LEGISLATIVE COUNCIL

Tuesday, November 9, 1976

The PRESIDENT (Hon. F. J. Potter) took the Chair at 2.15 p.m. and read prayers.

PERSONAL EXPLANATIONS: LAND TAX

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

Leave granted.

The Hon. M. B. DAWKINS: My attention has been drawn to a statement I made in this Council on October 20 and a subsequent statement made while I was called to the telephone a little later in the afternoon. My statement, on the Land Tax Act Amendment Bill, was as follows:

I support this Bill with pleasure. I am pleased that the Government has introduced it. Praise should be given where praise is due, and I commend the Government for introducing the Bill and, as the Hon. Mr. Burdett said, for adopting Liberal Party policy.

I went on to say that I thought that, while we were in power some years ago, we should have made the alterations to the Land Tax Act that the Government has introduced during this session. Later in the afternoon, while I was called to the telephone, the Minister of Health said (and I thank him for saying it, except for the inaccuracy in it):

The Hon. Mr. Dawkins in this debate was honest enough to say that it was Labor Party policy and, "When we were in power, we did nothing about it." The Hon. Mr. Dawkins was the most honest member opposite in saying that.

I thank the Minister for saying that I was honest, but the Minister said that I said it was Labor Party policy, but at no stage did I say that: I said that the Labor Party had adopted Liberal Party policies. While I thank the Minister for his comment, I would be pleased if he would be more factual in his remarks.

The Hon. D. H. L. BANFIELD (Minister of Health): I seek leave to make a personal explanation.

Leave granted.

The Hon. D. H. L. BANFIELD: If the Hon. Mr. Dawkins examines the record of the debate, he will see that there is an obvious typographical error. I was reported as saying that it was Labor Party policy but members opposite did not put it into operation: clearly, members opposite could not put Labor Party policy into operation when they were in power. Obviously, there is a typographical error. I am not blaming *Hansard,* but it is obvious that I really said, "You said it was Liberal Party policy, but you did not put it into operation." That was what I said.

The Hon. M. B. Dawkins: I am just correcting you.

The Hon. D. H. L. BANFIELD: What is recorded in *Hansard* is that I said "Labor Party policy" but, when one examines the context, one can see that there is no way in the world that my remark would apply to the Labor Party.

QUESTIONS

COPYING CHARGES

The Hon. M. B. CAMERON: Has the Minister of Lands a reply to my recent question about copying charges?

The Hon. T. M. CASEY: The copying service was introduced to the Registrar-General's office in 1964, when Xerox 720 machines were installed. Each page of a certificate of title or Crown lease required two machine prints stapled together, and each page of a registered instrument required one machine print. The charges were 10c for each machine print. The average number of machine prints required to copy a certificate of title, Crown lease, mortgage and some other instruments was four (40c), and single instruments two (20c).

In 1972, Xerox 7000 machines that enabled a page of a certificate of title or Crown lease to be copied in its entirety were procured. The copying charges were restructured, as it was estimated that the average requirement was four machine prints (since considered conservative), and a flat charge of 40c was levied. This flat charge not only simplified the copying service and reduced the accounting work of the office but also provided for copies of the whole of the title, lease or instrument irrespective of the number of machine prints required. Of the total number of Xerox copies produced, 32 per cent are for Government departments. At the moment, this service is free to Governments. However, a proposal to levy charges has been referred to the Under Treasurer for comment.

The estimated loss of the copying service to December, 1976, is $10 000. At the new scale of charges, costs will be borne by those who make use of the service. It is emphasised at this point that there is no loading of costs towards the private sector to offset the free service to the Government departments. A manual search is still available free of cost as an alternative, and the new charges are quite comparable to those of other States.

WOMEN'S ADVISER

The Hon. ANNE LEVY: Has the Minister of Agriculture, representing the Minister of Education, a reply to the question I asked on October 21 regarding a women's adviser in the Education Department?

The Hon. B. A. CHATTERTON: The Minister of Education informs me that the position of Women's Adviser has not yet been advertised. Although agreement in principle has been reached, the salary for the position has yet to be determined in consultation with the Public Service Board. It is expected that applications for the position will be called within the next few weeks. The appointee will be responsible for the welfare of women teachers in the Education Department and will encourage them to seek positions involving higher levels of responsibility. She will also be involved in curriculum activities associated with the education of girls and initiating moves to change girls' attitudes to the role of women in society.

LOCUSTS

The Hon. R. A. GEDDES: I seek leave to make a short statement before asking a question of the Minister of Agriculture.

Leave granted.

The Hon. R. A. GEDDES: The Minister of Agriculture is fully aware that the Wilmington District Council and many pastoralists in that area are extremely concerned about the hatching of grasshoppers in the immediate vicinity of the council area (to be more precise, in the area north of Hammond). I am aware that two Agriculture Department officers arrived in the area yesterday afternoon and it was hoped that they would be able to get a report to the Minister today of their assessment of the

grasshopper hatchings. Can the Minister report to the Council whether he has received a report from his officers about the present position and their opinion of the impending plague of grasshoppers?

The Hon. B. A. CHATTERTON: The two officers referred to by the honourable member were in the area yesterday and I have received a report from them. Until yesterday afternoon about 1 600 hectares had been sprayed. It is estimated that that is about half the total area that should be sprayed. The officers considered that the job would be completed by about Thursday. Presently there are 12 units operating in the district belonging to farmers and three ultra low volume units of the Agriculture and Fisheries Department operating in the area. The officers do not consider that the use of aircraft is justified, because the locusts are presently in isolated patches only and the use of aircraft would mean a blanket spraying in which about 80 per cent of the insecticide would be wasted.

The insecticide being used does not have much residual value. Therefore, the insecticide that misses the locusts would not be of much effect at all. The officers are continuing in their work and will inspect areas at Carrieton, Orroroo, Quorn and Hawker, where there have been reports of damage. I considered the recommendations provided this morning by the officers and other senior people in my department, and I agree that the insecticide that is being used in the area should be supplied free of charge. Obviously, to be fair to people who have already taken action to control locusts, the distribution of free insecticide should apply retrospectively to cover these people. That is the current situation.

The Hon. C. M. HILL: Does the Minister intend to compensate financially any of the farmers who have been adversely affected by this plague?

The Hon. B. A. CHATTERTON: No. There is no provision for compensation. I assume that the honourable member is referring to compensation in connection with crops. There is no provision for compensation to be paid to farmers in connection with the grasshoppers. The normal situation is that we provide insecticide with a subsidy of 50 per cent on the wholesale cost of the insecticide; this amounts to something like a 70 per cent subsidy on the price that the farmer would pay from normal sources of supply. That is the normal situation but, when the situation becomes as serious as it has become in this area, we agree to provide insecticide free of charge, as was done in 1974 and, I think, on one previous occasion.

The Hon. R. A. Geddes: In 1955.

The Hon. R. A. GEDDES: I seek leave to make a further statement before asking the Minister of Agriculture another question.

Leave granted.

The Hon. R. A. GEDDES: I thank the Minister and the Government for making insecticide available free of charge to the Wilmington District Council, a matter which related to another question which I intended to ask the Minister this afternoon and which was of much concern to council members when I spoke to them yesterday. I understand that the locust outbreak stretches from Ceduna, Wudinna, Kimba and Wilmington, and possibly farther east to the area north of Peterborough. In 1955, the Australian Army was asked to help combat a locust plague, and it did a wonderful job. It worked, generally speaking, in the areas to which I just referred. I understand that the Australian Army will not now assist a State Government in a project such as this unless it is declared a national emergency or unless a similar type of definition is attached to it. Has the Minister's department considered ascertaining what guidelines are laid down in order to ask the Australian Army to assist in years such as this when it appears that the hatching of locusts could be financially detrimental to a large part of the State's agricultural areas?

The Hon. B. A. CHATTERTON: As I said in the reply to the previous question asked by the honourable member, the departmental officers are going to the various areas concerned and investigating the matter. I did not mention specifically Eyre Peninsula and Wudinna, although there have also been reports from those areas. When those investigations have been carried out in the Hawker, Quorn and Orroroo areas, the officers will look at other possible sources of locust outbreaks. I think the situation is somewhat different from that in 1955, when the Army was involved, in that the standard of equipment we have now is very much better and the ultra low volume spraying equipment is most effective; but, while I rule out the use of aircraft for the time being, that possibility is still in our minds. If the swarms aggregate and become big enough targets to be dealt with effectively by aircraft, we shall certainly use aircraft, but we believe that for the time being the swarms are scattered and have not aggregated so that aircraft can be used effectively. We do not contemplate at this stage calling for assistance from the Australian Army.

MOUNT GAMBIER HOSPITAL

The Hon. J. R. CORNWALL: I seek leave to make a short statement prior to directing a question to the Minister of Health.

Leave granted.

The Hon. J. R. CORNWALL: I refer to a letter in the *Border Watch* at Mount Gambier dated November 6, 1976, over the name of one Rory J. McEwen who, I understand, has announced his intention of contesting preselection in the Liberal Party for the new seat of Mallee. The letter is highly political and states amongst other things:

> The staff of the Mount Gambier Hospital are embarrassed about selling raffle tickets; a raffle whose prizes are donated by the nursing staff; a raffle whose proceeds are to buy two pairs of forceps needed by the theatre sisters to make eye surgery possible. This, along with street stalls to buy blood pressure instruments, reflects the staff initiative we expect from these professional people who overcome such gross budgeting anomalies.

Is the Mount Gambier Hospital in fact equipped for eye surgery? Is there or has there ever been any suggestion that budgetary anomalies such as those alleged in this letter could occur or have occurred? If any staff or others in the hospital are involving themselves in such local initiatives, would not the Minister consider, as the Hon. Mr. Hill would, that they were praiseworthy, anyway?

The Hon. D. H. L. BANFIELD: I am not denying what the Hon. Mr. Cornwall says, that this gentleman is standing for preselection as a Liberal member in the District of Mallee. I hope he gets it because, if that is the standard of preselection in what looks like another new area, I am sure the people will not have him, so that looks like another seat for us. However, I assure the honourable member, generally, that eye surgery is being performed at the Mount Gambier Hospital, and there has been no hold-up of equipment. I assure him also that any requisition for necessary equipment has always been met by the Mount Gambier Hospital. I congratulate the nurses at that hospital who, from time to time, want to involve themselves in the

running of the hospital. It is true to say that they do conduct raffles from time to time so that they feel they are giving some personal involvement in the hospital, and it is not because of any lack of equipment. The staff have only to fill in a requisition form, and the requisition has always been granted.

EPILEPTICS

The Hon. J. E. DUNFORD: I seek leave to make a short statement before directing a question to the Minister of Lands, representing the Minister of Transport.

Leave granted.

The Hon. M. B. Cameron: Is this another of your very short statements?

The Hon. J. E. DUNFORD: The honourable member can object, if he likes. I have been advised by a person who is an epileptic that there are some 65 000 epileptics in Australia; I am also advised that, if an epileptic is involved in a road accident, when he may not be in the wrong in that accident (he may not have had a fit in that accident, which could have been caused by some misadventure or by someone else), he then applies for a driver's licence and is told by the Motor Registration Division that he is not to be issued with a licence for a further two years.

The Hon. M. B. Cameron: That is a bit rough.

The Hon. J. E. DUNFORD: It is rough even for a Legislative Councillor, but I am talking about a worker. The person whom I have interviewed has a certificate from Dr. Butler, Vice President of the Australian Medical Association, stating clearly that in his opinion, because of the changed medicine and because of the person's metabolism, it is highly unlikely that this young man will have an epileptic fit in future. That cannot be guaranteed but, from looking at him, diagnosing him, and putting him on this medicine, the doctor can say that it is highly unlikely. The person got that certificate, and it has been sent to the Motor Registration Division and rejected. Will the Minister consider setting up an appeal board so that in these circumstances a person can approach the board to have a review, because at present the matter is one of agreement between the A.M.A. and the Motor Registration Division, irrespective of the merits of the case or the circumstances involved?

The Hon. T. M. CASEY: I will refer the question to my colleague and bring down a reply.

BOLIVAR RECLAIMED WATER

The Hon. M. B. DAWKINS: Has the Minister of Lands a reply to the question I asked recently regarding the use of Bolivar reclaimed water?

The Hon. T. M. CASEY: The question of usage of Bolivar reclaimed water is at present being examined by the South Australian Water Resources Council as part of its investigation into the resources available to the market garden area of the Northern Adelaide Plains. Until the council makes a recommendation on this matter, no additional contracts for the diversion of Bolivar reclaimed water would be contemplated. However, in order to reduce soil and plant salinity, one agreement has been varied, subject to the proviso that the additional reclaimed water be applied to existing plantings only and that it may not be used to irrigate further plantings.

ESCAPED PRISONER

The Hon. C. M. HILL: I ask leave to make a statement prior to directing a question to the Chief Secretary.

Leave granted.

The Hon. C. M. HILL: My question is directed to the Chief Secretary as the Minister in charge of correctional services in this State. I refer to a newspaper report of November 6, which revealed a story concerning an escaped prisoner from Yatala Labour Prison. The situation, according to this report, was that this prisoner, with another prisoner, both being accompanied by a prison warder, went from the prison to the city to buy or collect various items for the prison. In Grenfell Street, the warder and the second prisoner had carried some purchased item to the prison van in which they had travelled and the particular prisoner in question was told to go back to the shop in Grenfell Street, collect other items, and wait there with those items. The prisoner did not do that: he escaped and gave himself up 36 hours later. The report went on to indicate that the prisoner had been convicted of murder when he was 17 years of age, was sentenced to imprisonment at the Governor's pleasure, and was still serving that sentence. Then the report revealed that the same prisoner, at the Royal Show (I understand in 1973), escaped while taking part in a puppet show. On that occasion he gave himself up, but he was convicted, on that occasion, of course, of having escaped from custody.

On that occasion in 1973 the Comptroller of Prisons admitted a mistake had been made by his department, and I have read where the Minister thought the matter was so serious that he held an inquiry and Mr. L. K. Gordon, the Crown Solicitor, acted in that inquiry. The policy followed in the case of this recent escape (and I think the Minister, it must be agreed, is responsible for such policy) is causing grave concern among the public at large. Can the Minister give an assurance to this Council that the treatment of prisoners will be such in the future that such extreme leniency will not be permitted and a much stricter control on prisoners will occur than occurred in the case which I have described?

The Hon. D. H. L. BANFIELD: The officers of the Correctional Services Department take every precaution that they consider is warranted. In the particular case referred to by the Hon. Mr. Hill the officers believed that this man was no longer a dangerous man and was a trusted prisoner. One of the jobs of these officers is to rehabilitate people to enable them to get back into the community and when they reach the stage where the officers have complete trust in them there are certain jobs which are given to prisoners to give them the opportunity to prepare themselves to get back into the community, and I understand that this was one of those occasions. However, I will again have a look at the matter and see whether any undue risks are being taken and will give a further report to the honourable member.

NEWSPRINT INDUSTRY

The Hon. J. C. BURDETT: I understand the Minister of Lands has a reply to a question I asked recently related to the newsprint industry.

The Hon. T. M. CASEY: The Minister of Works has informed me that the thermomechanical process for pulp manufacture is a new development which is not in current use in Australia. It is understood that the pollutants contained in the resultant effluent are minimal, particularly in

relation to cellulose fibres which can be removed to conform to required effluent quality standards. It appears that the distance from the timber resource and the availability of such a convenient water source have precluded further considerations of alternative siting.

CAR ACCIDENTS

The Hon. J. E. DUNFORD: I seek leave to make a short statement prior to directing a question to the Minister of Health.

Leave granted.

The Hon. J. E. DUNFORD: This question is incidental to the previous question I asked. Recently I had a discussion with a doctor and he told me he was very concerned that many of his patients, who were suffering from heart ailments, were receiving driving licences and he asked me what I thought about it. Immediately the case I just instanced concerning epilepsy came to my mind. Of course, there are other people in the community, through old age or illness, who have these problems. I ask the following three questions for the benefit of constituents who have asked these questions. First, how many car accidents can be attributed to epilepsy? Secondly, how many car accidents can be attributed to heart attacks? Thirdly, how many car accidents can be attributed to diabetes mellitus?

The Hon. D. H. L. BANFIELD: I doubt whether these figures would be kept, but I will endeavour to find out if they are, and if they are, I will bring down a reply for the honourable member.

HER MAJESTY'S THEATRE

The Hon. C. M. HILL: I ask leave to make a short explanation before directing a question to the Chief Secretary, as Leader of the Government in this Council.

Leave granted.

The Hon. C. M. HILL: Some months ago I suggested in a question that the Government acquire Her Majesty's Theatre for the State Opera. I asked whether the Government would consider such a proposal. In the reply I received (and I am speaking from memory) I was somewhat chastised and told that my question was ill-advised as it could lead to increased value of the property. That reply to me was absolute rubbish. In view of the question I asked, has the Government taken up the matter further in the interests of the arts generally and the State Opera specifically?

The Hon. D. H. L. BANFIELD: I will seek the necessary information for the honourable member.

JUSTICES ACT AMENDMENT BILL

Second reading.

The Hon. D. H. L. BANFIELD (Minister of Health): I move:

That this Bill be now read a second time.

It is the second of three Bills implementing the recommendations of the Mitchell committee on rape and other sexual offences. Briefly, it provides that the victim of a sexual offence shall not be required to appear at the preliminary trial unless, upon the application of the accused person, the justice is satisfied that there are special reasons why the victim should be subjected to oral examination.

There is no doubt that the victim of rape or other sexual offence undergoes considerable trauma from the time he or she first reports the offence until the time the alleged offences undergoes considerable trauma from the time he be reported to the police who must examine the evidence in detail to ascertain whether a charge can be supported; the victim must undergo a medical examination; at the committal proceedings the victim can be subject to extensive oral examination, followed by further cross-examination at the trial. At the end of the process the victim often ends up feeling as if she were the one accused of the offence. Apart from this, it is distressing enough for the victim to tell her story once but to have to repeat it twice in court can be traumatic. The ordeal which victims of sexual offences must go through plays a large part in deterring people from reporting sexual offences.

In any reform of the law to protect the alleged victim of a sexual offence from what might be called harassment, care must be taken not to lose sight of the rights of the accused. The accused has a right not to be put on trial when the evidence, when subject to close examination, reveals that the alleged rape was not in fact rape. The measures contained in this Bill recognise that an accused will not suffer any real injustice if he is given only one opportunity to cross-examine the prosecutrix, namely on his trial. At the same time the justice is to retain the discretion, in special circumstances, to order that the victim appear for oral examination. Clause 1 is formal and clause 2 provides that the alleged victim of a sexual offence should not be cross-examined at the committal proceedings unless the justice is satisfied that there are special reasons why cross-examination should take place. I commend the Bill to honourable members.

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

EVIDENCE ACT AMENDMENT BILL

Second reading.

The Hon. B. A. CHATTERTON (Minister of Agriculture): I move:

That this Bill be now read a second time.

It is the third and final of three Bills implementing the recommendations of the Mitchell committee on rape and other sexual offences. Briefly, it provides that evidence as to whether the victim of a sexual offence made a complaint in respect of the offence is inadmissible as evidence-in-chief. The Bill provides that evidence of the sexual experience or morality of such a victim is not to be adduced unless the trial judge deems it to be directly relevant to any issue and gives leave accordingly. Finally, the Bill prevents publication of the identity of the victim of a sexual offence and also prevents premature disclosure of the identity of a person who has been accused of a sexual offence. Broadly, the accused's name or identity and the evidence given in committal proceedings must not be published until he has been committed for trial or the charge has been dismissed. If the accused's identity is published in a report upon his trial, then the fact of his acquittal must also be prominently published.

First, upon a charge of rape, the fact that a complaint was made by the prosecutrix shortly after the alleged offence, and the particulars of the complaint, may be given in evidence so far as they relate to the accused, not as evidence of the facts complained of, but as evidence of the

consistency of the conduct of the prosecutrix with her evidence given at the trial as negativing consent. As far back as 1898 the admission of the evidence of a complaint was described by the Supreme Judicial Court of Massachusetts as "a powerful survival of the ancient requirement that she (the prosecutrix) should make hue and cry as a preliminary to bringing her appeal." The Mitchell committee agreed with this view. The admission of evidence of this kind is contrary to the well-established rule that evidence cannot be given of a statement made by a witness unless the statement was made in the presence of the accused, or the statement was against the interest of the witness (that is, in the nature of a confession). The Mitchell committee thought that the exception to this rule which has been recognised in sexual cases should be abolished.

The restriction upon cross-examination of the alleged victim of a sexual offence is in the Government's opinion a necessary reform. Presently, it is not uncommon for counsel to embark upon cross-examination about prior sexual experiences although the topic of cross-examination bears no direct relevance of any allegation that is at issue in the proceedings. The purpose of the cross-examination is merely to blacken the character of the prosecutrix and thereby to seek to prejudice the jury against her. The Bill provides that such cross-examination will only be permitted by leave of the judge, and leave will not be granted unless the subject of cross-examination is directly relevant to the matter that is in issue at the trial.

Clause 1 is formal and clause 2 inserts a definition of "sexual offence" in the principal Act. Clause 3 amends section 18 of the principal Act. The amendment deals with the case in which the prosecution may adduce evidence that an accused person is of bad character. Presently, such evidence cannot be introduced unless the accused has put his character in issue by bringing positive evidence of good character, or the nature or conduct of the defence is such to involve imputations on the character of the prosecutor or the witnesses for the prosecution. It is frequently impossible for an accused person to raise any defence at all without thereby creating the implication that the prosecutor or the witnesses for the prosecution are lying or are otherwise of bad character. Accordingly, the Mitchell committee recommended the repeal of that part of section 18 which permits cross-examination of an accused person as to his character where the nature or conduct of the defence is such as to involve imputations on the character of the witnesses for the prosecution

Clause 4 enacts new section 34i of the principal Act. This new section deals with two matters that I have discussed at length earlier. It provides that a self-serving statement made by a person who complains of the commission of a sexual offence against him is not to be admitted in evidence unless it is introduced by cross-examination or in rebuttal of evidence tendered by or on behalf of the accused. The new section prohibits cross-examination of a witness as to prior sexual experiences, or sexual morality except by leave of the judge. Such leave is not to be granted unless the allegation is directly relevant and the introduction of the evidence is, in all the circumstances of the case, justified. Clause 5 enacts new section 71a of the principal Act. This new section prohibits the publication of the name of the accused person, and of evidence given in the proceedings, until the accused has been committed for trial or sentence. Where the accused is subsequently tried by jury and a report of the proceedings is published, the publisher must also, in the event of an acquittal, publish a prominent note of that acquittal. Under subsection (4) the identity of an alleged victim of a sexual offence is protected absolutely unless the judge authorises publication of the identity or the alleged victim himself seeks publication of his identity.

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

CRIMINAL LAW CONSOLIDATION ACT AMENDMENT BILL

Second reading.

The Hon. D. H. L. BANFIELD (Minister of Health): I move:

That this Bill be now read a second time.

This Bill puts into effect some of the recommendations contained in the special report of the Criminal Law and Penal Methods Reform Committee of South Australia, entitled *Rape and Other Sexual Offences.* I seek leave to have the remainder of my second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Remainder of Explanation

The committee, which is commonly referred to as the Mitchell committee, made recommendations for alterations to the law to provide for a far more humane treatment of the victim of rape—without, of course, denying the proper protection of the law to the accused rapist. The Government has now had the opportunity to consider the committee's recommendations as to reform of the law of rape, and those recommendations provide the basis for the reform contained in this Bill, the Justices Act Amendment Bill and the Evidence Act Amendment Bill.

In brief, this Bill contains new provisions relating to rape and unlawful sexual intercourse, provides a definition of sexual intercourse, repeals various obsolete and repetitive provisions and strikes out all references to carnal knowledge, carnal connection, fornication, etc. The presumption that a boy under 14 years of age is incapable of sexual intercourse is abolished. The presumption that marriage of itself denotes consent to sexual intercourse or an indecent assault is abolished. This last provision, as members are no doubt aware, provides greater protection to a woman than do the recommendations of the Criminal Law and Penal Methods Reform Committee.

The Mitchell committee recommended that a husband be indictable for rape upon his wife whenever the act alleged to constitute the rape was committed while the husband and wife were living apart and not under the same roof notwithstanding that it was committed during the marriage.

The Government has decided, after thorough deliberations, to legislate so that marriage will not be a bar to the normal application of the law of rape. We feel—and the Mitchell committee points this out in the report—that it is anachronistic to suggest that a wife is bound to submit to intercourse with her husband whenever he wishes it, irrespective of her own wishes. If the Government were to accept the Mitchell committee's recommendation this anachronistic view would remain embodied in the law: the only wives who would have the protection of the law would be those who could afford to maintain a residence of their own.

As a Government, we are committed to a policy of equal rights and opportunity for all. In the light of this, we believe that all law which continues to treat a wife as the property of her husband, and marriage as a contract of ownership, should be abolished or amended. Every adult

person must be given the right to consent to sexual intercourse both within and outside marriage. Marriage, and sexual relations within marriage, ought to be a matter of equality, sensitivity, care and responsibility. Indifference, force, reckless or even intentional sexual brutality should, of course, be no part of any relationship. But unfortunately they sometimes are, and at present a wife is virtually defenceless.

Much criticism has been directed at this reform on the ground that it will put "a dangerous weapon in the hands of a vindictive wife". This is simply not true. If a woman charges her husband with rape, exactly the same procedures and legal evidence will be required as in other cases of alleged rape. All charges of rape must be rigorously substantiated before any conviction can be made.

Those who have criticised the Government's proposals have largely argued for the kind of proposition advanced by the Mitchell committee, that is, that a husband should be indictable for rape of his wife only when matrimonial cohabitation has ceased. They argue that the wife should be required to take the positive step of bringing cohabitation to an end as a kind of proof of her *bona fides* or as proof that she does indeed find her husband's conduct repugnant. This argument betrays, in my opinion, a middle class prejudice. It is all very well to argue that a woman should seek independent accommodation if she belongs to the middle or upper socio-economic strata of our society. Such women will almost inevitably have family or friends who can support them in independence. However, such an argument is entirely misconceived when applied to groups at the lower end of the socio-economic scale. Many women in this class are totally dependent upon their husbands for support and could not obtain independent accommodation however much they might desire to do so.

Further, we must now acknowledge that in our society at the moment there is a substantial number of *de facto* relationships. A man who cohabits *de facto* with a woman is, of course, indictable for rape on the complaint of that woman. It is an absurd and intolerable anomaly that the position of a lawful wife is inferior in this respect to that of a *de facto* wife. If this anomaly is allowed by this Parliament to continue, the institution of marriage may well be brought into disrepute—at risk as an institution. If the "rape in marriage" provision is opposed, then one is virtually condoning the plight of those women who are subjected to gross sexual abuse by their husbands. One surely cannot ignore the right of these women to the protection of the criminal law, for the sake of those who pretend with woolly reasoning that such an offence would be difficult to prove.

Clauses 1 and 2 are formal. Clause 3 strikes out the definition of "carnal knowledge" and inserts a new definition of "sexual intercourse". This is in accordance with the recommendations of the Mitchell committee, which considered that the expression "unlawful carnal knowledge" is not in general use and it is doubtful whether ordinary persons understand the meaning of the term "carnal knowledge". The phrase "unlawful sexual intercourse" is comprehensible to all. The change in terminology does not alter the elements of the offence. The new definition of sexual intercourse ensures that a forced *penetratio per os* is as much an offence as rape and forced *penetratio per anum*.

Clause 4 recasts the present sections 48 to 55. The changes are: (i) that all references to unlawful carnal knowledge are removed; (ii) no special provision is made for persons between the age of 12 and 13 so far as consent to sexual intercourse is concerned. Offences against all persons over the age of 12 are now treated in the same manner; (iii) the new section 49 (6) replaces the present section 55 (1) (1). This section makes it an offence to have unlawful carnal knowledge or attempt to have unlawful carnal knowledge of an idiot or imbecile, where the offender knew at the time of the commission of the offence that such person was an idiot or imbecile.

The new provision implements the recommendation of the Mitchell committee that a person suffering from a mental disease or defect should not, by law, be inhibited from having sexual intercourse unless such defect or disease renders him or her incapable of appraising the nature of his or her conduct and thus incapable of giving a true consent to sexual intercourse.

Clause 5 repeals section 57a of the principal Act. The Mitchell committee recommended the retention of this provision, which enables the justice conducting a preliminary examination in a charge of unlawful sexual intercourse to accept a plea of guilty from the defendant and commit him for sentence without taking any evidence. With due respect to the opinion of the Mitchell committee, the Government believes that this provision is misconceived in principle. A defendant may plead guilty for a number of reasons consistent with innocence. He may want to protect a friend; he may mistakenly believe that he is guilty; he may simply want the proceedings to be disposed of as expeditiously as possible. The Government believes that, at a preliminary examination, there ought to be a rigorous examination of the charge to ensure that no person is unfairly placed upon trial. This attitude is confirmed by examination of a number of Continental legal systems. In France and Germany, for example, it is well established that the confession of the accused does not obviate rigorous investigation into the substance of a criminal charge. The complainant will be sufficiently protected by the amendments proposed to section 106 of the Justices Act. I shall explain these amendments when I introduce the Bill to amend that Act.

Clause 6 repeals section 57b as recommended by the Mitchell committee. Section 57b presently provides that a person who indecently interferes with any person under the age of 17 years, whether with or without the consent of that person, or any person of or above the age of 17 years without his or her consent shall be guilty of an offence punishable upon summary conviction. The penalty for the offence is imprisonment for not more than one year or a fine of not more than $100 or both imprisonment and fine. The complaint is to be heard by a magistrate. If the magistrate hearing the complaint is of the opinion, at the close of the case for the prosecution, that the evidence discloses the commission of an offence of carnal knowledge, or of attempted carnal knowledge, or is of such an aggravated nature that it cannot be sufficiently punished under section 57b, the defendant is to be committed for trial. It is difficult to envisage a case in which an indecent interference is not also an indecent assault under section 56 of the Act. The provisions which save the person interfered with from the necessity of giving evidence are no longer required since the coming into operation of the Justices Act Amendment Act, 1972, which provides that the written statement of a witness for the prosecution, verified by affidavit, may be tendered in evidence subject to the right of the accused to require the person to be called for cross-examination.

Clause 7 repeals the present sections 59 to 62 and replaces them with provisions more suitable for today as well as rationalising the offences. The sections create various offences which relate to the abduction of heirs or heiresses "from motives of lucre", forcible abduction, abduction of

persons under the age of 16 years, and procurement of persons for carnal knowledge. Abduction of persons under the age of 16 years is dealt with in clause 9 of the Bill and the remainder of the offences are dealt with by one provision which makes it an offence to abduct a person with the intent to marry, or to have sexual intercourse with that person or with the intent to cause that other person to be married or to have sexual intercourse with a third person.

Clause 8 removes references to unlawful carnal knowledge in section 64 and repeals section 64 (*c*). It is difficult to envisage an offence under section 64 (*c*) which is not also an offence under section 64 (*b*). Clause 9 removes the reference to carnal knowledge in section 65 of the Act.

Clause 10 repeals sections 66, 67 and 68 of the Act. Section 66 presently makes it an offence to take away or detain any unmarried person under the age of 18 years "out of the possession of and against the will of his or her father or mother, or any person having the lawful care or charge of him or her, with intent that he or she have unlawful carnal connection with any person". Subsection (2) provides that the judge may order that the person be returned to the custody of any parent or person from whom he or she was taken or obtained. This provision has been interpreted so that a person may be taken away from the possession of his or her father or mother although he or she goes willingly and has proposed the means of departure. The Mitchell committee recommended the repeal of this section as it is not constant with social attitudes of today to give a parent or guardian rights to the possession of a child up to the age of 18. The repeal of section 67 is consequential on the repeal of section 66. The conduct in section 68 is, since the 1975 amendment to the principal Act, covered by section 65.

Clause 11 re-words the language of the present section 72 by removing references to fornication or adultery and replacing them with the words "sexual intercourse". Clause 12 repeals section 73 and: (1) re-enacts the provisions of section 73 in modern form; (2) abolishes the presumption that a boy under 14 years is incapable of committing rape. The Mitchell committee considered that this presumption which protects only those boys under 14 who are capable of sexual intercourse serves no useful purpose; and (3) provides that marriage is not a bar to the normal application of the law of rape or indecent assault. Clauses 13 to 17 are consequential amendments. Clause 18 is consequential on the amendment contained in clause 19. Clause 19 re-enacts in substantially the same form the provision presently contained in section 62.

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

SOUTH AUSTRALIAN HEALTH COMMISSION BILL

In Committee.

(Continued from November 4. Page 1915.)

Clause 18—"Appointment of advisory committees"—reconsidered.

The Hon. R. C. DeGARIS (Leader of the Opposition): I am willing to continue with my amendment, with the proviso that, if the concept of an advisory council is accepted by honourable members, it means that, when we recommit the Bill, other matters will have to be added; for example, fees and travelling allowances.

The Hon. D. H. L. BANFIELD (Minister of Health): I strongly oppose the setting up of the kind of health advisory council suggested by the Leader, because it would create more complications than it would create benefits. We already have provision for small advisory committees to be set up; this gives an opportunity for specialisation. Many people will be disappointed if they are not able to express their viewpoint. Setting up relatively small committees, each one specialising in a particular field, will help the commission to a greater extent than would a council of the type suggested by the Leader.

The Leader may argue that the system of small advisory committees does not prevent me from appointing another body but, if I did that, there would be duplication of services. During future discussions on the Bill, perhaps we could consider setting up another committee, possibly known as the professional services committee, but I strongly oppose the setting up of a health advisory council.

The Hon. R. C. DeGARIS: If my amendment is carried, I am quite willing to make specific provision for specialist committees, which the Minister seems to want so desperately; there does not appear to be any difficulty in that. When the Bill is recommitted, I am willing to provide that the Minister may set up specialist committees that can report to the commission. The council I am proposing would not do that job: it would be a body whereby the lower echelons could approach the commission.

The Hon. D. H. L. BANFIELD: The lower echelons could have representation on some of the committees I am suggesting. People will have more opportunity of presenting their views as members of a relatively small committee than they would if they had to present their views through representatives on a relatively large health advisory council. To cover everyone, we would need about 25 members, and this is not acceptable to the Government. A large health advisory council would not be a good way of achieving the aim; smaller committees, with expertise in particular areas, are preferable.

The Hon. C. M. HILL: Several points come to my mind regarding this matter. I rather suspect that the Minister does not want the future commission questioned very much at all by those involved in the delivery of health services in this State. A health advisory council that had upon it representatives of various sections or groups would be able to question and liaise closely with the commission. However, without such a council this could not happen.

In the interests of the general machinery that we are setting up in this Bill, I think the inclusion of a council could do nothing but good in relation to the overall scheme. I think the Minister is drawing a red herring across the trail when he says how it would be impossible for every authority or interest to be directly represented on such a council. Of course, that is the situation. Honourable members know that the many organisations and groups that play some part in health matters could not be directly represented on such a council.

However, it is fair to group those various small organisations together and to have one representative for all of them. It is reasonable to take an authority that may be playing a dominant part in the provision of health services and to say that that section or group is entitled to have one representative on the commission.

Although the composition of the council, as provided for in the amendment, might be improved, I am sure that it would not be impossible to obtain fair and reasonable representation. I understand that, if this amendment is carried, it, together with other parts of the Bill, will be recommitted and further discussed.

The CHAIRMAN: Yes.

The Hon. C. M. HILL: So, in effect, the vote that will soon be taken will be more or less on the line of the principle of a council's being part of the measure.

The CHAIRMAN: That is right.

The Hon. C. M. HILL: I therefore support that principle, and return to the point I made in the debate on this clause last Thursday. I do not object to other advisory committees reporting to the commission that is to be set up, or to such a provision being included in the Bill. I foresee that any Minister would, from time to time, want to have several advisory committees in existence inquiring into and investigating and researching various important matters.

The inclusion of that type of legislative machinery in relation to health matters is indeed important. I do not want that aspect to overshadow or clash with the importance of the proposed council. If we are to have a further look at this matter when the Bill is recommitted, the Committee should carry this amendment. If it does, it will approve in principle the establishment of an advisory council within this Bill.

The Hon. J. C. BURDETT: I support the amendment. As the Bill stands at present, it contains no provision for the various bodies involved in the delivery of health services to be represented either on the commission or anywhere else in the carrying out of their functions. I believe that there should be such a representative body.

I thought the Hon. Mr. Hill and the Hon. Mr. DeGaris were trying to do substantially the same thing, namely, to provide at some level for the bodies involved in the delivery of health services to be represented on the commission. The Hon. Mr. Hill was not impressed with the Minister's argument that some organisations would not be represented, in whatever way the advisory council was constituted, and I, too, am not impressed with that argument.

It seems to me that what the Hon. Mr. DeGaris has incorporated in his amendment is fairly representative. I point out that almost all of the small bodies which are involved but which are not included in the amendment are represented by the South Australian Council of Social Service. Therefore, those small bodies will, indirectly at least, be represented. It seems to me that it is proper that there should be a body representing the various organisations that deliver health services in the community, and that that body should be able to bring pressure to bear on the commission.

Although I believe that the commission will function well, I do not think it will function in the best possible way if it is allowed to continue working in an ivory tower. Certainly, no-one will be able to tell it what to do if that happens: no-one will be able to stir it up or effectively make it consider various policies that ought to be put into effect.

I believe that setting up the council along the lines suggested by the Hon. Mr. DeGaris will make this a valuable organisation that could bring pressure to bear on the commission to consider the things that it thinks ought to be considered. It will not stop the various bodies having direct access to the commission if they so desire: they could always have that. The advisory council will not have any ultimate power: the power will rest with the commission.

It seems to me that the commission should not be allowed simply to go its own merry way without anyone to stir it up, unless the Minister decides to do so or unless he decides to set up advisory committees in certain areas. It seems proper that there should be a representative body which could in a forceful way bring matters to the commission's attention.

The Hon. M. B. DAWKINS: The Hon. Mr. Burdett has just said that the Hon. Mr. DeGaris and the Hon. Mr. Hill were, in effect, trying to do the same thing in different portions of the Bill. I agree that, to some extent, that is correct. However, I also point out that, if this amendment is not carried (and we have already gone along with the idea of this commission's being a commission with expertise), no-one will have provided for a representative committee that has a certain amount of teeth, even by its own status.

I believe that there should be a body in which responsible organisations such as SACOSS, local government and the others referred to should have a seat, and that that council should have power to report to the Minister and to Parliament, and to make an annual report to the commission. It is highly desirable that there should be a representative body, as this commission would be.

I commend the Hon. Mr. Hill for the comments he made regarding the commission. With some reluctance, I rejected his amendment which provided for representatives on the commission, as I thought that the commission should be a commission of expertise, and I still think that. I am very much of the opinion that, if we have a commission of expertise, we should also have a representative advisory council that gives responsible bodies such as those that have been referred to the right of representation on such a council. I support the amendment.

The Hon. D. H. L. BANFIELD: I point out that clause 18 (2) provides:

> A committee appointed under this section . . .
> (*b*) shall investigate and report to the commission and the Minister upon any matter referred by the commission or the Minister to the committee for investigation and report.

I suggest that, instead of there being only one committee to stir the commission, we have three or four separate committees that can stir the commission. Not only are they being asked to report on something given them by the commission but also they have the right, in their own motion, to investigate and report not only to the commission but also to the Minister. Each of these committees would exchange minutes with the other committees. Each committee is fully conversant with what is going on in the other committees and, by their own motion, they can decide what action they want to take. I ask the Committee not to accept this amendment.

The Hon. R. C. DeGARIS: I have already said I do not disagree with the Minister having the right to appoint specialist committees. That is justified, but I point out that the committees, under the whole of clause 18, may be appointed by the Minister; and, when they are appointed, they will be given limited terms of reference by the Minister.

The Hon. D. H. L. Banfield: But they can play their own role.

The Hon. R. C. DeGARIS: It is difficult, because what is the good of the commission giving them limited terms of reference? There is no way in which the committees can expand those terms of reference without the approval of the Minister. They cannot move away from the original terms of reference as laid down by the Minister; so these specialist committees are set up to do one specialist job—they are nothing to do with representing the viewpoints of organisations at the delivery end of the health service.

The CHAIRMAN: The difficulty could be cured by an amendment.

The Hon. R. C. DeGARIS: Yes; but, even if a specialist committee was set up, I doubt whether that specialist committee would like to take unto itself, by its own motion, a role not set up by the Minister; it would be very difficult.

The Hon. D. H. L. Banfield: But we are giving them terms of reference.

The Hon. R. C. DeGARIS: Yes, but they are representative groups over which neither you nor any Government has control. However, although they have no power, there is an avenue by which they can group and come together to discuss problems. It is all very well for the Minister to say that there can be an exchange of minutes but, if that is done, we are trying to achieve communication between these groups merely by an exchange of minutes. Real communication between the groups will not be achieved by a simple exchange of minutes. Why not let them come together to discuss their problems at the point of delivery of the health service and let them make known their viewpoints in representations to the Minister? I suggest that the amendment covers this more fully than does a mere exchange of minutes between the advisory committees appointed for a specific purpose by the Minister.

The Committee divided on the existing clause:

Ayes (8)—The Hons. D. H. L. Banfield (teller), F. T. Blevins, B. A. Chatterton, C. W. Creedon, J. E. Dunford, N. K. Foster, Anne Levy, and C. J. Sumner.

Noes (8)—The Hons. J. C. Burdett, J. A. Carnie, Jessie Cooper, M. B. Dawkins, R. C. DeGaris (teller), R. A. Geddes, C. M. Hill, and D. H. Laidlaw.

Pairs—Ayes—The Hons. T. M. Casey and J. R. Cornwall. Noes—The Hons. M. B. Cameron and A. M. Whyte.

The CHAIRMAN: There are 8 Ayes and 8 Noes. To enable the Committee to vote on the new clause moved by the Hon. Mr. DeGaris, I give my casting vote for the Noes.

Existing clause thus negatived.

The Committee divided on the new clause:

Ayes (8)—The Hons. J. C. Burdett, J. A. Carnie, Jessie Cooper, M. B. Dawkins, R. C. DeGaris (teller), R. A. Geddes, C. M. Hill, and D. H. Laidlaw.

Noes (8)—The Hons. D. H. L. Banfield (teller), F. T. Blevins, B. A. Chatterton, C. W. Creedon, J. E. Dunford, N. K. Foster, Anne Levy, and C. J. Sumner.

Pairs—Ayes—The Hons. M. B. Cameron and A. M. Whyte. Noes—The Hons. T. M. Casey and J. R. Cornwall.

The CHAIRMAN: There are 8 Ayes and 8 Noes. To enable further consideration to be given to this matter, I give my casting vote for the Ayes.

New clause thus inserted.

Clause 19—"Officers and employees."

The CHAIRMAN: This clause was further postponed because it was necessary, at my suggestion, to make some provision for the staff to be made available to the new Health Advisory Council, but I think the matter could be dealt with when the Bill is recommitted.

The Hon. D. H. L. BANFIELD: As secretarial services, etc., would be automatically provided by the commission, I do not see why we must delay this clause.

Clause passed.

Progress reported; Committee to sit again.

Later:

In Committee.

Clause 8—"Constitution of Commission"—reconsidered.

The Hon. R. C. DeGARIS: I seek leave to withdraw the amendment that I moved last week.

Leave granted; amendment withdrawn.

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

Page 4—After line 24 insert subclause as follows:

(1a) The Members of the Commission shall be chosen in such a manner as to ensure that, as far as practicable, amongst its membership are persons with expertise in the following fields of health care:

(*a*) the practice of medicine;
(*b*) nursing;
(*c*) the provision of paramedical services;
(*d*) administration and finance;
(*e*) education and training of those who are to work in the field of health care;
(*f*) ascertainment of the needs of the community for health services and the planning of new health services;
(*g*) the provision of health services by voluntary or community organisations.

This amendment ensures that practically the whole field of health services receives consideration without our going beyond the number of commissioners laid down in the Bill.

The Hon. R. C. DeGARIS: I agree to the amendment, except for one portion of it. I now believe that the word "amongst" in the preamble is no longer applicable. I suggest that the preamble should be amended to read:

The members of the commission shall be chosen in such a manner as to ensure that, as far as practicable, its members are persons with expertise in the following fields of health care:

Does the Minister agree to this change in the preamble, which would be acceptable to honourable members on this side of the Committee?

The Hon. D. H. L. BANFIELD: Yes. I seek leave to amend my amendment accordingly.

Leave granted; amendment amended.

Amendment as amended carried; clause as amended passed.

Schedules and title passed.

Bill reported with amendments. Committee's report adopted.

Bill recommitted.

Clause 1 passed.

Clause 2—"Commencement"—reconsidered.

The Hon. R. C. DeGARIS: Is the Minister willing to report progress? I hope that we will be able to complete the Committee stage tomorrow, thereby allowing the Bill to pass this place tomorrow or on Thursday.

The Hon. D. H. L. BANFIELD: I agree to progress being reported.

Progress reported; Committee to sit again.

POLICE OFFENCES ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.

(Continued from November 2. Page 1771.)

The Hon. J. C. BURDETT: I support the Bill. At present, as is stated in the second reading explanation, it has been held in some cases in New South Wales that possession of money illegally obtained by drug trafficking does not constitute the offence of unlawful possession. This is based on words in a section of the New South Wales

Police Offences Act, and I understand that the words are, for all practical purposes, identical in our legislation. Section 41 (1) of our Act provides:

Any person who has in his possession any personal property which either at the time of such possession, or at any subsequent time before the making of a complaint under this section in respect of such possession, is reasonably suspected of having been stolen or unlawfully obtained shall be guilty of an offence.

It seems to me that in the New South Wales cases the words "stolen or unlawfully obtained" were interpreted unduly narrowly. It was held that "unlawfully obtained" ought to be construed in some way *ejusdem generis* with "stolen"; that is, the goods were not obtained illegally under the section unless they were obtained in some way similar to being stolen. I do not think the South Australian courts would apply such a narrow interpretation. To enable *ejusdem generis* to be brought into operation, there must be a *genus*, a type. One rarely has a *genus* of two.

I find it difficult to see how any conduct that is not comprehended under the term "having been stolen or illegally obtained" will be comprehended if the goods are stolen or obtained by any unlawful means whatsoever. However, I also cannot see how the Bill can do any harm, and I cannot see that the wording proposed is likely to catch any conduct that ought not to be caught.

Bill read a second time and taken through its remaining stages.

DEFECTIVE PREMISES BILL

Adjourned debate on second reading.

(Continued from November 3. Page 1852.)

The Hon. J. C. BURDETT: I support the second reading of the Bill, and although I support the Bill I think there are some matters that should be considered in Committee. The two main things which the Bill does are, first, to spell out the common law warranties and, in one respect, add to them (and I shall come to this point later), and to prevent the builder from contracting out of these warranties—

The Hon. N. K. Foster: These are defective premises.

The Hon. J. C. BURDETT: —and secondly, to give purchasers of houses from other than the builder rights against the builder or the vendor in certain circumstances. These two principles are unexceptionable. In general, at any rate, it is reasonable to accept that the builder should not be able to contract out of his common law obligations. The purchase of a new home is, after all, the major financial transaction which most couples enter into, and it is proper that they should not be deprived of the protection afforded by the common law warranty.

Any criticism of the general principles of the Bill must be seen against the background that, with one exception to which I shall refer, the Bill does not increase the obligation of the builder, but merely prevents him from contracting out of his common law obligations and extends the protection of the common law warranties to the purchasers from the original purchaser in certain circumstances. Clause 4 (2) extends the protection of the warranties set out in the Act to a purchaser in a new house, that is, one which has not been previously occupied. In such a case the same warranties as apply to the builder apply to the vendor of the house. In cases such as this the vendor would normally be an investor. It seems reasonable that he should be responsible for these warranties.

Clause 4 (3) provides that any person who purchases a house within five years after the date on which it was first occupied shall be in the same position in respect of warranties as was the original occupier. If the original occupier had had the house built for him these rights would be against the builder. If the original occupier had purchased from an investor the rights would be against the vendor. The five-year period has alarmed some people. They say that cracks may subsequently appear, and so on, but it must be remembered that for an owner to succeed he must prove that the work was not carried out in a proper workmanlike manner, that proper materials were not used, or that on completion the house was not fit for human occupation. There is no time of absolute guarantee.

The onus of proving the breach of these warranties rests on the owner. It must be borne in mind that as the five-year period wears on it will be increasingly difficult to prove a breach of any of these warranties. The limitation period is six years at the present time and it is pointed out in the second reading explanation that this will still apply. The limitation period runs from the time when the cause of action arose and this may be long after the building was erected. It should be remembered also that the 1975 amendment to the Statute of Limitations Act can in some circumstances enable the period to be considerably extended, and I know of one building case which is being dealt with on its merits after 14 years.

While the Bill does only (in the main) prevent builders from contracting out of obligations which they already have and extends the class of people who can take advantage of the warranty, I have no doubt that it is true that the Bill will increase the cost of house building, and that this will be passed on to the consumer. Unfortunately, this is always the case with consumer protection legislation. For example, there may be cases where it would appear that the footings designed for a house are adequate in the circumstances. The owner is satisfied that they are and wishes the house to be constructed with those footings. He wishes to save the cost of more elaborate footings.

The builder is prepared to build with those footings provided that the owner relieves him from liability should they prove inadequate. In most cases they will in fact prove adequate. This kind of arrangement will no longer be possible and the builder will have to protect himself by using the more elaborate footings which will, in the event, often prove unnecessary, but the expense will be borne by the owner in all cases whether the footings were necessary or not. It is inevitable that the builder will find a greater need because of the Bill to protect himself against liability, will take greater, and sometimes, in the event, unnecessary precautions, and this will increase the cost. Builders who have spoken to me on the matter have made out a good case for saying that because of the Bill the cost of an average house will increase by at least $1 000.

I am afraid that the benefits conferred by the Bill on the owner may often be illusory. In many cases where a breach of warranty occurs, the builder may have a liquidity problem and may subsequently become insolvent. The right of a purchaser to proceed against him within five years may well be worthless. The Government has been proud of its consumer protection legislation, but it has failed miserably to protect the owner in these circumstances. We all recall that when an amendment to the Builders Licensing Act was last before Parliament the Hon. Mr. Hill moved an amendment to provide a building indemnity fund.

After a conference between the Houses a provision to provide such a fund was inserted in the Act. This was a realistic means of providing true consumer protection for young couples and others. Nothing could be more heart-breaking for them than to purchase a house and find it is defective yet be unable to pursue their remedy because of the insolvency of the builder. The amendment of the Hon. Mr. Hill provided a real remedy and one which would not have increased the cost of a house by much. This, I suggest, would have been a much more helpful remedy to the owner than this Bill, but the Government has failed to proclaim this part of the Builders Licensing Act.

The amended Act was assented to on December 5, 1974. All the Government had to do was to set up the machinery and proclaim that part, but it has failed to do this. The Government always seems given to consumer protection which will inflate costs and impose extra burdens and controls on private enterprise but it is not interested in genuinely helping the consumer, as did the Hon. Mr. Hill's amendment. It would help the consumer if the Government would give it a go. Further, the provisions of the Bill would have been more appropriately included in an amendment to the Builders Licensing Act. We would then have been moving towards some sort of qualification of the statute law relating to the rights of builders and owners in this section. As it is, this Bill will not help house-owners much if they do not know that this legislation exists.

Most house-owners have heard of the Builders Licensing Act and might look at that Act to ascertain their rights. The short title "Defective Premises Act, 1976" would not seem a likely title for house builders or house-owners in respect of legislation setting out their rights. When the Bill was first conceived a short title of "Home Builders Act" was talked about, and this would have been a more suitable title. I would hate to interfere too much with a Government Bill but, in the Committee stage, I hope to amend the short title to "Defective Housing Act, 1976".

After all, the Bill refers to houses and not premises and "Defective Housing Act" would be a more effective title. I have said that in one respect the warranties go beyond common law warranties. The Minister's second reading explanation asserts that the common law warranties include that the house will, when finished, be reasonably fit for human habitation. This is not necessarily the common law position: it depends on the circumstances. At common law it is competent for an owner to contract with a builder according to the owner's specifications and, if he does so, there is no implied warranty that the house will be reasonably fit for human habitation. I refer to Hudson on *Building Contracts* and at page 280 it is stated:

> The following Australian dictum is, it is submitted, an entirely correct statement of the principle: "Unlike a warranty of good workmanship, a warranty that the work will answer the purpose for which it is intended is not implied in every contract for work. The essential element for the implication of such a term is that the employer should be relying, to the knowledge of the contractor, upon the contractor's skill and judgment and not upon his own of those of his agents."

At the bottom of page 282 and the top of page 283 the following comment is made:

> As Lord Esher said in *Hall* v. *Burke* (1886): "There were two well-known kinds of contract—first, a customer might ask a manufacturer to make a machine according to a given plan, or according to a plan supplied by the customer; in that case the manufacturer would only have to make the machine according to the plan, and in a workmanlike manner. Secondly, a customer might ask the manufacturer to make a machine for a particular purpose, not supplying any plan, but leaving it to him to make it for that purpose; in that case, unless the contrary was expressly stated in the contract, the manufacturer would have to make a machine fit for that purpose. There might be a third kind of contract, where both parties said that they would jointly endeavour to make a machine that would do its business, when there would be no warranty that it would effect its purpose."

The statement in the second reading explanation that there is a common law warranty as to fitness is not correct in all circumstances and the warranties imposed by the legislation in this respect go beyond common law warranties. I refer to clause 4 (1) (*c*) taken in conjunction with clause 4 (7). Ridiculous results can occur. Clause 4 (7) provides:

> The provisions of this Act shall have effect notwithstanding any agreement or waiver to the contrary.

This prevents contracting out, but I refer to three examples that can arise. First, when a prefrabricated house is supplied by a house builder, the builder of the prefabricated house now simply contracts to deliver the house and erect it on the premises. He does not contract for any toilets, plumbing and often not even for electrical installation or similar provisions. A house in this situation would not comply with clause 4 (1) (*c*), because it would not be reasonably fit for human habitation. Generally, it is much more convenient and much more to the advantage of both the builder and the house-owner that this arrangement applies.

If a prefabricated house is to be located in a country area, and that is frequently the case, it is often much easier, much more convenient and much more economical for the owner to obtain his own contractors on the spot. However, this sensible practice convenient to both parties would leave the builder liable for breach of warranty under the Bill. Secondly, it frequently happens that, where there is danger of water getting at the house footings and doing damage, it is specified by the building's designer that there should be concrete surrounds. Often it suits the house-owner to do it himself with his own labour or to do it much more cheaply than can the builder. Again, the house would not be reasonably fit for habitation, because it would not have the provision recommended by the designer. This practice would leave the builder responsible under the Bill.

Thirdly, on sloping ground where there is a danger of water seeping down towards the house footings, it is often specified by the architect or designer that there be a retaining wall built further up the slope to prevent water getting at the house footings. The owner will say that it will be expensive for the builder to do that and he will do it himself. Often, it is much more convenient to do it in that way. The house-owner might intend to landscape his garden and build the retaining wall as an integral part of the design. Again, this would leave the builder responsible under the Bill as it presently stands and liable for breach.

The outcome would be that all of these and other sensible arrangements to limit the extent of the building work to be carried out would be discontinued. I agree that a builder should not be able to contract out of his liability to carry out the work in a good and workman-like manner. He should not be able to contract out of his liability to use proper materials but he should, in proper circumstances, be able to limit the extent of what work he will do. He should be able to say, "I will do this much and no more." He should not necessarily be liable for breaches in these circumstances.

In the Committee stage, I intend to introduce an amendment to overcome this problem. Clause 4 (4) provides a procedure to make court proceedings more simple where a builder against whom proceedings are taken alleges that the real fault rests with his professional adviser in the design or construction fields. I question whether this simplification of procedures should be taken further to cover cases where

the builder alleges that the real fault rests with the subcontractors or suppliers of materials. Subject to the matters which I have raised and which I think should receive attention during the Committee stage, I support the second reading of the Bill.

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

NARCOTIC AND PSYCHOTROPIC DRUGS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 3. Page 1856.)

The Hon. J. A. CARNIE: I think every honourable member and every member of the community knows that one of the greatest social problems in the Western world today is the increasing use of drugs. The use of drugs, particularly narcotics, is increasing, the disturbing aspect being that the increase is occurring largely among young people. People of younger and younger ages are turning to the use of drugs, and no Government really knows how to tackle the problem. Holland and England have made some attempts to tackle it in a way other than by simply increasing penalties, which is the method used in this Bill. I shall have more to say on this matter later.

Because illicit drug trafficking provides enormous profits, it has attracted a large and well-organised world-wide criminal element. The situation has not been helped by some Governments. Only a few years ago the main source of opium for the manufacture of heroin was Turkey. The drug went mainly through Italy and France to the main markets of Europe and America; these were and are still the biggest markets for narcotic drugs. However, Turkey apparently then got a sense of conscience regarding this matter and clamped down on the growing of the opium poppy. Although I am not sure of my facts in this respect, I believe that the death penalty is now provided in Turkey for growing the opium poppy. This has not killed the traffic of heroin, but it has shifted it to another place. The main source of opium is now South-East Asia, particularly Thailand, the Government of which, although it does not actually condone the trafficking of this drug, certainly turns a blind eye to it.

For years, increasing quantities of drugs have been passing through Australia, until now the quantities involved are huge. I refer mainly to marihuana and heroin. The size of this traffic is shown by the occasional catches made by police and customs officials. The Minister of Health, in his second reading explanation, said that it has become common for drugs valued at $500 000 to be confiscated. We all know that this is simply the tip of the iceberg, and that there is no way of telling what are the total quantities. Some experts say that we are lucky if we are tracking down 1 per cent of what goes through this country.

Although I have said that some drugs are passing through Australia (and they are going to America and Europe), there is no doubt that some are remaining in Australia and that more and more of our young people are using them. What pressures exist or what is wrong with our society to cause this is, of course, outside the ambit of this Bill. However, there is no doubt that it is a terrible indictment on our society and our generation that more and more of our younger population are turning to the world of drugs. There is no doubt that this is the tragedy of our time, and there is equally no doubt that those of us with children or grandchildren know that those children will eventually come into contact with drugs. The most common drug in use in Australia at present is marihuana. I am told that it is almost impossible to go to a young people's party anywhere now at which marihuana is not smoked.

The Hon. N. K. Foster: Who told you that? That's not right.

The Hon. J. A. CARNIE: It is getting that way. Certainly, one cannot refer to figures. I think, however, that the Hon. Mr. Foster will agree that its use has become far more common. If he speaks to his own children, he will find that this is so.

The Hon. N. K. Foster: There are plenty of young people who do not smoke it.

The Hon. J. A. CARNIE: I still stick by what I was saying. I do not want to promote an argument, as I do not think any of us disagrees with the concepts of the Bill. The problem with the more common acceptance of marihuana is that familiarity is breeding contempt. We see evidence of a growing lobby to legalise the use of marihuana. This is understandable when one sees the number of people who regularly smoke it and who say that it has no apparent effect on them. The attitude then is, "Why not legalise it? It is not doing any harm." Also, the younger generation doubt what they are told about drugs. As an example of that, we told them not so long ago that marihuana was an addictable drug. Indeed, I was told during my pharmacy course that it was addictable. However, we now know that it is not addictable in the physical sense. The psychological dependence on it is a different matter, which I do not think anyone fully understands. Certainly, however, marihuana is not in the same category as, say, morphine or heroin, which are addictable drugs.

The public acceptance of drugs is, to me, the most frightening aspect of the matter. In yesterday morning's press, the President of the Pharmacy Guild of Australia, Mr. A. Russell, commented on the matter. It was rather telling that Mr. Russell said (as reported near the end of the article) that the community distinguished between bank robberies and chemist robberies. He is reported to have said:

> A bloke walks into a bank with a gun and everyone is up in arms. The same kind of hold-up happens at a pharmacy, and people say, "He's only after drugs." For some reason, as a community we are quite happy to tolerate that.

Certainly, there seems to be a difference in people's minds regarding this sort of thing. Although those people who want marihuana legalised say that one suffers no real effect from it, I can only say that we do not know what are the long-term effects. Alcohol has been around for a long time, and we have had a chance to study its effects.

The Hon. Anne Levy: So has marihuana.

The Hon. J. A. CARNIE: True, but it has not been in use for long in our Western society, and no serious studies have been made on it until comparatively recently. However, those studies are being conducted now in America and in most Western countries. I still stick by what I say: that it has not been in use long enough to enable us to study its long-term effects, as has alcohol. We are still learning much about the effect of marihuana, but most of what we have learnt (certainly from my reading) is inconclusive. One comes across one report that says something, but it is simple for one to find an equally authoritative source stating the opposite. Until some basic scientific facts are brought down, we must be careful. There is some evidence in America and Japan that excessive use of marihuana can cause genetic defects, particularly foetal malformation. One that is receiving—

The Hon. Anne Levy: No.

The Hon. J. A. CARNIE: The honourable member can disagree. However, I can show her certain reports. I am not saying that this is conclusive, but there is evidence that warrants further investigation.

The Hon. ANNE LEVY: Will the honourable member give way?

The Hon. J. A. CARNIE: Yes.

The Hon. ANNE LEVY: There have been cases which have suggested that there have been genetic effects because of prolonged doses of marihuana but, generally speaking, these experiments have been found not to be repeatable, and are scientifically discounted. The general consensus of opinion amongst genetic experts is that there is no solid scientific evidence that marihuana has genetic effects. I do not deny that it has other physiological effects, but it is generally accepted that there is no genetic evidence in this regard.

The Hon. J. A. CARNIE: I will bow to the Hon. Miss Levy's greater knowledge in this field. At the same time, I still think that not enough time has been allowed yet to study the full effects of using the drug. I am not really questioning what the Hon. Miss Levy has said. However, I think it would be a brave person who would say categorically that we have studied this enough to say that there are no genetic effects. There is also strong evidence from studies carried out in Japan that the use of marihauana is more likely to lead to the use of other drugs, such as the hallucinogenic drugs, amphetamines, and narcotic drugs. There is much more likelihood of a marihuana user's going on to those drugs than of an alchohol drinker's doing so. My whole point is that the evidence is inconclusive. Unless there is some conclusive evidence, I think we should not tamper too much with the present law regarding marihuana.

I know that this Bill does not deal with the legalisation or otherwise of marihuana. However, before passing on to other aspects of the Bill, I should like to read to the Council a description of the effects of marihuana as set out in the British Pharmaceutical Codex, as follows:

In some persons, particularly Orientals—

I must say that I do not know why they specify them—

it produces a type of inebriation with a feeling of pleasurable excitement and some mental confusion, fantasy or erotic hallucinations, and a loss of the ability to estimate time and space.

Later, decreased sensitiveness to touch and pain, as well as muscular lethargy and relaxation, precede the onset of a comatose sleep in which respiration is slowed and the pupils are dilated. In other persons, it may cause only lethargy with some irritability of temper . . . . *Cannabis* is too unreliable in action to be of value in therapeutics as a cerebral sedative or narcotic and its former use in mania and nervous disorders has been abandoned.

I point out to the Council that that is not the description of a safe drug. This Bill is the result of a Ministers' conference, and it has been brought in rather earlier than was originally announced. It reminds me that it is similar to the circumstances of six years ago. At that time, when I was a member of another place, the member for Bragg (now the Leader of the Opposition in that place) and I worked together on a Bill designed to separate, in legislation, a pusher from a user. A week after the Bill had been presented by the member for Bragg, an almost identical Bill was brought in by the Government, and that Bill brought about the present situation: there is a difference now between a pusher and a user. I am entirely in agreement with this Bill, which provides for much greater penalties for trafficking in hard drugs.

The Hon. F. T. Blevins: What about the pusher-trafficker?

The Hon. J. A. CARNIE: There is a difference between a trafficker and a user.

The Hon. F. T. Blevins: The Bill does not deal with a pusher-user.

The Hon. J. A. CARNIE: I will come to that if the Hon. Mr. Blevins will be patient. That is a very real problem. This is what we are faced with in dealing with this situation.

The Hon. F. T. Blevins: I am agreeing with you.

The Hon. J. A. CARNIE: There is a difference of view as to whether penalties make any difference at all to trafficking in drugs, whether they are severe or light penalties, because, when the stakes are high, as they are with the heroin traffic, the high penalties may not do anything; in fact, all they may do, as was said in one news article which I have here, is lead to more crime. The article states:

This is supported by evidence from New York City, where similar, but harsher, laws were enacted in 1973. The immediate effect in New York of the new laws was that the street price of heroin increased three-fold.

The addict had to commit more crimes to get enough money. This is the same problem, but surely nobody can suggest that, because that happened originally, the follow-on to that is that we should abolish penalties altogether. We must have sufficient penalties, and penalties that will be in accord with the seriousness of the crime.

One problem that we face, which the Hon. Mr. Blevins mentioned a few moments ago, is the fact that we have separated the user and the pusher and have created a problem for ourselves, because Parliament and the courts rightly take the view that a user needs treatment rather than punishment. The trouble here is that, at the usual level at which the peddler is apprehended, he is likely also to be a user who peddles to make money to satisfy his own addiction. People supplying him further up the criminal pyramid are not stupid enough to be addicts, and are rarely caught. So that, in the case of the usual peddler who comes before the court, the court is faced with a dilemma: does it treat him as a user and give him the usual suspended sentence or treat him as a pusher with a harsh penalty of $4 000 and/or 10 years imprisonment? Examinations of sentences passed show that the courts usually favour the former or, at the most, they give light sentences.

Parliament can only give legislation teeth; it cannot use those teeth, because it cannot and should not dictate to the courts; but, unless the courts use the power given in legislation, there is not much point in passing this Bill. If we give them the power to impose a fine of $100 000 or a term of imprisonment of 25 years, there is not much point in that if that power is not used. I am personally vindictive enough to say that these penalties are provided because, in this completely despicable traffic, there are some people who deserve these penalties. In England, an attempt was made to deal with this problem of drug usage and growing drug addiction. An example of what is happening in England was given in the *Sunday Mail* only two days ago. I will quote from what Mr. Perry, who is a lecturer in law at Adelaide University, said. He said this:

Mr. Perry favoured the English system of recognising the drug problem as a social and not criminal one, and setting up large scale programmes of treatment and rehabilitation. In 1968 the British Parliament passed laws which took addicts out of the hands of the courts and placed them in the hands of the medical profession.

I mentioned earlier the Bill of six years ago, which separated pushers from users. At that time, we tried to

move an amendment to make it obligatory on the courts to insist that rather than sentencing an addict the courts would send him to a rehabilitation centre. There were technical and legal problems of drafting, so the amendment was never accepted; in fact, I do not think it was ever moved. But it is what happens in most cases, anyway, and it is right that it should happen. The theory behind the English and the Dutch experiments is that, if the addict gets his drugs legally and in sufficient quantities, there will be no business for the pusher and he will disappear from the scene. These are bold experiments, and I hope they succeed; but how effective are they? I do not think we have yet had a chance to see. It is opportune that in two successive days there were articles in our news items, and I go on to quote from the article in the *Sunday Mail* to which I referred earlier:

The result of these measures can best be summed up by the first paragraph of a brief sent to the *Sunday Mail* by London Bureau chief, Murray Hedgcock:

> It is difficult to get material and write about the hard drug problem in Britain, for in truth, there is no problem. It is now estimated there are about 1 500 registered drug addicts in Britain who obtain their supply of heroin, cocaine, methadone or some other synthetic opiate through the Government Health Service. An extra 500 are said to operate on the black market. This is in a country with a population of some 50 000 000. New York figures show there are 250 000 drug addicts in the city itself. In 1968 the British Government set up 14 clinics in London and 20 in the rest of England (no figures available for Wales and Scotland). Some of these clinics were attached to hospitals. In 1968 there were 1 200 addicts known in Britain. During the first eight years of the clinics this number increased by only 300. The main thrust of the legislation has succeeded in almost eliminating the pusher from the hard drug scene.

That was one newsman's report. In yesterday's *Advertiser* there was a heading, on page 2, "Heroin traffic booms in United Kingdom". As it is only a short passage, I will quote it in full:

Heroin addiction in Britain has reached epidemic proportions, police and customs officials say. And they estimate there are 10 000 pushers in the country with a weekly turnover of $5 600 000. "This is just the tip of an iceberg," a customs officer says. "We are not deluding ourselves any by the law of averages, we are only catching a small portion of what is coming in." It is thought as many as 10 cells of smugglers are at work in Britain, operating in such cities as London, Manchester and Liverpool. First indications of a huge smuggling racket have been revealed by Scotland Yard's drug squad and the investigation branch of Customs and Excise. They say that in two operations 20 kilograms of heroin, which would have had a street sale of $7 200 000, were seized on its way into Britain. Scotland Yard officials believe that more than 40 000 people in Britain are hooked on the drug. "As addiction grows, fewer drug-takers register," one official said. "The smugglers make sure there is enough of the drug around to keep addicts happy without the rigmarole of becoming registered."

To me, those two news items indicate the whole uncertainty of this drug scene, because they are completely opposite to each other: one says that the drug pusher has disappeared from the hard drug scene, and the other says there are 10 000 pushers in England, and the number is increasing. I do not know from those reports whether this scheme is working. I have not any figures and I do not know much about the Dutch scheme. However, I gather that it differs from the English scheme in some details but that basically it is the same. As I have said, we hope that these schemes will work but we must wait more than the eight years they have been in operation, as is stated in those new items, before we will know whether they will work.

I am concerned that the Ministers' conference recommended, and that this Bill follows the recommendation and provides for, the separation of Indian hemp from the other drugs and leaves the penalty for Indian hemp in smoking form as it is. I have said that the use of marihuana in many cases can lead to the use of other drugs and, if this is so, the use of marihuana can be as bad as the use of other drugs. There was an instance of this in Adelaide recently, when the evidence was that supplies of marihuana were drying up so that there would be an increase in the supply of heroin. I do not know whether this was merely a newspaper report, but it is possible that what has been stated is the case.

I do not believe that we can have degrees of illegality regarding the illicit drug scene. If we are to talk about illegality, some drugs covered by the harsher penalty in this field are, if you like, less illegal than marihuana. As a registered pharmacist (and the Hon. Mr. Cornwall, as a veterinarian, is in a similar position), I can legally have supplies of cocaine, morphine and other narcotics, but I cannot possess marihuana.

If we are to talk about degrees, morphine is less illegal, or more legal, than marihuana, but separating Indian hemp from the other drugs and putting it into a separate category is a step towards its ultimate acceptance, and I will always oppose this as strongly as I can. By separating it, we are saying that selling Indian hemp is not as serious a crime as selling heroin, the amphetamines, or any of the others. It naturally follows that smoking marihuana leaf therefore is not as serious as sniffing cocaine. This certainly is not a physically addictable drug, but what is an addiction? I was a heavy smoker for several years, but I gave it up about four or five years ago, and had an unpleasant two or three weeks.

The Hon. N. K. Foster: People can get hooked on some drugs that they get on a prescription, and you are one of the pushers, when it comes to that, and so is every bloody doctor.

The Hon. J. A. CARNIE: I do not know what the Hon. Mr. Foster is getting steamed up about, because on this I agree with him entirely. I have dispensed hundreds of thousands of valium tablets. Certainly, they are different from other drugs and are not physically addictable. I know that it is impossible to put a figure on it, but 90 per cent or 95 per cent of those who get these valium tablets (in passing, I mention that the people who got most valium tablets were middle-aged women) are psychologically dependent on that drug. They cannot face a day without it. Is physical dependence more serious than psychological dependence?

The Hon. B. A. Chatterton: Valium is respectable, because a drug company makes a big profit out of it.

The Hon. J. A. CARNIE: I cannot agree with the Minister. However, I admit, as I have said, that valium is overprescribed.

The Hon. R. C. DeGaris: It is still very valuable.

The Hon. J. A. CARNIE: It is an extremely valuable drug. We are discussing not the price but psychological or physical dependence.

The Hon. N. K. Foster: You try to clean out the drug cabinets that pensioners have and see how much valium is in them!

The Hon. J. A. CARNIE: Is the Hon. Mr. Foster saying that we should supply them with marihuana, or something like that? I am pleased that he said that, rather than that I said it.

The Hon. N. K. Foster: I will say more for your benefit later.

The Hon. J. A. CARNIE: I am disappointed that this has developed into an argument across the Chamber.

The Hon. F. T. Blevins: It has not.

The Hon. J. A. CARNIE: I think we are bringing in extraneous matters, and I am guilty of that myself. The Bill deals with narcotic and psychotropic drugs, not with valium or any of the other drugs. I have tried to raise the questions of psychological and physical dependence and of whether one is worse than the other. I have misgivings about separating Indian hemp from the other drugs but, as that also has been recommended by the Ministers' conference, I will not try to amend the provision. I hope that, if a trader in Indian hemp, as opposed to a pusher, comes before the court, he will not get off with the comparatively mild penalties similar to those that have been handed down.

The Hon. J. R. CORNWALL: I thank the Hon. Mr. DeGaris for his contribution to this debate. It was thoughtful and reasoned and certainly was not superficial, emotional or political. I was afraid that some members might succumb to the temptation to try to make political capital out of the debate, but I have been delighted at how the debate has proceeded to date. However, I must say that I cannot quite apply the same sentiment to the Hon. Mr. Carnie's contribution. I say that with no malice but for reasons that I will make clear. I fear that he may have fallen into some traps.

I support the Bill. I consider that probably we are all pontificating from heights of great ignorance. None of us knows very much about the subject. If we did have a knowledge of it, there would be no reason for the debate to proceed, because we could solve the problem.

The Hon. R. C. DeGaris: Would you agree to the appointment of a Parliamentary Select Committee to take evidence so that members would have useful information?

The Hon. J. R. CORNWALL: I would be equivocal about my response to that.

The Hon. R. C. DeGaris: You usually are equivocal.

The Hon. J. R. CORNWALL: I would have to consider the matter further. I do not know that any great value would come from such a committee. As the Leader is well aware, the Senate set up such a committee several years ago and I do not think it reached any useful conclusion. What I would like to say, from my experience (and this is very much on the periphery of what is going on in Adelaide but it comes from sources that I would regard as being reliable), is that it has come to my attention that there are probably (and I realise the estimates of this vary according to whom you are speaking) 2 000 users of narcotic drugs in Adelaide. I am not suggesting that there are 2 000 addicts but, if you take into account casual users and others, there could be (and I stress again it is only an estimate) upwards of 2 000 users. It is also becoming increasingly obvious that these drugs are now spreading into country areas. It is no longer good enough to say, "If I was in the country bringing up my children in the unpolluted atmosphere I would not come into contact with these," because the use of drugs is evident in Port Lincoln, Port Pirie and Mount Gambier, and this is a disturbing thing.

The Hon. R. C. DeGaris: Probably more so.

The Hon. J. R. CORNWALL: I would like to make it perfectly clear in supporting the Bill that I believe the crime and punishment aspect is only one of the many grave problems in this area. It is interesting to listen to what has happened historically even up to 1 000 years ago. One of the interesting quotes I have before me is taken from a pamphlet entitled "Some historical aspects of social response to drug abuse" which was presented by J. L. Davis. The report states:

In 1729 the rulers of China issued the first edict against opium use, and threatened the keepers of opium shops with strangulation. However, in the same year 200 chests of opium were imported into China, and in 1746 the Chinese Government sent an investigator to Formosa to find out how to prepare opium more satisfactorily for smoking.

The Hon. C. M. Hill: You are not going to move an amendment along the lines of strangulation, are you?

The Hon. J. R. CORNWALL: Indeed not but, while I support the Bill, I have grave reservations that it is going to make any dent in critical terms in what is going on.

The Hon. R. C. DeGaris: Would you go further and say that on past experience it will have no effect?

The Hon. J. R. CORNWALL: That is, I think, probably fair comment. I want to again emphasise, as I have done before in this Chamber and outside, that the "Mr. Big" of the drug black market must be descended upon with the full force of the law, but I will say more about that later. It is very important in this debate that a careful distinction be made in members' minds, and particularly in the public mind, between physically addictive drugs, drugs of psychological dependence or addiction, psychotropic or hallucinogenic drugs, and *cannabis* derivatives. I want to make clear that I do not want to give a lecture on pharmacology. That would be out of my field of expertise. I would also point out that what I am about to give to the Council are fairly loose groupings. We could roughly classify them as follows: first, L.S.D. It is an ergometrine derivative and is a psychotropic or hallucinogenic drug. In the community at large it is bad news—very bad news. It has very bad side effects, with flash-backs, and it is easily synthesised. It is almost totally in disrepute in psychiatric use and it is now almost exclusively available only through illegal channels. Secondly, there are barbiturates and amphetamines, and there is no question that a person can develop both psychological and physical dependence upon these drugs.

The Hon. J. A. Carnie: *Cannabis* is not covered by this Bill.

The Hon. J. R. CORNWALL: I am aware of that. You must allow me more latitude to develop what I am going to say. With barbiturates and amphetamines there is both a psychological and a physical dependence involved. One can get severe withdrawal symptoms (as the Hon. Mr. Carnie would be aware) and untreated symptoms can lead to death. I had the misfortune, or the experience, recently of meeting a person who had been on barbiturates and had been a barbiturate addict in fact for 23 years. She was, I am happy to report, treated successfully, but it is interesting to know in that respect that her addiction started quite legally when barbiturates were prescribed by her medical practitioner. When she was not getting sufficient comfort from one nembutal capsule it was increased to two and subsequently three capsules, and over a period she developed a complete addiction or dependence on the barbiturate and eventually become a Mandrax user, or "Mandy freak", as it is commonly known in drug circles. Amphetamines I classify in the same group purely for convenience, and I make that clear. Again, they are available on prescription but of course they are not simply a schedule 4 as are barbiturates. They are available only with the authority of the Director-General of Health except for narcolepsy and hyperkinesia.

The Hon. J. A. Carnie: When I was practising pharmacy, you needed an authority even for those two conditions.

The Hon. J. R. CORNWALL: I understand from the Health Department that a prescription can be written for them without specific authority if they are for hyperkinesia. Suffice to say that amphetamines are not widely prescribed, and are very limited. Of course both groups are manufactured by the legitimate pharmaceutical companies but can also be synthesised for the black market.

The Hon. R. C. DeGaris: Do you agree that barbiturates are really the largest area of drug dependence that we have in our community at the present time?

The Hon. J. R. CORNWALL: No, I would not think so. Although, I cannot give accurate figures on that, fewer and fewer barbiturates are prescribed, and for that reason I would not think so.

The Hon. R. C. DeGaris: Apart from dependence on alcohol, what is the drug of most concern?

The Hon. J. R. CORNWALL: I will come to that. The one I am about to talk about is diazepam, more commonly know as valium and similar derivatives. I am loosely classifying them in the same area. Frankly, we do not know enough about valium. It is a very useful drug in many situations, but it is increasingly being prescribed, and I fear people are becoming increasingly psychologically dependent on it. There is no evidence of physical dependence. It is significant that there is more and more injectable valium on the black market, and it is of concern at the moment that people are getting valium in that form. The third grouping for the purposes of this classification I spoke of are the *cannabis* derivatives, and some informed sources suggest there is a psychological dependence in habitual users of *cannabis* resins and other potent *cannabis* preparations such as Buddha sticks.

Users can lose their motivation, and heavy users may permanently get into a state where they are more or less "stoned". However, I would point out that it has been estimated that about 500 000 people in Australia are casual pot smokers. Some researchers firmly believe that casual use of marihuana in a social atmosphere causes less harm than does the use of alcohol. Certainly, there is no real evidence that its use leads directly to the use of hard drugs. In passing, I point out that in Australia today it is estimated that we have 250 000-300 000 alcoholics. Each Australian consumes on an average per head of population basis; 141·26 litres (about 30 gallons) of beer, 11·16 litres (over two gallons) of wine; 1·26 litres (a quarter of a gallon) of spirits every year; 40-50 per cent (some say more) of the fatal road accidents are associated with alcohol abuse; 30 per cent of the crime in New South Wales is associated with alcohol; 20 per cent of persons admitted to mental institutions have brain damage due to alcohol; and the sum total of the cost of economic damage to our community from alcohol is between $740 000 000 and $1 000 000 000 a year. Certainly, there is no suggestion that *cannabis* and its derivatives at this stage are in anywhere near the same league in their effect as the legal drug alcohol. Many people say that the casual use of marihuana causes less harm than alcohol, and there is no real evidence that its use leads directly to the use of hard drugs.

The Hon. J. A. Carnie: Experiments in Japan, although they are not conclusive, warrant further investigation.

The Hon. J. R. CORNWALL: They are far from conclusive. Certainly, I am not setting myself up as an expert: I am merely advancing a few simple facts for further consideration and debate. On several occasions I have appealed for intelligent discussion and rational debate on this matter. It is for this reason that I am labouring some of these points.

The Hon. R. C. DeGaris: Your last point about marihuana was opinion rather than statistical.

The Hon. J. R. CORNWALL: There is no real evidence that casual use of *cannabis* in a social atmosphere is harmful or leads directly in any way to the use of harder drugs.

The Hon. R. C. DeGaris: I cannot accept that point.

The Hon. J. R. CORNWALL: That is your democratic right. Statistically and scientifically, it is another matter. There were people who once believed that the world was not round! The next category I have used in the classification are the narcotics, opium derivatives. The king of all these is heroin. Without doubt, it is the most abominable drug in the world. Once people become addicted, there is at the cell level an ever-increasing physical tolerance, and addicts require ever-increasing doses. The $30 habit leads to a $60 habit, which leads to a $100 habit a day, and consequently all sorts of crime is associated with this addiction. In females, a substantial amount of prostitution is involved, because this is the only way they can feed their terrible habit.

Even casual use of heroin is extremely dangerous. First, there is a real danger of addiction and, secondly, there is a real danger (and this is happening all too frequently) of overdose because users are not getting controlled dosage and may be getting contaminated dosage. I will come back to that point. Addicts, at least, have a tolerance. True, it is tragic, but addicts can tolerate large doses. For casual users it is possible that they can overdose and die, and this has been happening quite frequently. The next occurrence facing people "shooting up" is that commonly they develop Hepatitis B from contaminated syringes and equipment.

The causes and use of these drugs present a complex problem. It is difficult to understand and, as I stated initially, most of us who try to talk about it are merely pontificating from heights of great ignorance. Certainly, this matter requires much more study and much more tolerant thought. The use of drugs is increasing throughout the Western World. It is not a problem in which we find ourselves in isolation, and I refer to a recent report in the *News* (November 2, 1976), which states:

Melbourne: The number of people charged with using heroin in Victoria is now five times the level of two years ago. A similar rise has been recorded in charges of possessing the drug—and trafficking charges have doubled. The chief of the Drug Squad, Inspector Roy Kyte-Powell, said yesterday most people charged were in the 18 to 25 age bracket.

Such an increase in that relatively brief period is terrifying. The causes of drug use seem to range from the present instability of Western civilisation to, in specific instances, an artificial shortage of marihuana, but this is in the unstable part of the population. That is a point I must keep stressing: one of the great problems involves the drug subculture. This problem is fostered by the operators of the black market. They try to get kids into it at an early age. They are encouraging them to smoke pot and to "drop a bit of acid". Kids eventually get into a situation where someone may say at some time, "This is the in thing. We will give you a capsule," and it will not cost $30 the first time around. Before we know it, there are 15-year-old, 16-year-old and 17-year-old kids "mainlining" on heroin.

This is a most disturbing position. As Dr. Millner, Inspector-General of the Victorian Health Department stated, there may be a psychological chain of multiple use. I am willing to concede that. However, it does not follow from pharmacological or physiological views that that is the case; in fact, I am sure that is not the case. It seems that, if we can eliminate the attractions and attractiveness

of this drug subculture, we would probably be getting somewhere along the way towards solving the problem. If one looks at this matter from the most pessimistic stance, it may be that we are witnessing the decline of Western civilisation as we know it, but I am more optimistic about the position.

The Hon. R. C. DeGaris: A person addicted to alcohol finds it difficult to accept the drug addict. There seems to be a social attitude towards it.

The Hon. J. R. CORNWALL: That is perfectly true. For example, at Hillcrest, alcoholics are regarded with great scorn by drug-takers, and vice versa. Alcoholics regard themselves as being in a totally different category from that of narcotics users. I do not know the answer to this dilemma. However, it is not uncommon for alcohol and pot to be taken together. While many people who use pot do not feel the need for alcohol (and the vast number of people who take alcohol do not have any interest in using pot), it is not uncommon for the two drugs to be taken together. However, in referring to drug addicts, we are dealing with people who have been on heroin, which is at the top of the hard drug tree, in comparison with alcoholics.

True, each group regards the other with a degree of contempt. In the existing drug subculture there is a relatively small but increasing number of young people graduating from pot to heroin. Their basic insecurity leaves them open to manipulation. One of the great problems is that, with the increasing pressures of modern society, we have an increasing number of children between the ages of 12 years and 14 years who are suffering from varying degrees of depression, many from acute depression. Because they are in a state of emotional instability, they can be manipulated into the drug subculture. Perhaps one of the ways, which we ought to investigate, of eliminating this subculture is to consider decriminalising marihuana. This may make a significant dent in illegal trafficking and hence reduce the risk of exposure to hard drugs through the black market.

I turn now to the question of organised crime associated with the black market. For convenience, I shall enumerate four main categories. At the top of the tree, there are the suppliers, for whom I have no mercy; the full force of the law must be brought to bear on them. Secondly, there are the dealers and, thirdly, the pushers. Often, the pushers have developed the habit themselves. At the bottom are the kids who have been sucked in and are being used. The elimination of the big operators is obviously one of the keys to any successful campaign. However, as there are huge profits involved, increased penalties without successful prosecutions will have little, if any, deterrent effect. The effect of increasing penalties is questionable. Harassment of users at the bottom of the scale will probably only increase the excitement of "scoring". So, it probably does not do very much good in practical terms.

The other aspect we should consider seriously is education, which is probably started too late, and we often go about it in the wrong way; for example, we start to talk about the matter when youngsters are 15 years or 16 years old, but at those ages they may already be in the subculture, anyway. We tell them about the horrors of heroin, but on the first occasion when they use heroin they find there is nothing horrible about it; it is a delightful experience. And we geriatrics moralise about drugs! While we are having a beer and a smoke, we tell the kids about the horrors of heroin! They bomb themselves out, they sit there, and the world is a great joy. To unstable kids, this is the ultimate joy. So, we must consider the problem and our programme more deeply. To use a legal term, with deference to the Hon. Mr. Sumner, I could say that, on the one hand, intially it is very pleasing while, on the other hand, later it is most horrifying. There is no point in telling kids, when they are already in the subculture, that heroin is dreadful: we should explain to them that the initial contact with heroin is relatively pleasant, but if they get right into it they will be in terrible trouble.

The Hon. R. A. Geddes: Do you believe that something like a Select Committee should consider the total problem?

The Hon. J. R. CORNWALL: I do not know whether a Select Committee is the answer. Turning to the question of policing the legislation, I wish to refer to an article in the *National Times* of November 1. Six barristers with experience of up to 20 years in the criminal jurisdiction are referred to. One of the questions referred to the various squads, including the vice squad and the drug squad. I make it clear that I am not being critical of the South Australian Police Force. The article, which refers to the Victorian situation, includes the following interview:

First of all, when was the last "Mr. Big" arrested? Now when was the last big shot in crime arrested and/or convicted?

I do not remember. I have been defending people for 16 years—little people. The big shots are not arrested, it is as simple as that. I say there is organised crime, there are big shots. But there is pretty little successful detective work in relation to them.

Certainly that is one of the great problems. In most instances, the big shots are clever people who are unfortunately ahead of the police in many instances.

The Hon. R. C. DeGaris: Particularly if the powers of the Police Force are curbed.

The Hon. J. R. CORNWALL: I thank the Leader for listening to my contribution with rapt attention. All decent citizens must be as outraged as I am by the criminal activities of hard drug suppliers. It is imperative, as I have said many times before, that there be more rational discussions than there are emotional outbursts. The net effect of the Bill will be very limited but, since it cannot do any harm, I support it.

The Hon. F. T. BLEVINS: I support the Bill. To some extent I feel a little hesitant in following the Hon. Mr. Cornwall and the Hon. Mr. Carnie. This is the Hon. Mr. Carnie's field.

The Hon. J. A. Carnie: Not illicit drugs! Heroin is an illicit drug.

The Hon. F. T. BLEVINS: The Hon. Mr. Carnie and the Hon. Mr. Cornwall spoke very well, and they obviously know a great deal about the subject. I do not profess to have the same professional knowledge as they have, but I have given some thought to this topic, which society will have to consider very seriously if we are to combat the drug menace. I have some reservations about the approach being taken by all Australian Governments. Because I support a uniform approach to the drug problem in Australia, I can understand why this Bill has been introduced.

I will deal with the penalties provided in clause 5. The intention of this clause is to increase penalties for offences relating to the trafficking in narcotics. It would be appropriate for me to read into *Hansard* some of these penalties, and what will be involved if one is caught trafficking in drugs. I refer, first, to new section 5 (2*a*), which provides as follows:

(*a*) where the drug or plant involved in the commission of the offence is Indian hemp, or any other prescribed drug or plant—a penalty not exceeding four thousand dollars, or imprisonment for 10 years, or both;

that relates to marihuana—

(*b*) in any other case—a penalty not exceeding one hundred thousand dollars, or imprisonment for 25 years, or both;

When this Bill is passed, those will be some of the penalties that could be imposed. I refer also to clause 8 (*d*), which provides as follows:

where the offence involves a drug of a prescribed kind—any premises, or vehicle, the property of the convicted person, used by him in connection with the commission of the offence.;

The Hon. R. C. DeGaris: What about an aeroplane?

The Hon. F. T. BLEVINS: It could even include that. The point is that these are Draconian measures. The Hon. Mr. Hill, by way of a humorous interjection, referred to strangulation. He asked whether we advocated strangulation. When one looks at the Bill one sees that that is about the only thing that is not provided for in it.

The Hon. C. M. Hill: Apparently, it was the punishment in China in the eighteenth century.

The Hon. F. T. BLEVINS: Yes. I was in the Chamber, and I heard that. Strangulation is about the only thing that is not provided for in the Bill. When one talks about $100 000 fines and/or 25 years in gaol, then there is not much left with which to threaten people. Apparently, anything that offenders own can be confiscated. For the professional narcotic trafficker, I have nothing but contempt and loathing, as, indeed, I have for anyone in business who exploits his customers and makes huge profits. What disturbs me is that I am not convinced that, simply by increasing the penalties for hard drugs, we are approaching the problem in the correct way. Last Wednesday in the Council, I had the unusual experience of agreeing with the Hon. Mr. DeGaris, who said:

The drug trafficker, the person who is pushing drugs, is often a person who is addicted and uses this method as a means of getting the drugs on which he depends, and there is pressure on that person to open new markets for his own exploitation.

I agree entirely with that. What is also true is that it is generally the lower income people who, tragically, become involved with narcotics and drug trafficking. They are the ones who have not got the resources that the rich and powerful criminal organisations have to enable them to operate effectively.

A recent New South Wales study revealed that almost 85 per cent of people convicted for drug offences came from working-class homes. They could not afford to bribe anyone; nor could they afford huge lawyers' fees. So, most of them pleaded "guilty" and went to gaol. True, a significant percentage of drug traffickers in narcotics are also addicts. As the amendments stand, there is no way of dealing with what is essentially a medical and a psychological problem in any other way but as a criminal offence. To my mind, there is no point in putting an addicted person in gaol for long periods of time without ensuring that he gets the right treatment. I hope that when this problem is being examined and when legislation is being framed in future stronger recognition will be given to the question of treatment.

I now refer honourable members to a report in last weekend's *Sunday Mail* headed "Drug moves of no use". This report, which I think all honourable members should read, casts considerable doubts, along the lines suggested by the Hon. Mr. DeGaris and me, on the effectiveness of the proposed laws. The report claims that senior criminal lawyers and a lecturer in law at Adelaide University have said that the drug laws currently before State Parliament are unlikely to affect the supply and use of heroin and other hard drugs. In fact, the report claims that it could lead to more crime.

The report refers to the New York legislation. The immediate effect of increased penalties in New York was an increase in the street price of heroin. It states that this meant that addicts committed more crimes to buy drugs. Latest United States figures show that 60 per cent of serious crime is related to heroin. The report also quotes Mr. Allan Perry, a lecturer in law and a criminologist at Adelaide University, who said:

Heroin use did not decrease as a result of the laws. All it did was to increase the sales.

Essentially, it meant that big capitalism in the criminal world moved in. Organised crime took over, or at least extended its influence in this sphere because it had the money and the muscle to exploit the hard drug market.

The Hon. R. C. DeGaris: That is not necessarily capitalism. You've used the wrong term there.

The Hon. F. T. BLEVINS: Capitalism seems to do this better than anything else does it. Capitalists are the most efficient exploiters on earth. As a consequence, there are now 250 000 drug addicts in New York alone. That represents a large increase on 175 000 addicts before the harsher penalties were introduced. Honourable members should compare that with the situation in Holland, England and other countries where a different approach is used: that of registering drug addicts and treating their addiction as an illness, which it is. Honourable members would find that the problem is nowhere near as bad there as it is in America. In the United Kingdom, for example, there are only 1 500 registered drug addicts. I am not suggesting that that is the sum total of drug addiction in the United Kingdom, although it certainly shows that it is nowhere near the problem there that it is in America.

The Hon. R. C. DeGaris: I cannot quite agree with that.

The Hon. F. T. BLEVINS: Very well. I am not suggesting that we condone addiction or that it is morally right. I am concerned solely with what is the correct method of dealing with this problem. It seems to me that we could be falling into the same trap as the Americans. The article refers to a report from the Association of the Bar of the City of New York Drug Abuse Council which was published in August this year. I have a copy of that report and, if honourable members would care to look at it, I should be pleased to give it to them. This report deals with the effect of the new laws on the court system, and indicates that the new legislation caused delays of up to a year in the New York City courts. In the summary of its findings, the report states:

A total of roughly $55 000 000 had been spent on court-related resources to implement the laws by the end of 1975.

The report also suggests that the new laws have not acted as a deterrent. I should like to see laws relating solely to people who push drugs for profit and who are not addicted. These laws could have harsh penalties and could be directed towards organised crime. It seems to me that in future a case could be made out (and I put it no stronger than that) for this entire matter to be referred to a Select Committee, which could look at the alternatives and report to Parliament. I can see that a case could be made out for that. It is a great pity that rational debate on the drug problem is often categorised as being soft on drugs or pro drugs. I am certainly none of these things. It appears that certain sections of the Opposition are beginning to

orchestrate a law and order electoral campaign and drugs, violence in the streets, and juvenile crime are beginning to dominate certain sections of the press. It would be a great pity if electoral considerations stampeded Governments into passing harsh and unworkable legislation, simply because of electoral considerations, as was the case in New York.

The Hon. C. M. Hill: You sound as though you will vote against the Bill.

The Hon. F. T. BLEVINS: Drug addiction and its problems have nothing to do with Party politics. We have to get the best information and the best legislation. We shall not get that by the likes of Dr. Tonkin attempting to score cheap political points at the expense of drug addicts, which I think he was doing. There were a few instances two or three weeks ago of people who died from the misuse of drugs, and Dr. Tonkin said immediately, "I will bring in these harsh Draconian laws." That was sheer, cheap politics. I say that Dr. Tonkin was only playing politics over this issue and he was going to introduce penalties in a private member's Bill and take the credit for it. I hope the Liberal Party will in the future take more notice of the Hon. Mr. DeGaris than it does of Dr. Tonkin on this issue.

The Hon. C. M. Hill: You are not playing politics now, are you?

The Hon. F. T. BLEVINS: No; I am merely stating the fact that I hope sincerely that members of the Liberal Party will take more notice of Mr. DeGaris than of Dr. Tonkin on this issue. It is a simple statement of fact. The passing of this Bill will, I am sure, not solve the problem of drug addiction and the crimes associated with it. I hope it helps, but I look forward to a reasoned non-political debate and investigation of the whole drug problem. Given the known attitude of the Hon. Mr. DeGaris on this issue, I am confident that such a reasoned debate and investigation can become a reality. I support the Bill.

The Hon. ANNE LEVY: I, too, support the second reading of this Bill. Much has been said in this debate already, and I commend the Bill. As I see it, there are two main aspects of this legislation, which are detailed in clause 5. First, as was mentioned by a number of previous speakers, the penalties for trafficking in and the possession of hard drugs are greatly increased, as was agreed at the recent meeting of the Australian Government and State Health Ministers. These penalties could indeed be regarded as quite savage. As was mentioned by the Hon. Mr. Blevins, there is a maximum fine of $100 000 and/or a 25 years gaol sentence. Furthermore, as indicated in clause 8, a court may order the confiscation and forfeiture to the Crown of any premises being the property of a convicted person which have been used by him in connection with the commission of the offence.

This raises the spectre of a man being sent to gaol for a no doubt well-deserved, lengthy sentence for drug trafficking, and his wife and family being turned out into the street as the family home is taken from them by court order, if the offender has in any way conducted his illegal business from his home. This seems rather a Draconian provision in the Bill, and one would hope the courts would avail themselves of this penalty only in the most extreme circumstances. It may well be that it will never be used, as I can well envisage that the most vicious and unprincipled trafficker would take the sensible precaution of putting the family home in his spouse's name, so protecting it from forfeiture in the event of his detection.

Other speakers have dealt, and will deal further, with this aspect of the Bill and also the philosophy behind the approach of heavy penalties for drug trafficking. We all recognise, I am sure, that there is a difference between the pusher of hard drugs, who deals in human misery for his personal profit (surely the most anti-social of activities), and the addict who is driven to selling drugs to obtain the cash to supply his own needs. The addict deserves help and sympathy, and the State has recognised his cry for help and established centres to rescue and rehabilitate him.

It is perhaps worth noting that in the United Kingdom an addict who comes forward for help, registers himself as an addict and sincerely desires and receives treatment, automatically is granted a pardon for any offence he may have committed through having been in possession of narcotics. This does not apply under Australian law, although I cannot imagine that the authorities in this State would take legal action against an addict who voluntarily contacted the Alcoholics and Drug Rehabilitation Centre for help towards a cure. This question of an automatic pardon for the addict seeking treatment could perhaps be considered in this State when drugs legislation is next considered, so that the present practice can be written into our laws.

The second main aspect of this Bill I wish to consider concerns penalties invoked for possession and use of Indian hemp, or marihuana. These are not being altered but are remaining at a $4 000 fine and/or a 10-year gaol term. While some would argue that these penalties are excessive, considering what is known of the effects of marihuana, nevertheless it seems to me that a very important principle is here being established. Unlike the Hon. Mr. Carnie, I heartily agree with this principle—that marihuana is being considered in our law as being different from the hard drugs of addiction. This is a very sensible first step, and I thoroughly endorse the policy that recognises that marihuana is different from other drugs physiologically, psychologically, and in its social effects in present-day society. Marihuana is far more widely used now than are any of the hard drugs, although it is far behind the socially-acceptable and legal drugs, alcohol and tobacco.

In the United States, Government-sponsored surveys and Drug Abuse Council surveys show that many Americans both approve of and use marihuana. The latest surveys show that 13 000 000 Americans are now marihuana users and that 8 per cent of adults and 12 per cent of persons aged between 12 years and 17 years had smoked marihuana within the past month and expected to do so again. Furthermore, 34 000 000 Americans have smoked marihuana at least once, and these constituted 19 per cent of the adult population and 23 per cent of the youth group. The greater proportion of young people compared to older people who use marihuana suggests that, with time, attitudes to the drug are changing and that increasingly there will be social acceptance of moderate marihuana use.

The nation-wide survey by the National Institute of Drug Abuse in the United States, released in October last year, showed that 53 per cent of those aged between 16 years and 25 years had used marihuana at some time, although only 25 per cent were current users at the time of the survey. These are substantial proportions that cannot be ignored by legislators who are concerned with social questions.

The Hon. R. C. DeGaris: What were the figures for heroin in the survey?

The Hon. ANNE LEVY: I am sorry, I cannot recall the figures. I was checking only on marihuana use. We have a majority of the age group having used marihuana at

least once, and one-quarter of them currently using it. I agree that heroin is a problem, but the proportion in regard to heroin would be nothing like the figures for marihuana. This large number of young people using marihuana cannot be dismissed as being irresponsible and criminal, and surely no-one would suggest seriously that a habit indulged in by more than 50 per cent of the age group at some time is making criminals of half the young age group in the community. If that is suggested, the word "criminal" needs redefinition.

Perhaps it is not generally known that eight of the States in the United States have decriminalised marihuana. That does not mean that marihuana has been removed from the Statute Books. There has not been a complete legalisation, but it has merely been removed from the criminal law and made a civil violation, similar to a traffic offence. The States that have decriminalised marihuana are Oregon, Alaska, Maine, Colorado, California, Ohio, South Dakota, and Minnesota. In those States, possession of a small quantity of marihuana (usually 1oz.) is a civil offence only, with a possible maximum penalty of a fine of $100.

The advantages of this new legal approach are obvious. Young people convicted of such a civil offence are not branded with a life-long permanent criminal record that can affect their future careers and job opportunities, and the people concerned no longer need fear being gaoled. The police, too, have been freed of a costly and time-consuming burden to concentrate on serious crime.

Oregon is the State where this new approach to marihuana has been in effect for the longest time, decriminalisation having occurred there in October, 1973. Surveys done in that State have shown that there has been no increase in the use of marihuana since that time. After one year of operation of the new law, 19 per cent of adults had tried marihuana and 9 per cent were current users. This can be compared to the position in neighbouring California, which then still had possession of marihuana as a criminal offence and where 28 per cent of adults had tried marihuana and 9 per cent were current users. After two years of operation of the new law in Oregon, 20 per cent of adults had tried marihuana, compared to 19 per cent a year before, and 8 per cent were current users, compared to 9 per cent previously, so there had been no increase in the use of marihuana with the removal of criminal penalties.

It is also interesting to note that the surveys in Oregon showed that, for those adults who were not using marihuana, the main reason for not using the drug was lack of interest in it. Between 53 per cent and 65 per cent of those not using the drug gave this reply in the survey. Another major reason was concern about possible effects on health. Only a small minority stated that they feared prosecution, and for them only could the penalties be said to act as a deterrent. It is clear that, for most people in Oregon, those who do not use marihuana abstain because they are not interested in it.

Similar responses were given by non-users in California when that State still treated the possession of marihuana as a felony. Of the non-users, 50 per cent were simply not interested in using it. Perhaps we can conclude that, for many people, whether the State regards marihuana use as a felony or merely as a civil offence makes little difference to its use in the community. It is probable that research in this country would lead to similar conclusions, but little work has been conducted along these lines in Australia.

Research work has been carried out in New South Wales by the Division of Health Service Research of the Health Commission in that State regarding use of marihuana in certain limited sub-groups of the New South Wales population. Those conducting the survey investigated selected groups in forms 4 and 6 in a representative sample of students at State, Catholic, and private schools, students at technical colleges and art schools, adult Matriculation students, and general and psychiatric nurses. They were all young groups in which the prevalence of marihuana smoking might be expected to be higher than in the general population.

I will not quote all the figures obtained in the survey, but at that time (1973) the biggest incidence reported was 43 per cent among art school students as being current users of marihuana, 29 per cent of students in trade courses, and 14 per cent of those students in Matriculation year at school. Again, we cannot seriously suggest that more than one in eight of our high school students is a criminal, in the usual meaning of the word.

Other conclusions of interest from this New South Wales study were that the use of marihuana was much greater in private schools than in State or Catholic schools, and also that users were more likely to have parents in a high socio-economic class than were the non-users. Users were also more likely not to have orthodox Christian beliefs and, unlike the surveys in the United States, they were equally likely to be male or female. I quote briefly the final paragraphs of this report wherein a number of questions are raised which I think we could well consider. The report states:

> Does the law discourage potential users by the threat of detection and punishment, does it restrict their access to the drug or does it only limit the frequency of use and the quantity consumed? How is it that although young people with fathers in upper occupational classes were apparently more likely to smoke marihuana, the lower classes were considerably over-represented among the offenders convicted for drug offences in New South Wales . . . Is there something about the behaviour of lower-class delinquents which makes them more prone to apprehension or are the police more likely to seek out and press charges against them? This question goes beyond the matter of drug use to the sociology of law enforcement.

I am sure that these questions need investigating in this country, and I hope it will not be long before serious research is carried out into these matters, as it surely could be with encouragement from the appropriate authorities. Meanwhile, we are taking the first step towards decriminalising marihuana. This first step is very important in principle in distinguishing between marihuana and the narcotic drugs as to the maximum penalties imposed in this legislation. I commend this approach and support the Bill.

The Hon. C. M. HILL: I support the Bill, and the only reason I rise is to answer the criticism made by the Hon. Mr. Blevins of Dr. Tonkin in regard to the contention that Dr. Tonkin played some sort of politics in trying to rush through a private member's Bill on this matter. On September 7 of this year there was a report in the *News* which, under the heading of "Get tough on drug pushers—S.A. Minister", stated:

> Tough new penalties for traffickers in hard drugs could be introduced in South Australia next year. The South Australian Health Minister, Mr. Banfield, today said he supported Federal Government moves to increase penalties . . . "Neither the heavy fines nor the gaol terms are too harsh for drug peddlers," Mr. Banfield said "I believe there are more and more people experimenting with drugs."
>
> If the meeting of Federal and State Ministers agreed to increased uniform penalties across Australia and the State Government accepted the plan, it is unlikely legislation could be drawn up in time for the current session of State Parliament. More probably the legislation would be introduced next year.

That meant that in September the Minister did not intend to bring in his legislation until next year.

The Hon. D. H. L. Banfield: It doesn't mean that at all.

The Hon. C. M. HILL: If it does not mean that I will ask the Minister what this report in the newspaper means—a report in the *News* of October 25 (not very long ago) which states:

Last week the Health Minister, Mr. Banfield, said the Government was planning to introduce tougher penalties for drug pushers in South Australia but did not expect to bring in the legislation until next July. Dr. Tonkin said he was bitterly disappointed that the Government had not appreciated the urgency of the growing drug problem in South Australia.

Dr. Tonkin was mainly, by the inactivity of the present Minister, spurred on because of his great interest in this matter and his desire to get this measure on the Statute Book. On the following day (October 26) a report, under the heading "Tonkin to act on drug pushers", states:

The Leader of the Opposition (Dr. Tonkin) is drafting legislation aimed at providing substantial penalties for drug pushers. He said yesterday he hoped to have his private member's Bill ready to go before the Assembly next week. The legislation would set a maximum penalty for drug pushers of a $100 000 fine or 25 years gaol. "Drug trafficking is the worst kind of pyramid selling," Dr. Tonkin said. "Many drug pushers could be classed as being guilty of murder or manslaughter in the long term. Therefore, they should have to face the toughest possible penalties." Dr. Tonkin said the South Australian Government had agreed recently to introduce tougher penalties, but had announced that the legislation would not be ready until July, next year. That was far too long to wait for Government action. He said he hoped the Government would support his legislation next week.

The Hon. F. T. Blevins: Did he introduce the Bill? Where is the Bill?

The Hon. C. M. HILL: He did not introduce the Bill, because of what happened following that announcement. The Minister got off his stool, and we saw some action. Obviously the Leader of the Opposition stung the Minister into action. The initiative of the Leader of the Opposition and the result that has been achieved as a result of that initiative, namely, the introduction of this Bill, is indicative of the strength and leadership of the Opposition and its Leader in this Parliament. I support the Bill.

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

RUNDLE STREET MALL ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 3. Page 1853.)

The Hon. C. J. SUMNER: This Bill contains mainly machinery matters that do not seem to raise a great deal of controversy. The change of name from Rundle Street Mall to Rundle Mall is contained in the Bill, and also contained are the financial provisions to enable the mall to function effectively and to enable the Adelaide City Council to borrow funds in connection with it. The Bill also provides for some by-law-making powers to be given to the council. It extends the power of the mall committee in this respect. As this is the first time that the subject of the mall has come before us formally since it was opened about two months ago, I should like to make some general comments on it.

We know what its history is. Although a suggestion was made for a mall in Rundle Street prior to 1972, the real impetus for the creation of the mall came in that year when certain pollution counts were taken in Rundle Street and it was found that pollution from motor vehicle traffic was beyond acceptable levels. The State Government showed, and has shown throughout the period, some enthusiasm for the project, and it would be true to say that, from 1972 to when the mall was completed, there was some reluctance, perhaps timidness, towards the project on the part of the council and the traders concerned. I think most people would now agree (certainly the shoppers would agree; indeed, they did years ago when surveys were carried out) that the mall is an excellent thing, and most of us who have had the experience of shopping in and walking down the mall since its opening would be full of praise for it. I am sure that in the future retailers, although initally they seemed reluctant and less than enthusiastic about it, will find that it has been a commercial success.

There are one or two disturbing matters about the mall and the attitude towards it of some people, including certain members of the mall committee. This raises the issue that has perhaps been at the heart of an on-going conflict about what the nature of the mall should be. In 1973 Sir Edward Hayward (Chairman, I think, of John Martin's Board of Directors) said that the mall must be attractive to both the buyer and the seller; it must be a pleasant place to shop in and its position must be enhanced as a commercial success. I doubt that any honourable member would argue with that view, although it is interesting to note that the emphasis was placed on the mall's being a commercial success and a pleasant place to shop in. In 1975 the Lord Mayor's Mall Steering Committee said that the mall should be a shopping mall rather than a crowded plaza. Again, the emphasis was placed on the commercial and shopping nature of the mall. I do not wish to argue with the fact that the mall must be a commercial success—that it must enhance the commercial possibilities of the traders in the area. Obviously, Rundle Street was a commercial street and now that it is a mall it must continue in that way, and attracting people to shop there must lead to its success in other community activities.

Some of the attitudes expressed have placed too much emphasis on the shopping nature of the mall. I believe we must examine it as a community centre, an area that the people of South Australia can use not only for shopping but also for other activities. Some of the attitudes of traders and members of the mall committee in this respect are a little retrograde. The mall should become a live, out-door community centre and should not merely be an extension of the retail shops and the trading zone.

The Hon. M. B. Cameron: Do you want people there like the Hare Krishnas?

The Hon. C. J. SUMNER: Why not?

The Hon. C. M. Hill: Are you in favour of the singers about whom objection was raised?

The Hon. C. J. SUMNER: Yes. That is the sort of activity that should be encouraged, and I was going to mention that. I believe the mall committee has taken a short-sighted view of what activities should be permitted in the mall.

The Hon. N. K. Foster: It's a people's mall.

The Hon. C. J. SUMNER: True, it is.

The Hon. R. C. DeGaris: Are you suggesting that it is a case of maladministration?

The Hon. C. J. SUMNER: I was not talking about maladministration. There is too much emphasis on seeing the mall as merely an extension of the retail zone, and not sufficient thought has been given to it as a community centre. Every encouragement should be given to people to come to the mall and engage in activities beyond those

involving shopping. In the long run, I am sure that that will be beneficial to the traders. Trader representatives and council representatives on the mall committee are tending to be short-sighted in this respect.

Exception has been taken to and has led to the prohibition of buskers, itinerant street musicians and actors. This is an especially stupid prohibition. To allow people to set up in the mall at various spots, perhaps under some control or licence system, would enhance the general community and make the surrounds of the mall more pleasurable. I refer also to out-door cafes and perhaps licensed areas. If I were a licensee of the Richmond Hotel or the Norfolk Hotel I would be pushing my colleagues to try to get this sort of activity introduced in the mall. It is strange that in Australia we have accepted from Britain most of our cultural conditions, including our architecture, eating habits, gardens (our emphasis on lawns), and the like. This has been carried so far that we seem to have a reluctance to live out-doors in a commercial setting.

We have developed our participation in out-door sport, barbecues, and the use of beaches, etc., but there seems to be a reluctance to combine shopping and commercial activities with dining and drinking in a setting with people around. We have the perfect climate, unlike the British climate, for the development of such activities. The mall would be a better place for people to visit, and it would be a more pleasurable place, if one could sit down and buy a cup of coffee in the mall and watch the passing parade. Not only should one be able to buy coffee, but liquor and food should be available, too. Such development should be encouraged, but I believe that the mall committee is being a little conservative in its approach and is reluctant to encourage such development.

The Hon. C. M. Hill: Do you know why such out-door dining is not successful in Australia?

The Hon. C. J. SUMNER: Perhaps the Hon. Mr. Hill will tell me.

The Hon. C. M. Hill: It is because of the flies.

The Hon. C. J. SUMNER: I do not think that is the only reason. I have eaten outside on several occasions and I have not really been affected by flies. That may say something about the Hon. Mr. Hill. Obviously, I do not attract flies in the same way as the Hon. Mr. Hill does when he eats outside. Certainly, in the evenings, this type of development should be encouraged. It would be an enormous success in such a popular area as the mall.

The Hon. Jessie Cooper: What about mosquitoes?

The Hon. C. J. SUMNER: I have not had any trouble with mosquitoes, either. Mr. Geoffrey Dutton, in a letter to the *Advertiser*, referred to the fountain, with its urinal base, and the bottom-scarring seats of the mall. One wonders whether these seats were designed so that people would not find them too comfortable and, therefore, would go into shops to have coffee. It would be better if a type of seating was provided that people could use for reasonably long periods while conversing and watching the passing parade. The mall committee is somewhat reluctant to promote entertainment in the mall. The Italian Festival was enormously successful, and various activities have been successfully conducted on Sundays. I hope this sort of thing will continue. The owner of the Richmond Hotel might be able to arrange for a band in the evenings. If these sorts of activity were encouraged in the evenings, it might be able to fit in with any late night shopping.

The Hon. M. B. Cameron: You killed it.

The Hon. C. J. SUMNER: The Industrial Code Amendment Bill, which was before this Council last week, was for a limited purpose and it did not provide any guarantees for people working in the industry. Further, it was introduced without any consultation with the industry. The question of shopping hours is much more complex than honourable members opposite make out. Because the mall was completed on a restricted budget, there is room for further development. The ultimate success of the mall will depend on such development and on encouraging people to use it. I hope the mall committee will consider these matters in a more favourable light than it has done up to the present. Finally, I regret the somewhat overwhelming penchant for logic and order in connection with changing the name of the thoroughfare. Someone has said, "This is not a street any more. Perhaps we had better strike out the word 'street' from the name." The name "Rundle Street Mall" indicates the history of the thoroughfare and should not greatly offend our general notions of order and logic. No doubt my attitude will be considered to be an eccentric lament, and I do not intend to make a great issue of it. Perhaps the word "street" could have been left in the name, but it is not of great moment. I support the Bill.

The Hon. M. B. CAMERON secured the adjournment of the debate.

PRICES ACT AMENDMENT BILL

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

URBAN LAND (PRICE CONTROL) ACT AMENDMENT BILL

(Second reading debate adjourned on November 2. Page 1773.)

Bill read a second time.

The Hon. R. C. DeGARIS (Leader of the Opposition) moved:

That it be an instruction to the Committee of the Whole that it have power to consider new clauses dealing with industrial and commercial land and with the recovery of land agents' commissions by vendors of land subject to price control.

Motion carried.

In Committee.

Clause 1 passed.

New clause 1a—"Interpretation".

The Hon. R. C. DeGARIS (Leader of the Opposition): I move:

After clause 1—Insert the following new clause:

1a. Section 5 of the principal Act is amended—

(*a*) by striking out the word "or" between paragraphs (*f*) and (*g*) of the definition of "vacant allotment of residential land"; and

(*b*) by inserting after paragraph (g) of the definition of "vacant allotment of residential land" the following paragraph:

or

(*h*) within a zone established for industrial or commercial purposes under the Planning and Development Act, 1966-1976.

When the original legislation was passed in 1973 after a long conference, my understanding was that urban land

price control would not apply to industrial and commercial land. In the principal Act the definition of "vacant allotment of residential land" can include some industrial and commercial land in a certain area. My information is that this has caused some disabilities to some people. As it was not the intention that the original legislation should apply to industrial and commercial land, I wish to insert new paragraph (*h*) to make the matter clear.

The Hon. B. A. CHATTERTON (Minister of Agriculture): I do not think this is necessary, as under section 23 there is provision to exclude various classes of land. However, on behalf of the Minister in charge of the administration of the Act, I am willing to support the amendment. In the three years that the Act has been in force, there have been few applications in this respect. Most of the industrial land exceeds the requirement involving one-fifth of a hectare.

New clause inserted.

New clause 1b—"Certain transactions forbidden without consent of the Commissioner."

The Hon. R. C. DeGARIS: I move to insert the following new clause:

1b. Section 15 of the principal Act is amended—

(*a*) by striking out the word "and" between subparagraphs (iv) and (v) of paragraph (*m*) of subsection (3); and

(*b*) by inserting after subparagraph (v) of paragraph (*m*) of subsection (3) the following subparagraph:

and

(vi) the amount of any commission payable to a licensed land agent in respect of the sale of the land.

I dealt with this matter when the Bill was first introduced. The long-term bond rate was, I think, about 6 per cent. The previous Bill conceded a 7 per cent rise in the sale price of a block of land covered by the legislation. Finally, it went to 9·5 per cent with the addition of certain other factors, such as rates and taxes. I believe that by regulation the 9½ per cent figure was increased to 10½ per cent.

The Hon. B. A. Chatterton: It was 11½ per cent, and came back to 10½ per cent.

The Hon. R. C. DeGARIS: Most interest rates are well above 10½ per cent, and I do not see any reason why a person, when reselling a block of land, should make nothing at all out of it. For example, a land agent's commission could well consume probably half of the 10½ per cent rise that is allowed for. I cannot see any reason why the cost involved in agents' commission should not be a factor that is considered in the sale of a block of land, especially when, I think, about 95 per cent of blocks of land sold in Adelaide are sold through land agents, so that, therefore, a commission is payable.

Progress reported; Committee to sit again.

ADJOURNMENT

At 6.9 p.m. the Council adjourned until Wednesday, November 10, at 2.15 p.m.