SOUTH AUSTRALIA

PARLIAMENTARY DEBATES
(HANSARD)

Second Session of the Forty-Second Parliament
(1976)

Parliament, which adjourned on February 19, 1976, was prorogued by proclamation dated March 11. By proclamation dated May 13, it was summoned to meet on Tuesday, June 8, and the Second Session began on that date.

LEGISLATIVE COUNCIL

Tuesday, June 8, 1976

The PRESIDENT (Hon. F. J. Potter) took the Chair at noon.

OPENING OF PARLIAMENT

The Clerk (Mr. I. J. Ball) read the proclamation by His Excellency the Governor's Deputy (Mr. W. R. Crocker) summoning Parliament.

GOVERNOR'S SPEECH

His Excellency the Governor, having been announced by Black Rod, was received by the President at the Bar of the Council Chamber and by him conducted to the Chair. The Speaker and members of the House of Assembly having entered the Chamber in obedience to his summons, His Excellency read his Opening Speech as follows:

Honourable members of the Legislative Council and members of the House of Assembly:

1. I have called you together for the dispatch of business.

2. Since you were last called together the State has suffered a sad loss as a consequence of the deaths of three former members of the House of Assembly. I refer to the passing of James Rankin Ferguson, who between 1963 and 1973 represented the electorate of Yorke Peninsula and later that of Goyder, to the passing of Horace Cox Hogben, one of the members for Sturt from 1933 to 1938 and afterwards Deputy Chairman of the South Australian Housing Trust for some 26 years, and to the passing of William MacGillivray, the Independent member for Chaffey from 1938 to 1956. I feel sure that you will join me in recording our appreciation of the services rendered by these gentlemen to the State and in expressing our sympathy to their families.

3. There has been an exceptionally dry autumn and early winter season. Stock in the pastoral zones are generally in excellent condition but in those areas where rainfall is usually assured there is a serious shortage of fodder. The aggregate number of stock in the State is about 40 per cent higher than at the beginning of the 1967 drought but the overall feed situation is about the same as it was in that year. Good soaking rains are needed urgently but even if the State received them there would not be an improvement in feed supplies for some six to eight weeks. The prospects for a good cereal harvest will depend mainly on the amount and distribution of late winter and spring rains. Horticultural crops are generally thriving with the grape harvest expected to be an exceptional one.

4. My Government has taken steps to increase the involvement of the Department of Agriculture and Fisheries in the field of management of the State's fisheries resources, by a reorganisation of the services provided by the department and by the provision of more staff for both the research and regulatory functions, and also by the provision of greater research facilities. During the next year it is proposed that further additions of staff will be made to improve the department's capacity to carry out my Government's policy in relation to fisheries management. In aid of this, a measure dealing with fisheries will be laid before you in the forthcoming session. A comprehensive programme of research, development and extension to improve the quality of grape-vine stock is planned for the South Australian viticultural industry. There are more than 31 000 hectares of vineyards in South Australia—over one-half of Australia's wine grapes. More than one-half of these vineyards are over 40 years old, are becoming uneconomic and will need to be replaced. Rapid advances in technology make it possible for the vines to be replaced

with superior, uniform and more productive material which has the potential of greatly improved economic yield and quality.

5. A Bill to amend the Community Welfare Act will be laid before you to give effect to recommendations of the Community Welfare Advisory Committee. These recommendations, in a large part, deal with serious maltreatment of children. It is proposed that the operation of hostels in which young people reside will be examined to ensure that satisfactory standards are developed and maintained in these establishments. In addition, legislation will be laid before you dealing with the licensing and supervision of commercial baby-sitting agencies.

6. A Bill to amend the Industrial Conciliation and Arbitration Act will be placed before you. It will give effect to the undertaking contained in the policy speech of my Government, before it was returned at the last election, that civil action for damages should not be taken in industrial disputes, but that disputes of this nature should be resolved in the tribunals specifically provided for the purpose. The Bill will also propose the removal of the present limitation on the power of the Industrial Commission to provide in its awards for absolute preference to members of trade unions. In order to reduce the number of wage fixing tribunals, it is proposed that the Public Service Arbitration Act be repealed and that jurisdiction to make awards in respect of public servants be vested in the Industrial Commission in the same way as for any other workers. Amendments to the Industrial Safety, Health and Welfare Act arising as a result of experience in its operation will be introduced.

7. My Government is still firm in its view that the development of the new city of Monarto should go forward. The Monarto Development Commission is proceeding with its planning and design activities to ensure that a start can be made on development works as soon as funds are available. Under the provisions of legislation enacted in an earlier session of this Parliament, my Government proposes to use the resources of the commission to assist in the planning of areas within the outer metropolitan areas of Adelaide. The commission is currently engaged on a study for the redevelopment of the Port Adelaide central business area for the State Planning Authority.

8. A committee has been appointed to investigate alternative means of dealing with land acquisition and rating disputes. The subdivision and hence removal from production of some of the best agricultural land in the State for hobby farms and rural living areas is causing my Government considerable concern, not only because of possible losses in production but also because of the possibility of environmental damage. This trend is viewed with alarm by all concerned with rural economics, and my Government is considering ways in which the undesirable aspects of this form of development may be dealt with.

9. My Government's aim of extending the scope of secondary education is being realised. As part of its policy two special music schools were successfully established at Brighton and Marryatville High Schools in 1976 and additional special interest centres are planned for 1977, including one school for languages. Over the past few years my Government has given increasing attention to the place of the performing arts in its education policy. A world authority in theatre-in-education was brought to Adelaide by the Education Department to work with 20 of our local drama teachers. At the present time, many children see at least three professional performances a year in school and at theatres and also take part in workshop activities. A proposal for community school libraries will be put into effect in the forthcoming financial year. This will give small rural communities some library services that they would otherwise lack.

10. With an increased emphasis on an open-door policy most colleges and centres of further education are providing services to wide sections of their local communities. It is proposed to extend the use of radio for the provision of further education courses supported by written educational material made available to those undertaking courses. It is expected that talk-back facilities will enable a more direct link to be established between teacher and student. This will be of significant value for the student in isolated areas. My Government is aware of the importance of the education of Aboriginal adults throughout the State. In co-operation with the Point Pearce Council, the Department of Further Education is undertaking a project to develop Wardang Island as a self-supporting tourist venture to be placed under Aboriginal control. At Whyalla Technical College major additions are planned for commencement this year and will include a new library resource centre and classroom wing, an auditorium for drama and music, together with an art-craft, hairdressing and home science wing.

11. A Bill to encompass a new approach towards the problems of mental health will be laid before you in the forthcoming session. My Government will, through its Department of Public Health, continue to decentralise its activities by the location of staff in major country centres. In this regard, particular emphasis will be given to the school health services. In conjunction with officers of the Commonwealth and the State Governments of New South Wales and Victoria, my Government is engaged in a comprehensive plan for the control of mosquitoes in the Upper Murray area aimed at the prevention of an outbreak of Australian arbo-encephalitis.

12. Work has just been completed on the construction of a 79-kilometre lateral pipeline from the main Moomba to Adelaide pipeline to Port Pirie. This line will enable the South Australian Gas Company to supply natural gas for domestic and industrial purposes to the people of Port Pirie.

13. At Leigh Creek the Electricity Trust of South Australia is continuing with the development of the coal field to ensure adequate fuel supplies to generate the State's electricity needs. The re-opening of the Telford Basin is now in progress, and new coal crushing and rail loading facilities and workshops costing $8 000 000 are nearing completion. On the West Coast, preliminary work is under way for the extension of the trust's transmission system to Streaky Bay and Ceduna at an overall cost of $3 000 000.

14. Up to the end of April of this year 3 737·48 hectares of land required for present or future urban use in metropolitan Adelaide and several country areas has been purchased or acquired by the South Australian Land Commission with financial assistance provided by the Commonwealth Government. In addition, a further 471·48 hectares of land designated, by the State Planning Authority in the Metropolitan Development Plan, as required for regional open space, has also been purchased or acquired on behalf of the authority.

15. The value of minerals produced in South Australia for the calendar year 1975 was approximately $130 000 000, almost the same as in the previous year. The production of iron ore and salt decreased and the output of copper and zinc increased. Mineral search has continued on about

the same scale as in the previous year and almost $4 000 000 was expended, principally in exploration for copper, uranium and coal in 1975. At the present time 35 companies are engaged in this activity under some 68 exploration licences which cover approximately 65 000 square kilometres throughout the State.

16. Planning studies are under way leading to a review of the Metropolitan Development Plan. Towards the end of 1975, members of the public were asked to express their views on broad issues affecting Adelaide's future development, and a considerable number of thoughtful and concerned submissions were received. Studies of the northern, north-eastern and southern growth areas are now in hand. These studies are being carried out by teams drawn from the State Planning Office, the South Australian Housing Trust, the South Australian Land Commission and the Monarto Development Commission and are being co-ordinated by the Urban Development Co-ordinating Committee chaired by the Minister for Planning. Consideration is being given to the planning proposals for the city of Adelaide, initiated by the City Council. Legislation to ensure effective control of development in the City will be laid before you during the session. The State Planning Authority is continuing its land acquisition programme for further open spaces in the metropolitan area and also in some country areas. A Bill to achieve a more effective and co-ordinated control of outdoor advertising is proposed. A complete review of the Planning and Development Act is now under way and it is likely that legislative proposals arising from this review will be laid before you in the forthcoming session. A measure providing for the establishment of recreational trails will be laid before you.

17. During the year, the South Australian Housing Trust expects to continue its role of providing a wide variety of accommodation throughout the metropolitan area and the State. In addition, it will continue to act as one of the instruments of industrial development policy for my Government, both in providing houses where a labour supply is necessary, as, for example, at Port Augusta, should a new power station be constructed there, and also in building factories in growth areas such as Lonsdale.

18. My Government is continuing to give effect to its intention to maintain and improve the public transport system within the State, in order to provide an alternative to the use of the private car, and achieve a better balance between public and private means of transport. In the short term these activities are concentrated on the development and improvement of the services offered by the existing bus and rail systems. At the present time a review is being conducted of the longer-term transport needs of the north-eastern segment of the Adelaide metropolitan area. This review will, for the first time, seek major public participation in the transport planning process not only from the potential users of any transport system eventually proposed but also from those who may be affected by its construction and operation. The proposed Highways Department works programme for the forthcoming financial year has been prepared on the assumption that the sum of $92 000 000 will be available for its fulfilment. The full length of the Eyre Highway in South Australia will be sealed and opened to traffic in September of this year. A major task facing my Government in the rural area will be the restoration of roads damaged by floods, particularly in the Far North of the State. In the Mid North, the Highways Department plans to build a new bridge to replace the structure damaged by floods near Wirrabara. Design work is in hand and construction is expected to commence early next year. The new bridge, estimated to cost $250 000, is to be positioned in a manner that provides for the future realignment of the road.

19. A Bill to provide for the rehabilitation of the area in the parklands at present occupied by the West Terrace Cemetery will be laid before you in the forthcoming session.

20. The Woods and Forests Department advise that the advanced condition and the excellent quality of the radiata pine stands in this State should enable a large volume of high quality structural timber to be produced and this fact should materially assist in containing the cost of house building in this State. Significant progress is being made towards overcoming the problem of a slightly lower growth rate in the second rotation of pines on our South-East soils. Availability of land will limit the acquisition of new areas in the next decade. A modern log mill is being planned to replace the mill built at Mount Gambier in 1956-58. The old mill has performed extremely well but its capacity does not measure up to modern standards, and much of its vital equipment has reached the end of its economic life.

21. A Bill to amend the Public Service Act to provide for the grant of maternity and paternity leave and for other matters will be laid before you in the forthcoming session.

22. Work has commenced on the provision of sewerage to Port Augusta West to provide for new South Australian Housing Trust development and the existing township. This will be followed by sewerage works in Port Augusta East. The first stage of the Blackwood-Belair sewerage scheme has been completed, and work has commenced on the first phase of approved extensions to sewer Hawthorndene and Monalta. The first stage of the Port Pirie scheme has been completed and the provision of sewers to the remainder of the town has been commenced and will continue in 1976-77. A new source of water for Port Lincoln in the Uley South Basin has been developed and this scheme is nearing completion. Work is continuing with the sewering of the few remaining small pockets of land in the metropolitan area and extensions will be made to serve existing and new houses. The major water supply scheme under construction in the metropolitan area is the Little Para Dam and ancillary works, to ensure adequate supplies of water to the Elizabeth-Salisbury area in periods of peak demand. This scheme involves the construction of a rockfill dam to form a reservoir with a capacity of approximately 18 000 Megalitres, a branch main from the Mannum-Adelaide main, outlet works from the dam to the Barossa trunk mains and improvements to the distribution system in the northern suburbs. These improvements are designed to meet an estimated doubling of demand in these areas over the next 25 years. Steps are being taken to augment the water supplies to Mount Barker and Littlehampton with new pumping stations, pumps and distribution mains within the townships.

23. A measure covering many aspects of noise pollution will be laid before you in the forthcoming session together with a Bill providing for environmental impact statements and a measure dealing with the cultural heritage of the State.

Members of the House of Assembly:

24. A Supply Bill covering the early part of the financial year 1976-77 will be laid before you together with Supplementary Estimates covering the concluding portion of the present financial year. In due course the Estimates of Expenditure will also be laid before you in the usual way.

Honourable members of the Legislative Council and members of the House of Assembly:

25. In addition to the measures already referred to, my Government intends to lay before you a number of Bills in total constituting a substantial legislative programme. Amongst them will be measures relating to the Adelaide Festival Centre Trust, the Land Commission, the Art Gallery Board, marine matters, the transfer of the Port Lincoln abattoirs complex to the South Australian Meat Corporation, racing, police offences, country fire services, the poultry meat industry, the Rundle Street mall, control of advertisements, mining, national parks and wildlife, builders licensing, consumer credit, prohibition of discrimination, abolition of capital punishment, criminal law reform, firearms, second-hand motor vehicles, Church of England property, education and the University of Adelaide.

26. The management of the fiscal affairs of this State in the forthcoming financial year will to a considerable extent be conditioned by the development of the Commonwealth Government's financial policies in relation to the States generally. In this area my adviser's fiscal policy in the immediate past may, at least in the short term, place us in a better position than some of the other States.

27. In the ordinary course of events, this will be the last occasion when it will fall to me to call you together for the dispatch of business and I discharge my duty today in the sure confidence that the future Parliaments of this State will, with the example of those of the past, continue to serve its people well and faithfully.

28. I now declare this session open and trust that your deliberations will be guided by Divine Providence to the advancement of the welfare of this State.

The Governor retired from the Chamber, and the Speaker and members of the House of Assembly withdrew.

The President again took the Chair and read prayers.

DEATH OF SIR MELLIS NAPIER

The Hon. D. H. L. BANFIELD (Chief Secretary): I move:

That the Legislative Council express its deep regret at the recent lamented death of the Hon. Sir John Mellis Napier, K.C.M.G., Kt.St.J., Q.C., LL.D., and place on record its appreciation of his monumental public services and that, as a mark of respect to his memory, the sitting of the Council be suspended until the ringing of the bells.

The late Sir Mellis had a unique record of public service. He was Lieutenant-Governor of the State for 31 years, during which time he officiated on 169 occasions covering a total period of 9 years and 140 days, which was a record for this State and probably for the Commonwealth. In that time he opened 11 sessions of this Parliament, a record for any titular head of Government. He obtained his degree of LL.B. at the University of Adelaide in 1902, was admitted to the bar of the Supreme Court of South Australia in 1903, was made a K.C. in 1922, a judge in 1924, and Chief Justice in 1942. He was a judge of the Supreme Court for 43 years, Chief Justice for 25 years, and Chancellor of the University of Adelaide from 1946 to 1961. Sir Mellis was Chairman of the Federal Banking Royal Commission in 1936-37.

Throughout his long and distinguished public service, Sir Mellis was revered in the community as a just and learned judge, a wise counsellor, an experienced and able administrator, and a gentleman of noble and generous nature. We extend our sympathy to Sir Mellis's two surviving sons and their families.

The Hon. R. C. DeGARIS (Leader of the Opposition): As the Chief Secretary has said, the late Sir Mellis Napier had an unsurpassed record of service to the State of South Australia. As Lieutenant-Governor, he acted in the office of Governor for a period of almost 10 years, which, on my research, is a record for the Commonwealth. As the Chief Secretary also said, during his long career Sir Mellis was a judge of the Supreme Court for 43 years and Chief Justice for 25 years.

My most personal contact with Sir Mellis was as a Minister during the period from 1968 to 1970. When Sir Mellis acted as Governor and presided over Executive Council, the half an hour or so following the formalities of Executive Council meetings was an experience not to be forgotten by any person interested in the history and development of South Australia. I think my memory is correct on this point: that Sir Mellis began his legal career in the offices of George Kingston, who was a member of the House of Assembly, in, I think, 1856. Nevertheless, George Kingston was associated with the early development of this State, and Sir Mellis Napier had a direct personal link with George Kingston.

The compounding of our history into two lifetimes, with a direct link through Sir Mellis, placed him in a unique position in this State. I deem it a privilege to have known Sir Mellis Napier, and I, with members of the Party that I lead, join with the Chief Secretary in extending our sympathy to his family.

The PRESIDENT: Before putting the motion to the Council, I should like to add my tribute to the memory of a very great man. A recitation of his public service alone, which we have heard this afternoon, is, I think, rather inadequate to do full justice to the late Sir Mellis Napier. But it was in the various spheres of his public life that we all knew him. In my case, I was presented to him, as Chancellor of the University, to receive my Bachelor of Arts degree. I appeared before Sir Mellis on many occasions in the Supreme Court when he was Chief Justice, and I have, of course, been present in this Chamber on several occasions when he has opened sessions of the Parliament.

As a scholar, Sir Mellis Napier made a distinguished contribution to the laws of this State. As a judge, he had a rare grasp of complex problems and a gift of exposition and resolution of those problems. As Lieutenant-Governor, he had a distinct presence and dignity that enhanced any gathering. He was a kindly and Godfearing man with a sympathy for and understanding of changes in social attitudes, and these were many during his time in office.

We mourn the passing of Sir Mellis Napier. We honour his name and work over a long and active life, and extend to the members of his family our sympathy in the sad loss of a beloved man.

Motion carried by honourable members standing in their places in silence.

[*Sitting suspended from* 12.49 *to* 2.30 *p.m.*]

STANDING ORDERS

The PRESIDENT: I direct the attention of honourable members to the reprinted copy of the revised Standing Orders, and inform them that the "give way" rule, which was introduced on trial last session, will be reviewed by the Standing Orders Committee tomorrow. Until that matter has been reported upon and dealt with by this Council, Standing Order No. 182 will operate to prevent members' speaking being interrupted, except as provided for by that Standing Order. I would like

to add that the Chair allowed a considerable amount of latitude last session to enable newly elected members to become familiar with the rules of the Council. However, I expect to see a great improvement this session, particularly in respect to such matters as addressing the Chair during debate, the use of Parliamentary language on all occasions, avoidance of reflections on the Houses of Parliament of South Australia and of the Commonwealth or the members thereof, and the observance of the authority of the Chair, particularly in reference to repeated interjections.

OFF-SHORE WATERS (APPLICATION OF LAWS) BILL, 1976

The Hon. D. H. L. BANFIELD (Minister of Health) obtained leave and introduced a Bill for an Act to apply the civil and criminal law of the State to certain off-shore waters in the vicinity of the State, and for other purposes. Read a first time.

The Hon. D. H. L. BANFIELD: I move:

That this Bill be now read a second time.

This measure is proposed against the background of the recent judgment of the High Court in *The State of New South Wales and others v. The Commonwealth,* 50 A.L.J.R. 218, which upheld the validity of the Commonwealth Seas and Submerged Lands Act, 1973. Briefly, this Act asserted a claim by the Commonwealth to "sovereignty" over the territorial seas of Australia; that is, the waters within three nautical miles of the coast. Up to the time of the enactment of this measure, it was thought by many, including the legal advisers to the States, to be settled law, that each State had jurisdiction over the territorial sea adjacent to its coast. However, it is clear that there is at present a legal vacuum in the open seas adjacent to this State with respect to large areas of both the criminal law and the civil law.

In the case of certain serious crimes it may be possible to proceed under old imperial Acts that give jurisdiction to colonial courts to try serious crimes against United Kingdom laws committed on British ships. However, this is a complicated and anachronistic procedure, and at any rate it covers only a part of the criminal law. There is not even this limited provision with respect to the civil law.

It is highly desirable, then, that the gap disclosed by the Seas and Submerged Lands Act judgment be filled. The High Court recently affirmed the power of the States to apply their laws generally in offshore waters (though this course may not be available in the case of certain topics), so it is neither necessary nor desirable to leave the matter solely to the Commonwealth Parliament. Besides, the problem needs to be dealt with speedily. The Government has therefore accepted the recommendation of its legal advisers that a measure of the nature proposed be enacted into law as soon as possible.

Their advice is based on two grounds: (*a*) first, it will, in one area, as nearly as possible restore the situation in relation to the "territorial" waters of the State so as to accord with the situation that was thought to have existed since Federation; this without more is a compelling ground since it will re-establish the element of certainty in the law that is so essential for those whose activities are affected by it; (*b*) secondly, it provides a legislative solution that is entirely encompassed by the philosophy of "co-operative federalism" as enunciated by the present Government of the Commonwealth.

In passing, at least two other States (Western Australia and Tasmania) have enacted or have in contemplation legislation broadly along the lines of this measure. The measure is a short one but not without complexity, since it has been drawn against a background of some uncertainty in the developing law of offshore sovereignty and at a time when the constitutional constraints on the exercise of extra-territorial powers by the States are not yet entirely settled.

Clause 1 is formal. Clause 2 sets out the definitions used in the measure and two of these definitions are of particular importance: (*a*) the definition of "law of the State", which expressly includes both "civil and criminal" law; in the measures enacted or in contemplation by the other States only the criminal law was dealt with; although civil actions arising in offshore waters would be rather less common than proceedings for offences, the Government's advisers consider that as far as possible civil actions should be covered to accord with the aim to restore the situation as it was presumed to exist; (*b*) the definition of "offshore waters" which is set out in the schedule to the Bill. For the purposes of the definition the waters are separated into three bands of three nautical miles, nine nautical miles and 88 nautical miles respectively. The first of these bands comprises the former territorial waters of the State, the second when added to the first will encompass the proposed extension by international convention of the territorial sea to a total of 12 nautical miles offshore, and the third when added to the first and second will extend the scope of the measure to 100 nautical miles offshore. The reason for this "step by step" assertion of application is simply to ensure that should the State's powers in this area prove deficient in some particular the assertion will prove "severable" in the constitutional sense.

Clause 3 is an over-riding clause and applies every appropriate law of the State to offshore waters. If the validity of this clause as a proper exercise of the extra-territorial legislative power of the State is upheld, there will be no need to have recourse to clause 4. In constitutional terms, the "nexus" which grounds the exercise of this power is the propinquity of the offshore waters to this State.

Clause 4, which is to be called in aid only in the case of the total or partial invalidity of clause 3, is grounded on a different "nexus"; in this case the "nexus" is the asserted power to control and protect persons connected with the State (as to which see the appropriate definition in clause 2). Clause 5 is an averment provision in the usual form, and clause 6 provides for an appropriate extension of jurisdiction of the courts.

The Hon. R. C. DeGARIS (Leader of the Opposition): In introducing this Bill, the Government has asked for this Council's co-operation in ensuring the Bill's passage as quickly as possible. The second reading explanation refers to a recent High Court judgment which upheld the validity of the Commonwealth Seas and Submerged Lands Act, 1973. At present there is a legal vacuum in respect of the waters, sea-bed and subsoil adjacent to the State of South Australia. Of course, the Government is aware that in such circumstances, where an urgent matter is to be considered, this Council's co-operation is always available to any Government. At times, I wish that the Government's co-operation with the Council was as freely given as honourable members' co-operation is given to any Government. This Bill and the Commonwealth Seas and Submerged Lands Act, 1973, will only be the beginning of a continuing serial of legislation on this contentious topic over the next 10, 20 or even 50 years.

The serial will not only be of a legislative nature: there will also be continuing litigation in the High Court between,

I believe, the States and the Commonwealth, as well as between individuals, the States and the Commonwealth. The legal position is clouded enough already in the area of international law. It is clouded enough so far as national States are concerned, but when we add to that pudding the problems of Imperial law, including the knotty problems of a federation, honourable members will be able to gauge the immensity of the legal problems ahead of us.

Perhaps the approach for which I fought for many years is too simple; perhaps I do not understand the implications of the tangled tapestry of international, Imperial, State and Commonwealth law, but it always appeared to me to be desirable that the Commonwealth and the States should reach agreement on all matters concerning territorial waters (Australian waters, the sea-bed, the subsoil of the sea-bed and the air space above the continental shelf), and should together provide mirror legislation, which I believe would significantly lessen the litigation that will inevitably ensue in the coming years.

It is fair to say that I opened the batting for South Australia on this matter, following the announcement of the former Gorton Government that it intended to legislate in respect of the seas and submerged lands. Although I will not detail those negotiations to the Council, so far as I know the present State Government has adopted a policy similar to that which was propounded by the State Liberal Government in 1969 and 1970.

That policy is simply that the legal complications will be difficult enough without the added complications of an argument involving a Federal authority versus a State authority, and we shall be seeking solutions on the basis of mirror legislation, rather than confrontation and litigation.

The Hon. C. J. Sumner: What about Mr. Fraser's attitude on Medibank?

The Hon. R. C. DeGARIS: The one real answer to this question may be in the approach of the Fraser Government, because the approach of both the Gorton and Whitlam Administrations represented an assault upon Commonwealth-State relations.

Members interjecting:

The Hon. N. K. Foster: It started under Gorton.

The PRESIDENT: Order!

The Hon. R. C. DeGARIS: If the Hon. Mr. Foster would listen we might not have so much confrontation. I repeat what I said so far as the Fraser Government is concerned; there is a chance that we may solve some of these problems, but in both the Gorton and the Whitlam Administrations we had an assault upon Commonwealth-State relations.

The Hon. C. J. Sumner: That is absolute nonsense.

The Hon. R. C. DeGARIS: It is not. It is a fact that can be shown, and I intend to show it.

The Hon. C. J. Sumner: What about his attack on the Medibank agreement?

The Hon. R. C. DeGARIS: If the honourable member wanted a debate on Medibank, he knows the Government could have facilitated it, if it wished, last session in this Council. Before the honourable member opens his mouth about Medibank, I suggest he look closely at the Bill. In 1956, Professor D. P. O'Connell drew attention to the question of whether the boundary of the Australian States terminated at the low-water mark or at the three-mile limit. When he drew attention to this point, I think, in the *International Law Year Book*, 1958 (I think that was its title), not much notice was taken of his view until the Canadian Supreme Court, in a judgment in 1967, followed almost exactly the lines propounded by Professor O'Connell.

In Australia in 1969, the High Court gave a decision in *Bonser v. La Macchia* 43 A.L.J.R., 275, noted at 43 A.L.J., 355. Also in 1969, came the Gorton Governments' announcement that the Commonwealth intended legislating for the territorial sea and continental shelf. Following the 1970 election, the Governor-General in his speech made the following statement:

At present, the various State Governments claim sovereign rights in respect of (the resources of the seabed) from low-water mark to the outer limits of the continental shelf. The Commonwealth believes that, except for internal waters as they existed at Federation, it has sovereign rights in this area. It is the view of my Government that it would serve Australia's national and international interests to have the legal position resolved.

By 1970 the Commonwealth had not only taken up Professor O'Connell's theory with enthusiam but, after a decade of procrastination, had gone overboard with it, and this situation has continued until the present time. I emphasise "until the present time", because I believe that, if this question is to be resolved, it is with the approach of the Fraser Government that there may be some hope for improved Commonwealth-State relations.

The Hon. N. K. Foster: You're joking!

The Hon. R. C. DeGARIS: I am not joking. The honourable member will have the chance to speak on this.

The Hon. N. K. Foster: I won't be speaking on it.

The Hon. R. C. DeGARIS: I would not doubt that at all. It is hoped that the Fraser Government will take a more co-operative line than the line taken by either the Gorton or the Whitlam Administrations.

The Hon. C. J. Sumner: What about the line it's taking in respect of Medibank?

The Hon. R. C. DeGARIS: The Seas and Submerged Lands Act is the most direct assault yet made by Commonwealth legislation on the constitutional relationship between the Commonwealth and the States. The Act will cause a head-on collision between the States and the Commonwealth and in a series of actions over the next 50 years, private interests will certainly challenge the legislation's validity. It presents more legal conundrums than it solves.

The Seas and Submerged Lands Act provides that the Crown, in right of the Commonwealth, has sovereignty over the territorial sea and inland waters and the air space and sea-bed and subsoil thereof. I would like honourable members to take notice of those words, including the "inland waters" of this State. An exception is made in the legislation of bays, gulfs, estuaries, rivers, creeks, inlets, ports or harbors which were within the limits of the States in 1900, and remain therein. If one examines that question and sees what the legislation provides and what ramifications exist in respect of litigation before the High Court on those questions alone as to what are inland waters and bays, what base lines are to be used in relation to waters belonging to the States in 1900 and at the present time? What does the word "sovereignty" mean in relation to that Act? In international law the word "sovereignty" means an entirely different thing from what we interpret "sovereignty" to mean in our own situation in Australia. "Sovereignty" in reference to international law includes all sorts of other provisions. One, for example, is the right of innocent passage, and how one can be confused in international law on this one question of what is sovereignty. Does the word "limits", which is used in the legislation in place of boundaries, have that particular meaning? Chief Justice Barwick thinks it does in his analysis of

section 51 (10) of the Constitution. How many cases will there be in the next 20 years determining the base lines regarding bays, gulfs, etc., or reaching a determination as to whether or not a particular bay was State territory in 1900?

I suggest that we should be legislating in this State as soon as possible to define the base lines of our bays and gulfs. This appears to me to be just as important as the matters covered in this Bill. The Commonwealth claim to sovereignty over inland waters is, to me, not surprising, given the known philosophies of recent Federal Governments. Such a claim to sovereignty runs counter to the solutions found in the United States and Canada, both federations like Australia, where it has been accepted that waters inside the base line of the territorial sea belong to the States, even if the territorial sea does not.

The Act also exempts from its operation wharves, piers, breakwaters, etc. In whom will these rest should they be in Commonwealth territory? The answer to that question is anybody's guess at the present time. If the States legislate in respect of them or existing legislation becomes extra-territorial, then the question must be raised of the extra-territorial competence of the States so to legislate. At this point, one should also examine section 122 of the Commonwealth Constitution, and the question arises whether the declaration of sovereignty over the territorial sea makes it Commonwealth territory. This is dealt with by Chief Justice Barwick in the *Bonser v. La Macchia* case, where he dismisses the question of section 122 of the Commonwealth Constitution having any relevance in this matter, but other learned judges thought differently on this point.

The Commonwealth Act creates machinery for drawing base lines from which the territorial sea is to be measured. Waters inside these base lines are State waters only if they were such in the year 1900. I repeat that this State should be expressing its view in legislation on where this base line should be. For example, we have the present confrontation in the gulf in what is known as the prawn war. In the Letters Patent, we know that the gulfs and bays of South Australia belong to this State; they are the territory of this State but where are the base lines—where do they exist? Does the base line of the gulfs run from the Fleurieu Peninsula to Corny Point to Port Lincoln or from the south coast of Kangaroo Island across to Port Lincoln? Nobody knows; that question has not been determined, yet I believe it is important that we should legislate to say exactly what are our enclosed waters, the waters that belong as the territory of this State.

On the other hand, if the States repealed all their maritime legislation (and it was threatened at one conference that I attended that the States would repeal all their maritime legislation), then the question would arise of the Commonwealth's constitutional competence to legislate in that field. The Act also declares that the Crown, again in right of the Commonwealth, has sovereign rights over the continental shelf. No definition is made of what the continental shelf is in the legislation, although Commonwealth thinking on this matter has already earned international criticism as the most extreme interpretation yet made of the 1958 Geneva Convention, to which Australia is a signatory, in relation to the matter of continental shelves and sovereignty over territorial seas.

Going back to the 1958 article of O'Connell, he suggests that the problem could ultimately be resolved by reference to which theory of federalism came to prevail. If one examines this question, one finds this is true, and that is precisely why the Commonwealth legislation will usher in a period of constitutional struggle, the end result of which at this stage cannot be predicted. I defy any honourable member here to predict the end result of the road upon which we have been launched and, if any sense or sanity is to come into this position, there is only one way in which it can occur—by a clear and absolute statement being made by the Fraser Government of its intentions in regard to this matter because, if we proceed by the States and the Commonwealth declaring their aims and their sovereignty by legislation in this field, then we have 50 years of litigation before us, and not only between the States and the Commonwealth: nobody who uses these waters will know what the law is, and there will be loaded on to people's shoulders the tremendous expense of taking action in the High Court to establish what they think is their right.

I would say that no-one could give any guarantee what the answer will be in 20 years or 30 years time if this road we are on is allowed to be the only road we can take. We are embarked on a course that saddens me, when I believe that, with co-operation between the States on this matter, the States and the Commonwealth could determine this matter by mirror legislation as was done in relation to the offshore areas in regard to oil search, exploration, and exploitation. When that legislation was passed, right around the world there was applause that in Australia there had been the first real example of co-operative federalism that the world had seen.

In relation to all other matters, we are now to go along the same line that other federations have taken, and let me remind honourable members that over the last 25 years there has been Supreme Court action after Supreme Court action on the American scene, and still the question has not been resolved: and this is an unnecessary way to attack this problem. As I said earlier in my speech, the end to which I began working in 1969 may have been too simple—that is, for the Commonwealth and the States to sink their differences and come together to decide exactly what would go on in regard to fisheries, mineral exploitation of the sea-bed, shipping, etc., and legislate in this mirror image so that it does not then matter about determining the question of sovereignty: whatever happens, one piece of legislation underpins the other. The question of sovereignty becomes secondary to the whole argument. That solution may have been too simple, with all the implications and complications of international law, Imperial law, State law, and laws of the Federation. Nevertheless, I believe that it was a practical answer, and no-one yet has shown that the offshore oil legislation that is dealt with in that way has been anything but an absolute success on the Australian federal scene.

Referring to O'Connell again, I point out that he observes in a recent report that there is a probable danger that the litigious issues will now crystallise quickly and that a premature decision may be given in which all the ramifications of the question are not examined fully. There is the possibility, as I have said, that the present Federal Government, intent on declaring a new concept of federalism (or, perhaps, I should say intent on re-establishing a viable and realistic federalism), may act in such a way that some degree of sense may yet prevail on this issue. At this stage, I intend to examine, to the best of my ability, the background leading up to the Bill that is at present before the Council. I have already canvassed some matters.

The Hon. N. K. Foster: You're sending the President to sleep. You've got the President nodding, and I do not think that can be done in our shanty.

The Hon. R. C. DeGARIS: I look forward to the day when I have the Hon. Mr. Foster nodding.

The Hon. N. K. Foster: We have to interject to keep people on their toes.

The PRESIDENT: I am pleased to hear the honourable member at any time.

The Hon. R. C. DeGARIS: The changes that have taken place in the exploitation of the resources of the sea, the sea-bed, and its subsoil have raised fundamental legal problems in both the laws of national States and international law, and these problems are compounded in respect of Federations. In Australia, two developments that have occurred do present legal puzzles.

The Hon. N. K. Foster: You should have been born and brought up in Switzerland.

The Hon. R. C. DeGARIS: In Australia, two developments have occurred that present legal puzzles. The first is fishing exploitation, which has brought the Commonwealth Government into the fishing field, with its powers under section 51 (x). The second is the mineral and oil exploitation and exploration. As I have said, I believe that the confrontations in the oil search in both exploitation and exploration were largely overcome in relation to the mirror legislation between the Commonwealth and the State. When one comes to the mineral section, where we tried to negotiate a further agreement but failed to do so, that confrontation has continued.

As Mr. Justice Windeyer stated in his judgment in *Bonser v. La Macchia*, this matter is no longer of merely academic importance. It was purely an academic debate until these two questions of fisheries and mineral exploration came on the scene. The first element that one must consider in this tangled tapestry is the 1876 case known as the *Franconia* case, where the court held, by a majority decision, that there was no jurisdiction over an act committed by an alien on an alien ship on the British territorial seas. This decision meant that the British realm, in 1876, ended at the low water mark.

The question that may have been left unanswered in that case was whether the Admiralty had jurisdiction over aliens in the three-mile limit or beyond that boundary. The essence of that judgment is that the Australian colonies, in 1876, did not have jurisdiction over the territorial sea. In 1878 the Imperial Parliament enacted the Territorial Waters Jurisdiction Act, which covered Admiral's jurisdiction respecting aliens and, as was thought then and as we know now, the vacuum created by the decision of the court in 1876 was filled.

In section 7 of that Act, reference is made to sovereignty over the territorial sea but, in judgments of the Canadian Supreme Court and in the judgment of both Barwick, C. J. and Windeyer, J. in *Bonser v. La Macchia*, it was found that this sovereignty over the territorial sea, as referred to in the Territorial Waters Jurisdiction Act, did not, in fact, extend to boundaries of the realm. The international concept of the right of innocent passage across territorial sea further complicates the theories of territory and sovereignty, and I have already referred to the fact that I have much difficulty in understanding exactly what the term "sovereignty" means.

The Sea and Submerged Lands Act declares that the Crown, in right of the Commonwealth, has sovereignty over the territorial sea and inland waters, air space, sea-bed, and subsoil thereof, except bays, etc., that were within the limits of the States in 1900. It seems to me that the Commonwealth is claiming that, some time after 1876, the sovereignty of the territorial sea became vested in the Commonwealth. If the Territorial Waters Jurisdiction Act did extend the boundaries of the realm, then the State's boundaries would have been extended, and it would seem reasonable that boundaries of South Australia were extended accordingly.

However, it has been held by the Supreme Court of Canada and by Barwick, C. J. and Windeyer, J. in *Bonser v. La Macchia* that such an extension was not effected by the Territorial Waters Jurisdiction Act of 1878. The question still stands as to the exact point where sovereignty was granted to any authority. However, the Commonwealth of Australia is a signatory to several international conventions, particularly the Geneva convention of 1958, in which the sovereignty of the territorial sea was the central issue.

International law now appears to concede that the territorial sea is to be treated as national territory but, as I have said, is the term sovereignty an absolute term? I say that because international law allows a right of passage in the territorial sea. Therefore, exactly what does the term "sovereignty" mean in the context of international law? It appears that the Commonwealth claim is based upon either the changing international view on sovereignty in the territorial sea, or on the fact that the Commonwealth acts as a single national body in the international scene, and is the signatory on behalf of the Australian people in conventions at the international level.

Section 51 (x) of the Commonwealth Constitution allows the Commonwealth to make laws with respect to fisheries in Australian waters beyond territorial limits. I emphasise "beyond territorial limits". The meaning of "Australian waters" and "territorial limits" was raised in the High Court case, *Bonser v. La Macchia*. The Commonwealth Fisheries Act intended that the Act operate from the territorial sea outwards. The language of the Act gave the indication of a constitutional restraint on the power of the Commonwealth to legislate for fisheries in the territorial seas adjacent to the States. Evidently, the draftsman of that Act recognised that there was a territorial sea, although he did not say how far it went, and that from the end of that territorial sea the Commonwealth legislation took over. The High Court judgment means that there is no territorial sea attachable to the States. Both Sir Garfield Barwick and Mr. Justice Windeyer, in their judgments in *Bonser v. La Macchia*, said that they did not concede that a three-mile limit applied to the States. I refer now to various pages of the judgment, which deal with this point. At page 189, Sir Garfield Barwick says:

> In my opinion, therefore—

and this is a summary of the previous pages—

> the territorial limits of an Australian colony at Federation did not include any part of the territorial sea, or sea bed adjacent to it. Federation did not increase those territorial limits, so that since Federation the territorial limits of a State are to be found at the low water mark on its coasts.

I also refer honourable members to pages 182 to 188 of that judgment.

The Hon. N. K. Foster: What section are you looking at?

The Hon. R. C. DeGARIS: Section 51 (x).

The Hon. N. K. Foster: I think you ought to be looking at another section.

The Hon. R. C. DeGARIS: I am pointing out what the Chief Justice has said regarding this matter. I will read it again, for the benefit of the Hon. Mr. Foster. The Chief Justice said:

In my opinion therefore the territorial limits of an Australian colony at Federation did not include any part of the territorial sea, or sea bed adjacent to it. Federation did not increase those territorial limits, so that since Federation the territorial limits of a State are to be found at the low water mark on its coasts.

I have already referred to the pages of the judgement leading up to that decision. Sir Garfield Barwick is saying that in 1876 the law was stated to be that the territorial sea was extra-territorial to the Crown's dominions. Yet, in an easy step, the Chief Justice reaches the conclusion that it is today Commonwealth territory. This can mean only that the Crown's dominion in right of the Commonwealth has been extended since 1876. I think every honourable member would agree that that was perfectly logical. If in 1876, by a decision of the court, the territorial seas were not in the realm of the Crown, in an easy step the Chief Justice reached the conclusion that today it is Commonwealth territory. The question is "How and when?" In his judgment on the validity of the Commonwealth Seas and Submerged Lands Act, Sir Garfield Barwick said (page 221):

In my opinion, the Parliament—

that is, the Federal Parliament—

has power to place Australia in a position to enjoy and exercise the terms of these conventions—

referring to the Geneva convention of 1958—

the sovereignty and sovereign rights of which the Conventions speak are available to Australia as a nation state without any executive or legislative act on its part. But the Act provides for the exercise of that sovereignty and those sovereign rights, and authorises the implementation of the conventions in material respects. I shall state briefly my reason for that conclusion.

Then, the Chief Justice goes on and gives his reasons for finding that since the Geneva Convention the Commonwealth at that time, if at no other point, achieved the territorial rights to offshore areas. The Chief Justice relies entirely in this argument on the external affairs power of the Commonwealth Constitution, and on the fact that the Commonwealth is a signatory to international conventions. Because the Parliament of the Commonwealth of Australia is the only body that can act on the international field, and as it enters into a convention in relation to the territorial sea, it assumes from that act sovereignty over all territory outside the low water mark. The Chief Justice was of the view that the Imperial territorial waters in due time (and those are the words used in the judgment) passed to Australia as a nation State. Perhaps I can now quote what Professor O'Connell has said about this matter.

The Hon. C. J. Sumner: What's the point you are getting at?

The Hon. R. C. DeGARIS: If the honourable member has followed what I have said until now, he will know that I have said that in relation to Federation there are complex problems facing the whole question of the territorial sea. They are much more complex than those matters facing a nation State. I point out that if we continue to follow the line we are now following we will have litigation and legislation on this question for the next 50 years.

The Hon. N. K. Foster: But the Constitution has always been fraught with difficulties.

The Hon. R. C. DeGARIS: But that is no reason for continual confrontations between the Commonwealth and the States regarding territorial powers. Also, I wish to record in *Hansard* certain bench marks regarding this argument, because this will not be the first speech of any length made in this Parliament on this matter: this argument will continue in the Council for 50 years, unless some sanity prevails. Moreover, many innocent people will be caught up in this issue in the next 50 years and will have to incur much expenditure, unless some co-operative federalism can be exhibited by the Commonwealth and State Governments regarding these matters. In his summary on this matter, Professor O'Connell does not quite agree with the simple approach taken by the court. I point out, too, that the reliance on the external powers aspect raises for me even more startling possibilities for the future of Australian federalism than merely the question of sovereignty over the territorial seas. If any international organisation of which Australia is a member (say, the United Nations) adopts a policy to which Australia is a signatory, and if the external affairs power is exercised, the States of this Federation could be committed. That, I believe, is also a direct assault upon the whole constitutionality—

The Hon. C. J. Sumner: Are you saying that the States should be represented at international conventions?

The Hon. R. C. DeGARIS: No. My point is that, if one relies entirely on an external affairs power in a constitution, to turn round and dictate to the States as to what course they shall adopt is a direct assault on the concept of federation.

The Hon. C. J. Sumner: That is a court decision.

The Hon. R. C. DeGARIS: I know. I am not arguing that point. I embarked on a course of co-operative federalism in 1969-70, when the Gorton Government was in power; at that time there was a confrontation between the States and the Commonwealth on this issue, and it was a question of, "We own this, and we will tell you what you are going to do," instead of a co-operative approach. I believe that the offshore oil agreement between the States and the Commonwealth was a perfect example of co-operative federalism. We went through a period of assault on Commonwealth-State relations during the Gorton regime and the Whitlam regime. All I can say is that I hope that at this stage there may be some further development of co-operative federalism by the existing Fraser Government to overcome the 50 years of litigation that I see in this field.

The Hon. C. J. Sumner: Are you looking for a Commonwealth-State agreement?

The Hon. R. C. DeGaris: Yes; I hope it can be achieved. Did the State Government go to the Commonwealth Government and ask what the Commonwealth thought of this Bill? Further, did the State Government go to the Commonwealth Government and ask what the future was in relation to offshore areas? Or, are we bowling along again and trying to develop a confrontation between the States and the Commonwealth? Those questions could well be directed to the State Government on this issue. The Government talks about co-operative federalism.

The Hon. N. K. Foster: You are talking rubbish. Will you give way for two minutes?

The PRESIDENT: Order!

The Hon. R. C. DeGARIS: I seek leave to conclude my remarks.

Leave granted; debate adjourned.

PETITION: WIRRABARA BRIDGE

The Hon. R. A. GEDDES presented a petition signed by 605 persons expressing concern about the serious damage caused by the recent floods to the road and bridge over the

Rocky River south of Wirrabara and praying that the Legislative Council would take all steps necessary to expedite the reconstruction of the road and bridge.

Petition received and read.

PERSONAL EXPLANATION: PARTY AFFILIATION

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

Leave granted.

The Hon. M. B. CAMERON: Prior to this session, the Hon. Mr. Carnie and I were members of this Council representing a Party called the Liberal Movement.

The Hon. N. K. Foster: It still exists.

The Hon. M. B. CAMERON: I wish to inform the Council that the Hon. Mr. Carnie and I have now joined the Liberal Party, and we would wish the Council to recognise this fact.

MINISTERIAL STATEMENT: KANGAROO ISLAND SETTLERS

The Hon. T. M. CASEY (Minister of Lands): I seek leave to make a statement.

Leave granted.

The Hon. T. M. CASEY: In view of the decision of the Commonwealth Minister for Primary Industry to have valuers from the Taxation Department review property values on certain war service holdings on Kangaroo Island, the Governor-in-Council has referred the question of the financial viability of certain settlers to the Parliamentary Committee on Land Settlement for investigation and report. The specific matters that the committee has been asked to report on are: (1) financial viability of specific settlers; (2) whether those settlers at present considered viable will continue to be so under present rural economic conditions; (3) whether the present value of securities taken by the Minister of Lands to cover the total debt of individual settlers to the Minister is adequate; (4) which of these settlers is considered to have reasonable propects of remaining or becoming financially viable.

OVERSEA STUDY TOUR

The PRESIDENT laid on the table the report of Mr. C. J. Wells, M.P., member for Florey in the House of Assembly, on his oversea study tour, 1975.

PUBLIC WORKS COMMITTEE REPORTS

The PRESIDENT laid on the table the following reports by the Parliamentary Standing Committee on Public Works, together with minutes of evidence:

Baroota Reservoir Spillway Upgrading,
Coromandel Valley Primary School (Replacement),
Hawthorndene and Monalta Sewerage Scheme,
Hope Valley to Clairville Road Trunk Main,
Modbury Hospital Development, Stage II, Phase I,
Parks Community Centre, Angle Park,
Woodville Primary School (Redevelopment), Stage I,

ADDRESS IN REPLY

The PRESIDENT having laid on the table a copy of the Governor's Speech, the Hon. D. H. L. Banfield (Minister of Health) moved:

That a committee consisting of the Hons. D. H. L. Banfield, F. T. Blevins, R. C. DeGaris, J. E. Dunford, and C. M. Hill be appointed to prepare a draft Address in Reply to the Speech delivered this day by His Excellency the Governor and to report on the next day of sitting.

Motion carried.

SESSIONAL COMMITTEES

Sessional Committees were appointed as follows:

Standing Orders: The President and the Hons. D. H. L. Banfield, F. T. Blevins, M. B. Cameron, and C. J. Sumner.

Library: The President and the Hons. J. A. Carnie, Jessie Cooper, and Anne Levy.

Printing: The Hons. F. T. Blevins, M. B. Cameron, J. E. Dunford, N. K. Foster, and R. A. Geddes.

ADJOURNMENT

At 3.41 p.m. the Council adjourned until Wednesday, June 9, at 2.15 p.m.