs. Steele, Messrs. Tonkin and Wardle.

Noes (25)—Messrs. Broomhill (teller), Brown, Burdon, Clark, Corcoran, Crimes, Curren, Dunstan, Groth, Harrison, Hopgood, Hudson, Jennings, Keneally, King, Langley, McKee, McRae, Payne, Ryan, Simmons, Slater, Virgo, Wells, and Wright.

Majority of 9 for the Noes.

Motion thus negatived.

ROAD TRAFFIC ACT AMENDMENT BILL (COMMERCIAL VEHICLES)

Adjourned debate on second reading.

(Continued from October 11. Page 1995.)

Mr. RODDA (Victoria): When I sought leave to continue my remarks last week, I had been commending the member for Bragg for introducing the Bill. What has happened in the last week has done nothing to alter my opinion on this matter. Indeed, on this last day of private members' business (for some of us, it could be the last time we will be discussing private members' business)—

The Hon. G. T. Virgo: It could be the last time some of you are discussing any business in this House.

Members interjecting:

The SPEAKER: Order! The honourable member must address the Chair. I cannot ascertain whether or not he is in order.

Mr. RODDA: The Bill recognizes an anomaly affecting many people engaged in the transport industry who must traverse long distances. I do not think it is too much to ask that the present speed limit of 30 miles an hour be raised to 50 m.p.h., and I hope that this change takes place. I hope that the Bill receives the Government's blessing, for it will benefit our knights of the road, who represent an important section of our community, transporting our goods across the State and into other States. To restrict the speed of vehicles exceeding 13 tons to 30 m.p.h. is beyond one's comprehension. I support the Bill.

Mr. MATHWIN (Glenelg): I, too, support the Bill. I believe that the present limit on the speed of commercial vehicles has, directly or indirectly, caused many accidents. The speed of vehicles exceeding 13 tons is restricted to 30 m.p.h., and this, when we bear in mind the expanse of open road in a country the size of Australia, must affect the driver of the vehicle in question. Indeed, this speed limit has the effect of making drivers drowsy and tired. I think all of us who have driven long distances at a certain speed, especially a low speed, have experienced this situation. I think that a speed limit of 50 m.p.h. is reasonable, and I intend to support the amendments foreshadowed by the member for Bragg in relation to braking because, if the speed limit is increased, obviously we must have regard to the appropriate safety measures. The speed limit of these vehicles applying in Victoria and New South Wales is 50 m.p.h. and, in Queensland, as high as 60 m.p.h. It seems to me that the Government is most unsympathetic to road transport.

The vehicles concerned are capable of travelling at speeds of up to 50 m.p.h. at least. I wonder whether the Minister of Roads and Transport, when he was overseas, told his counterparts in the United Kingdom and the other countries he visited that there applied here a speed limit of 30 m.p.h. in respect of vehicles exceeding 13 tons. Did he note the

speeds of heavy vehicles in the U.K. and Europe, where distances between towns, cities and counties (even countries, in the case of Europe) are much less than the distances that apply here? Although I admit that certain roads in oversea countries may be much better than those here, I point out that vehicles capable of carrying about 20 tons can travel at speeds of up to 70 m.p.h. The Minister's statement on this matter does not ring true. I suspect that he is involved in a scheme to bring road transport into line, as I know that the Government is not sympathetic towards private enterprise.

Mr. McANANEY (Heysen): I, too, support the Bill. Many transport drivers in my district are having much difficulty because of this 35 m.p.h. limit. Out on the main interstate highways it is impossible to keep down to this speed. The vehicles are not even designed to travel at this speed. The result is that innocent people, who are causing no danger at all to anyone, are losing their licence because of the demerit points they are building up. The Government has a completely impractical and unrealistic attitude towards this matter. I agree that these vehicles should be equipped with adequate brakes that are tested regularly. The only reason the Government has for continuing to apply this speed limit of 35 m.p.h. is to penalize road transport, which often is the cheapest and best way of transporting goods, so that people will be forced to use the railways, although in some cases, such as long haulage, the rail service is adequate. It is only an excuse to say that it would not be in the interests of safety to increase this speed limit for transport vehicles. As I travel along Glen Osmond Road two or three times a week, I notice that the slow speed at which semi-trailers must travel increases the likelihood of accidents.

Dr. TONKIN (Bragg): I thank members who have supported the Bill. I agree with the Minister of Roads and Transport that there has been difficulty in debating the Bill, since it is intended to amend it to an extent that will make it a rather different Bill; it would come out of Committee in a very different form. However, that is no excuse for not supporting it. I believe that the Minister is using this fact as an excuse to abdicate his responsibility; he is merely quibbling about this matter. I point out that last session the Minister introduced measures affecting road transport, one of which dealt with load limits and hours of driving, the other dealing with speed limits and braking provisions. I can see no reason why similar legislation regarding speed limits and braking should not have been introduced this session. If he had wished, the Minister could have introduced such legislation. If he believes that provisions relating to the number of hours a driver may operate his semi-trailer and adequate weight limit provisions are essential and complementary to this legislation, it is open to him to introduce other legislation. It is no credit to him that he has not taken this action. He may well speak to his colleagues now and try to ignore me, but he knows that what I am saying is true.

He tried to make the excuse that he did not have a consensus of industry opinion on this matter, but I doubt whether he tried very hard to get it. Many people to whom I have spoken have not realized that, if we do not deal with this matter this session, we will probably not be able to deal with it until next July. The Minister referred to what Opposition members had said previously during the debate on the points demerit scheme legislation. He suggested that those who had supported that scheme then no longer favoured it. That is utter rubbish, but it is the sort of thing we have come to expect from the Minister. Of course we support the points demerit system. What we do not support is this ludicrous and yet tragic situation in which transport drivers lose their licence as a result of building up demerit points because they exceed a speed limit which the Minister, by his action in introducing legislation on the subject last session, has indicated is impractical and unfair. That is my quarrel with the Minister. People are losing their employment because the Minister will not get moving and do something about this speed limit.

If the Minister had proceeded with his Bill last session or introduced other legislation this session, the problem would no longer exist. Experienced drivers would still be on the road, instead of young men who do not have the experience necessary to drive semi-trailers. Moreover, transport drivers would have a far higher opinion of members of the highway patrol than they have now, because rightly or wrongly these drivers at present believe they are being victimized. Although the Minister really believes that the speed limit should be 50 m.p.h., by using stop watches and lights at night, and by parking in side roads, the highway patrol catches drivers who exceed 35 m.p.h. I believe that the Minister is hiding behind the excuse of road safety. He is concerned with road safety (and so are we), but only

when it suits him. Only recently the Minister introduced a Bill to exempt certain buses which were wider than the permitted width and which exceeded axle load limits. It suited the Minister to do that on that occasion.

The DEPUTY SPEAKER: Order! The honourable member must not refer to a matter that has already been the subject of a debate this session.

Dr. TONKIN: For these reasons I question the Minister's sincerity when he speaks about road safety in this regard. I think a real hazard exists in retaining the speed limit at 30 m.p.h. or 35 m.p.h. We should see what would happen if we increased the speed limit, at the same time providing adequate braking requirements. I ask members to consider these transport drivers and to support the Bill.

The House divided on the second reading:

Ayes (17)—Messrs. Allen, Becker, Carnie, Eastick, Evans, Ferguson, Goldsworthy, Gunn, Hall, Mathwin, McAnaney, Millhouse, and Rodda, Mrs. Steele, Messrs. Tonkin (teller), Venning, and Wardle.

Noes (24)—Messrs. Broomhill, Brown, Burdon, Clark, Corcoran, Crimes, Curren, Dunstan, Groth, Harrison, Hopgood, Hudson, Jennings, Keneally, King, Langley, McRae, Payne, Ryan, Simmons, Slater, Virgo (teller), Wells, and Wright.

Majority of 7 for the Noes.

Second reading thus negatived.

OCCUPATIONAL THERAPISTS BILL

Adjourned debate on second reading.

(Continued from October 11. Page 1995.)

Mrs. STEELE (Davenport): This Bill was adjourned day after day by the Attorney-General, who represents the Minister of Health. Unfortunately, no-one has had a chance to speak to the Bill, which is a very great pity because the Bill is of some importance. I know that life is hard and life is earnest in politics, but I am disappointed about this matter. It is a subject in which I have had a great personal interest over a considerable period, and I was hoping that I would have the opportunity of hearing members supporting the Bill, which was introduced by me at the request of the Occupational Therapists Association. The reasons advanced by the Attorney-General for the Bill being unacceptable to the Government are understood up to a point: that there are other disciplines that may want similar policies to be followed. Nevertheless, this matter was one that the Government itself saw the need to advance, because of its great importance in medical rehabilitation. I think the real reason for the Bill's being turned down is a personal one: it was because I did not, as a courtesy, go to the Minister of Health and tell him that I had been asked to introduce the Bill.

Dr. Tonkin: You could very well be right.

Mrs. STEELE: I am sure I am right. The fact that debate on the Bill was adjourned week after week leads me to that conclusion. The Minister of Health thought he had been slighted in some way because the occupational therapists had not gone to him and asked him to introduce the Bill. He himself told me that he thought he had done so much for them that he felt he was owed that courtesy. That may or may not be so, but it does not excuse the Government for procrastination on this matter. Occupational therapy is a new discipline that the community has come to realize is important in the area of rehabilitation. Over the last 10 years there has been a struggle to bring about a school in occupational therapy, a move in which I played a large part. It was purely as a gesture to me that the occupational therapists asked me to do this, because they knew that I would be retiring from Parliament and they knew how pleased I would be if this matter was cleared up before I retired. I now have no option but to allow a vote to be taken on this Bill at the end of the session. I feel slightly personally disgruntled about the whole business. I seek leave to continue my remarks.

Leave granted; debate adjourned.

[Sitting suspended from 6 to 7.30 p.m.]

FRUITGROWING INDUSTRY (ASSISTANCE) BILL

Returned from the Legislative Council without amendment.

PUBLIC WORKS COMMITTEE REPORT

The SPEAKER laid on the table the report by the Parliamentary Standing Committee on Public Works, together with minutes of evidence, on Law Courts Area, Adelaide (Western Courts Building—Stage II).

Ordered that report be printed.

CRIMINAL LAW CONSOLIDATION ACT AMENDMENT BILL (HOMOSEXUALITY)

Second reading.

Dr. TONKIN (Bragg): I move:

That this Bill be now read a second time.

This Bill, which was introduced into another place by the Hon. C. Murray Hill, is a short one and, as originally introduced, provided that certain homosexual acts between consenting males of 21 years and over and in private shall no longer be offences under the criminal law. The age of 21 years was

adopted by Mr. Hill in spite of the age of majority in this State now being 18 years, because of his desire to err on the side of caution in this respect. The Bill, as introduced, followed the major change regarding homosexuality in the English Sexual Offences Act, 1967.

The whole subject of homosexual behaviour was brought to the fore again in this State with the tragic death of Dr. Duncan, and the Hon. Mr. Hill introduced his Bill as a result of the considerable public disquiet expressed at the apparent discrimination against and persecution of homosexuals. Members of Parliament received many letters from concerned members of the community, many of which claimed that the Legislature in South Australia was still equating the sphere of crime with sin, and pointing out that the Duncan inquest illustrated the persecution to which minority groups were subjected. In his second reading speech, the Hon. Murray Hill said, too, that he considered that it was his duty to represent people. People come before all other interests, and in this issue he considered he was confronted with a minority of people whose cause to change the law here, as it was changed in England, was just and right. This attitude, I believe, should be reflected by all members in this Chamber also.

It is well apparent to those who have made a deep study of the subject that the wisdom of the present law on homosexuality and the general beliefs held by the public about the subject are open to challenge. It is important to summarize the views of professional men and women, because of the ignorance and prejudice that seems so prevalent in the community. The primary purpose of the imposition of criminal sanctions against homosexual acts is to enforce the wish of society that these practices be curbed and, in particular, to protect minors from any ill effects which it is thought might stem from the existence of homosexuality within the community.

There is now, however, much reason to believe that the psychological nature of the condition of homosexuality is such that the threat of criminal sanctions is not an appropriate means of controlling the behaviours in question, and there is every reason to believe that the bad effects on the community stemming from the existence of the sanctions are considerable. Some people fear that removal of these sanctions might lead to even worse effects. It has been suggested that homosexual practices among existing homosexuals may become more common, that attacks on, or seduction of, minors may increase and, in general, that influences tending to turn people into homosexuals may become stronger. These fears, which are sincerely held by many people, are based primarily on a failure to understand the nature of homosexuality.

There is a misconception in the minds of these members of the community, who understand by the term "homosexuality" an actual sexual act. In its medically and psychologically accepted sense, of course, the definition is much wider, and relates to emotional involvement between persons of the same sex, either male or female. This abnormal emotional attachment, which often has its beginnings in a person's early life, unfortunately, and without any element of real conscious choice, becomes the normal thing for that person, and I believe that such people are to be pitied. Certainly, I believe they should be helped if this is at all possible, but unfortunately, this is not often the case.

J. F. Fishman, writing in *Sex in Prison* and revealing sex conditions in American prisons, states that most homosexual acts are carried out by people whose sexual misidentification had its origin very early in life. There has been some work to suggest that the cause of homosexuality is genetic, but the majority of researchers agree that environmental factors have a very strong influence. Such factors as the absence or ineffectiveness of the father, or lack of communication or identification with the father, together with a marked domination by the mother are among those factors tending toward homosexuality in males and, of course, the reverse situation applies to females. These factors operate at very early ages on the developing personality of children, and, in general, it seems that, if the child is orientated in the direction of homosexuality by these factors, adult homosexuality is likely to follow, long before any understanding of or contact with adult homosexuals takes place.

There is, in fact, a great volume of evidence suggesting that homosexuals are made, rather than born, and are certainly not made by other homosexuals. It is thus most unlikely that any change in the law against homosexual practices between consenting adults would increase the likelihood of people growing up as heterosexual persons, becoming homosexual through contact with homosexuals. A. C. Kinsey in his book *Sexual Behaviour in the Human Male* estimates that between 4 per cent and 7 per cent of the male population are active homosexuals. Bryan Magee, writing in *One in Twenty,* obviously fixes the figure at

5 per cent. The Hon. Murray Hill estimates that, from his knowledge of those people who have contacted him, there are more than 14,000 male homosexuals in South Australia. The honourable member has extrapolated these figures from data available from the sources he has, and has applied them to conditions in South Australia.

Judging from this assessment, which is reinforced by other authorities on the subject, it would seem that the existence of the law, as it now is, has very little effect on the incidence of homosexuality. In countries where the legal situation resembles or is more open than the one proposed, there is no evidence to show that the incidence of homosexual practices has increased. In Belgium there has been no distinction between heterosexual and homosexual offences since the early 19th century. France, too, has had similar legal provisions, with a similar lack of an increased incidence of homosexual practices. Some people fear that a change in the laws relating to homosexual practices will lead to an increase in attacks on children. Once again, this fear represents an ignorance of the condition of paedophilia.

Paedophiliacs or people who molest children fall into a separate category of people, quite regardless of whether or not they are homosexual or heterosexual. The proposed change in the law does not in any way affect the laws relating to child molestation. It is clear that the imprisonment of homosexuals is unlikely to cause them to change their ways, when one considers that their behaviour is psychologically induced, and it would seem that imprisonment is not intended as a punishment in itself. It is the punishment exacted by society consequent on prosecution, and possible conviction and imprisonment, which is the real one and which, of course, is capitalized on by those people unscrupulous enough to take advantage of the homosexual's vulnerability to blackmail and other pressures. Homosexuals are very open to blackmail both by other homosexuals and by other people and, because at present they are in defiance of the law, there is very little they can do about their unfortunate situation.

It must not be thought that homosexuals, who are strongly and positively motivated to change their behaviour into conformity with the norms of society, cannot do so. These efforts, however, are not likely to be successful if the patient is resentful of his situation and certainly will fail if the patient is motivated only by fear, either of exposure or of punishment. Nor will homosexuals come forward to seek help while there is any risk of prosecution. The most important inquiry into homosexuality in relatively recent times has been the British Wolfenden inquiry, and the Wolfenden report is of extreme value to those people who wish to understand the subject in depth. It was as a result of the Wolfenden committee's recommendation that homosexual behaviour between consenting adults in private should no longer be a criminal offence that the law was changed in the United Kingdom in 1967.

The function of the law in matters of moral conduct, the reports suggested, was "to preserve public order and decency, to protect the citizen from what is offensive or injurious, and to provide sufficient safeguards against exploitation and corruption of others, particularly those who are especially vulnerable because they are young, weak in body or mind, inexperienced, or in a state of special physical, official, or economic dependence." The report continued:

> It is not, in our view, the function of the law to intervene in the private lives of citizens, or to seek to impose any particular pattern of behaviour further than is necessary to carry out the purposes we have outlined. It follows that we do not believe it to be a function of the law to attempt to cover all the fields of sexual behaviour. Certain forms of sexual behaviour are regarded by many as sinful, morally wrong, or objectionable for reasons of conscience, or of religious or cultural tradition; and such actions may be reprobated on these grounds. But the criminal law does not cover all such actions at the present time; for instance, adultery and fornication are not offences for which a person can be punished by the criminal law.

The committee found evidence for the view that there were varying degrees of homosexual propensity. This indicated, in their opinion, that homosexuals could not be regarded as quite separate from the rest of mankind; it also had implications for possible treatment. Distinguishing between active and latent homosexuality, the report observed that "among those who work with notable success in occupations which call for service to others, there are some in whom a latent homosexuality provides the motivation for activities of the greatest value to society."

The committee dismissed the concept of homosexuality as a disease, with the implication that the sufferer could not help it and therefore carried a diminished responsibility for his actions. It was often the only symptom, being associated with full mental health in other respects, while alleged psychopathological causes had been found to occur in others besides the homosexual. It had been suggested to the committee that associated

psychiatric abnormalities were less prominent, or even absent, in countries where the homosexual was regarded with more tolerance.

Discounting the widely-held belief that homosexuality was peculiar to particular professions or classes or to the "intelligentsia", the report pointed out that the evidence showed that it existed among all callings and classes and among persons of all levels of intelligence. Its incidence, the committee said, among a population of more than 18,000,000 adult males, however, must be large enough to constitute a serious problem.

The Wolfenden report examined and dismissed a number of arguments against legalizing adult acts in private, its conclusions being as follows: (1) There was no evidence for the view that such conduct was the cause of the "demoralization and decay of civilizations", although like other forms of debauch it might unfit men for certain forms of employment. (2) There was no reason to believe that such behaviour inflicted any greater damage on family life than adultery, fornication, or Lesbianism. (3) The evidence indicated that the fear that legalization of homosexual acts between adults would lead to similar acts with boys had not sufficient substance to justify the treatment of adult homosexual behaviour in private as a criminal offence; on the contrary, the evidence suggested that such a change in the law would be more likely to protect boys than to endanger them.

The committee accepted the evidence of expert witnesses that there were two recognizably different categories among adult male homosexuals—those who sought adult partners, and paedophiliacs who sought as partners boys who had not reached puberty. The latter category would continue to be liable to the sanction of the criminal law. (4) The committee did not share the fear that such a change in the law would lead to "unbridled licence", as the law seemed to make little difference to the amount of homosexual behaviour which actually occurred. The report continued:

> Unless a deliberate attempt is made by society, acting through the agency of the law, to equate the sphere of crime with that of sin, there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law's business. To say this is not to condone or encourage private immorality. On the contrary to emphasize the personal and private nature of moral or immoral conduct is to emphasize the personal and private responsibility of the individual for his own actions, and that is a responsibility which a mature agent can properly be expected to carry for himself without a threat of punishment from the law. We accordingly recommend that homosexual behaviour between consenting adults in private should no longer be a criminal offence.

The majority of the committee agreed (and I point out that this was in 1957) that an adult for the purposes of their recommendation should be a person of 21 years, although a minority considered that the age should be fixed at 18 years. To be consistent with recent developments in this State and throughout the world, I believe the age of majority should now be fixed at 18 years.

The Hon. D. A. Dunstan: The Wolfenden committee's report was before the Latey report.

Dr. TONKIN: Yes. The Wolfenden report was debated in the House of Lords in 1957. The Archbishop of Canterbury (Lord Fisher) said that the report was right in saying that, while the law should protect and control those under 21 (the age of majority) and protect unwilling people over that age, homosexuality between consenting adults in private should not come within the ambit of the law. There was one great benefit in obeying that principle. He had reason to believe that often great pressure was put on a consenting adult to continue when, if left to himself, he would like to get free.

He had heard of a young man who wished to get free being pursued by his partner from Australia to Britain, and so brought back into the practice. Another young man, half wishing to get free of the habit, was recommended to fresh partners when he moved from the provinces to London, and later when he went overseas. There were "groups of clubs of homosexuals with an organization of their own and a language of their own, a kind of freemasonry of their own, from which it is not at all easy to escape." The Archbishop continued:

> So long as homosexual offences between consenting adults are criminal and punishable by law, this pressure will mount and homosexualism will remain. It has all the glamour and romance of chosen and select rebels against the conventions of society and the forces of the law. At the heart of this kind of freemasonry are men of passionate sincerity who are made strongly homosexual by nature, who believe that what is wrong for others is right for them, and that society is not merely hostile but unjust and cruel. Into this kind of nightmare world there can be no entrance for the forces of righteousness until the offences are made no longer criminal, so there is no longer a question of betraying companions to criminal offences. At once the free air of normal morality will begin to circulate.

He further thought that those involved would be set free to talk without giving anyone away to the law; they would seek advice and would be free to seek protection by the police from molestation by their former companions. It would be all the more easy to convince them of the restraints of common sense and Christian morality when they were "delivered from the feats, the glamour, and even the crusading spirit of the rebel against law and convention".

The Sexual Offences Bill, a private member's measure introduced in the House of Commons on July 5, 1966, by Mr. Leo Abse, implemented the recommendation of 1957 by the Wolfenden committee that homosexual behaviour between consenting adults in private should no longer be a criminal offence. The Bill, which was enacted on July 27, 1967, had been preceded during the previous two years by a series of unsuccessful attempts in both Houses of the British Parliament to place similar legislation on the Statute Book.

The Earl of Arran on May 24, 1965, moved the second reading of a private member's Bill which simply sought to legalize homosexual acts in private between consenting adults in accordance with the recommendation of the Wolfenden report. The Bill passed, but then lapsed with the prorogation of the Parliament. Meanwhile on May 26, 1965, Mr. Abse tried to introduce a private member's Bill in the House of Commons. Mr. Abse's motion to introduce the Bill was defeated on a free vote. During the Parliamentary session immediately preceding the general election of March, 1966, Mr. Humphry Berkeley, M.P., introduced in the House of Commons a measure in almost identical terms to that of Lord Arran. This passed the second reading stage on a free vote on February 11, 1966, but failed to make any further progress before the dissolution.

Mr. Berkeley's attempt was the last to be made in the House of Commons before the introduction of Mr. Abse's Bill on July 5, 1966, but in the House of Lords a second version of Lord Arran's Bill was given a second reading on May 10, and it was passed. However, in view of the successful introduction of Mr. Abse's Bill in the House of Commons it was allowed to lapse. Mr. Abse, in moving his successful measure, declared that only those who were "wilfully blind" could say that it condoned or approved of homosexual practices (I believe that is the case here, too), or would tolerate any act of indecency against a youngster or a public display of homosexual conduct. No member suggested that the House approved of adultery, fornication, or Lesbianism merely because they were not listed as crimes.

Mr. Abse believed that the present law was both unjust and unenforceable. The Home Office had suggested that there were about 500,000 homosexuals in the country, although evidence given to the Wolfenden committee put the figure at about 750,000. What could be said with certainty, however, was that millions of criminal acts were committed every year, leading to the absurd situation that, with the exception of motorists, homosexuals comprised the largest category of offenders in the land. Having denied that the law was a deterrent, Mr. Abse called it a "blackmailer's charter" and an "invitation to hoodlums", the effects of which could not be prevented by even the most sympathetic administrative action. Of the total number of cases of blackmail reviewed over a period of three years by the Wolfenden committee, about half were shown to have had some connection with homosexuality.

Most homosexuals, because of their condition, were permanently denied the blessings of family life and of parenthood, but the present law, by preventing their integration into the community and by branding them as criminals and outlaws, intensified their inherent isolation and too often caused them to react by succumbing to anti-social attitudes. It was not surprising, therefore (Mr. Abse continued), that the Church Assembly, the Church of England Moral Welfare Council, the Roman Catholic Advisory Committee on Homosexuality, and the Methodist and Unitarian Churches had all called for the implementation of the Wolfenden report. During the English Parliamentary debates, the views of churches and church leaders were expressed. The Lord Bishop of London said on July 13, 1967, in the House of Lords:

> My Lords, I rise on behalf of many of my brethren in this part of your Lordships' House to reaffirm, very briefly, the support which we gave to the principles of this Bill when it was before the House on a previous occasion. In so doing we do not condone homosexual practices; nor do we regard them as in any way less sinful. But in supporting the Bill we are concerned mainly for the reformation and recovery, if it can be, of those who have become the victims of homosexual practices. The fact that the law as it stands is difficult to enforce, and leads so often to blackmail, frequently results in those who need spiritual and psychiatric help being reluctant to reveal themselves in order to obtain that help. It is our hope that if this Bill becomes law we shall be able to bring to more people the help, guidance, and reformation which they need and which we believe it to be our duty to- make possible for them.

On the same day, Lord Soper spoke of the attitude of the free churches. He said, among other things:

My Lords, one of the great effects, it seems to me, of the protracted debates in another place and here on this topic has been the tendency at least to educate in many fields where before there was little but ignorance and prejudice. It may well be, as the last speaker has said, that this has tended in some cases to produce a coarsening of thought. But on the whole the evidence I would bring from the free churches is that the process has been to the good, and that, since this question first appeared in headlines, this process within the free churches has led to an almost total unanimity, so far as it is expressed in their affairs, that on the whole this Bill ought to be supported, and that in general it clarifies and expresses quite important moral issues.

Then he argued further and said:

But it would not be for me to deploy these arguments again, except to say—and in this respect I can speak for the free churches in this country—that I support this Bill on their behalf and believe that it represents a necessary change in the law.

I now quote at length from the speech of the Archbishop of Canterbury (Lord Fisher) in the debate on the Wolfenden report in the House of Lords on December 4, 1957; it was an extremely worthwhile contribution to the general debate on this subject. He said:

I do not intend to speak from any particular Christian grounds; I assume only the generally accepted beliefs of theists, and, indeed, of every reasonable and responsible citizen. This report has already accomplished two great things, one deliberately and one by accident. It has compelled people to think about and compare the sphere of crime and the sphere of sin, in the sense of an offence against the general moral standards of the community, and it is all I ask for in using the word "sin". Of course, the two spheres overlap, but they are not coterminous, and it is of real importance for the national well-being that the difference between the two should be clearly understood, both as to the moral grounds they respectively cover and as to the sanctions on which the two spheres respectively rest.

One of my correspondents boldly writes to me, "So far as possible, every sin should be declared a crime"—which is precisely the belief of the totalitarian state, which defines its own sense of sin and then makes it a crime. I am afraid that there is a very common belief that only crimes are sins and that the not illegal is therefore lawful and right. That such a belief should continue is a very dangerous thing. There is a phrase *pro salute animae et pro reformatione morum.* The State and the law are not concerned directly, as the church is, with saving the souls of men from their own destruction. The right to decide one's own moral code and obey it, even to a man's own hurt, is a fundamental right of man, given him by God and to be strictly respected by society and the criminal code.

I believe that it is of vital importance to maintain this principle against the law and against society. Indeed, it may at any time feel compelled to invoke the law against some organ of publicity which in one way or another so intrudes a moral code of its own, and so employs the powers of publicity and suggestion, as almost to impose that code upon society; and at least the private rights of a citizen so to choose his own moralities and protect his own privacies against some forms of publicity must not be allowed to be outraged.

The State becomes concerned only when for the general good, for the protection of those who need protection, or for the promotion of a healthy community life—*pro reformatione morum*—it ought to act. Of course, in this sphere there will always be special and borderline cases. As an example of a special case, there is the protection of the young, or the need to discourage suicide and suicide pacts. Such cases create especial problems and justify interference with private rights. And there are also the borderline cases, and homosexual offences may come under this category.

In general, however, a sin is not made a crime until it becomes a cause of public offence, although it remains a sin whether or not it be a crime. That is obvious enough but great numbers of people, having lost the sense of sin, have lost sight of this distinction, and it is most valuable that this report should cast the limelight once more upon it. Secondly, although the report refuses to consider it, it must make people think about the differences between what is natural and what is unnatural. There is a great general moral indignation against homosexual sins because they are unnatural. There is a queer lack of general moral indignation against heterosexual sins, fornication and adultery, because they are supposed to be natural, and therefore, in some sense, less wrong.

There is here a serious and now very dangerous confusion of thought . . . What is thus unnatural is bad and must be disciplined; but much of what is natural, if left to itself, is equally bad and must no less be disciplined. Both homosexual and heterosexual sins or vices may become something more than private; then they raise questions of public morality, though I would say that they do not necessarily raise them equally. For in my judgment the threat to general public moral standards from homosexual offences done in private is far less, and far less widespread, than the damage openly done to public morality and domestic health by fornication and adultery . . .

I know many people have grave hesitation about this recommendation. They think it will lead to an increase in offences. Their information may be different from mine, and it is not at all easy to be dogmatic; but, like the Church Assembly itself, I feel that if there is a doubt the risk should be taken ... I wholly accept the principle that consenting adults in private, whether the offences be homosexual or heterosexual, should not come under the law.

That is an extract from a speech that I believe has become well known. It was made by the

Archbishop of Canterbury, and I think it was a very fine speech. Turning to the position in South Australia, I believe there is now a tolerance and understanding of the problems confronting homosexuals that were not apparent until recently. These problems have been highlighted by the recent Duncan inquest and by considerable publicity through the various media. The greatest contribution that can be made to help is for society itself to be compassionate and willing to consider the opposite viewpoint and indeed willing, in many cases, to help such people. The Legislature has a clear duty to show some leadership in the formulation of community attitudes.

By introducing the change proposed in the Bill, the Legislature is not condoning the behaviour, nor wishing that society should condone it, but is laying down the principle that, like other sins such as adultery, fornication, and homosexual acts between women, the sin of homosexual acts between adult males in private is not a criminal offence.

Once the "criminal" stigma is removed, the community may change its attitude to the people carrying out these acts, so that, while the behaviour may be deplorable, an appropriately sympathetic community attitude will prevail towards the homosexual himself. In South Australia, there is support for this proposal. In the *Advertiser* of February 17, 1972, appeared an article that said, "Church leaders in Adelaide believe it should be legal for consenting couples to practise homosexual acts." The Bishop of Adelaide (Dr. T. T. Reed), whilst strongly condemning the sin and requiring enforcement of the law to prevent corruption of other people, said he would not object to the law allowing acts of homosexuality in private between consenting adults.

The Reverend Michael Sawyer, Executive Minister of the Congregational Union of South Australia, said he would like to see the law changed because he was concerned that it left homosexuals open to the danger of blackmail. He said:

I know an instance of a clear case of blackmail, and other instances where homosexuals would not seek treatment because of their fear that what they were doing was illegal.

The Assistant Minister of Scots Church said he was strongly in favour of the United Kingdom law allowing acts of homosexuality in private between consenting persons. The *Sunday Mail* of June 24, 1972, dealt with the death of Dr. Duncan and the subject generally. Mr. Greg Walker said:

Earlier this year a homosexual awaiting trial hanged himself in gaol rather than face that humiliation and disgrace of being revealed in court as a "queer". A leading official of the local branch of C.A.M.P. Inc. has said that he knows of four homosexuals who committed suicide over the past three years rather than face the law courts.

The *Advertiser* of Saturday, July 1, 1972, carried a leader headed "Legalize homosexuality"; part of the leader states:

The argument in favour of legalizing homosexual acts in private between consenting males is quite clear cut. Put simply, such acts harm no-one and offend no-one, and the law has no right to intervene in such a situation. To be fair, it should be stated that the law is not rigidly enforced by the police. However, it is objectionable that such a law exists at all. The State has no business in its citizens' bedrooms and the sooner it is completely removed from them the better.

Columnist John Miles, in the *Advertiser* of July 18, 1972, said:

I now think that our attitude of violent prejudice against homosexuals and laws which lead to the hounding of homosexuals do more harm to the whole community than homosexuality.

The recent General Conference of the Methodist Church in Australasia passed the following resolution:

In the light of the fact that Parliament, society and the church do not consider fornication, adultery and Lesbianism as criminal offences, we consider that homosexual acts between consenting male adults should not be proscribed by the criminal law.

The Anglican Diocese of Melbourne Social Questions Committee, in its Report on Homosexuality, 1971, says:

We therefore recommend that the present provisions of the Victorian Crimes Act, 1958, which render criminal those homosexual acts committed in private between consenting males of 18 years or over, should be repealed.

Indeed, the only real opposition comes from those who deal solely with the religious viewpoint, and it comes from the extreme literist group who provide judgmental attitudes, based upon Biblical passages. I respect these views, but print out that laws made in Biblical times were made according to behaviour in those times, and of course the great advances in medicine and knowledge should now be used to help and understand these people rather than treat them as social outcasts, with moral persecution and social stigma heaped not only upon them but in many cases also upon their families. One cites as a parallel example our tremendous advances in the understanding and treatment of mental diseases, and one wonders just what would be the position regarding

mental hospitals nowadays and those people who are unfortunate enough to be patients had we still continued to regard these people as possessed of a devil, as they were in Biblical times. Further, the whole basis of Christian faith is surely that God forgives, and God is love. The great Christian virtues of compassion, forgiveness and understanding must be pillars of strength in this enlightened age, not simply props to uphold every word written some 2,000 years ago.

Some critics, pursuing a religious submission, consider the "unnatural" aspects of some homosexual acts compared with other sins claimed to be more natural by comparison. Again, I respect these views, which I feel were answered well by Lord Fisher, whom I have already quoted. However, the present Archbishop of Canterbury, Dr. Ramsay, has emphasized the point further. He said in the House of Lords on June 21, 1965:

I think it is extraordinarily hard for any of us to assess the relative seriousness of sins. When we start doing that we get into questions to which the Almighty himself knows the answers, and we do not. I would say that, comparing the two, homosexual behaviour has an unnaturalness about it which makes it vile. On the other hand, we are encouraged to measure the vileness of sins by the question of motives and personal circumstances. I think that there can be behaviour of a fornicating kind as abominable as homosexual behaviour and as damaging to the community.

Other critics have said that they object to the proposals in the Bill on the general grounds that the moral fibre of society will be weakened, the incidence of homosexuality will increase, the young will be corrupted and, lastly, that permissiveness will increase to a point of acceptance of radical social measures. The moral fibre of the community, as far as private behaviour is concerned, is a community attitude made up by the moral conduct of individuals within that society, and the individual's private morals are his own private affair.

As Lord Fisher said: "The right to decide one's own moral code and obey it, even to a man's own hurt, is a fundamental right of man, given him by God, and to be strictly respected by society and the criminal code". The moral fibre of the community, judged by accepted standards of public decency, is another matter entirely, and such accepted standards should be respected and preserved. For this reason, the Bill does not alter the law in regard to homosexual acts in public.

This social problem of homosexuality exists within the South Australian community, and those charged with the responsibility of making and changing laws under which that community lives, so that optimum freedom, happiness, and contentment can be enjoyed by all, should not refrain from considering the quality of the relevant law on our Statute Book. Knowledge and experience has reached a level where deep understanding of homosexuality is known. The English experience is a guide which is invaluable in our consideration.

In this State, a challenge has come to our often expressed claims that we within the nation as a whole are a tolerant and socially understanding people; that challenge came as a result of the Duncan inquiry and the public discussion that followed. That there are critics of the change is undeniable, but their fears can be stilled as one studies the subject in depth. I emphasize my personal view that I do not condone homosexual behaviour; in fact, I find even the verbiage of some aspects of the Bill distasteful, but I believe, nevertheless, that there is an urgent need for the community's attitude toward those who are homosexuals to improve, and improve markedly.

Apart from such improvement which would follow the proposed change, two groups of people whose lives have previously been guilty and frustrated would benefit. I refer, first, to those who commit these acts privately and who cannot be helped by medical or other aid, or who do not wish such aid. These are law-abiding citizens in all other respects except that they infringe the criminal code in this one matter. These people surely are not criminals.

If the law changes, the degree of shame and mental anguish that they suffer will lessen, because they know they will not be breaking the law. Also, the threat of blackmail and moral persecution from others will be greatly lessened, because the victims would be able to come forward and report such threats, without fear of admission of breaking the law themselves. The second group would be those who, wanting release from their present way of life, would come forward and seek discussion, communication, and, most importantly, medical treatment. Under modern psychiatry, if the patient is motivated to be cured (and this applies to so many conditions), experts say that 30 per cent to 70 per cent of patients show major improvement. Again, most of these people would not voluntarily come forward, because of the fears of blackmail, moral persecution, and of breaking the criminal code.

The Rt. Hon. Earl Jowitt, Lord Chancellor of England from 1945 to 1952, once said that,

when he became Attorney-General in 1929, he was impressed with the fact that "a very large percentage of blackmail cases—nearly 90 per cent of them—were cases in which the person blackmailed had been guilty of homosexual practices with an adult person." Mr. Ian Harvey, former British M.P., writing on February 1, 1972, of the British experience after the Sexual Offences Bill, in the *Australian* said:

The homosexual society is and always will be a minority. But it is no longer an oppressed or persecuted minority in the fullest sense. The worst fears of those who opposed the Sexual Offences Bill have not been realized. The moral fibre of the nation has not been undermined. Those who have been given a greater degree of freedom have not abused it or turned it into licence. There have been no public orgies. These are the lessons to be learnt from an Act which was both humane and progressive.

I now deal with the Bill in detail. Clauses 1 and 2 are formal. Clause 3 adds a new section 68a to the principal Act, transposing the portions of section 1 of the English Sexual Offences Act, 1967, as far as they are relevant to the law in this State, and provides that it is a defence to a charge to prove that a homosexual act was committed between consenting males of 21 years of age or over, and in private. Clause 4 provides, among details of other offences, that a person commits an offence if he procures, or attempts to procure, the commission of a homosexual act, between two other men, whether or not these men are in fact committing an offence, and amends section 70 of the principal Act so that a male person under the age of 21 years cannot be deemed capable of consenting to any indecent assault by another male. I commend the Bill to honourable members.

Mr. HOPGOOD (Mawson): I support the second reading of the Bill, although I am not very keen on it in its present form. However, I will say a little more about that later. I congratulate the member for Bragg on introducing the Bill and on the compelling way in which he has spoken to it. In fact, if I had any criticism at all about his speech, it would be that perhaps he indulged a little in over-kill. Perhaps it is a pity that some of his colleagues who will probably oppose the Bill were not here to listen to his speech.

There is a solid body of opinion outside in favour of this move. However, I do not believe that that is the basic reason why members of Parliament should support the Bill. In these matters we must stand firmly on our own conscience, irrespective of public opinion and irrespective of the electoral consequences to ourselves. However, having said that, I am buttressed somewhat because I believe that my position squares largely with the consensus that now exists in the Australian community. For example, a poll conducted by the *Age* in Melbourne in 1971 showed that 52 per cent of the population thought that homosexuals were neither harmful nor dangerous. A poll conducted in Melbourne and Sydney by Wilson and Chappel found similar figures to those arrived at in Canberra, where 62 per cent of Canberra's males supported homosexual law reform. In 1971, 56 per cent of Australians supported reform of the criminal law at this point.

It would probably be true to say, although difficult to quantify, that in South Australia since the murder of Dr. Duncan the figures could be considerably higher than that. I do not know that it is because anyone's mind has been changed as a result of that tragedy, but I would say that many people's thinking has been crystallized. Those who earlier had given no thought whatever to the whole business now realize the dangers inherent in having these penal sanctions in our criminal law. The member for Bragg quoted from some newspapers and editorials, and I shall buttress those quotations with a couple more. An article in the *Sunday Mail* of June 24, 1972, states:

Laws discriminating against homosexual acts could safely be repealed.

My attitude to the statements by our local press is that, generally speaking, the popular press is a little on the conservative side of what people in the community are thinking and, therefore, when we get a progressive statement from the press, we can usually assume there is a fair consensus in the community for it. The Melbourne diocese, Anglican synod, in 1971 issued the following statement:

We cannot see that homosexuality constitutes a deliberate, wilful attack on the moral standards of the community. Homosexual acts in private should be legalized.

If we look at legislation in other countries we can see that, although the passage of this Bill will bring in something new for this country, it will by no means be a new departure by world standards. Homosexual acts in private between consenting males above specified ages are no longer criminal in the following countries: Argentina, Belgium, Bulgaria, Canada, China, Czechoslovakia, Denmark, East Germany, England, France, Greece, Hungary, Iceland, Italy, Japan, Luxembourg, The Netherlands, Norway, Sweden, Switzerland, Turkey, West Germany, and Illinois (a

State in the United States of America). The commencement of adulthood, as defined, varies from the age of 13 years in Japan to 22 years in Argentina.

What of the effect of removing the penal provisions? The member for Bragg has already touched on this matter. Some people have put forward a sort of floodgate theory. I pose the question: is there any evidence that Lesbianism is more widespread in the community than is male homosexuality? There are no penal provisions against the practice of Lesbianism, and I know of no survey that has suggested that the legal practice of Lesbianism is more widespread than is the illegal practice of male homosexuality.

We do not really know what is the cause of homosexual behaviour. Some put it down to genetic factors, while others put it down to environmental factors. Probably the balance of learned opinion these days is that it is more likely to be due to environmental factors than to genetic factors. Having said that, we cannot go on to suggest that, because environmental factors rather than genetic factors are involved, the person is any more to blame for the type of behaviour he is displaying. The vast majority of practising homosexuals have the same feeling of personal revulsion against heterosexual behaviour as I have against homosexual behaviour. There are emotional and ethical components in such feelings and people will evaluate these attitudes according to their own moral codes, emotional attitudes, and the like. The question at issue is whether the criminal law should be involved at this point.

I remember being told a story about a theological student who was a homosexual. Because of his ethical outlook, he believed that this was wrong, and the only solution to the dilemma was for him to be celibate. He simply could not bring himself to the reality of heterosexuality, so he took the serious and painful decision that his life would be celibate. Although, of course, we cannot generalize too much from one instance, we can see that at least in that instance what I was saying earlier about the revulsion of people against such behaviour is real, and it is a feeling over which they have very little control, irrespective of their moral attitude to the whole question. My own preference for heterosexual behaviour is something over which I have no control: it has been induced in me by environmental factors. I am fortunate that my own moral code and the criminal law of the society in which I live coincide at that point with the form of behaviour that has been induced by me by genetic or environmental factors. So, I am one of the lucky majority.

What should be our attitude toward the unlucky minority? We are looking at this whole business in connection with the criminal law. What of the homosexual, who has guilt feelings about his behaviour, who wants to be normal in the sense that our social *mores* define "normal", and who wants treatment in the hope that he will display behaviour that will be acceptable to most of the community? Do criminal sanctions *per se* provide an incentive for such a person to come forward for treatment, or do they deter a person from taking that step? Once we pose that question, the answer is obvious. What is the result of using penal sanctions to force people into forms of behaviour for which they have a feeling of revulsion?

I do not want to go On any further in connection with general considerations, except to say that I believe that some aspects of my personal attitude to this matter are outlined in a letter that I sent to the Secretary of he Community Standards Organization in August of this year. I will refer to the following portion of a letter I wrote in reply to a letter from a correspondent who had raised matters dealing with Christian ethics, behaviour, and so on:

> I accept the broad Christian ethic although I usually find it unnecessary to buttress my argument by having recourse to the sub-Christian Mosaic code promulgated as it was at least 1,000 years before Christ.

Of course, the member for Bragg dealt with this matter, too, when (although he did not use this term) he talked about the fundamentalist attitude to passages in Leviticus and other parts of the early books of the Bible.

Mr. Millhouse: It is not only in the early books: it is in the New Testament as well.

Mr. HOPGOOD: The point I made was that the writer referred to parts of the Mosaic code. Had he raised matters in the New Testament, I should have been happy to deal with them as well. However, it was not relevant to this exchange of opinion. My letter continues:

> My concern here as a member of Parliament is with the legal and legislative implications of your submission. I note that the Christian ethic would condemn such aspects of sexual behaviour as fornication, adultery and Lesbianism. I note further, however, that none of these practices are at present prohibited by law. It seems to me that the prohibition experiment in the U.S.A. 30 to 40 years ago showed that there is a very wide gulf between a moral

position and what is legislatively feasible. The law is obviously very inconsistent so far as sexual matters are concerned. In terms of civil liberties, this seems to be intolerable. Why should we not place fornication, adultery and Lesbianism on the same legal footing as homosexuality? If the answer to that question is "Yes", only two courses are open: one is to make illegal the three practices I have outlined above (which I feel would be completely intolerable), and the other is to reform the law in relation to homosexual acts between consenting male adults.

In the light of these observations, I cannot accept the "holding of the line" type of argument which appears in your circular. I note, for example, that sodomy, even within marriage, is outlawed in the U.K. What would your organization's attitude be to the repealing of this law? I have no doubt that there may be a number of "psychological" arguments against such a repeal, but the legal arguments for repeal in the terms of how a prosecution can be secured seem to be overwhelming and, if a repeal is opposed, is this not a step towards the law actually drawing up a set of instructions as to how citizens shall and shall not carry out sexual intercourse?

I find the Bill in its present form unacceptable, but not so unacceptable that it cannot be amended in Committee. I notice, for example, that new section 68a is to be enacted. This seems to be the most important part of the Bill as it has emerged from another place. New section 68a (1) provides:

Where a male person is charged with an offence that consists in the commission of a homosexual act, it shall be a defence for that person to prove that the homosexual act was committed with another male person, in private, and that both he and the other male person consented to the act and had attained the age of 21 years.

When he introduced the legislation in another place, the Hon. Murray Hill intended that there should be no penal sanctions against those who commit homosexual acts in private provided that they are consenting acts between both parties and that the parties involved are adults, as he defined them. The effect of the amendment is simply that it will still be unlawful for one to engage in these types of sexual practice but, having been arrested and hauled into court, one can then plead as a ground of defence that consent was involved and that the parties involved were 21 years of age or over.

This is unacceptable to me. I cannot understand the grounds on which this could possibly have been justified, as it seems to cut right across the basic attitude in our law that a person is innocent until proven guilty. It seems to contemplate our Vice Squad being involved in the ridiculous business of arresting people knowing full well that in most cases they would be let off and, in fact, it may be that the judge would dismiss the case before hearing all the evidence. I do not see why our police should be put to this kind of largely empty exercise when it would be a simple matter for this House to fix up the criminal code in the. way contemplated by the person who introduced this Bill in another place.

Mr. Millhouse: You realize that you may sink the whole thing, don't you?

Mr. HOPGOOD: That is something eventually to be decided.

Mr. Millhouse: It is a factor to take into account.

Mr. HOPGOOD: I cannot predict what the attitude of this House will be. I do not at this stage know whether the Bill will pass the second reading (although it is my guess that it will do so). I do not know that the House will accept my amendments (although again it is my guess that it will do so). I do not know that the Legislative Council will reject the amendments should they be accepted by this House. Finally (and I do not need to remind the member for Mitcham of this), there is the possibility of managers from the two Houses meeting in conference to work out some sort of compromise. There are plenty of opportunities for saving some form of the Bill after it has gone through Committee and really, if the logic of the member for Mitcham was to be accepted, we would never amend in Committee any legislation that had been passed down to this House from the Upper House, on the ground that we might be putting the Bill at risk, which would in turn render unnecessary our conference machinery. I should prefer to see us use all the machinery in the hope that we could get an acceptable form of Bill.

Basically, my amendments, on which I cannot speak in detail at present but which are on file and which I will move later, seek to restore the original form of the Bill. However, they take from legislation that was passed by this House earlier in the life of this Parliament the age of majority, or adulthood, as 18 years and, in addition, they broaden the scope of the Bill to cover acts of sodomy as well as strictly homosexual behaviour. I hope not only that the second reading of the Bill will receive wide support from members but also that it will be possible in Committee for us to amend the Bill in an acceptable form. I commend the Bill to members.

Mr. MILLHOUSE (Mitcham): I am much less enthusiastic about the Bill than either the member for Bragg, who introduced it in this place, or the member for Mawson, who has just supported it and foreshadowed amendments to make it much stronger than it now is and, as I understand it, to put it back into the form in which it was introduced in another place, where it was amended. I say to the member for Mawson, as I said by way of interjection, that I can see a great risk in the other place's not being willing to accept the Bill, if amended here, in the form in which it refused to accept it before it came down to this House. That is for him and for all other members of this House to decide. However, I think he (and, indeed, we) would be taking a grave risk that the Bill would be laid aside or that no agreement would be reached at the conference. However, that is anticipating, and I do not wish to do that.

Although I view the Bill with much less enthusiasm than do many other members, I intend to support the second reading. I agree with what has been said that it is in a most unusual form indeed, and it is much weaker than it was when Murray Hill introduced it originally. The history of legislation on this matter in our system is strange. I gather from reading *Homosexuality,* by D. J. West, that in England homosexual crimes first became a matter for the secular courts in 1533, when a Statute was introduced to make sodomy punishable by death. It remained so until the nineteenth century when, under the Offences Against the Persons Act, 1861, the penalty was changed to life imprisonment. Short of buggery, homosexual activities seem to have been permissible in the nineteenth century, provided that they did not involve children, violence, or public indecency. We must consider that such conduct has only been a crime in our system for 100 years or so. This gap was filled in 1885, when a Bill was introduced to make further provision for the protection of women and girls and for the suppression of brothels. I quote from page 78 of West's book, as follows:

One of the main provisions in the original draft was to raise the age of consent for girls from 13 to 16. Henry Labouchere, M.P., moved the introduction of a new clause making indecent acts between males in public or in private a criminal offence. Another member asked if it was in order to introduce into the Bill an alien topic. The Speaker ruled that it was for the House to decide, and the new clause was accordingly accepted without any discussion.

That seemed to be a most extraordinarily haphazard way of legislating and one that has had consequences not anticipated by those who actually voted on it. That is the history of the thing, and it is for me, anyway, an ingredient that must be considered. This has not been always traditionally a crime as well as a sin. However, I cannot dismiss the objection on religious grounds to this sort of conduct and the support which that objection for me lends the prohibition of such conduct by law. I intend to refer to this book by West, and I quote paragraphs on page 94 under the heading "Ethical and Religious Issues", as follows:

Christian dogma has long considered homosexual behaviour in all circumstances utterly immoral and inexcusable. In 1953, Dr. Fisher, then Archbishop of Canterbury, declared categorically:

In quoting the late Archbishop, I realize that he has already been quoted in this debate, but that does not, in my view, weaken the force of this quotation:

"Let it be understood that homosexual indulgence is a shameful vice and a grievous sin from which deliverance is to be sought by every means." And a year later, the Bishop of Rochester, writing for a medical audience, declared: "Homosexual practice is always a grievous sin and perversion. Defective sexual intercourse between two persons of the same sex can only be gross indecency under the guise of expressing affection. Even if safeguards could eliminate the corruption of youth, and the practice be confined to inverts of mature age, it would remain the perversion of a wholesome instinct to an unnatural and loathsome end. For all such inverts continence is demanded."

For the life of me I cannot see why it was so dreadful for the theological student whom the member for Mawson quoted to decide, as all Roman Catholic priests, by vow anyway, undertake to live a life of celibacy. As the Bishop of Rochester states, this is the only moral solution to the problem. Those objections are real ones on moral grounds. It could be, and has been, argued back and forth that this does not justify the law in forbidding this conduct and thereby making it a crime. I acknowledge the force of those arguments, but I cannot altogether put them out of my mind. Again I borrow the arguments in the form put in this book, as follows:

Lord Devlin, a leading opponent of this legal *laissez-faire*—

and the reference here is to the argument that the law should not intrude simply because the conduct is immoral—

takes issue both on the principle and on the premises on which the argument rests. In his

view, by helping to define the limits of permissible conduct, the law contributes to the discouragement of immoral behaviour and the prevention of the spread of habits which could eventually harm society.

He then draws an analogy. All these arguments and considerations make me hesitate to support the Bill straight out as both previous speakers have supported it. I must say that members, after an initial burst of attention from those people interested in this matter, have heard little in the last couple of months. I think that those protagonists and antagonists of the Bill have concentrated on members of the Upper House. We now find, having received very little from them after the initial burst, that the Bill is to be pushed through in Government time in one evening. Frankly, I am surprised that this is being done, and I do not like it. I think that this is so important a matter that we, as did members of another place, should take our time over it and, as members know, I intend to ensure that this is done, so that there is proper consideration, at least, by members of the arguments, pro and con, after we have received them and have been able to test them by questioning.

Although we have had little by way of attention in the last few months, there has been much controversy and I think the matter is by no means concluded. We had submissions from the organization calling itself C.A.M.P., and we have had counter submissions from the Moral Standards Committee, and replies and so on, and I must say that I respect greatly the views of some of those who have opposed a change in the law, particularly Dr. John Court whom I know and who lives in my district. I do not accept, simply because I respect him, the views that he advances. I simply mention him as one who has put forward strong views and arguments against any change in the law. Let us face it: despite what has been said by the member for Bragg and the member for Mawson, there is controversy about the wisdom of acting as we intend to act.

Also, we should not in one night go ahead with this matter: I suspect (but I do not know) that this Bill has been introduced as a consequence of the death of Dr. Duncan, in the most appalling circumstances, some time ago. Because of that tragedy, there has been heightened emotion about the whole issue of homosexuality in this State; that emotion is still, I believe, at a high level. In my view, it is not the atmosphere in which we should hastily change the law. I see so reason why we should not wait a few more weeks and give ourselves and the State a little more time to consider these matters.

I do not propose the course of action which I will follow to try to defeat the Bill by playing for time until the end of the session. On the information that the Government has given, I believe there would be time for the matter to be considered and for us to have further time to consider it in much the same way, although not over so long a period, as when we considered another change in the law on another social matter—the law on abortion. It is for those reasons that I intend to move for the appointment of a Select Committee. After all, the Wolfenden committee reported in 1957, but it was not until 1967 or 1968, about 10 or 11 years later, that the law in the United Kingdom was finally changed.

Mr. Payne: That was four years ago.

Mr. MILLHOUSE: It took 10 or 11 years in Britain for the law to be changed. The member for Bragg mentioned the attempts made in the British Parliament in that time.

The Hon. Hugh Hudson: How long did it take for a law to be introduced?

Mr. MILLHOUSE: Do you mean for an actual Bill to be introduced and passed?

The Hon. Hugh Hudson: The law that made homosexual offences a crime.

Mr. MILLHOUSE: As I said, it was done in an hour. However, I do not believe that that is a reason for our acting equally precipitately now. I say (and I know the Premier will acknowledge this) that this is not the first time that a change in the law here has been contemplated. The Premier himself had a Bill drawn when he was Attorney-General in the mid-1960's. It was not proceeded with and was never introduced in this House, but it was in his mind at that time. Therefore, this is no new matter, I admit, but that does not, in my view, justify our rushing it through now. Therefore, I support the second reading of the Bill but hope that we shall not see its passage through this House concluded tonight. That would be a mistake.

The Hon. D. A. DUNSTAN (Premier and Treasurer): I support the second reading. The honourable member who has just resumed his seat has suggested that we are debating this Bill in an atmosphere of emotion following the death of Dr. Duncan. I do not think that the emotions that have been aroused following the death of Dr. Duncan are anything but salutary to the community. That this community should contemplate

a law allowing people to do, as was shown at the inquest, assault and murder under what they believed was the protection of the law, in that their victims would be frightened of going to claim the normal protection of citizens from assault and murder, is surely something that should cause us grave alarm. If we suggest that the community should say, "Oh, well, that has happened. Let us not be emotional about it; let us wait the 10 years it took Britain to move after the Wolfenden committee's report", how many more assaults, murders and blackmails in that intervening period will this community have to suffer?

The honourable member is correct: I had a Bill drawn on this matter when I was Attorney-General but I did not proceed with it then because the climate of public opinion was not such that I believed we could obtain a sufficient consensus of opinion to support an amendment to the law—not that I did not believe it was right to make the change then as I believe it is right to make a change now, for my experience in the criminal law had been such that I had seen the misery, the harm, the hurt, and the injustice that have occurred in this area of the law. In practice, I saw what happened to clients whom I had had to represent. As Attorney-General, I saw two cases of people who hanged themselves as a result of accusations under the law, although what they had done had been done in private with consenting males and had actually done no harm to anyone except perhaps themselves. In all humanity, I could not believe that the law should remain as it was then or as it is now.

I do not want to go over the case put by the member for Bragg and the member for Mawson, both of whom have made serious and valuable contributions to the debate. I congratulate them both on what they had to say, but I want, if I may, to turn to the nature of the prejudice that society has about this matter and the extent to which that kind of emotion blinds society to doing justice in a matter of this kind. I think most of us have been brought up with a kind of traditional prejudice about this matter, a prejudice prevalent in society. I certainly was. As Secretary of my union, since there is a larger proportion of people who are homosexually inclined in the acting profession than almost anywhere else, naturally enough I came in contact with cases of people who were obviously homosexual; and those people who were obviously so caused my hackles to rise, as they would with most people in the community. The vulgarity and unpleasantness of the behaviour in which they indulged was something that would obviously offend most people. I had the traditional prejudices of the community about this, and there were some cases, which frankly astonished me, concerning people whom I had considered obviously masculine and apparently normal. When I discovered, since it happened in the course of my union activities that matters occurred in front of my eyes that astonished me, that those people were homosexuals, I simply could not understand it. I poured all this out to a prominent producer in Australia who, with his wife, was having dinner with my wife and me on one occasion, and he bitterly attacked me, as did his wife, and said that I was utterly lacking in understanding, I was hopelessly prejudiced and did not know what I was talking about. He proceeded to assail all my previous assumptions. I think that that was a salutary lesson for me, as a matter of fact. I think everyone of us, in life and in politics, needs constantly to question his own assumptions.

I came to realize that, in fact, from my own observations (and later this also became obvious in the course of my practice in the law from the numbers of cases with which I had to deal), there were people in the community who were apparently, from all observations and any other conceivable criterion, completely normal in their activities, attitudes, modes of living, and the like, but who nevertheless were homosexuals. They were able to live normally, but the problem for them was that, although they were socially useful (they related satisfactorily to other people in the community; they were able to carry out their jobs, and they were often charming, pleasant, intelligent and sensitive people), they lived subject to the constant threat that, since their motives were different from the norm and from the outlooks and tastes of the majority of the community, they were liable to prosecution, persecution and blackmail.

Having seen the kind of misery that was caused by the community, I came to question whether, in fact, this was right: What were we doing by this kind of law? What they were involved in was a departure from a sexual norm, or at least a departure from what society lays down as acceptable sexual behaviour, according to the Christian ethic. However, that Christian ethic is widely departed from in other respects (fornication, adultery and Lesbianism, which is not proscribed by the law at all). In those circumstances why should this departure from the norm be proscribed? Was it specifically and uniquely harmful to the

community? There was no evidence that I could find that this was so. In fact, the majority of people with whom I dealt in my practice who had been charged in relation to these matters were quiet and discreet and, as I said, were causing no harm to anyone but perhaps themselves.

Why should this area of the law differentiate, and why should it produce the sort of situation that occurred in relation to Dr. Duncan or the other people who at the inquest gave evidence of assault and persecution? I could see no reason for that. The view which I then came to adopt was fortified by my reading of the Wolfenden report. I do not intend to quote further from that report, the member for Bragg having quoted what I believe are the relevant and important passages from it. However, I wish to quote to honourable members what was said in a rather more recent work, namely, a book by two professors, both Australians, who wrote *The Honest Politician's Guide to Crime Control*. The authors are Norval Morris and Gordon Hawkins, and I discussed this book with Professor Morris in Chicago at the time of its publication. The authors, quoting the Kinsey report, state:

> There appears to be no other major culture in the world in which public opinion and the statute law so severely penalize homosexual relationships as they do in the United States today.

We are not quite as savage in our law as are some sections of the United States. The authors continue:

> Our primacy in this field is purchased at a considerable price. Although the Kinsey report maintains that "perhaps the major portion of the male population has at least some homosexual experience between adolescence and old age," only a small minority are ever prosecuted and convicted. Yet the law in this area, while not significantly controlling the incidence of the proscribed behaviour, not only increases unhappiness by humiliating and demoralizing an arbitrarily selected sample of persons every year and threatening numberless others, but at the same time encourages corruption of both the police and others who discover such relationships by providing opportunities for blackmail and extortion. As far as the police are concerned, a great deal has been written both about corruption in this area and the degrading use of entrapment and decoy methods employed in order to enforce the law.

The member for Mitcham will know that in South Australia in the past (I do not believe at present) there have been clear cases of entrapment, decoy methods having been deliberately used by police officers to induce people to commit homosexual offences and then to charge those people with these offences. A wellknown Adelaide man appeared before the Adelaide Supreme Court and was sentenced to 18 months imprisonment in a case where he was deliberately induced by a police officer and entrapped into a suggestion of a homosexual offence. That sort of thing has happened, and it can happen under this kind of law. The passage continues:

> It seems to us that the employment of tight-panted police officers to invite homosexual advances or to spy upon public toilets in the hope of detecting deviant behaviour, at a time when police solutions of serious crimes are steadily declining and, to cite one example, less than one-third of robbery crimes are cleared by arrest—

here, the authors are talking about the American statistics, of course, but ours are not much different—

> is a perversion of public policy both maleficent in itself and calculated to inspire contempt and ridicule. In brief, our attitude to the function of the law in regard to homosexual behaviour is the same as in regard to heterosexual behaviour. Apart from providing protection for the young and immature; protection against violence, the threat of violence, and fraud; and protection against affronts to public order and decency, the criminal law should not trespass in this area. If the law enforcement agents involved in ineffectual efforts to control buggery were to be diverted to an attempt to improve the current 20 per cent clearance rate for burglary it is unlikely that there would be an immediate fall in the burglary rate. But it is utterly unlikely that there would be an increase in buggery; for people's sexual proclivities and patterns are among the least labile of their responses, as the almost total failure of "cures" and treatment programmes for homosexuals should have taught us. And in the long run such a strategic redeployment of resources could not but be beneficial to society.

What are the excuses for maintaining a law which interferes in this area alone with what might be called deviant or sinful sexual behaviour? One excuse is that it is an affront to public decency that this should occur. It is certainly contrary to the majority public taste, but surely that is not sufficient for us to say that, because most of us do not regard this as something that is in any way attractive but, rather, repulsive, other people who view the matter differently should have our views imposed on them privately. The second suggestion is that there is a need to help the people involved. The law as it stands does not help the people involved; it does not assist people to seek help. As the honourable member for Bragg has said, it prevents people from seeking help.

What is more, of course, one must face the fact that the majority of people who are homosexual do not regard homosexuality as a disease at all, nor do they regard it as a

condition to be cured. They regard it as normal and natural. They may be unhappy about it. As the honourable member will recall from a play that he once acted as censor for, there was a passage in it, "Show me a happy homosexual, and I will show you a gay corpse." Undoubtedly, the condition of the minority involved in this is a condition, in many cases (not always, but often), of unhappiness. At the same time, while it is often a condition of unhappiness, it is not a condition that the unhappy people regard as, for themselves, abnormal or avoidable.

In those circumstances I do not believe that society has any right whatever to trespass in this area. The purpose of the criminal law is to protect persons from physical harm and from active affront, and their property from harm, also. Outside of that area, I believe the criminal law has no place at all, and it is for the social influences of the community to impose or induce or persuade the moral standards which various sections of the community advocate, to establish the moral standards which will be accepted by the majority of the community. The law is not a means of enforcing morality. It is a means of protection of persons and property from harm. In these circumstances, I believe that the change in the law as originally intended by this Bill should be enacted, but there are, as the member for Mawson has pointed out, a number of unsatisfactory features in the Bill as it stands. To shift the onus of proof to the defendant as to the circumstances under which he may legally commit an act of homosexuality is a complete departure from the normal principles of the law; it is completely contrary to what we normally do, and in addition to that it achieves the worst of both worlds, for it leaves the existing law as the very blackmailers' charter which Mr. Abse condemned.

If we are to say that it is not to be an area into which the criminal law trespasses for consenting adult males in private to commit homosexual acts, then we should say that outright and not say, "It is an offence until you can prove that you did it under those particular circumstances". It should be for the law to say that the circumstances in which the act has occurred are circumstances which call into force the criminal law; it should not be for the defendant to prove the circumstances. Secondly, a rather extraordinary anomaly is created by this legislation and that is in relation to acts of buggery between males and females. These are not as rare as some members might imagine. I can assure honourable members that anyone who has practised at all extensively in family law in South Australia would have had a large number of cases, as I certainly had, of particulars in divorce cases prepared in which this matter is cited to the courts. It is not rare; it is a quite widespread and common practice.

Certainly, there have been very rare prosecutions in relation to it, but it would be an extraordinary anomaly in the law that we should allow an act of anal intercourse between consenting male adults in private, yet say that if an act of anal intercourse occurred between a man and his wife in their bedroom that would be a criminal offence and that the police should invade the bedroom, arrest them, and drag them before the courts. Therefore, that section of the law also should be removed, so that anal intercourse between consenting adults, whatever their sex, in private, should not be a matter for the law to intrude upon. The idea that, if one male propositions another and causes him an offence, that should be something subject to a penalty of three years imprisonment, whereas if a male propositioned a woman and caused her an offence it would bring merely a minor fine and a maximum of three months imprisonment, seems rather a strange thing. I think most men are equally able, with most ladies, to say, "No". I would not think a greater offence was incurred in one case than the other.

Finally, I agree with the honourable member for Bragg that, since the Wolfenden report advocated that the law should be changed to allow homosexual acts between consenting adult males in private to be free of the intrusion of the law, then it should be the adulthood which is the matter in question. Since adulthood here, following the Latey report in Great Britain, is now at the age of 18 years, we should provide that that is the age at which consent could occur. Some honourable members may argue that there is an anomaly in that we allow the age of consent for females to be 17 years of age and that there is a discrepancy of a year. However, at any rate at this stage, the age of 18 years seems to conform to the general provisions of the recommendations of the Wolfenden report, so that it is a sensible move to make and I believe it should be supported in the Committee stage.

Dr. EASTICK (Leader of the Opposition): On such issues as this I have always expressed the view that there was no point in giving a silent vote. Personally, I have not all

the detail I would require to sanction the course before the House or the proposition put to it. Very early in the piece, when it was suggested that this matter was to come before the House, I made a public appeal for information, and I am able to report that I received 137 replies to the appeal. The replies covered a variety of approaches to this subject. They came from people who approached the subject on religious grounds and from other people who were either for or against the matter, and information came from professional people, psychiatrists, doctors, social workers and others. Much information came from people working in the State sphere as well as information made available from people who identified members of their family or people with whom they had been associated in the past. All this information indicated that there is a genuine need for deeper research into this matter than was undertaken by the investigation carried out in Great Britain. I believe that there will be an advantage to us in the long term if we can justly introduce legislation that can be a guide not only to this State but elsewhere. I give my support to this Bill, only to the second reading stage, in the hope that the House will see fit to appoint a Select Committee to make further investigations.

The Premier indicated that there were areas in the law regarding male and female acts of buggery, and an alteration is required there. I was not aware from the comment he made whether there was sufficient cover in the Bill before the House or contained in the amendments to be moved by the member for Mawson.

The Hon. D. A. Dunstan: It is covered in the amendments to be moved.

Dr. EASTICK: I understand, from the information supplied to me, that there are several other areas not covered by the amendments to be moved by the member for Mawson. I believe that there has been considerable confusion in the presentation of detail by people from the professions and from the churches to members in another place. Certainly, wide and divergent views have been presented by people from these two areas in their submissions to me. A paper presented to a psychiatric conference held in Hobart last week dealt with the problem of homosexuality and I am advised (although I have not seen that paper), that the statement was made that there were no homosexual practices between members of the Maori race before the white man came to New Zealand. Although I do not know what proof has been put in support of that claim—

Dr. Tonkin: It would be difficult to prove that before the white man came—

Dr. EASTICK: I realize the difficulty, but the fact remains that a considered paper was presented to that conference making that statement. It is because such detail is available that I believe the matter requires further consideration and that is why I indicate my support for the referral of this matter to a Select Committee. Beyond that, I clearly set out that I will not support the passage of this Bill at the third reading stage.

Mr. McRAE (Playford): I support the Bill as it was originally introduced into another place by the Hon. Mr. Hill. I find the Leader of the Opposition hard to follow when he refers to an alleged lack of homosexual practices amongst the Maoris. The Hon. Dr. Springett, in a most learned address in the Upper House, dealt with the history of homosexuality among all races and cultures. His conclusion was that homosexuality was a practice that was universal throughout the history of mankind. Indeed, I fail to see in a society such as ours, which is so much like the British society (especially in South Australia which is akin to various parts of Britain), that another Select Committee would achieve a great deal more.

Mr. Evans: Do you support the age of 18 or 21 years of age?

Mr. McRAE: I support 18 years as the age of adulthood for reasons I will later put forward. It took the British Parliament 10 years to do something about the Wolfenden report, one reason being that the late Lord Kilmuir was at that time known as the "hammer of the homosexuals". He denounced such things as he called "sodomite societies" and "buggery clubs". He seemed to be obsessed about these things. As Sir Maxwell Fyfe (that was his title when he was Home Secretary), he had this to say on the matter:

> Homosexuals in general are exhibitionists and proselytizers and a danger to others, especially the young. So long as I am Home Secretary I shall give no countenance to the view that they should not be prevented from being such a danger.

He kept his word and, therefore, it is hardly surprising that it took so long for the recommendations of the Wolfenden report to be implemented, because of the succession of Conservative Governments in office in Britain.

Every Christian church of which I know (and it is from the Christian churches that

traditional opposition to this matter has come) has examined this problem in depth and supports the recommendations of the Wolfenden report and the subsequent British legislation. Indeed, the churches have gone further and found that there has been no greater moral danger to the community since the passing of the Sexual Offences Act in Britain than before that time. After the final passing of that Act in 1967, Lord Arran, who played a distinguished part in the proceedings, had this to say:

> Lest the opponents of the Bill think that a new freedom, a new privileged class has been created let me remind you that no amount of legislation will prevent homosexuals from being subject of dislike and derision or at best pity. We shall always, I fear, resent the odd man out. That is their burden and they must shoulder it like men—for men they are.

I point out to any opponent of the Bill now before us that no amount of legislation is going to take away from homosexuals in our community the derision and attacks that are made on them. However, this Bill provides an opportunity to remove some of the more brutal injustices.

I believe that one of the most outstanding contributions of the Wolfenden report was to define the nature of homosexuality. Until that time the whole question had been shrouded in misconceptions of a hostile nature, and there was apparently no objective consideration in society that there are a range of sexual practices, and a range of sexual characteristics that vary from complete heterosexuality to various aspects of bisexuality to complete homosexuality. The report of the committee brought this fact to life. In the House of Lords, Lord Brain said:

> Sexual behaviour is a spectrum. At one end are the normals, the heterosexuals, the large majority of the population; at the other end are the hard-core homosexuals, a very small percentage. But in between there are gradations, people who are in some sense both, perhaps married and with children but with homosexual tendencies which may or may not be given overt expression.

He went on to describe the circumstances in which people in the middle can lose their self-control, as a result of depression, illness, alcoholism and marital discord. So, it is not rigid: there are not simply two classes—heterosexual and homosexual. There is a middle class, the bi-sexual, that in varying circumstances can be led to commit homosexual acts. I do not believe the law will stop homosexuality any more than the law will stop other acts that some of us consider to be disgusting or obscene. It is very significant that, whereas most reasonable men in South Australia today wholeheartedly approve of assistance to drug addicts, unmarried mothers, released prisoners, the mentally unstable, and many other unfortunate people, it is only since the tragic affair of Dr. Duncan that it has been the consensus in the community that the same kindness should be extended to homosexuals. I agree with the Premier's statement that most homosexuals are not happy people. Some homosexuals may have adjusted to their state, but most of them have not done so. It is tragic that it has taken a murder to awaken the public conscience on this matter. However, once the public conscience has been awakened, we should not let it rest there.

The Melbourne diocese, Anglican synod, Social Questions Committee has made a very up-to-date analysis of the whole question. That body is authoritative and learned, and on the whole it would be inclined to be conservative in relation to social questions. That analysis is one of the things that incline me against the idea of appointing a Select Committee. I want to highlight in more detail the history of the matter, which was referred to by the member for Mitcham. I have done a little research on this matter and I have found that the original measure found its way into the law of South Australia from the British law; further, that law was passed at 2 a.m. on a July morning in 1885, when the House of Commons was considering a measure that had been introduced as a result of considerable agitation by a newspaper editor, Mr. W. T. Stead. That gentleman had had an extraordinary career, and he outraged Victorian society and, indeed, Queen Victoria herself by highlighting the problems of children on the streets. At that time the age of consent for sexual intercourse was 14 years, and this gentleman sought to have it increased to 16 years.

Believe it or not, the House of Commons opposed this measure vigorously, and it was not until it had been introduced three times and it was not until Mr. Stead, with the aid of the Archbishop of Canterbury and Cardinal Manning, had deliberately abducted a girl of this age and taken her to Paris (with witnesses—to show that he had not behaved immorally) and forced a prosecution, not on the ground of sexual immorality but on the ground of kidnapping, and it was not until he had been placed in gaol, that the House of Commons was forced to do something about it. Queen Victoria noted in her journal that immoral things

had been talked about in the name of humanity that would do harm. Mr. Stead was vindicated in his stand. The British Government was so attacked by the public outcry that it was forced to give Mr. Stead a private room in the gaol; it was decorated with lilacs, convolvulus and lilies of the field. It was in that sort of context that a private member named Labouchere suddenly introduced this amendment. Most members had gone home at the time, and those who were there were half asleep. So this iniquitous law found its way into the law of the British Commonwealth and, indeed, into the law of many countries in the Western World.

I refer members to Cyril Pearl's latest work *Victorian Patchwork.* Mr. Pearl is not a learned historian, so I checked his remarks, and I found that what he has said is correct. The law did not appear to be too evil at the time but it has become since then a most iniquitous piece of legislation. The term "blackmailer's charter" has been used over and over again by speakers tonight, and it is quite correct. The Wolfenden committee was told that, of 90 blackmail cases in a year, almost every one involved a homosexual. In one case two homosexuals had been frequenting a room without offending the public, and one homosexual blackmailed the other. When the person being blackmailed went to the police, he was charged with a homosexual offence.

It is this outrage to conscience that leads me to support this measure strongly. I have been disgusted to have to listen to the degrading evidence supplied by Vice Squad detectives. I stress that there is only a limited number of the type of officer I am referring to. I do not condemn most police officers, but the officers I am referring to are partially homosexual themselves, and they incite others in public lavatories to commit homosexual acts with the intention of later prosecuting them. That is disgusting and disgraceful and I am afraid that, because of the rulings of the Supreme Court, such evidence has been held to be admissible. That outrages my conscience. Worse than that, members of our own Vice Squad have harried and persecuted homosexuals with the avowed aim of getting money from them to hush them up. Also, these members of the Police Force (and again I stress that they are only a tiny minority) have been inclined to get some enjoyment on the cheap, and finally, to cap it all off, not only must we consider the blackmail, persecution and outrage to the public conscience that would result should we incite people to commit crime, then pardon one offender and convict and imprison another, but also we must examine the bashings and murders. We need only to look at the hideous spectacle of the Duncan case to have that proved right here in our own State.

This law has achieved nothing. I believe that its repeal will not lead to any kind of breakdown of morals, as some people have suggested. I believe it can do nothing but good. I therefore support the Bill in its original form and I support the concept of adulthood. I also support the view, as did the Premier, that if we are to be logical about the matter we ought also to remove the concept of illegality in relation to acts of buggery between consenting males and females in private. With those remarks (and I may have some comments to make in Committee in relation to the foreshadowed amendments), I support the Bill.

Mr. EVANS (Fisher): I support the second reading. I, too, would prefer that a Select Committee be appointed to obtain further evidence from within the State and to submit that evidence to Parliament before a final decision on this matter is taken. If this does not happen I believe that, after much consideration, I would have to support the move allowing adults who so desire to perform homosexual acts in private without breaking the law. This is not a decision that can be taken lightly. We are in the position of setting an example and giving people the opportunity to think that, because this is all right, they can go further and that it will not hurt if it happens in public. However, that is not permitted in relation even to normal sexual acts.

I do not believe the legislation will encourage more people to perform homosexual acts. If it does, it will be the duty of Parliamentarians of that era (be it 12 months or 10 years hence) to amend the law. I cannot understand people who have this attitude. I suppose one considers that one is normal in not tending towards activities of this type. However, when one considers that one in 20 is supposedly a homosexual and that there are 47 members in this Parliament, one starts to worry.

The SPEAKER: The honourable member must not reflect on other honourable members.

Mr. EVANS: I was not reflecting on them, Sir. Indeed, because of their approach I may have been praising them and bringing their views to the attention of the public. It must be remembered that the figures available are only estimates. There is no really clear evidence of how many people in society have

this tendency. I believe that some would say they have this tendency merely for the sake of being brave or trying to prove that they are different from others. Others, who have this tendency, would hide it and not disclose it in any circumstances, trying to keep it secret from the rest of society. However, that could be difficult. Although I did not intend to say much on this Bill, I thought it would be wrong for me to cast a silent vote. The whole thought of homosexuality abhors me. However, if there are people in our society (and I accept that there are) who are being blackmailed because we have on our Statute Book a law that cannot really be put into practice, something should be done about it.

How could one actually apprehend anyone performing such an act in private? I suppose this could happen on a few occasions by one's breaking down a door although, as the member for Bragg said, once that happened it would not be in private. The law as it exists is really useless. I do not believe we will eliminate completely the area of blackmail, because society considers it shameful. It will be years before the blackmail aspect is eliminated altogether. However, if we can help to eliminate it we will be doing something for the betterment of society. We will also be helping those people to take the opportunity of receiving treatment. Recognizing the problem, the churches believe it may be better to eliminate the offence from the law of performing such acts in private. I support the legislation in the hope that we can achieve something that will help others.

Mr. KENEALLY (Stuart): I, too, support the second reading and trust that the Bill will pass into Committee so that we will be able to debate the worthwhile amendments which have been foreshadowed and which deal with the onus of proof, the act of buggery and the age of majority. I am the eighth speaker on this Bill tonight, each of the previous speakers having supported its second reading. Members have heard many good contributions. The member for Bragg, who introduced the Bill in this place, gave a wide and comprehensive cover of the problems facing homosexuals in society. The Premier also covered fully the pressures that are placed on homosexuals not only by the law as it exists at present but also by the community. I believe that each member has a responsibility to state clearly where he stands on an issue of this kind. That is why I am making my contribution, short though it may be.

The whole subject of homosexuality has been taboo for many years, for which reason many people do not know much about it. I suspect that few people would know what causes a homosexual condition. Few people would know anything about female homosexuality. Even fewer would know about the pressures placed on homosexuals by society, and I suppose even fewer still really know what homosexual behaviour is. I am sure that most members at one time or another have probably shared this ignorance of the subject; I am sure I did. It was only when the Hon. Murray Hill introduced the Bill in another place that I took the trouble to acquaint myself more fully with the whole subject. I have read the Wolfenden report and other books on the subject that are available to members in the Parliamentary Library. Although I am not fully aware of the subject now, I do know more about it than I did six months ago. One of the problems facing the community is that they regard all homosexuals as paedophiliacs. They believe that homosexuals prey on young children, and, because of this belief, they have a revulsion towards homosexuals. My reading indicates that this belief is not true, and that paedophiliacs are a type of person who may indulge in deviant practices, but they not only prey on children of their sex but also have a tendency to prey on children of the opposite sex as well.

If a person is a male paedophiliac he not only tries to consort with youngsters of the male sex but will also try to have sexual relations with youngsters of the opposite sex. For this reason people believe that the whole range of homosexuality should be controlled under the criminal law. Another general fear of people is that, if we were to take out of the criminal code homosexual behaviour, this would increase the number of people who would participate in that activity. They are afraid that people placed in charge of children, such as schoolteachers and scout masters, would be given freedom to prey on youngsters. This point may be relevant, but has no basis in fact, because in society there are female homosexuals (Lesbians) who may also be schoolteachers, headmistresses, and guide mistresses, and no one suggests that, because these people are not subject to the criminal law, they are a danger to society and to young girls in particular. As we do not suggest this about female homosexuals, I suggest that the same argument should be held valid for male homosexuals. From figures I have seen, adult

homosexuals mainly consort with other adult homosexuals, and I believe that when two adults wish to participate in homosexual acts in private no-one, including the law, has the right to interfere. This is a matter of private morality between the people concerned and not a matter in which the public or the law should interfere. This whole subject has been well covered by previous speakers, who have made some excellent contributions to the debate. I once shared public ignorance on this matter, because the matter was taboo and, if people did speak about it, they made sly remarks about it. We do not appreciate the problems of homosexuals.

We considered that they acted in this way because they wanted to, and we believed that they had the chance to be heterosexual if they wished. Now, I understand that it would be as difficult for a complete homosexual to want to be heterosexual as it would be for me to want to be homosexual. I believe that it is not right that we should, by legal action, force homosexuals, who have no desire to be otherwise, to be heterosexual. A homosexual who tries to be heterosexual is most unstable and unhappy and, should one be forced into marriage because of community norms, the marriage is generally disastrous. Any children of that marriage are placed in an invidious position, and their future as a stable person is very much threatened.

I have no doubt that, if the law remains as it is at present, it will not assist one whit to stamp out homosexuality, if that is what the law intends. It will not do that: it will place greater pressures on these people who already have great pressures placed on them by public mores. In these enlightened days we should not deliberately use the law to try to stamp out a practice that people have through no fault of their own. I hope to be able to contribute in a small way to the discussion on the worthwhile amendments that have been foreshadowed by the member for Mawson, because these will improve the Bill immensely. I support the second reading.

Mr. PAYNE (Mitchell): I do not support the present Bill. Having said that, I make clear that I support the second reading in the hope that enough members will support the second reading to allow the Bill to reach the Committee stage. At that time I hope to be able to affirm my views by my support or otherwise of the foreshadowed amendments. I consider that we are not here to debate the rights or wrongs of homosexuality, if there are such things What is clear to me is that this type of behaviour is simply one facet of the broad spectrum of human behaviour that exists at all levels of our society. What we know about this facet of human behaviour has been well outlined by the member for Bragg, when explaining the Bill. I believe that he has shown that the practice of homosexuality in private by consenting adults poses no threat to society in that the practice will increase alarmingly because such an act no longer constitutes an offence, or that public morality will be placed in any more danger from what we may call conventional heterosexual activity, which already exists and which is not unlawful.

I do not believe that the law should intervene in a private sphere to regulate human sexual behaviour between consenting adults. As I see the position, the present law makes certain acts between males in private unlawful, but what we may call equivalent behaviour between females in private is not unlawful. Also, a form of intercourse between males and females in private is also subject to the dominion of the law. I believe that this situation does not warrant the present intrusion of the laws in this State. The relevant clause of this Bill which inserts new section 68a purports to improve the situation in respect of the criminal law; but to my way of thinking the clause fails in its object, on two grounds: first, it places the onus of proof on the persons charged with an offence, and this charging of the offence in itself is a failing of the projected legislation. Secondly, in creating this state of affairs, the clause continues all the possibilities of blackmail and harassment of the persons concerned, and this is so undesirable in the present condition of the homosexual law in South Australia.

Members who have followed me so far will have detected, I hope, my attitude to this whole matter. I neither condone nor condemn homosexual behaviour, whether between females or between males. The member for Mawson in his contribution, it seemed to me, put the position very well in describing his own situation. He outlined the position in which I find myself. He said that he was one of the lucky majority who are heterosexual. As I indicated, I am of the same belief and have no wish to see penal provisions inflicted on persons whom I would describe as being of the unlucky minority. I commend those members who have spoken already in this debate for what I regard as their excellent contributions. I hope I have been able to be similarly as lucid and sincere as they have been. In conclusion, I indicate

that I see no need for a Select Committee on this matter.

Mr. Gunn: You may not, but others do.

The SPEAKER: Order! The member for Eyre is not going to destroy the high standard of this debate; he is most discourteous. So far, there have been no interjections. I ask the member for Eyre to contain himself. If he does not, I will name him. The member for Mitchell.

Mr. PAYNE: Thank you, Mr. Speaker. Prior to that interjection, I was saying that I personally saw no need for a Select Committee on this matter. There has been a wealth of research into homosexuality, and much information has been made available over the years, both from oversea inquiries and from Australian sources, as has been mentioned by previous speakers. The member for Playford and the member for Bragg referred to inquiries in other States into this matter. I join with the member for Playford who, I think, said that the the public conscience on this matter was awakening. I believe the public wants some change in this area of the law. I know that my own conscience leaves me in no doubt about what I should do. I look forward to this measure getting into Committee, when I hope to be able to support some of the amendments that will be moved. I support the second reading.

The Hon. L. J. KING (Attorney-General): I support the second reading of this Bill. Perhaps I should say at the outset that I do not, however, accept all the arguments that have been put, particularly outside the House, in favour of the measure. In particular, I do not accept a view that has been propounded outside Parliament that we should repeal the existing law because homosexual practices are themselves no more morally reprehensible than are heterosexual practices, and that indeed for those people who are homosexually inclined homosexual practices are the right course of conduct. I take the view that the traditional attitude of Christendom, the traditional Judeo-Christian ethic on this matter, is right and that homosexual practices are intrinsically evil, because they represent a dehumanization of the sexual capacity of the human being. The sexual powers that the human being possesses, if they are to be used in a truly human and not merely in an animal manner, are to be used, as it seems to me, as part of an enduring personal relationship between a man and a woman, which in the normal course of events will result in the production of a family, the procreation of children.

It seems to me that, when human sexuality is diverted from that particular use, it then becomes a perverted activity, and one must not shrink from describing it as intrinsically evil. To say that is not to make a moral judgment of people who engage in homosexual practices, because the individual condition, the individual disposition and the individual personal problems of each person are matters about which none of us can judge. No man is in a position to judge the moral condition of another, but nevertheless, in all honesty and frankness in discussing this matter, it is necessary to state one's position on the moral question involved in homosexuality. However, what we are here concerned with as a Legislature is not precisely the moral question involved in homosexual conduct but what the state of the criminal law should be. The Premier has referred succinctly and lucidly to the purposes which the criminal law ought to serve, and the member for Bragg, in his carefully prepared and excellently delivered speech in explaining the Bill, also made extensive reference to this matter.

Broadly speaking, I take the position, as both of those speakers did, that the criminal law is concerned with enabling us to live together in society in peace and harmony, which means that the criminal law is concerned with providing protection for our persons and our property against infringement by other people. I think it may be that in some circumstances there is a function for the criminal law in prescribing and enforcing somewhat more general rules for the good of society, but that is an exceptional situation that will arise only when there are compelling considerations. In general, I take the view that the area of private morality is not one in which the criminal law should operate. I say that for several reasons, perhaps all of which have already been mentioned. Primarily, it is because one's moral conduct in private is his own personal responsibility; it is a matter between himself and his own conscience and between himself (if he is a believer) and God. But it is not the business of society at large, and certainly not the business of the State, operating through the criminal law. In addition, of course, for the criminal law to operate in the area of private morality, it is necessary to tolerate intrusions into the privacy of citizens which, if the criminal law enforcement agencies really pursued the matter, would very

soon become intolerable. Moreover, the difficulties of enforcement in this area are overwhelming. In the nature of the case there is no complainant, because we are dealing with consenting parties, and, therefore, the law can be enforced only by means of police methods which are themselves repulsive, intolerable, and indeed counter-productive.

Reference has been made to the danger of blackmail and to the history of blackmail which has been disclosed. Quite apart from that, I believe that the criminal law is quite ineffective to influence personal conduct of this kind in a significant way. Both the Premier and the member for Playford have referred to the futility of the exercise of the courts' endeavouring to deal with and punish people for conduct of this kind and to the frustration of a judge faced with two people charged with homosexual conduct in private. What will he do with them? He can send them to gaol. What does that achieve, either for the individuals or for society? I believe most judges would be heartily pleased to be rid of this burden.

The suggestion has been made that we are not really in a position to deal with this matter tonight, and that it is desirable that a Select Committee should be appointed. I do not really understand why. I suppose that no social question has produced a greater volume of literature in the past 15 years than has the question of homosexuality and the bearing the criminal law should have on it. The Wolfenden inquiry produced its report 15 years ago in the United Kingdom. The law in the United Kingdom was altered in 1967, and the results of that experiment are quite well documented. Lest it be said, as indeed the member for Mitcham did say, that members in this House have not had an opportunity of acquainting themselves with the subject, I remind members that the Hon. Mr. Hill introduced his Bill in the Legislative Council on July 26. The second reading explanation was delivered on August 2. Every member in this House has been well aware since that day that this matter would come up for consideration. The whole community has displayed a great interest in the matter, particularly since the death of Dr. Duncan and the introduction of the Hon. Mr. Hill's Bill. I do not believe that members in this place have been less interested and less sensitive in this area than have ordinary members of the community.

I remind the House that this is the last day for private members' business, and that this is a private member's Bill. I think we would be remiss in our duty if we did not use the opportunity which has been provided on this last private member's day by facing up to our responsibilities and making a decision on the matter. This is not the time to argue in detail the various questions which arise and which have been discussed at length in the literature and, to some extent, in the speeches. I want to state my position shortly: I have stated my position on the principles, and the conclusions I have reached on the factual matters involved in this controversy are these: I think that the sexual orientation of an individual is determined, as the member for Bragg said, by early adolescence or, at any rate, well before the age of 18 years, which I think is the relevant age for this purpose. I think, too, that it is sufficiently established that an individual's propensity for unnatural sexual activity is capable of being controlled by him, to the same extent, at any rate, as heterosexual activity is capable of being controlled by a heterosexual.

The degree of self-control available to individuals or capable of being exercised by individuals varies enormously, and there is a small minority, both of heterosexuals and homosexuals, of whom it can be said in a substantial sense that they are incapable of controlling their sexual instincts, but they are few. The vast majority, to a greater or lesser degree, is capable of exercising self-control, and we are entitled to frame our laws on that basis. The other thing that I think is established by the literature and research is that the level of homosexual activity in a community is not significantly affected by the state of the criminal law in relation to homosexuality.

If I am correct in deducing those propositions from the evidence available to us, the question must be put as to how the existing criminal sanctions can be justified. Really, only one substantial argument need be considered, and that is the argument so persuasively put by Lord Devlin, to whom reference has been made, in his book *The Enforcement of Morals,* an argument that a great many people nowadays have no moral standards other than those that they take from the civil law, and that if the law does not prohibit homosexual conduct some people, perhaps many people, will come to regard it as the right conduct. I do not believe that that sort of attitude is tenable, at any rate in our society.

It might have been a tenable position to take up in a society in which there was a greater degree of unity of thought and belief as to

the principles of morality, but I believe that in our plural society, in which many streams of belief and thought as to moral questions exist side by side, it is no longer possible to say that the State is competent to lay down moral norms to be followed by individual citizens in their personal lives. I endorse unreservedly the sentiments expressed by the then Archbishop of Canterbury during the debate in the House of Lords on the English Bill, quoted by the member for Bragg when explaining the second reading.

Mr. Goldsworthy: Do you think theft is a moral issue?

The Hon. L. J. KING: Of course it is. Let this be perfectly clear: the criminal law must always be based, in my view, on the moral law and ought never to be in conflict with it, but that is not to say that the areas to be covered by the moral law and the criminal law are co-extensive. There is, as the Archbishop of Canterbury pointed out very eloquently (and I agree with this point of view), an area of private morality which can never be touched by the criminal law, except at the price of freedom in a society. If the existing law against homosexual practices were enforced, I believe we would find the position so intolerable that there would be not the slightest question about its repeal. It has been tolerable only because it is generally not enforced. It is enforced quite selectively, usually accidentally, as a result of some vindictive complaint by some person with a quite ulterior purpose in bringing the matter to light, and then some individual is prosecuted for a homosexual offence whilst the other 999 (or perhaps 9,999) are not prosecuted. Of course theft is a moral issue, but it is also an area that calls for the action of the criminal law, because it is the means by which the criminal law protects my property against someone's depredations or, if we put the other way, it protects someone else's property against my depredations.

The question that arises, if all this is correct, is what should the criminal law protect in this area of private morality. The first thing I take to be the duty of the criminal law is to protect minors until they have reached the age of adult responsibility (the age at which they are recognized at law as being capable of making their own choices in life on their own responsibility). In this State that age is recognized as 18 years. I believe, too, that the law has a legitimate interest in preventing the fostering of homosexual activities by procuring. I agree entirely with the provision in the Bill that makes it a crime for one person to procure the commission of an unnatural act with another person. I believe that the law has an interest in protecting the community from having its moral sensibilities outraged by public display, and hence this Bill is concerned with conduct in private.

I approve of this and I think that we are all entitled to be protected from being offended by soliciting. However, I agree entirely with the Premier's remarks that the idea of treating soliciting to commit an offence with another person as an indictable crime punishable by three years imprisonment is ridiculous, and that it clearly ought to be brought within the subcategory of offensive behaviour and treated in the same way as is offensive behaviour by a heterosexual.

Mr. Goldsworthy: That is a pretty vague area, though. You may say that immodesty is, in a sense, offensive.

The Hon. L. J. KING: Offensive behaviour has always a certain vagueness about it that must finally be judged by a tribunal. There is no question that, if a man approaches a woman and puts a sexual proposition to her about which she is offended, he is guilty of offensive behaviour. That has never been questioned, and many people have been prosecuted in those circumstances. There is no doubt that, if a man approaches another man and puts a homosexual suggestion to him by which the latter is offended and which suggestion he has not encouraged by his conduct, that is offensive behaviour. The provisions of this Bill, as it stands, prohibit that kind of conduct. However, I believe that the characterization of that conduct as an indictable crime punishable by three years imprisonment is unreasonable and absurd. I have not attempted to argue the case in favour of this Bill. Indeed, such arguments would require more time than is available, but I wish to state the reasons why I hold the view that the present prohibition against homosexual acts between consenting adults in private should be repealed.

The repeal by this Parliament of the criminal sanctions against homosexual conduct and, indeed, the criminal sanctions against unnatural sexual conduct between males and females (buggery) would not imply any moral approbation on the part of this Parliament. Indeed, I personally disassociate myself entirely from the view of some humanist speakers, expressed, of course, outside this House, that homosexual conduct is equally morally acceptable as heterosexual conduct. I do not take that view, but I do not regard it as relevant in considering

whether the criminal law should prohibit such conduct. I support the second reading and I indicate that, in a general way, I favour the amendments placed on file by the member for Mawson.

Dr. TONKIN (Bragg): I thank all honourable members who have spoken in this debate. I am most impressed that, although the member for Mitcham and the Leader had some faint opposition to this Bill, it was not opposition to its principle; it was perhaps a little excessive caution regarding the need for this matter to be referred to a Select Committee. Regarding the comments of the member for Mawson, perhaps I did over-kill a little, but there is so much ignorance and prejudice in the community on this subject that I believe it is necessary to over-kill and to make the point, if necessary, again and again. I intend only to refer to the matter raised by the member for Mitcham, namely, referring this Bill to a Select Committee.

Mr. Gunn: What about—

Dr. TONKIN: I was going to say also that I had heard no speaker against this Bill, and I was rather surprised, because I understood that one or two members—

The SPEAKER: Order! The interjection is entirely out of order.

Dr. TONKIN: —had an objection to it. We have heard nothing from those members if they do oppose the Bill. I believe that the move to refer the matter to a Select Committee is unwarranted and unnecessary and is designed purely to delay the passage of the Bill. I remind the member for Mitcham, if he is not already aware of this fact, that Parliament will rise in a relatively short period and that a Select Committee, if it were to do its job properly, would take much longer than a week or two.

Mr. Millhouse: You admit that it has a job to do?

Dr. TONKIN: There is, as well, the question whether there is any job for a Select Committee to do. I believe that many investigations have been made into the subject. The Wolfenden report is the result of only one such investigation, but it is the most well known. However, there have been church investigations and medical investigations into this matter, and I believe that there is a wealth of information from which members can draw. Therefore, I see no useful purpose in referring this Bill to a Select Committee, unless it involves the principle of delaying the Bill or putting it off for as long as possible. I am sure that the member for Mitcham does not have that motive in mind.

The Hon. Hugh Hudson: You are too charitable.

Dr. TONKIN: I intend to make no comment on the custom of Maoris before the arrival of the white man in New Zealand. I thank members for the consideration they have given to this Bill.

Bill read a second time.

Mr. MILLHOUSE (Mitcham): I move:

That the Bill be referred to a Select Committee.

I will speak only briefly on this, because I gave the reasons for this motion when I spoke during the second reading. The two major reasons for this action are, first, that we have had in this House virtually no opportunity to consider the matter at leisure, certainly not in the way that members in another place had and, whether the Attorney-General finds time to study the debates that occur in another place, I do not know; but I certainly do not. What has been done there has been done, and it is no concern of mine. Here we have a Bill, which is of far-reaching social significance, being pushed through this House in one evening. I think it is too quick. The second reason is that I believe there is still a high measure of emotionalism following the Duncan incident,, and I do not agree with the Premier that this is a good thing and that it creates a proper atmosphere for a change in the law; rather,, the reverse is the case. We should slow down, rather than hasten.

I pointed out previously that the Premier himself, when Attorney-General, prepared a Bill on this matter in 1965 or 1966, and he acknowledged that he had done so. That is now seven years ago, and it will not do any harm for us to wait for another few weeks to allow all members to consider this matter while a Select Committee considers it in depth. I therefore believe that we should not press on tonight but that we should take this step of appointing a Select Committee. I do not make this proposal simply to try to kill the Bill. I believe that the session will last for at least another month; in connection with another Bill, the Attorney-General has suggested that a Select Committee will report on November 30, six weeks away. This would give us time to have the matter considered by a Select Committee and for the Select Committee to report to the House.

Mr. GOLDSWORTHY (Kavel): I second the motion. I had no indication that the Government intended to pursue this matter today, and I had no firm indication that the Government intended to carry on with the matter tonight. Some other members have engagements outside the House and will not be able to take part in the debate. Apart from that, there are other strong grounds for referring the Bill to a Select Committee. Many people would like to give evidence before a Select Committee on this matter. I have received very little correspondence from my own district in this regard, but I have received circulars on the matter from groups in the community. Of course, one cannot rely on that sort of information when one is trying to make an informed judgment. As the member for Mitcham has said, there is time for a Select Committee to be set up. The Government has said that there is still much legislation to be dealt with, and the Premier has said that he hopes the session will finish by the end of November, so there is ample time for the Bill to be referred to a Select Committee. It is unfortunate that the happenings in connection with the Duncan case are being used as a lever to bulldoze this Bill through the House. I support the member for Mitcham's statement that there appear to be flaws in the Bill and that there is good reason to examine the legislation closely.

The Hon. L. J. KING (Attorney-General): I oppose the motion. I have already stated my reason for opposing the referral of this Bill to a Select Committee, and other reasons were given by the Premier and the member for Bragg. I rise merely to comment on the remark made by the member for Kavel that he was unaware until this afternoon that this debate would continue tonight. It is necessary to make clear what actually happened. Last Wednesday the member for Bragg informed me that he desired to proceed with this debate today, and he inquired whether the Government was willing to allow the debate to proceed today. I said that, as far as I was concerned, that was so; and, after further consultations, I told him that it was so. Further, I said that, if the debate was not completed during ordinary private members' time, time would be made available during the evening to conclude the matter. Last Wednesday the Government Whip also informed the Opposition Whip that the debate would proceed today and that time would be made available this evening if there was inadequate time in the afternoon. I do not know why the member for Kavel was unaware of that. I take it that it is the responsibility of the Opposition Whip to communicate such matters to Opposition members: it is certainly not a reason for a Select Committee.

Dr. TONKIN (Bragg): I oppose the motion, but I defend the actions of the Opposition Whip, who took all the necessary steps.

Mr. GUNN (Eyre): I support the motion, because I believe that every section of the community should have the right to make its views known. As this is a new concept, all members should treat it very seriously. The arguments advanced by the member for Mitcham are logical. I supported the second reading because I hoped the House would endorse this motion. We have had only a week to consider this matter, and that is not long enough for a Bill of this kind.

The House divided on the motion:

Ayes (10)—Messrs. Allen, Coumbe, Eastick, Evans, Goldsworthy, Gunn, McAnaney, Millhouse (teller), Rodda, and Venning.

Noes (25)—Messrs. Becker, Broomhill, Brown, Burdon, Carnie, Clark, Crimes, Curren, Dunstan (teller), Groth, Harrison, Hopgood, Hudson, Jennings, Keneally, King, Langley, McRae, Payne, Ryan, Simmons, Slater, Tonkin, Wells, and Wright.

Pairs—Ayes—Messrs. Brookman and Ferguson, Mrs. Steele, and Mr. Wardle. Noes—Mrs. Byrne, Messrs. Corcoran, McKee, and Virgo.

Majority of 15 for the Noes.

Motion thus negatived.

In Committee.

Clauses 1 and 2 passed.

Clause 3—"Certain homosexual acts not offences."

Mr. HOPGOOD: I move:

In new section 68a to strike out subsection (1) and insert the following new subsections:

(1) Notwithstanding any Act or law to the contrary, it shall not be an offence for a male person to commit a homosexual act with another male person, in private, where both parties are adult and have consented to the commission of that act.

(1a) Notwithstanding any Act or law to the contrary, it shall not be an offence—

(a) for a male person to commit an act of buggery with a female person; or

(b) for a female person to commit an act of buggery with a male person,

in private, where both parties are adult and have consented to the commission of that act.

New subsection (1) legalizes consenting homosexual acts between adult males in private and re-establishes the original form of the Bill as introduced in another place. New subsection (la) extends this principle to deal with buggery. How convictions could be obtained for offences against that provision completely defeats me. I suggest that the methods which are used or which might be used to apprehend offenders would be as objectionable as the offence itself. I therefore urge members to support the amendment.

Mr. MILLHOUSE: I do not really like this amendment. Of course, it strengthens the Bill and puts it back into much the same form as it had when it was introduced in another place. It was not acceptable to the Council. The Minister of Education looks surprised, but it was not acceptable to another place.

The Hon. Hugh Hudson: You followed that debate over a period of time, did you?

The CHAIRMAN: Order!

Mr. MILLHOUSE: I do at least know the outline of what happened in another place and, except to try to trap me in my words, I do not think any member would suggest that what I say now is inconsistent with what I said earlier. This amendment was not acceptable to another place, and I warn the member for Mawson and other members who will support this amendment that, by doing so, they are likely to lose the whole Bill. I do not know whether or not they will, but that is certainly the risk they take. I do not care much if the Bill is lost, and I am therefore in two minds what I should do about it. The stronger the legislation is when it leaves this place, the greater is the chance that it will be lost. I must say that as it stands I do not like the provision and I must, therefore, in all conscience oppose the amendment.

Mr. EVANS: Those who support the attitude that homosexual acts committed in private should not be unlawful take the risk of losing the whole Bill, because it may not be acceptable to another place. I doubt the wisdom of trying to strengthen the Bill too much.

Mr. McRAE: I would prefer to see the Bill defeated than that it be left in its present form. I believe members in another place were placed in a predicament, as they knew that public consensus demanded that the Bill be passed. The present Bill seems to reflect the ingrained prejudices of certain people. I believe that, put to the test, they will back down. If they do not, we have lost nothing.

Dr. TONKIN: It is most important that the Bill be passed in a form that will make it useful: it will serve no purpose if it remains in its present form. What happens or might happen in another place should not affect our decision on the amendment, the Bill, or any other topic. If we wish the Bill to achieve what it sets out to achieve, we must agree to the amendment.

Mr. RODDA: Can the member for Mawson explain "it shall not be an offence for a female person to commit an act of buggery with a male person"?

Mr. HOPGOOD: Irrespective of the biological equipment of the partners involved in the act, in many cases one partner will play a more aggressive part. If it is proved that the female is the instigator, the subsection covers this situation.

Amendment carried.

Mr. HOPGOOD: I move:

In new section 68a (2) to strike out "A homosexual" and insert "For the purposes of this section, an".

This is a consequential amendment so that the clause refers to acts in general, both homosexual and buggery, and not the acts set out in new subsection (1).

Amendment carried.

Mr. HOPGOOD: I move to insert the following new subsections:

(4) In any proceedings in which it is alleged that a homosexual act committed by male persons constitutes an offence, the burden of proving—

(a) that the act was not committed in private;

(b) that a party to the act did not consent to the commission thereof; or

(c) that a party to the act was not an adult shall rest upon the prosecution.

(5) In any proceedings in which it is alleged that an act of buggery between a male person and a female person constitutes an offence, the burden of proving—

(a) that the act was not committed in private;

(b) that a party to the act did not consent to the commission thereof; or

(c) that a party to the act was not an adult shall rest upon the prosecution.

New subsection (4) establishes that the burden of proof shall be on the Crown, and new subsection (5) is consequential on the adoption of new subsection (1) a.

Amendment carried; clause as amended passed.

Clause 4—"Offences against male persons."

Mr. HOPGOOD: I move:

In new section 69 to strike out subsection (2) and insert the following new subsection:

(2) Unless a male person is an adult, he shall not be considered capable of

consenting to an indecent assault on his person by a male person and unless a male person has attained the age of seventeen years he shall not be considered capable of consenting to an indecent assault on his person by a female person.

This amendment brings this subsection into line with the age of majority as defined in the Age of Majority (Reduction) Act passed earlier in the life of this Parliament.

Amendment carried.

Mr. HOPGOOD: I move:

In new section 69 (3) to strike out "a good defence to a charge relating to that act, or proposed act, of buggery or gross indecency could be made out under section 68a of this Act" and insert "by reason of section 68a of this Act the act or proposed act of buggery or gross indecency may not be unlawful".

This amendment establishes the penalty for procuring as provided in the Bill originally introduced, but the altered wording is consequential on amendments that have been made by clause 3.

Amendment carried.

Mr. HOPGOOD: I move:

In new section 69 (4) to strike out "a misdemeanour and liable to be imprisoned for a term not exceeding three years" and insert "an offence and liable to a penalty not exceeding two hundred dollars or imprisonment for three months".

Honourable members will know from the amendments on file that new subsection (5) provides that proceedings for an offence shall be disposed of summarily. This amendment is in line with what I shall move in a moment.

Amendment carried.

Mr. HOPGOOD moved to insert the following new subsection:

(5) Proceedings for an offence against subsection (4) of this section shall be disposed of summarily.

Amendment carried; clause as amended passed.

Title passed.

Bill reported with amendments.

Dr. TONKIN (Bragg): I move:

That this Bill be now read a third time.

On behalf of the Hon. Mr. Hill, who obviously did much work on this Bill, I thank honourable members for the consideration they have given the Bill. I thank my colleagues in this House, and I thank the Government for allowing Government time in which to debate this matter, which is after all a private member's Bill. I believe we have made some sort of history today. I only hope that, when this Bill goes back to another place, it will be left in much the same form as it is in now.

Mr. MILLHOUSE (Mitcham): We may have made history but it is extraordinary that within 3½ hours we could in this House have dealt with such a matter as this. As the Premier admitted during the second reading debate, a few years ago it would have been absolutely unthinkable even to introduce a Bill on this matter, let alone put it through the House of Assembly in the course of one evening. That may be progress to some people: I do not know. Some people say I am progressive, but I do not know whether or not I am. Perhaps I am not being progressive tonight, because I deplore the way in which this Bill has been pushed through.

The Hon. Hugh Hudson: No-one has been stopped from speaking.

Mr. MILLHOUSE: No, but we were told that this Bill would go through tonight and we would stay here until it went through. I suppose we could have debated it, filibustered and so on, but the resolve would no doubt have been carried out. We have been unwise in acting so precipitately. Whether or not the other place will accept the amendments we have made remains to be seen. As I said earlier, I do not really care what happens now, because I do not like the Bill in its present form. We should not have acted so hastily. If another place throws it out and we find we have wasted the evening, I am not so sure that I shall not be quite pleased about it.

Mr. HOPGOOD (Mawson): I support the third reading and congratulate the House on the decision it has made this evening. I also congratulate the member for Mitcham for being able to rise to his feet many times during the debate and yet not once really making his position clear on the issue being debated. It takes considerable ability in rather doubtful directions to be able to put on a performance like that, but that is the position that has arisen as a result of what we have heard from the honourable member this evening. The only salient point I make is that I am glad the House has rejected the move to refer this matter to a Select Committee.

The DEPUTY SPEAKER: Order! The honourable member can make his remarks only on the Bill as it came from the Committee.

Mr. HOPGOOD: Thank you, Mr. Deputy Speaker. I do not believe we have acted overhastily in the decision we have made. I refer to remarks made by previous speakers, in which they have stressed that we have known for a long time that this matter would be

referred to us because it took a considerable time to get through the procedures of another place. There is no excuse for any member of this House not having taken the opportunity to inform himself as completely as possible on the .issues surrounding this matter. I wonder exactly what benefit was derived from the Select Committee that looked into the amendments to the Criminal Law Consolidation Act Amendment Bill introduced by the member for Mitcham in his capacity as Attorney-General.

The DEPUTY SPEAKER: Order! Again I draw the attention of the honourable member for Mawson to the fact that we are discussing the third reading of this Bill. He should confine his remarks to that.

Mr. HOPGOOD: Thank you, Mr. Deputy Speaker. I was referring to the debate on the abortion legislation that occurred at that time, but I will not proceed with that further. I believe we are making the right decision and are not being over-hasty in doing so.

The House divided on the third reading:

Ayes (26)—Messrs. Becker, Broomhill, Brown, Burdon, Carnie, Clark, Crimes, Curren, Dunstan, Evans, Groth, Harrison, Hopgood, Hudson, Jennings, Keneally, King, Langley, McRae, Payne, Ryan, Simmons, Slater, Tonkin (teller), Wells, and Wright.

Noes (9)—Messrs. Allen, Coumbe, Eastick (teller), Goldsworthy, Gunn, McAnaney, Millhouse, Rodda, and Venning.

Pairs—Ayes—Mrs. Byrne, Messrs. Corcoran, McKee, and Virgo. Noes—Messrs. Brookman and Ferguson, Mrs. Steele, and Mr. Wardle.

Majority of 17 for the Ayes.

Third reading thus carried.

Bill passed.

REAL PROPERTY ACT AMENDMENT BILL

The Hon. L. J. KING (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Real Property Act, 1886-1969. Read a first time.

The Hon. L. J. KING: I move:

That this Bill be now read a second time.

This short Bill arises mainly from a submission to the Government of the then Commissioner of Statute Revision. Honourable members will be aware of the existence of the Fees Regulation Act, 1927. This Act gave wide powers to vary fees provided for in any Act and, incidentally, gave powers for fees to be fixed where no fee was provided for the doing of any matter or thing under an Act. Since 1927 a large number of regulations have been made under the Fees Regulation Act, and as a result a large number of fees payable under other Acts have been varied. While this has been administratively convenient, there is no question that the multiplicity of regulations under the Fees Regulation Act has resulted in confusion to the legal profession and the public generally. It has always been necessary to ensure when examining an Act that the fees set out therein have not been subsequently varied by a regulation under the Fees Regulation Act. This Act then does little more than ensure that in future all fees under the Real Property Act will be fixed or varied by regulations made under that Act. At the same time, opportunity has been taken to effect certain changes to English units of measurements consequent on the decision of the Government to adopt the metric system of measurement.

Clauses 1 and 2 are formal. Clause 3 makes a necessary consequential amendment. Clause 4 repeals and re-enacts the provision in the principal Act which provides for the fixing of fees "in respect of the several matters provided for" in the principal Act. Clause 5 amends section 65 of the principal Act which provides for the fixing of a search fee. For some time now searches in the registry have been without charge and this is made clear by the proposed amendment. Clauses 6 and 7 provide for a number of conversions to the metric system of measurement which are generally self explanatory.

Clause 8 repeals sections 271 and 272 of the principal Act. These two sections principally dealt with the licensing of land brokers, a matter that is now proposed to be dealt with under the Land and Business Agents Bill that is at present before this House. However, included in section 271 was a power for the Registrar-General to prescribe the charges recoverable by both land brokers and solicitors for transacting business under the Act. It is proposed that in future these charges will be fixed by regulation. Clause 9 enacts a new section 277 of the principal Act and provides for a formal regulation-making power to fix fees in respect of matters mentioned in the principal Act and also to fix charges referred to in connection with clause 8. I would draw honourable members' attention to proposed new subclause (2), which will enable existing regulations made under the Fees Regulation Act to be amended or revoked by regulations under this Act. Clause 10 repeals the first schedule to

the principal Act. Clause 11 makes a minor metric amendment to the sixth schedule to the principal Act and clause 12 repeals the twentieth schedule to the principal Act. Both clauses 10 and 12 are, in effect, consequential on the decision to fix the fees by regulation.

Mr. MILLHOUSE secured the adjournment of the debate.

CONSTITUTION ACT AMENDMENT BILL (FRANCHISE)

The Hon. L. J. KING (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Constitution Act, 1934, as amended. Read a first time.

The Hon. L. J. KING: I move:

That this Bill be now read a second time.

The Bill, which is the same in form as a measure introduced into this House last year which failed to become law, is designed to widen the field of Legislative Council electors from the narrow confines of land and leasehold owners and their spouses to the broad field of House of Assembly electors. Since its inception, the Constitution Act has provided that, notwithstanding the vastly wider provisions of that Act embracing House of Assembly electors, no person shall be entitled to vote at a Legislative Council election unless he or she owns or leases land in this State or is the tenant of a dwellinghouse in this State. Apart from the addition, in 1943, of servicemen actively engaged in war, and the addition, in 1969, of electors' spouses, the field of Legislative Council electors has not been altered. It is still the opinion of this Government that property qualifications are artificial and outmoded as conditions attaching to any franchise, and that it is desirable to amend the Constitution Act so as to entitle all House of Assembly electors to vote at a Legislative Council election.

As was said at the time the earlier measure was introduced, I believe that, in this day and age, it is scarcely necessary to address to this Chamber argument in favour of the proposition that all of the adult residents of this State should have an equal say in the Government of the State and in the election of their Parliamentary representatives. This restricted franchise for the Legislative Council had its origin in a society in which there was a notion that ownership and occupancy of property gave to the owner and, in some limited instances, to the occupier a special stake in the country, so that those persons, it was said, had the right to exercise political control over policies of Government. As the years have passed, the emphasis has shifted from property to persons. The tone and outlook of society have gradually altered and become more democratic.

That being the case, at this point in history, it is quite remarkable that we still have a franchise for one of the Houses of Parliament of this State that is restricted to persons who qualify in one way or another in relation to property (that is, whether they be owners or occupiers of property, or the spouses of the owners or occupiers of property) and to those who qualify as servicemen and ex-servicemen. Therefore, it is again submitted that the only proper franchise and the only proper method of electing members of Parliament is the vote of all the people of the State expressed in a way that gives to them an equal say in the makeup of the Parliament that makes the laws for them. For this reason, I look forward, when the vote is taken on the Bill, to a degree of unanimity in this House, for I find it difficult to believe that any member of this House, who professes faith in democracy, which is at the very basis of the society in which we live, could possibly support the continuance of a restricted and privileged franchise that has the effect of giving one section of citizens of the State political privileges that the rest do not enjoy.

Clause 1 of the Bill is formal. Clause 2 fixes the commencement of the Act on a day to be fixed by proclamation. Clause 3 repeals section 20 of the principal Act, which deals with the qualifications of Legislative Council electors. New section 20 enacted by this clause provides that a person who is entitled to vote at a House of Assembly election shall be qualified to have his name placed on the Legislative Council electoral roll and shall be entitled to vote at a Legislative Council election. Clause 4 repeals sections 20a, 21 and 22 of the principal Act. Section 20a includes servicemen on active service as Legislative Council electors. Sections 21 and 22 set out various disqualifications for Council voting. These three sections are redundant, as they appear in almost identical form in sections 33 and 33a relating to House of Assembly elections.

Dr. EASTICK secured the adjournment of the debate.

ADJOURNMENT

At 11.23 p.m. the House adjourned until Thursday, October 19, at 2 p.m.