LEGISLATIVE COUNCIL

Tuesday, November 16, 1976

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

PETITION: SEXUAL OFFENCES

The Hon. R. C. DeGARIS presented a petition signed by three electors of South Australia stating that the crime of incest and the crime of unlawful carnal knowledge of young girls are detrimental to society and praying that the Legislative Council would reject or amend any legislation to abolish the crime of incest or to lower the age of consent in respect of sexual offences.

Petition received and read.

PETITION: CRIMINAL LAW CONSOLIDATION ACT AMENDMENT BILL

The Hon. C. W. CREEDON presented a petition signed by 20 electors of South Australia alleging that the Criminal Law Consolidation Act Amendment Bill ignores the recommendations of the Mitchell committee, undermines the sanctity of marriage, reduces it to the level of fornication, prostitution and adultery, puts at risk the security of the family, and puts a dangerous weapon in the hands of a vindictive wife, and praying that the Legislative Council would reject this Bill unless amended to agree with the recommendations of the Mitchell committee.

Petition received and read.

MINISTERIAL STATEMENT: MIGRANT EDUCATION

The Hon. B. A. CHATTERTON (Minister of Agriculture): I seek leave to make a statement.

Leave granted.

The Hon. B. A. CHATTERTON: In my reply to the Hon. C. M. Hill on September 22, I outlined activities undertaken by the Further Education Department through its Migrant Education Centre in relation to teaching English to migrants. Included in my answer were details regarding the home tutor scheme. It has been drawn to my attention that the answer could be interpreted as implying that the Further Education Department conducted the home tutor scheme solely from its own resources. This is not correct.

The Further Education Department is represented on the co-ordinating committee for the home tutor scheme, which is largely conducted under the aegis of voluntary agencies such as the Good Neighbour Council. The staff of the Migrant Education Centre have occasionally participated in the training programmes for tutors and are sometimes called on to help individual teachers with problems related to English language learning. Thus the Department of Further Education is concerned in assisting the voluntary agencies in their operation of the home tutor scheme.

QUESTIONS

PATIENTS FEES

The Hon. J. R. CORNWALL: I seek leave to make a brief explanation prior to asking a question of the Minister of Health.

Leave granted.

The Hon. J. R. CORNWALL: In last Saturday's *Advertiser* an article headed "Patient fees: 50 nurses in protest" stated:

More than 50 senior nurses at Glenside Hospital have protested over a 10 per cent increase in the accommodation fees paid by psycho-geriatric patients.

The nurses concerned have also alleged that there are difficulties in relation to accommodation and other anomalies. Without going further into the details, can the Minister say whether there is any substance in this matter over which the nurses are protesting, is the Government aware of the situation and, if it is, what does it intend to do about it?

The Hon. D. H. L. BANFIELD: There is no substance in the allegations made. The position is that it has been a long-term objective of this State that there be no discrimination between physically-ill patients and mentally-ill patients. Under Commonwealth legislation no Commonwealth benefits are available in mental health service hospitals, either in relation to hospital benefits or nursing home benefits. To achieve its objective that there be no discrimination between patients the Government decided some time ago that it would not charge patients in acute wards at mental health service hospitals and the receiving homes. This put such patients in a position equivalent to medically-ill patients who are admitted to a public hospital and who are not charged. We have cut out discrimination in respect of mentally-ill patients. Under Commonwealth legislation no benefits are paid in this area. In relation to long-term assessment, it is stated that, before October 1, patients were allowed to retain a minimum $5 a week from their pensions. However, since October 1, that amount has been increased to $7·30. As there has been no benefit payable by the Commonwealth to any such patient before this Government introduced this concession, all short-term and long-term patients who had to pay hospital fees were permitted to retain 25 per cent of their pension. Now that there is no charge for short-term patients, long-term patients or nursing-home type patients retain the same minimum rate in line with all State nursing homes. This is a far better position than that facing people in private nursing homes, and I referred last week to the gap between the benefit paid by the Commonwealth and the pension, which had to be made up by the patient himself or by a member of the patient's family. Concerning the nursing home pension, ambulant patients retain about 25 per cent of their pensions. For non-ambulant patients, who need extra nursing care but fewer personal requirements, those patients retain $7·30. In fact, in respect of the press report, someone at Glenside did not allow for the fact that there is an assessment regarding ambulant patients and non-ambulant patients, and the people at Glenside believed that the $7·30 applied to all patients. That is how the misunderstanding came about. If there is anyone who has been dealt with in this regard, the position will be reviewed and, where necessary, adjustments will be made and backdated to October 1.

The Hon. C. M. HILL: Further to the Minister's reply, I ask him whether it is a fact that these psycho-geriatric patients must provide their own clothing, footwear, toilet articles, tobacco, cigarettes, sweets, drinks, newspapers, dry-cleaning costs, shoe repair costs, and other incidental items of that kind, out of the $7.30 and, if they do have to provide these items in that way, whether he thinks that that is fair and reasonable. Secondly, is it a fact that Dr. Dibden, when giving evidence to the Parliamentary Standing Committee on Public Works last year regarding

the accommodation occupied by 200 psycho-geriatric patients, described that accommodation as shockingly sub-standard? If Dr. Dibden did so describe it, does the Minister agree with that description?

The Hon. D. H. L. BANFIELD: I do not agree that those things must be paid for out of the minimum rate I have mentioned, namely, the $7.30 a week for the non-ambulant patients, because they are in wheelchairs or in their beds on a full-time basis. They do not have the need for shoes, and other things, and clothing is mainly supplied by the hospital. True, other nursing patients in the nursing home sections must provide these items out of the 25 per cent of the pension as is allowed to them. However, I point out that these patients in the nursing home are far better off than patients in nursing homes which are under the control of the Commonwealth Government or which the Government subsidises, where the benefits received from the Commonwealth by the nursing homes is such that there is a large gap between the pension and the fee charged by the nursing homes, with the nursing home patients involving themselves in the provision of those facilities that the Hon. Mr. Hill has mentioned. Those patients also must make up the difference between the costs and the amount charged by the hospital. Regarding what Dr. Dibden said when giving evidence before the Public Works Committee, I think he was referring to certain sections. True, sub-standard accommodation has been provided and, as I said when I first became a member of this Council, South Australia could not hold its head up regarding the accommodation in some psychiatric hospitals in this State. We have improved that position and still are improving it. We have heard from time to time what is being done regarding building at these hospitals. In fact, next Friday afternoon I will open a new unit at Glenside, and that will further improve the accommodation there. I cannot look up to heaven and say that things are perfect, but we are on the track and we can be justifiably proud of how we have upgraded conditions at Glenside.

UNREGISTERED TRUCKS

The Hon. R. C. DeGARIS: I seek leave to make a short statement before asking a question of the Minister of Lands, representing the Minister of Transport.

Leave granted.

The Hon. R. C. DeGARIS: I have received several approaches from truck operators in South Australia questioning the position regarding cartage intrastate by operators of trucks with no South Australian registration and no registration in any State whatever, but using interstate plates. Can the Minister say how many prosecutions have been launched in South Australia against operators using interstate plates on their trucks, which are not registered in any State, for carting goods intrastate in South Australia?

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

DROUGHT RELIEF

The Hon. A. M. WHYTE: The Minister of Lands has indicated that he has a reply to a question I asked regarding drought relief, and I ask whether he will give that reply.

The Hon. T. M. CASEY: The application form required to be completed by primary producers who wish to apply for carry-on assistance under the Primary Producers Emergency Assistance Act contains nine pages. The first page relates only to personal and property details such as the applicant's name and a description of the property, and the last page is a declaration. The remaining seven pages cover the carry-on requirements for the ensuing year, current farm management programme, and production figures of income and expenditure for the preceding three years. These details should all be readily available from normal farm records. The application form was devised after liaison with primary producer representatives, who are in agreement with its format. I have a copy of the application form for the honourable member, as requested, and shall be pleased to pass it on to him for his information.

GOVERNOR'S SECRETARY

The Hon. J. A. CARNIE: Has the Chief Secretary a further reply to my recent question about the Governor's Secretary?

The Hon. D. H. L. BANFIELD: Former Private Secretaries at Government House were in receipt of superannuation as well as a salary. Because the present Private Secretary was not in receipt of any external benefits, he requested that his salary be increased. The Public Service Board recommended the rate at the AO2 salary range ($15 433 to $16 004), having regard to the fact that certain diplomatic privileges also applied to the present incumbent. The new Governor's Secretary will again be in receipt of superannuation, and he will be paid a salary of $8 000 a year, plus $1 500 a year allowance.

FOOD AND DRUGS ACT AMENDMENT BILL

The Hon. D. H. L. BANFIELD (Minister of Health) obtained leave and introduced a Bill for an Act to amend the Food and Drugs Act, 1908-1976. Read a first time.

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

That this Bill be now read a second time.

This short Bill amends the principal Act, the Food and Drugs Act, 1908-1976, to give effect to a request made by the Australian Institute of Health Surveyors (S.A. Division) that the title of "inspector" in the principal Act be changed to that of "health surveyor". Similar amendments have been made to corresponding legislation in other States. Clause 1 is formal. Clause 2 provides that the measure is to come into operation on a day to be fixed by proclamation. The remaining clauses of the Bill all substitute for references to "inspector", wherever they occur in the principal Act, references to "health surveyor".

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

HEALTH ACT AMENDMENT BILL

The Hon. D. H. L. BANFIELD (Minister of Health) obtained leave and introduced a Bill for an Act to amend the Health Act, 1935-1975. Read a first time.

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

That this Bill be now read a second time.

It amends the principal Act, the Health Act, 1935-1975, in respect of four disparate matters. The Bill provides for the reporting of cancer by hospitals and pathologists. To date in this State the collection of information as to the incidence of cancer has been carried out by the Neoplasm Registry of

the Anti-Cancer Foundation of the University of Adelaide and has been limited to those patients diagnosed at the major metropolitan hospitals. Statutory requirement of cancer reporting by all hospitals and pathologists should produce information as to the distribution and incidence of and environmental factors associated with the various types of cancer, which can then be analysed, it is hoped, to some advantage.

The Bill revises the schedules listing infectious and notifiable diseases so that they more closely conform to the lists recommended by the National Health and Medical Research Council for uniform adoption throughout Australia. It widens the regulation-making power in respect of the clean-air provisions of the principal Act so that the regulations may both regulate and prohibit burning in the open. Finally, the Bill gives effect to a request made by the Australian Institute of Health Surveyors (S.A. Division) that the title of "inspector" used in the principal Act be changed to that of "health surveyor". Similar amendments have been made to corresponding legislation in other States.

Clause 1 is formal. Clause 2 provides that the measure is to come into operation on a day to be fixed by proclamation. Clause 3 amends section 3 of the principal Act, which sets out the arrangement of the principal Act. Clauses 4 to 15 (inclusive) change references in the principal Act to "inspector" to references to "health surveyor". Clause 16 amends section 94c, which empowers the making of regulations as to clean air. The clause amends paragraph (*c*) of subsection (1) of that section to empower the making of a regulation prohibiting the lighting of a fire in the open rather than just the emission of air impurities once the fire has been lit. The clause also amends paragraph (*i*) of that subsection to empower the making of a regulation prohibiting the burning of rubbish at rubbish tips.

Clauses 17, 18 and 19 make amendments to sections 127, 131 and 132 respectively of the principal Act consequential to the inclusion of tuberculosis in the list of infectious diseases provided in the proposed second schedule to the principal Act. Clause 20 enacts new Part IXE in the principal Act providing for the reporting of cancer to the Central Board of Health by hospitals and pathologists. Clauses 21, 22 and 23 make consequential amendments. Clause 24 repeals the second and third schedules to the principal Act and replaces them with schedules setting out revised lists of infectious diseases and notifiable diseases respectively.

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

ADOPTION OF CHILDREN ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 11. Page 2104.)

The Hon. J. C. BURDETT: I have been seeking the introduction of this Bill for some months and I am pleased to support it. On August 2, 1976, I wrote to the Minister of Community Welfare in the following terms:

I refer to the difficulties in adopting Vietnamese children which has been referred to in the press mainly during April and May. The difficulty referred to seemed to be the lack of documentation and difficulty which the court seemed to have experienced in determining whether or not a proper inquiry had been made as to the natural parents of the children as required by the existing Act.

Some constituents have approached me on the matter. These constituents are perturbed about the delay and in some cases the feeling of insecurity seems to be causing real anxiety. Some of the intending adoptive parents have been worried, for example when they think of the possibility of one parent dying before the adoption, and the other parent perhaps being thereby denied adoption of the child.

In one case in particular the proposed adoptive father has had some difficulty in obtaining employment to which he considers he is suited by qualification and ability in South Australia. He has a very good job opportunity oversea but naturally the family feel that they cannot go oversea until the matter of adoption is finalised.

Do you consider that an amendment to the Act is desirable to clear these questions up in cases such as the Vietnamese children? If legislation seems to be the answer and if it would expedite the adoptions and if it were confined to the matters raised in this letter it would certainly receive support from me.

On August 23 I wrote a letter to the Attorney-General in the following terms:

I recently spoke to you informally about applications for adoptions of Vietnamese and other oversea refugees in relation to the problem of satisfying the court under the present legislation that given due and proper inquiry as to the natural parents has been made. I understood from the conversation that there was some problem as to uniform legislation in the States. I think we agreed that if necessary there ought to be legislative action to enable these adoptions to proceed. We spoke of the possibility of such legislation being temporary if the other States were not prepared to proceed and if it was considered that ultimate uniformity was desirable.

In some particular cases which have come to my notice considerable distress is being caused to proposed adoptive parents and I should think that if the delays continue the number of parents who will become distressed will increase. Could you please advise me as soon as possible the present situation in regard to this problem?

As I have been seeking this legislation for some time I am very pleased to support it. I would draw the attention of the Council to the following paragraph in the Minister's second reading explanation:

The principle of the additional subsection sought to be added was recommended by the officers of the Standing Committee of Attorneys-General. At the meeting of the Standing Committee last month, the Honourable the Attorney-General undertook to provide the committee with a draft provision, and this is the provision based on recommendations of officers to the committee.

The other amendments made by the Bill are minor ones. I have perused them and I support them. I support the second reading.

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

CRIMINAL LAW CONSOLIDATION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 11. Page 2102.)

The Hon. R. C. DeGARIS (Leader of the Opposition): I am sorry; I spent much time at the weekend analysing the Bill and the speeches already made on it but I have misplaced the research I did. However, I will proceed as long as the Council will put up with my perhaps disjointed ramblings on this matter.

The Hon. F. T. Blevins: We are used to that.

The Hon. R. C. DeGARIS: And we, too, are used to the honourable member's ramblings, because he does not do much research.

The Hon. F. T. Blevins: Don't be ashamed; don't apologise.

The Hon. R. C. DeGARIS: I am not ashamed. I support the second reading. I am in accord with the Hon. Mr. Burdett, because I do not agree with clause 12,

the only clause upon which there is substantial argument. I agree with the Mitchell report that there should be a position where a wife can take action against her husband for rape where there is a separation or a breakdown in marriage and they are not living in the same house. The Bill provides no protection for married women. By its nature, marriage is a consensual state regarding sexual intercourse. Although Bernard Shaw may be old hat by today's standards and may be well out of date, he said that marriage is popular because it combines the maximum opportunity with the maximum temptation. I have been trying to look quickly at some of the things the Hon. Mr. Blevins said in his speech, when he indulged in a lot of rather odd logic. He can correct me if I am wrong in what I say, but I cannot quite see it when he says that the Bill is worth while if, of the thousands of rapes that take place every day, one rape is prevented by the passage of the Bill.

The Hon. F. T. Blevins: That is substantially correct.

The Hon. R. C. DeGARIS: That sort of debating is an old trick, at about grade 7 level, where one can prove that anything is right with such logic. For example, one can say, "Let us make the penalty for rape in marriage so stiff and so hard that we shall prevent two rapes in one thousand and therefore, just by that logic, we shall be doing more." If one takes this view that, no matter what the result is, one can justify any action on any matter, and the point that there may be, if the Bill passes, one rape in a thousand in marriage prevented is logic that cannot be justified in this situation.

The Hon. F. T. Blevins: In your opinion.

The Hon. R. C. DeGARIS: Not in my opinion. Let me put this to the Hon. Mr. Blevins, who will shortly face a Bill in this Council dealing with capital punishment. Will he use the same argument there as he uses in this Bill? The answer is "No". Again, why not introduce a Bill to have a maximum speed limit of 25 kilometres an hour and save 3 000 lives a year? Is it justified? His was an illogical argument to put forward. We can justify anything by using that type of reasoning. We cannot introduce the grade 7 type of logic used in this way to justify a matter of this nature.

The Hon. F. T. Blevins: Obviously, you haven't worked on this Bill.

The Hon. R. C. DeGARIS: The Hon. Mr. Blevins went to the Parliamentary Library and discovered a fellow called Bertrand Russell who wrote a book called *Marriage and Morals*. After about 1½ days study of that book, he suddenly discovered a gentleman called St. Paul, to whom Bertrand Russell referred, so he thought he had better do some research and go further and find out about this fellow St. Paul. So, in his own words, he got the research officer in the library to find out about this chap St. Paul and provide him with information. After a day's study of Bertrand Russell and a day's study of St. Paul, he passes his judgment.

The Hon. F. T. BLEVINS: I rise on a point of order. The Hon. Mr. DeGaris said at the beginning of his speech that he had not had time to do much research and asked me to correct him if he went wrong in quoting what I said. He is completely incorrect in his reference to my going to the library to get the research assistant to look up material. That was not what I said in my speech. The Hon. Mr. DeGaris is wrong there.

The PRESIDENT: Order! The honourable member is incorrect in saying that that is a point of order; it is not.

The Hon. F. T. Blevins: It is the only way to shut him up.

The Hon. R. C. DeGARIS: To satisfy the Hon. Mr. Blevins, may I read from *Hansard* exactly what he said:

This, of course, is reinforced by the absurd woman-hating found in St. Paul. I did a strange thing today: I went to the Parliamentary Library and asked for a Bible. I have been reading a tremendous book by Bertrand Russell called *Marriage and Morals*. I am sure the Hon. Mr. Burdett has read it. Unfortunatey, he does not appear to have got as much out of it as I have. . . . I saw references in Bertrand Russell's book to St. Paul and I thought I had better go to the source and look at what St. Paul said because, frankly, I do not remember from my Sunday school days what St. Paul said. I got one of the research officers from the library, a competent person, to assist me.

The Hon. F. T. Blevins: That is correct.

The Hon. R. C. DeGARIS: The honourable member continued:

It can be found in the Bible in Romans, VII.2, which states—

The Hon. F. T. Blevins: That is correct, but I did not go to the library and ask the research officer to supply me with the material, as the Hon. Mr. DeGaris said three minutes ago. So, in the interests of accuracy, do you want to correct what you have said?

The Hon. R. C. DeGARIS: I think I am accurate in what I have said. The Hon. Mr. Blevins goes on to quote St. Paul, taken from Bertrand Russell's book *Marriage and Morals*. After quoting St. Paul, in 1 Corinthians, V. 1, he said:

What incredible attitudes! Those attitudes are from the Bible and I assume that the Christians amongst us take some notice of that and abide by the attitudes expressed in the Bible. If they do, it is completely beyond my understanding how these attitudes invade the thinking of people, especially legislators, today.

May I examine for a moment the quotation by the Hon. Mr. Blevins from St. Paul? It is a well-known quotation; it is probably the quotation that has made St. Paul the enemy of women over the centuries.

The Hon. J. E. Dunford: Most churches are the enemies of women.

The Hon. R. C. DeGARIS: Oh, no!

The Hon. J. E. Dunford: You believe it, but you are frightened to say it.

The Hon. R. C. DeGARIS: No; I do not believe it at all.

The Hon. J. E. Dunford: If you had any common sense you would; but you have not.

The Hon. R. C. DeGARIS: That is what I call very sound debating! Let me quote what the Hon. Mr. Blevins quoted from Corinthians:

Now concerning the things whereof ye wrote unto me: It is good for a man not to touch a woman.

That is St. Paul speaking. One must examine the position of St. Paul. Also, one must examine what has been said over many years and quoted by Bernard Shaw in his preface to *Androcles and the Lion*, that any married person is unable to be a philosopher. When one examines this aspect it is perfectly true, and what St. Paul is saying here is exactly the same as the dictum of Jesus: if one wants to follow God there must be no distraction—none whatsoever. Celibacy is part of the cornerstone of most of the deep philosophers of history—

The Hon. J. E. Dunford: We are talking about 1976.

The Hon. R. C. DeGARIS: That does not matter. The dictum of St. Paul is still true, irrespective of whether one goes through a whole range of philosophers from Carlyle to Ruskin, Florence Nightingale or Joan of Arc. History is studded with people who have embraced celibacy as a

means of directing their whole attention to a subject. Whilst it may be difficult for the Hon. Mr. Blevins and the Hon. Mr. Dunford to accept this—

The Hon. J. E. Dunford: It's a lot of rubbish.

The Hon. R. C. DeGARIS: It is not. Even in 1976 the position is the same.

The Hon. J. E. Dunford: You want the rapist to go free.

The Hon. R. C. DeGARIS: I am not talking about the rapist going free: I am talking about the criticism levelled by the Hon. Mr. Blevins at what he terms are the incredible attitudes of St. Paul.

The Hon. F. T. Blevins: They are incredible.

The Hon. R. C. DeGARIS: They are not. Throughout history there have been people who have had a great effect on the history of this world and who have embraced celibacy. It may be difficult for the Hon. Mr. Dunford (with his limited capacity to think) and the Hon. Mr. Blevins (with his limited capacity to understand) to accept this fundamental fact but, even when one goes back to the choosing of the disciples (which can be read in *Matthew, Mark, Luke,* and *John*), it is clear that the disciples were chosen with one aim in view: they were people who could dedicate themselves, without any distraction from marriage or family ties, to their philosophy. That is the essential point. Even the first part of the quotation of St. Paul makes sense if one examines it. I should like to go one step further, and the second point (quoted by the Hon. Mr. Blevins) states:

Nevertheless, to avoid fornication, let every man have his own wife, and let every woman have her own husband.

Is that an incredible attitude, the Hon. Mr. Blevins says it is?

The Hon. J. E. Dunford: It is in 1976.

The Hon. R. C. DeGARIS: It does not matter what time it is, whether it be now or 2 000 years ago. Is it an incredible attitude? Of course, it is not; it is the basis of marriage as we know it. The third of St. Paul's points is as follows:

Let the husband render unto the wife due benevolence: and likewise also the wife unto the husband.

Is that an incredible attitude? What is the Hon. Mr. Blevins talking about? The fourth point is as follows:

The wife hath not power of her own body, but the husband: and likewise also the husband hath not power of his own body, but the wife.

Is that an incredible attitude?

The Hon. F. T. Blevins: It is, in my opinion.

The Hon. R. C. DeGARIS: It is not. It is the basis of marriage, whereby a husband is subject to his wife and vice versa; each one serves the other. That is the concept, and I find it far more incredible to consider the views expressed by the Hon. Mr. Blevins, who suddenly finds there was a gentleman called St. Paul and who, after about only half a day's study of what he said, makes the comment, "What incredible attitudes". It is the Hon. Mr. Blevins' attitude that is incredible. The honourable member then proceeded to refer to Bertrand Russell in opposition to St. Paul.

The Hon. F. T. Blevins: Read the rest of the quote of St. Paul.

The Hon. R. C. DeGARIS: I do not want to go through it, because I think I have covered it.

The Hon. F. T. Blevins: I want you to, because you are thoroughly dishonest.

The Hon. R. C. DeGARIS: I am not, and I object to that. The Hon. Mr. Blevins then quoted Bertrand Russell, one of the most outstanding philosophers of our time. However, when one reads the views of Bertrand Russell the one outstanding fact is that his political philosophy dominated his thoughts on morality. I intend to refer to the statement by Bertrand Russell, and honourable members can judge whether they accept his views or those of St. Paul. Certainly, I am not standing up for the views of St. Paul—I am merely saying that the comments of the Hon. Mr. Blevins on the incredible attitudes of St. Paul deserve to be exposed for what they are: no more than a sham attack on the basis of marriage. The Hon. Mr. Blevins quoted Bertrand Russell, as follows:

Consider the life of a typical business man of the present day, especially in America—

this also applies in Australia today—

from the time when he is first grown up he devotes all his best thoughts and all his best energies to financial success; everything else is merely unimportant recreation. In his youth he satisfies his physical needs from time to time with prostitutes: presently he marries, but his interests are totally different from his wife's, and he never becomes really intimate with her. He comes home late and tired from the office; he gets up in the morning before his wife is awake; he spends Sunday playing golf, because exercise is necessary to keep him fit for the money-making struggle. His wife's interests appear to him essentially feminine, and while he approves of them, he makes no attempt to share them. He has no time for illicit love any more than for love in marriage, though he may, of course, occasionally visit a prostitute when he is away from home on business. His wife probably remains sexually cold towards him, which is not to be wondered at, since he never has time to woo her. Subconsciously he is dissatisfied, but he does not know why. He drowns his dissatisfaction mainly in work, but also in other less desirable ways, for example, by the sadistic pleasure to be derived from watching prize-fights or persecuting radicals. His wife, who is equally unsatisfied, finds an outlet in second-rate culture, and in upholding virtue by harrying all those whose lives are generous and free. In this way the lack of sexual satisfaction both in husband and wife turns to hatred of mankind disguised as public spirit and a high moral standard. This unfortunate state of affairs is largely due to a wrong conception of our sexual needs. St. Paul apparently thought that the only thing needed in a marriage was opportunity for sexual intercourse, and this view has been on the whole encouraged by the teaching of Christian moralists. Their dislike of sex has blinded them to all the finer aspects of the sexual life, with the result that those who have suffered their teaching in youth go about the world blind to their own best potentialities.

Does any honourable member really believe that Bertrand Russell, the great philosopher, the great mathematician, is talking about a typical business man with that rubbish?

The Hon. F. T. Blevins: He could well be doing so.

The Hon. R. C. DeGARIS: Doubtless, there are business men, workers, professional men, and the like, who fit that description, but I ask the Council to look at what Bertrand Russell says. I repeat that, if one reads Bertrand Russell, one will find that his political philosophy dominates his whole thinking and even affects his judgment on morality.

The Hon. J. R. CORNWALL: On a point of order, Mr. President, as a socialist I must take great exception to what the Leader of the Opposition has been saying. I stated the other day that I was a practising Christian and also a dedicated socialist, and I do not see any incompatibility at all. The Leader of the Opposition is misrepresenting.

The PRESIDENT: That is not a point of order. It would have been much better if the honourable member had asked the honourable Leader to give way so that he could make that comment.

The Hon. R. C. DeGARIS: As you say, Mr. President, there is no point of order. I accept that the Hon. Mr. Cornwall is a practising Christian and a practising socialist. I probably agree with his Christianity but disagree with his politics. What I am saying is true, namely, that if a

person reads Bertrand Russell he will find that his political dogma comes through and warps his judgment on questions of morality. I think what is worrying honourable gentlemen opposite is that what I am saying is true if they base their argument on what was quoted by the Hon. Mr. Blevins, namely:

Consider the life of a typical business man.

Then we go through all the talk about living with prostitutes, marrying for convenience, and so on. I know many business men of whom this is not typical.

The Hon. N. K. Foster: How do you know?

The Hon. R. C. DeGARIS: How does the honourable member know that what is stated here is correct? I know many business men, and this statement branding all business men with this sort of nonsense and then tying it in with St. Paul is illogical in any way in which one may look at the whole question.

The Hon. F. T. Blevins: That is only your opinion, and I was expressing mine.

The PRESIDENT: Order! I think everyone in this place knows that, when people speak, they express their own opinion.

The Hon. R. C. DeGARIS: Despite the Hon. Mr. Blevins's statement, "What an incredible attitude!", I am pointing out that St. Paul's letter to the Corinthians was a justified letter. I know that St. Paul had a different, shall we say, Christianity from the Christianity of the Nazarenes. There is no question of that, and the Christian church owes much to St. Paul. It was St. Paul who was responsible for making Christianity, rather than Jesuism (because the two terms have different meanings), politically and socially acceptable to the Roman-dominated world. There would be no Christianity as we know it today but for St. Paul. It was Paul-ine Christianity probably more than anything else that enabled Christianity to become the dominating force that it has become. All I have done is point out that Bertrand Russell made the same mistake as the Hon. Mr. Blevins has made.

The Hon. F. T. Blevins: At least I quoted all of the passage, which is more than you have done.

The Hon. J. C. Burdett: Read the whole epistle.

The Hon. F. T. Blevins: Why not? It does not suit your point.

The Hon. R. C. DeGARIS: I am willing to stand here and debate the viewpoint of St. Paul for as long as the honourable member likes, because I think I probably know much more about St. Paul than the honourable member knows and that I know more about Bertrand Russell than he knows, the honourable member having discovered only last week in the Parliamentary Library that Bertrand Russell ever existed.

Let me come back to the quotations of the Hon. Miss Levy and the Hon. Mr. Blevins in this Council from correspondence that has come to them from people who have experienced violence in marriage. I wish to pose a question. Every one of those cases quoted involved violence—assault—and I ask one question of the Hon. Miss Levy: Did these people who were so assaulted in such a ghastly way, a way in which no person in this Council would support in any way, take action against their husbands for assault?

The Hon. F. T. Blevins: But that is not the point.

The Hon. R. C. DeGARIS: It is the point.

The Hon. F. T. Blevins: It is not the point.

The Hon. R. C. DeGARIS: The point, surely, in this matter—

The Hon. F. T. Blevins: You asked me a question but you won't let me answer it.

The PRESIDENT: Is the honourable member asking the Leader of the Opposition to give way?

The Hon. F. T. Blevins: The honourable member said that he was asking me a question.

The PRESIDENT: I think the Hon. Mr. Blevins had better ask the Hon. Mr. DeGaris whether he is willing to give way.

The Hon. F. T. BLEVINS: The Hon. Mr. DeGaris asked me a question. The position is clear. In all those cases that the Hon. Miss Levy and I cited, the whole point of this exercise is that those people could not be charged with rape, and that is what we are trying to criminalise. I agree that they could have been charged with assault and many other things, but one thing that they could not be charged with was rape, and that is the point of this Bill. Why should they not have been charged with rape, because that is what they committed?

The Hon. R. C. DeGARIS: I thought I had covered that by pointing out that marriage was a consensual arrangement.

The Hon. N. K. FOSTER: Will the Leader give way?

The Hon. R. C. DeGARIS: I will answer one question first.

The Hon. N. K. Foster: I will point the position out to you. You obviously have not read the report.

The Hon. R. C. DeGARIS: The question I had directed to the Hon. Mr. Blevins was whether those people had taken any action on the question of assault by their husbands.

The Hon. F. T. Blevins: I would not know, and that is not the point.

The Hon. R. C. DeGARIS: A wife who does not take action for assault in that case will not take action for rape. That is clear. The big crime in marriage is the crime of violence, not of rape. I will deal with that matter later when I deal with this Susan Brownmiller, who had much to say last evening on *Monday Conference*.

The Hon. N. K. Foster: Was that the person who was on television last evening? She was most unconvincing and was trying only to flog a book to make a few dollars.

The Hon. R. C. DeGARIS: That is true. For once I agree with the honourable member. When the Hon. Mr. Foster and I agree on a point, doubtless we must be right. I agree with what the Hon. Mr. Foster has said. The question is that marriage is a consensual arrangement, and people who enter into it do so with two basic considerations in mind. This point was made by Beatrice Faust at the end of *Monday Conference* last evening, when she stated clearly that marriage was a consensual arrangement but went further than that. I quote St. Paul once again, where he stated:

Let the husband render upon his wife due benevolence: and likewise also the wife unto the husband.

The wife hath not power of her own body, but the husband: and likewise also the husband hath not power of his own body, but the wife.

The Hon. J. E. Dunford: Don't you understand that this is 1976?

The PRESIDENT: Order! Honourable members must contain their impatience, and they can speak later.

The Hon. R. C. DeGARIS: May I say that it is 1976, in the year of our Lord. The marriage arrangement also includes a promise that the wife will hold herself only for the husband, and vice versa, and that is an important consideration that was referred to as the last point in *Monday Conference* last evening. On that programme Susan Brownmiller, on whose book I think the Hon. Miss Levy based most of her speech—

The Hon. Anne Levy: Two quotations!

The Hon. R. C. DeGARIS: Anyone who saw the programme could not help but notice that, finally, no-one agreed with this Bill. I think the Hon. Mr. Foster would not disagree with me—

The Hon. N. K. Foster: Perhaps I will tell you soon.

The PRESIDENT: Order! The Hon. Mr. Foster will tell us about that.

The Hon. N. K. Foster: I certainly will.

The PRESIDENT: I hope he will not tell us now.

The Hon. R. C. DeGARIS: No-one, including Mr. Mooney (the rapist), Mrs. Faust (the journalist), Mr. Moore, Ms. Brownmiller herself, whose viewpoint cannot be substantiated, Miss Mathews (the lawyer)—

The Hon. J. E. DUNFORD: Will the honourable member give way?

The PRESIDENT: Does the Hon. Mr. DeGaris wish to finish his sentence before giving way?

The Hon. R. C. DeGARIS: No, Mr. President.

The Hon. J. E. DUNFORD: The Hon. Mr. DeGaris must have gone to sleep during the programme, because it appeared that Susan Brownmiller knew about this Bill. She said she hoped it would go through Parliament, because it would make history. We would be ahead of every other country; if that is not making history, I do not know what is.

The Hon. R. C. DeGARIS: I did not go to sleep during the programme. The Hon. Mr. Dunford should think about what was said during the programme, towards the end of which Miss Mathews, the barrister, said that there should be no charge of rape in marriage unless violence had been proved, and Ms. Brownmiller agreed. Dr. Barnes, the psychiatrist, said, "Yes, but rape in marriage has many difficulties. There should be no prosecutions for rape in marriage unless there is a long pre-trial examination." And Susan Brownmiller agreed with that. Neither of those two matters is in the Bill. So, if Susan Brownmiller had the option of voting for or against the Bill in its present form, it is likely she would vote against it. What Susan Brownmiller wants is the glory of going back to America and saying, "We have achieved, on behalf of the feminist movement, this first breakthrough in the world. Every other country has agreed not to introduce it, because it will not work, but we made a final breakthrough in the little State of South Australia, where there is legislation that provides women with the right of revenge."

Members interjecting:

The Hon. N. K. Foster: That is the end of your amendment. You are not a fit and proper person to be in this place.

The PRESIDENT: Order! Honourable members will cease interjecting. If they do not do so, I shall have to put one or two of them out. There are plenty of opportunities for honourable members to make their own contributions on this subject.

The Hon. R. C. DeGARIS: The point to which I referred became very clear last evening. Even Robert Moore, who opened the programme—

The Hon. N. K. FOSTER: Will the honourable gentleman give way? I refer to the term "revenge", as applied to the woman. Does the honourable gentleman not consider that the act with which this Bill deals is one of the most vengeful acts that can be perpetrated by a human being?

The Hon. R. C. DeGARIS: No-one deplores rape more than I do. Susan Brownmiller clearly said that, unless violence can be shown, there is no case for any charge of rape in marriage: violence is a significant aspect.

The Hon. J. E. Dunford: Didn't she say the judges—

The PRESIDENT: Order! The Hon. Mr. Dunford will cease interrupting.

The Hon. R. C. DeGARIS: Susan Brownmiller herself takes an extremely radical position, as shown on the programme last evening. In her book she says that all women are intimidated by all men with the threat of rape; that was the point with which Robert Moore pinned her last evening. Her answer was an impossible answer, because such a sweeping statement cannot be sustained; that is the basis of all her book and of this Bill. It does finally tackle the concept of marriage in our society; that cannot be denied. I have researched this matter, but unfortunately I have left my notes at home. I stress that I do not in any way condone violence or rape either in marriage or out of marriage. It has been said that a *de facto* wife has the right to charge her *de facto* husband with rape. Some honourable members have been asked, "Why should a married woman not have the same right?" Apropos a debate that occurred in this Chamber last week, I reply: this appears to be putting the waggon before the entire! Let us not use the *de facto* relationship as a means of understanding the estate of marriage. During the contribution of the Hon. Mr. Blevins to the debate I interjected by saying that the honourable member was using the *de facto* relationship as a model for marriage; the honourable member's reply was "Certainly." However, that is not the way to approach this question.

The Hon. J. E. Dunford: The *de facto* wife has more protection than has a married woman.

The Hon. R. C. DeGARIS: No. There is more to the marriage arrangement than just the consensual situation. If we use the *de facto* relationship as a means of understanding marriage, we are indeed putting the waggon before the entire. I do not believe that this Bill will do anything to assist the wife who is involved in a marriage where violence occurs. There is the possibility that it will assist a hysterical wife.

The Hon. F. T. Blevins: Wouldn't she be hysterical if she was being raped?

The Hon. R. C. DeGARIS: Marriage is a consensual situation and, in such a situation, the law breaking is the violence. That point has been stressed time and time again by the Hon. Mr. Burdett and me.

The question of a wife's having the right to arrange for a prosecution for rape cuts across the concept of marriage and, if there is a situation in which a wife can charge her husband with rape, what is left of the marriage, anyway? Would it achieve anything? The answer is "No". I support the Hon. Mr. Burdett's foreshadowed amendment. If clause 12 remains as it is, I believe a tremendous amount of work will have to be done in Committee. Last evening, Ms. Brownmiller and Miss Mathews, the barrister, looked at the whole question of what constitutes rape particularly inside marriage. There is a need for lengthy pre-trial examinations, and the question of showing the violence that must occur before any charge of rape within marriage can be sustained. With those comments, I support the second reading although, as most people realise, I strongly oppose the concepts contained in clause 12.

The Hon. JESSIE COOPER: I rise to speak briefly to this Bill, which began following the recommendations of the Mitchell committee with the object of remedying a

growing ugly social wrong, the crime of rape in all aspects, which is now likely to cause a serious social evil, namely, a weakening of the institution of Christian marriage by the inclusion of clause 12, which is recommended by no committee of inquiry, by no other State of Australia, by no other country in the Western non-communist world, and which is positively condemned by leading jurists in South Australia.

Rape is a cruel, vicious crime. By its very term, it means a violent act. Rape has for its first meaning the act of taking anything by force, the violent seizure of goods, or robbery. For its second meaning, rape is the act of carrying away a person, especially a woman, by force. For its third meaning, rape involves the violation or the ravishing of a woman. So, violence is common to all meanings. This being so, a woman at present has the protection of the law, whether or not there is rape within marriage.

Clause 12, which proposes to make rape in marriage a separate offence, gives no extra protection to women and, therefore, it must have been devised for some other reason. It would therefore seem that those who see it as a definite attack on the institution of Christian marriage have, I believe, justification for their contention. To imply that those who do not agree with the inclusion of clause 12 in this Bill are condoning this shameful and loathsome crime is malicious, spiteful and unworthy of those so arguing.

I have spoken to several jurists, who have assured me that the law at present gives the wronged wife every protection, and that this clause, if it becomes part of the Act, will not be effective.

Recently, Sir Roderick Chamberlain wrote to the *Advertiser,* and I should like to read the section of that letter connected with the last part of my speech. Sir Roderick said:

In the case of a wife prepared to go to the police, one of several things would happen. One is that the police may not be satisfied to take proceedings; and remember that Mr. Duncan has assured Parliament that proceedings will not be taken without careful investigation. In this case the wife would feel slighted and the husband would claim that she had tried to make a false charge. Or a charge would be laid, and when the case came on, the wife, having made it up meanwhile, as not infrequently happens in family cases, would go back on her story.

That is what the Hon. Mr. DeGaris was referring to when he said that I privately had told him that I objected to the word "vindictive" always being used against the wife. On the whole, women are not vindictive, and I believe that women could, of course, be upset and hysterical. However, this is what happens when a wife goes back on her charge and will not proceed. Sir Roderick continued:

Or the husband would be convicted and sent to gaol for upwards of three years. Or, after a bitterly fought trial, the husband would be acquitted, and, according to statistics collected by the committee, the chances in his favour would be about four to one (in 19 cases tried in 1975 there were 15 acquittals).

Presumably, the Attorney-General thinks that in such a case the parties would go home and live together happily ever afterward; but how any of these possible results would confer any "socio-economic" or other benefit on the wife is difficult to follow. The Attorney-General's political aspirations have led him into ignoring the advice of the committee set up by his Government, not to mention the wisdom of some centuries of English law-makers.

There is in fact no basis for the proposed law other than a denial of the validity of the institution of marriage. Perhaps if he were to follow a course often taken in such a case, and consult the judges, he might learn the reasons why his proposal is impracticable as a matter of legal proceeding, as well as misplaced as a social measure.

We have already heard mention of the Hon. Mr. Blevins' speech last week. I am indebted to the honourable member for bringing up the quotation from the Bible. Perhaps the Hon. Mr. Blevins went into it in a rather different spirit from the way in which I approach the matter. However, he did bring it up. If the honourable member misunderstood it, perhaps it was because of the archaic language, or perhaps it was because he did not evaluate the words with the history of the times. So, I am willing to quote all of it. However, I thought I would quote it from the Revised Standard Version which is in modern terms and which, as honourable members know, is very clear. First, the Hon. Mr. Blevins referred to the following:

Now concerning the things whereof ye wrote unto me: It is good for a man not to touch a woman.

In the modern version, that is as follows:

Now, concerning the matter about which you wrote. It is well for a man not to touch a woman.

That is much the same. Verse 2, to which the Hon. Mr. Blevins referred, was as follows:

Nevertheless, to avoid fornication, let every man have his own wife, and let every woman have her own husband.

The modern version is:

But because of the temptation to immorality, each man should have his own wife and each woman her own husband.

Surely, that is a clear statement of marriage. The Hon. Mr. Blevins read the third verse, as follows:

Let the husband render unto the wife due benevolence: and likewise also the wife unto the husband.

In the modern version, that becomes:

The husband should give to his wife her conjugal rights, and likewise the wife to her husband.

Surely, that is another clear statement of marriage.

The Hon. F. T. Blevins: Not in all cases.

The Hon. JESSIE COOPER: I am sorry if the Hon. Mr. Blevins does not understand what I am getting at. It merely states that each shall be faithful to the other. The husband should give his wife her conjugal rights and likewise the wife to her husband.

The Hon. F. T. Blevins: Does that mean in all circumstances?

The Hon. JESSIE COOPER: Of course.

The Hon. F. T. Blevins: It means in all circumstances?

The Hon. JESSIE COOPER: When I made my marriage vows I meant them.

The Hon. F. T. Blevins: In all circumstances she has to give conjugal rights to the husband. Isn't this precisely what I argued? Personally I find that offensive.

The Hon. JESSIE COOPER: You may.

The Hon. F. T. Blevins: Whether it is in the old language or the new language it means the same thing.

The Hon. JESSIE COOPER: Verse 4 in the modern version states:

For the wife does not rule over her own body, but the husband does; likewise the husband does not rule over his own body, but the wife does.

The point is that when St. Paul was writing to the Corinthians the times were very similar in relation to some of the conditions to those in primitive countries of 1976. Since I have been in Parliament I went into Northern Nigeria in the Muslim World where in fact there was no protection of the women at all. By Muslim law men had four wives who could be transferred all around the clock. Men could have four different wives this month from the four they had last month and the discarded wives had no rights. At the time St. Paul was speaking he was speaking of similar circumstances where the wife, if she was cast out from the home, had no rights and no status and this was St. Paul's way of interpreting the law of Christ.

The Hon. J. E. Dunford: Wouldn't you agree that St. Paul might have a different quotation for 1976?

The Hon. JESSIE COOPER: I am explaining what was explained very badly last week.

The Hon. J. E. Dunford: You are not doing it very well.

The Hon. JESSIE COOPER: That may be your opinion. Verse 5 states:

Defraud ye not one the other, except it be with consent for a time, that we may give yourselves to fasting and prayer; and come together again, that Satan tempt you not for your incontinency.

The modern version provides:

Do not refuse one another except perhaps by agreement for a season, that you may devote yourselves to prayer; but then come together again, lest Satan tempt you through lack of self-control.

Verse 6:

But I speak this by permission, and not of commandment.

The modern version provides:

I say this by way of concession, not of command.

Verse 7:

For I would that all men were even as I myself. But every man hath his proper gift of God, one after this manner, and another after that.

In the modern version it says:

I wish that all were as I myself am. But each has his own special gift from God, one of one kind and one of another.

Verse 8:

I say therefore to the unmarried and the widows. It is good for them if they abide even as I.

And verse 9:

But if they cannot contain, let them marry; for it is better to marry than to burn.

And in the modern version it says:

To the unmarried and the widows I say that it is well for them to remain single as I do. But if they cannot exercise self-control, they should marry. For it is better to marry than to be aflame with passion.

That is the passage that the Hon. Mr. Blevins read and I have given the modern version which fits in definitely with our modern morality. Nothing indicates that St. Paul hated women but rather he was supporting women and trying to keep them on equal status with men. The Hon. Mr. Blevins would have got even greater benefit if he had continued even further than he did and had gone to chapter 13, 1 Corinthians, when St. Paul goes on to speak words that have become constant in any marriage and are read constantly in marriage ceremonies and are loved and enjoyed by people of Christian religion. The modern version states:

If I speak in the tongues of men and of angels, but have not love, I am a noisy gong or a clanging cymbal. And if I have prophetic powers, and understand all mysteries and all knowledge, and if I have all faith, so as to remove mountains, but have not love, I am nothing. If I give away all I have, and if I deliver my body to be burned, but have not love, I gain nothing.

And this is a word that has not been used in this debate at all, and I am speaking of love in marriage. St. Paul continues:

Love is patient and kind; love is not jealous or boastful; it is not arrogant or rude. Love does not insist on its own way; it is not irritable or resentful; it does not rejoice at wrong, but rejoices in the right. Love bears all things, believes all things, hopes all things, endures all things. Love never ends.

The Hon. A. M. WHYTE: I rise to indicate my intention concerning the measure before us. I am firmly of the opinion that unless the Mitchell report is followed concerning clause 12 (which is the contentious matter before us) I will vote against the third reading of the Bill. I do not pretend to be such an authority on rape as some of the other members who have preceded me in this debate. I have, of course, on occasions seen women who have been very badly treated by their husbands, and I believe this is the whole point as recommended by the Mitchell report, that we ought to be considering some type of protection for these women. That is what the Mitchell report would do and what I believe the amendment as proposed will provide.

We should go further than consider just protection. It has been argued that the woman (and I believe quite rightly) who can make that break and is prepared to charge her husband with rape is indeed a fairly brave little soul. She and her children should have that right to make the break from this person whether it be just on the ground of assault or assault and rape, which probably are very often closely connected. In this provision before us there is nothing that has anything to do with providing this amount of protection.

The Attorney-General, whom I register as a reasonably smart type of young man, knows very well that there is nothing in this Bill that will help the woman who is being raped and battered by her husband. In this Bill there is nothing whatsoever to say that she will be any better off than she is at present. The Attorney-General has introduced this legislation in the manner before us because in this fashion it is most provocative and controversial and it will highlight the Hon. Mr. Duncan throughout the whole of Australia.

The Hon. F. T. Blevins: Come on! That is unworthy of you. You can do better that that.

The Hon. A. M. WHYTE: If he had been honest he would have introduced legislation which would do what he says this Bill will do. In actual fact it does not. Preceding this debate I found there were a number of people prepared to give evidence, but as happened in the evidence that was given preceding the homosexual debate, there were none of them giving evidence who in fact had been raped—or indeed knew any rapists. It was the same in the homosexual Bill where people came in to give evidence but they were not homosexuals themselves. Indeed, the ladies who came to interview me could quote many instances—and I suppose they quoted exactly the same instances as the Hon. Miss Levy spoke of in her speech—horrifying instances of rape and assault and, of course, not the type of thing any sensible person would be prepared to condone. I completely abhor rape: it should be stamped out—there should be provisions wherever possible to stamp it out.

The Hon. J. E. Dunford: It is in the Bill.

The Hon. F. T. Blevins: It is difficult to stamp it out.

The Hon. A. M. WHYTE: If either of the honourable gentlemen who are helping me on with my speech will indicate where this legislation will help this unfortunate person, I shall be pleased to see it.

The Hon. F. T. Blevins: The Bill will make it illegal. I know you find it absolutely appalling. We are not saying the Bill will stamp out rape: we are making it illegal.

The Hon. A. M. WHYTE: Why have words of this sort when in fact they can never be applied?

The Hon. F. T. Blevins: You do not know they can't be.

The Hon. A. M. WHYTE: I like to be a realist; when we are talking about legislation, let us get down to the nitty gritty part of it and make some provision where this unfortunate person can be protected. There is one miserable shelter where a woman can go, if she is brave enough to go there and take shelter. You need to legislate so that this person can escape from this beast.

The Hon. J. E. Dunford: Yes, but the beast has done it and you want to give the house to the beast, and put her in a shelter.

The Hon. A. M. WHYTE: This is the whole point I am making. I am pleased that the Hon. Mr. Dunford has come into this. The type of legislation we want is where you can take the home away from the beast (as we call him). That is the legislation we should be having.

The Hon. J. E. Dunford: And charge him with rape.

The Hon. A. M. WHYTE: Under this Bill, you can charge him with rape. To have him proved guilty is different.

The Hon. F. T. Blevins: It is very difficult now.

The Hon. A. M. WHYTE: Yes.

The Hon. F. T. Blevins: That is no argument, because it is difficult to have proof. Surely, that is no argument. To follow your logic, we should have rape removed from the Statute Book, because of lack of witnesses, and so on.

The Hon. A. M. WHYTE: To get back to the Hon. Mr. Dunford's interjections, I say that one would have to prove a charge, as well as charge someone, you would agree with that?

The Hon. J. E. Dunford: Yes.

The Hon. A. M. WHYTE: And then we should provide some type of legislation that would take him out of his own home and give it to his wife; that is the type of legislation you should be presenting to this Council.

The Hon. J. E. Dunford: We are.

The Hon. A. M. WHYTE: There is a lot of ballyhoo about rape in marrriage, but it means nothing if one cannot prove it.

The Hon. J. E. Dunford: But what if you can prove it?

The Hon. F. T. Blevins: We know it is difficult to prove.

The Hon. J. E. DUNFORD: Will the honourable member give way?

The Hon. A. M. WHYTE: Yes.

The Hon. J. E. DUNFORD: It seems to me that the only thing troubling the Hon. Mr. Whyte is that we might find it difficult to prove rape. The situation could occur where a married person raped his wife in front of five or six people. At present the wife cannot charge him with rape; she can only charge him with assault. With a *de facto* relationship, the *de facto* wife can charge her *de facto* husband with rape. After all is said and done, of course rape is hard to prove; it should be hard to prove. It should be proved without any doubt at all, but there are circumstances in which rape has occurred (as the Hon. Mr. Blevins has said) and, once it is proved, why should not a married woman have a right to sue her husband for rape as a wife living with a *de facto* husband has? That is what the Bill is all about.

The Hon. A. M. WHYTE: I think the honourable member is trying to make a case against a *de facto* wife.

The Hon. J. E. Dunford: No.

The Hon. A. M. WHYTE: You bring her to the point of putting her in the same category as a wife.

The Hon. J. E. Dunford: No; the *de facto* wife is already protected by the law. We want the married woman to have the same rights.

The Hon. A. M. WHYTE: In the case of the person who would have five of his friends stand by and watch a woman being molested to this point, it is difficult to believe they would testify against him in a court of law.

The Hon. J. E. Dunford: They could come into the situation when the rape had taken place; they could observe that.

The Hon. A. M. WHYTE: In that case, the case would be proved.

The Hon. J. E. Dunford: Yes.

The Hon. A. M. WHYTE: And the man would be prosecuted.

The Hon. J. E. Dunford: No. Assault and rape are two different things.

The Hon. A. M. WHYTE: There is still no provision for this woman to break away from that person and get away and establish herself in a position where he cannot attack her again.

The Hon. J. E. Dunford: Yes.

The Hon. A. M. WHYTE: When he comes out, he cuts her throat and is put in gaol.

The Hon. J. E. Dunford: Would you like him to live there and rape her every fortnight or every month?

The Hon. A. M. WHYTE: There should be a provision that she does not have to stay there. I am sure the Hon. Mr. Foster, who seems to be more rational on this occasion than his colleagues, would agree that this is the type of thing we should be trying to do.

The Hon. J. E. Dunford: Why should she leave the home for the beast who rapes her? It is her home.

The Hon. A. M. WHYTE: Who said it was her home? A moment ago you said it was his home.

The Hon. J. E. Dunford: The marriage home—half and half.

The Hon. A. M. WHYTE: It may not be; this is legislation that needs to be altered.

The Hon. J. E. Dunford: The Bill provides that, where one party has a half share in a home and rapes the other party, he can be charged with rape in marriage.

The Hon. A. M. WHYTE: If you can eliminate rape, I shall be prepared to assist you wholeheartedly. Personally, I would keep Dr. Cornwall on a retainer to have his emasculator with him at all times.

The Hon. F. T. Blevins: You will do everything bar making it illegal.

The Hon. J. E. Dunford: I think you support the Bill, really.

The Hon. A. M. WHYTE: The whole thing is an absolute farce unless we can make some alterations to it to give the woman adequate protection. The Hon. Mr. Blevins mentioned St. Paul—not that I know a great deal about the Scriptures.

The Hon. F. T. Blevins: The same as me.

The Hon. A. M. WHYTE: It seems to me most ironic that the Hon. Mr. Blevins attacked this Saint, because St. Paul started off very much the same as the honourable member: he was a church basher.

The Hon. F. T. BLEVINS: Who said I was that? I take great exception to that. Mr. President, on a point of order, the honourable member used the term "church basher". I take very great exception to that and I insist that the honourable member—

Members interjecting:

The PRESIDENT: Order! I am trying to listen to the Hon. Mr. Blevins.

The Hon. F. T. Blevins: Will you deal with the Hon. Mr. Dawkins? You must find it very difficult to hear me.

The PRESIDENT: I do; I find it very difficult at times. I understand that the honourable member is complaining that the term "church basher" was used. I certainly heard that, but I do not know to whom that expression applied. I think that the honourable member believes that the Hon. Mr. Whyte applied it to him. Is that true?

The Hon. A. M. WHYTE: I did not mean it to include the honourable member. I said that St. Paul was a church basher—

The Hon. F. T. BLEVINS: On a point of order, Mr. President. The honourable member went considerably further than that and said that St. Paul started in the same way that I did. He said that I, too, was a church basher. I take great exception to that and I hope that the Hon. Mr. Whyte, being a gentleman, will withdraw and give me an apology.

The PRESIDENT: If the Hon. Mr. Whyte intended to use that expression, I call upon him to withdraw it in respect of the Hon. Mr. Blevins.

The Hon. A. M. WHYTE: I am not sure what I am to apologise for.

The PRESIDENT: I am not sure, either, but the Hon. Mr. Blevins—

The Hon. F. T. Blevins: If I can—

The PRESIDENT: Order! The Hon. Mr. Blevins seems to think that the Hon. Mr. Whyte called him a church basher. If the Hon. Mr. Whyte did say that I call upon him to withdraw, and, if he did not, the honourable member should tell me.

The Hon. A. M. WHYTE: I would like to continue, because I did not really say that the Hon. Mr. Blevins was a church basher at all. I said that St. Paul was a church basher.

The PRESIDENT: I think that the Hon. Mr. Blevins had better accept that.

The Hon. F. T. Blevins: Why should I?

The Hon. A. M. WHYTE: I do not want to get this subject too close to St. Paul, because I do not believe he would want to get too close to the Hon. Mr. Blevins's politics.

The Hon. F. T. BLEVINS: I apologise for this further interruption, Mr. President, but the Hon. Mr. Whyte clearly said that St. Paul started off as I did, that he started off a church basher. He said that clearly, and I ask him to withdraw that remark. I do not ask the honourable member to apologise to St. Paul, I merely ask him to apologise to me, because they clearly were the words he used.

The PRESIDENT: I think that the Hon. Mr. Whyte had better come out clearly on this.

The Hon. A. M. WHYTE: It seems that the Hon. Mr. Blevins has got me at this point, and I apologise to him.

The Hon. F. T. Blevins: I accept your apology.

The Hon. A. M. WHYTE: St. Paul certainly was a Christian hater. The average Christian would have run the mile in four minutes flat if he knew that St. Paul was about. However, he, too, came to understand that there was much merit in the teachings of Christ. He belaboured himself and sacrificed himself to pronounce those teachings. I thought it ironic that the Hon. Mr. Blevins took a swing at St. Paul when they had some aspects in common.

The Hon. F. T. BLEVINS: On a point of order, Mr. President. After graciously apologising and withdrawing, the Hon. Mr. Whyte is coming at it again. He has suggested that I have something in common with St. Paul. I am sure that the honourable member is only trying to get around your ruling, Sir, and the apology that he gave. I have to ask the Hon. Mr. Whyte, if not to apologise, at least refrain from comparing me with St. Paul.

The PRESIDENT: It is a somewhat sterile line of argument. Perhaps the Hon. Mr. Whyte could get on and talk about the Bill, because we have had a lot of St. Paul this afternoon.

The Hon. A. M. WHYTE: True, but there is no reason why this aspect should not be repeated. I cannot follow the argument that one should diversify one's argument merely because another honourable member has already used the argument that one supports. Reference was made to *Monday Conference* and Susan Brownmiller's book, which relates closely to the subject we are debating. I believe her theory was completely debunked. Had this debate taken place in the past or if the Bill were delayed until the result of *Monday Conference* was fully absorbed by the public, we would have greater reaction than we presently have from the public. The point of contention is clause 12. The remainder of the Bill is not under discussion, as I stated initially. Provided that clause 12 can be amended in accordance with the findings of the Mitchell committee, I shall be pleased to support it. I refer once again to the point that I am not a pious moralist, nor can I claim to be a good Christian, and I do not want to argue this point with any misapprehension about my position. However, it is against my belief to see legislation promoted with a great flourish and a great rattle of cow-bells rather than sabres, as in this case, when the legislation does not do what it has been portrayed to do. I support the second reading, but I will vote against the third reading, unless clause 12 is amended in accordance with the recommendations of the Mitchell report.

The Hon. N. K. FOSTER: First, this Bill is one that is worthy of support in its entirety. I draw the attention of the Leader of the Opposition to this fact. The Leader has at his disposal a full-time stenographer/secretary, a full-time driver, a vehicle for his service, and he spoke today on what is considered an important matter by members of his Party. I refer to reports in the daily press about his Party's attitude to this matter and the democratic recommendation, if not a motion, by the Liberal Party on it. Nevertheless, I was astounded to hear him say that he left his notes at home.

The Hon. R. A. Geddes: It was an honest comment.

The Hon. N. K. FOSTER: It was a foolish one, though perhaps it might have been honest. I draw to the attention of the Leader that I have a copy of the report of the Criminal Law and Penal Methods Reform Committee of South Australia. It was sent to me with the compliments of Justice Mitchell, of the Supreme Court of South Australia, who was Chairman of the committee. The committee had considered all these things about which we have spoken today, but did not, in itself, lay down what was to be absolute direction in a legislative sense.

I hope to draw the attention of some of the more reasonable Opposition members to the fact that they ought to have read into the document more than they have done. The Hon. Mr. Burdett, the shadow Attorney-General, did not read those things into the document in his public and press comments. Honourable members could have read into the report more than a hint of what was in the Bill, although the committee did not recommend that in the proper sense.

The Hon. Mr. DeGaris has heard me several times, as perhaps you have heard me, Mr. President, decrying the fact that he speaks in this place on any measure without having done his homework or looking at the facts presented in reports. He has not been willing to listen objectively to what has been said in debate. Then he tries to rule the roost by deriding any speaker who has preceded him in the debate.

I do not intend to do that so far as the Hon. Mr. Whyte is concerned: I will do it only so far as the Hon. Mr.

DeGaris is concerned. This is the prime indulgence of the Hon. Mr. DeGaris. It is classical of the man, who says, "I stand aloft in this place as being the only person who ever has taken on himself the right to research a subject—indeed, to be advised on the subject—and woe betide any man or woman who may think that he or she has a right to research anything: I am the only one who has been given that right in the past in this place." That is a way of putting what the Hon. Mr. DeGaris said today when he ridiculed what the Hon. Mr. Blevins had said on this Bill.

If anyone wants to research the writings of St. Paul, good for him. If anyone wants to research the writings of Bertrand Russell, that is all right, too. However, honourable members should be fair and look at the fact from which this report springs, namely, something that is occurring at present and always has been occurring in the past. That matter should concern us today, because the position concerning the people of this State, particularly the women, is not damm well good enough. No-one in this State suggests, or is likely to suggest, that clause 12 of the Bill will be the be all and end all of this problem. I tell the Leader of the Opposition that he put a weak case today. He used phrases such as "the right of revenge", and he should have lived in the past with Saint Paul.

The Hon. R. C. DeGaris: I was only quoting—

The Hon. N. K. FOSTER: I do not care whom the honourable member was quoting. If he was quoting the person who was on television last evening, more fool he is for that. There were better quotations than that one, and the honourable member should not make out his case on the basis of the right of revenge. I suggest that he look at the dictionary. The Hon. Mr. Whyte, a previous speaker in the debate who is now absent from the Chamber, said that he was prepared to support the measure but that he would support the amendment. That honourable gentleman is an agricultural man. He is probably having a quick cigarette now, but I ask the honourable gentlemen opposite whether there are laws in this State to cover the position if a neighbour's bull gets under a fence, climbs over a fence, or kangaroo-hops the fence and impregnates a cow. In such a case, prosecution may follow.

The Hon. J. A. Carnie: This is a fairly serious subject.

The Hon. N. K. FOSTER: Then, I suggest that the Hon. Mr. Carnie has no alternative but to support the Bill in its entirety. I point out to the Hon. Mr. DeGaris, regarding his theological outbursts in this place, that that point of view represents the opposite of the intention of the Bill. Does it not do that?

The Hon. R. C. DeGaris: I do not know.

The Hon. N. K. FOSTER: It does, when it deals with some aspects regarding celibacy, does it not?

The Hon. R. C. DeGaris: I do not follow your reasoning.

The Hon. N. K. FOSTER: I ask the honourable membe what "celibacy" means. Rape is the opposite of it, is it not? For the benefit of honourable gentlemen opposite who want to speak of the past, I will quote from a report of the Law Reform Commission, and I point out that the report is printed under the Commonwealth Government Coat of Arms. I will quote at length from the report, and I ask Opposition members whether they will then say in the debate that we ought not carry out the type of reform provided for in clause 12 because there would be difficulty in doing that and in proving criminality and rape.

Proving a matter is a problem for the prosecution authorities in many other forms of law enforcement, such as car stealing. The Commonwealth Law Reform Commission report states:

Dr. John Helmer, a Senior Lecturer in Political Science, is reported in the *Age* (September 10, 1976) as saying that rapists in Victoria have an 80 per cent chance of avoiding conviction. He asserts that a legal system that permits this favours rape as a "better gamble than risking V.D. by going to a massage parlour". A number of law reform reports have now been delivered suggesting rape law reform. In the last quarter, an important report from the Victorian Law Reform Commissioner, Mr. Smith, Q.C., proposes substantial changes in court procedures and rules of evidence in Victoria. There have been earlier reports from the Tasmanian Law Reform Commission, the South Australian Criminal Law Committee and the Women's Advisory Board in New South Wales. The matter is also on the programme of the Queensland Law Reform Commission. The issue: how to reduce the embarrassment and trauma suffered by victims during rape trials without removing the protections for the accused traditional in our system of criminal justice.

The Hon. J. C. Burdett: That report states that the figures quoted probably are wrong.

The Hon. N. K. FOSTER: I will come to that. I am not concerned about 80 per cent as against 75 per cent or 79·5 per cent. If you want to take on the learned gentleman's attitude of putting on a frock and putting your hands behind your back—

The Hon. J. C. Burdett: Read that part.

The Hon. N. K. FOSTER: I expected Opposition members to say that they were not opposed to those excellent matters to which I have just referred. Apparently, that statement is not forthcoming from the shadow Minister, who seeks press coverage. I am not interested in the academic argument that implies that nothing ought to be done about this matter because perhaps it is not as serious as we think. The report continues:

In his report, the Victorian Law Reform Commissioner follows up his Working Paper which produced a Government commitment to reform the rules of evidence governing rape trials. The Victorian Attorney-General, Mr. Haddon Storey, Q.C., summed up the report:

> The principal recommendations are designed to reduce the number of occasions when a victim has to give evidence, to cut out as far as possible questions directed to the victim's previous sexual behaviour and to ensure that the matter is disposed of speedily.

In July, 1976, the Victorian Premier, Mr. Hamer, suggested that the prosecutrix should be allowed to give her evidence in a sworn written statement at the committal proceedings instead of orally. He proposed that her previous sexual experience should not be the subject of questions, unless specifically permitted by the trial judge.

The figures attached to the V.L.R.C. report show that 75 per cent of persons committed for trial in Victoria on rape-type offences pleaded guilty or were convicted. This compares with 76 per cent in New South Wales. Certainly once legal machinery has been set in motion, the figures do not bear out the claim of Dr. Helmer. However, he is unrepentant and calls all the suggestions now made "flea bites". Perhaps lawyers are more conscious than political scientists of the fact that, even in rape trials, the accused has rights.

In August, the South Australian Government announced its intention to enact legislation basically along the lines recommended by the S.A.C.L.R.C.'s special report *Rape and Other Sexual Offences*. However, there were some differences. The proposed legislation will make it possible for a wife to charge her husband with rape, irrespective of whether they are living under the same roof or not. The report had recommended that such a charge could only be brought against a husband where the spouses were living apart. The suggestions in the report that the age of consent be lowered to 16 and that incest should cease to be a separate offence have been put aside by the Government for further consideration. South Australian Attorney-General Duncan said that the aim of the legislation would be "to extend equal rights in the eyes of the law to all people".

Those rights have not existed up to the present; I think the Hon. Mr. Burdett would agree with that. Clause 12 remedies this situation. Whatever criticism honourable

members opposite may make of the provision, whatever validity that criticism may have, and whatever the burden of proof, that situation is not good enough for 1976. The report continues:

The proposed legislation in Victoria and South Australia has promoted reform suggestions in other States. Mr. Medcalf, W.A. Attorney-General, recently announced that he too intends to ease the strain and embarrassment facing women who give evidence in rape trials. In announcing this he said that he was studying the V.L.R.C. and S.A.C.L.R.C. reports. This indicates again the initiative in Western Australia to promote an efficient use of law reform agencies in this country.

The new Attorney-General for New South Wales, Mr. Walker, has also proposed legislation on this topic. He said that one possibility which his department had been asked to study was the removal of the offence of rape as such and the introduction of varying degrees of assault (*Sydney Morning Herald,* July 30, 1976). Of course, in Michigan the offence as such has been abolished as part of the reform procedure. The focus of attention is diverted from the sexual to the assault aspect of the offence. Since Mr. Walker's announcement, Mr. Justice Lee of the Supreme Court of New South Wales has called attention to the apparent unfairness of a trial procedure that allows accused, immune themselves from questions, to submit the complainant to hundreds of questions about her private sexual conduct. (*R v. Macey & Ors* (unreptd), September 30, 1976.)

We are endeavouring to pilot through this Council something that will improve the situation that has existed up to the present. We do not expect that within 24 hours hordes of women will be lined up complaining that they have been raped in marriage by their husbands. However, a female person should not, because she has taken marriage vows, be denied the justice otherwise available to her. The attitudes of the churches have changed over the years; for example, churches' attitudes to the Vietnam war and apartheid. I am meaning to refer to the churches without attacking them. There are differences between what some churches say and what others say. However, no-one can say that any church has made an outright condemnation of this Bill. Some churches have had misgivings about the matter, but everyone must realise that people also have the right to put the opposite viewpoint. The report continues:

The Tasmanian Government has before it the Tasmanian L.R.C. *Report and Recommendations For Reducing Harassment and Embarrassment of Complainants in Rape Cases.* Tasmanian Attorney-General, Mr. Miller, announced on July 31 that the Government proposed to introduce legislation in the current session which will restrict questioning about the complainant's previous sexual history, restrict the publication of names and addresses and limit the number of people allowed in court when women give evidence. It will also provide that a husband may be charged with the rape of his wife where the parties have been legally separated. A number of other reforms to implement the L.R.C. proposals were also foreshadowed. Every State in Australia is therefore doing something about rape law reform. Many of the proposals are along the same lines. The same issues crop up in all of the reports. The value of co-operation between the law reform agencies is illustrated by the identity of references on this subject.

Who knows whether or not there will be a provision in the Tasmanian legislation that is the same as clause 12 in this Bill, which members opposite are seeking to strike out?

The Hon. J. C. Burdett: The present information is while they are separate and apart, the same as in the Mitchell committee report.

The Hon. N. K. FOSTER: I thank the honourable gentleman.

The Hon. J. C. Burdett: I have done some research and, if the honourable member wants—

The Hon. N. K. FOSTER: If the Hon. Mr. Burdett wants to create a further mental muddle, certainly he should do more research. I now refer to some of the recommendations made by the Mitchell committee, which can be found on page 14 of its report. The committee said:

The view that the consent to sexual intercourse given upon marriage cannot be revoked during the subsistence of the marriage is not in accord with modern thinking.

I understand from that that those involved did not consider that they had an obligation, let alone a duty, to spell out a legislative programme for the Government, irrespective of its political persuasion. The report continued:

In this community today 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. Nevertheless it is only in exceptional circumstances that the criminal law should invade the bedroom. To allow a prosecution for rape by a husband upon his wife with whom he is cohabiting might put a dangerous weapon into the hands of the vindictive wife and an additional strain upon the matrimonial relationship.

It is from this report that the catch-cries used by members opposite have come. They see fit to pluck a few words from the report. The right of revenge comes from that. The report continues:

The wife who is subjected to force in the husband's pursuit of sexual intercourse needs, in the first instance, the protection of the family law to enable her to leave her husband and live in peace apart from him, and not the protection of the criminal law.

Family law jurisdiction lies within the common law. I am not criticising that part of the report. However, this is ineffectual. Are we in this place going to say that there has not been a case of rape by a husband of his wife who has left the matrimonial home, or that a woman who may have packed her goods and chattels prior to leaving her husband but who has nowhere to go is not subjected to all sorts of indignities? Certainly, there are now places to which such women can go. At the same time, however, a woman would not be worthy of much pity if she did not ponder at length the steps which she was about to take and which were fraught with all sorts of difficulties. The recommendation made by the Mitchell committee explores the possibility for thinking legislators in this regard. If honourable members opposite can come up—

The Hon. J. C. Burdett: You look at page 15.

The Hon. N. K. FOSTER: I will come to that. I make the point that Utopia for the women who are subjected to sexual assaults, rape and all types of indignity does not begin merely because they go to live elsewhere. I know of one woman who left her husband and went to live in a country town. It was four years before that woman's husband found her and made her spend a night with him. He carried out all sorts of bestialities upon his wife and forced her into pregnancy, not having seen her for four years. What are such women to do to protect themselves?

The Hon. M. B. Dawkins: This Bill does nothing.

The Hon. N. K. FOSTER: It does not go far enough. I expect the Hon. Mr. Dawkins to move amendments that will remove obstacles that stand in the way of the police being able to launch prosecutions against an offending husband. Such a person cannot be charged by the police even on complaint. No. lawyer, including the Hon. Mr. Sumner, or a prosecuting police officer, would be willing to stand up, under privilege in this place or outside and say, if a woman laid a complaint that she had been raped by her husband or subjected to serious bestialities, that the police would prosecute.

The Hon. J. E. Dunford: After this Bill is passed it will be all right.

The Hon. N. K. FOSTER: If a man goes out and steals a car, a piece of polluting machinery, out comes the book! If I go out on to the streets and punch hell out of a man, kick him and do all sorts of things to him, do honourable members opposite tell me that that person, lying unconscious on the pavement, must swear a complaint so that the policeman guarding Government House can throw me in the paddy waggon, fingerprint me and charge me? I would deserve that much, and more.

However, the woman who takes the marriage vows removes herself from that type of protection, irrespective of whether she is bashed, burnt or assaulted. We as legislators turn our back on assaults on wives, yet some of us would like to think that we are 10ft. tall. Some of us say that what is stated in the marriage vows is final and absolute. What I am trying to say is that there is nothing revolutionary in this Bill. It is a right that everyone in the community should be afforded protection, and the Bill does not say that that right ought to be denied. Would the Hon. Mr. DeGaris repeat what he said this afternoon about the Hon. Blevins's statement of the position if the Bill stopped only one rape, or maybe two? If I had made the speech that the Hon. Mr. Blevins made and the Hon. Mr. DeGaris had come at that caper, he would have got a swift reply from me, but I will not go into it now. However, it would have been swift, telling and much to the point. The Hon. Mr. DeGaris made no constructive contribution to the debate at all. He talked about business men but never about the married women in the community. except in a derogatory sense. The statement he made this afternoon was quite incredible. If I may quote—

The Hon. R. C. DeGaris: It hit in the right place.

The Hon. N. K. FOSTER: All he said is that a male person ought to have more rights than anyone else. That is what he was on about. The right is man, the might is man and to hell with everyone else. The Leader was grandstanding in this place trying to win a cheap political point over someone else in the Chamber. If that is the way the grand legislator carries on, I hope that at the next State election, when he will not have the immunity that he engineered previously (so that he did not have to go before the people but left his colleagues to carry the bag and suffer defeat), whether or not he goes to the Privy Council on the issue, he will be reminded of the speech that he made here this afternoon. I hope those progressive women's movements in this State have had implanted in their minds the type of attitude that the Leader displayed here today. I quote from an article, headed "Rape-in-marriage legislation comes under heavy fire", by Wendy Milsom in the *National Times* of September 27-October 2, 1976. I think it would be fairer if the shadow Attorney-General was here (it is not my fault that he is not present), because it deals with his attitudes as the principal spokesman for the Opposition. The report states:

The Dunstan Government's plans to reform legislation on rape are likely to meet strong opposition when the legislation comes before the Parliament in a few weeks. The Attorney-General's Department is drafting rape legislation which includes a clause making it possible for a husband living with his wife to be charged with her rape and vice versa.

It is not for the legislators to ponder the enforcement or otherwise of the law. What is basic and necessary is the principle of according equal rights to everyone in the community. Subsequent amending legislation is probably the manner in which enforcement measures can be more closely considered. The report continues:

Since Attorney-General Peter Duncan announced proposed amendments to the rape laws early in August, the opposing sides have been locked squarely over the principle of protection for a wife and the intrusion of an "unenforceable" criminal law into the sanctity of marriage. The controversy has eclipsed the other proposed amendments to the rape Bill; the preclusion of the alleged victim's sexual history from evidence, except in rare circumstances; the alleged victim's evidence to be given by affidavit at the committal hearings; the establishment of a panel of doctors, including women, to examine the alleged victim, and a training course for police officers handling rape cases.

The Liberal Opposition is prepared to use its majority of one in the Legislative Council to block the clause. The shadow Cabinet has recommended the Party support an amendment to the present law so that the husbands separated from their wives can be charged with rape. Shadow Attorney-General John Burdett says it's reasonable to assume the Council will carry the amendment.

The South Australian Constitution provides for either House to seek a conference of the managers of both Houses to reach a compromise in a deadlock. Mr. Burdett says it is hard to predict the outcome of such a conference on the rape-in-marriage clause, presumably because neither Party is willing to compromise.

I say to the Hon. Mr. DeGaris, as the Leader of the Opposition, and to the Hon. Mr. Burdett (who has returned from his forced absence from the Chamber) that they should not seek a conference on this matter. Everyone knows my attitude to such conferences. If I had my way they would be abolished. That is my own viewpoint, but they are part and parcel of this place.

The Hon. A. M. Whyte: A democratic procedure.

The Hon. N. K. FOSTER: The numbers were 16 to four, for over 100 years. Do not say that was democratic. The report continues:

We believe the criminal law should not be used to establish a moral or social principle.

What law school did he go to?

The Hon. C. J. Sumner: Who said that?

The Hon. J. C. Burdett: I did, and it's true.

The Hon. C. J. Sumner: That's not what you said on the homosexuals Bill.

The Hon. N. K. FOSTER: I am glad the honourable member reminded me of that. The report continues:

We are concerned that husbands assault their wives for sexual reasons—

you could have fooled me—

but we don't think the Government's proposed legislation is going to have any practical effect at all.

Surely the Opposition does not suggest its amendment will have any effect. The amendment does nothing to the cause or intention of the Bill as proposed by the Government. The report continues:

Instead the Liberal Party advocates the establishment of more women's shelters and crisis centres as a short-term answer to the problem of husbands assaulting their wives.

The Hon. Mr. Burdett says, "Let's put up bricks and mortar and throw the women behind them." They can go to the shelters for protection. Let the bloke go. Let the criminal go and do what he likes. That is what the Hon. Mr. Burdett advocates. The report continues:

The Opposition's amendment to the rape-in-marriage clause is in line with the recommendation of the Mitchell committee, the State's Law Reform and Penal Methods Committee.

The Hon. J. C. Burdett: Which you haven't read much about.

The Hon. N. K. FOSTER: I have. I do not think that it goes on to say that one cannot legislate beyond the recommendation.

The Hon. J. C. Burdett: Did you read the actual recommendation?

The Hon. N. K. FOSTER: If I may digress, we have had people out in the streets up in arms about the Ranger inquiry and what the Federal Government did last week.

We have had people up in arms also about the Green report and what the Federal Government is doing to the A.B.C., which is not even remotely suggested in the report. Get it and read it and come back next week and tell me if I am wrong. There is nothing wrong with not following a report to the letter or taking it a step further. The report continues:

In a report on rape and other sexual offences published earlier this year, Justice Roma Mitchell, Professor Colin Howard and Mr. David Biles recommended that husbands living apart from their wives and not under the same roof could be indicted for raping her.

I relate that to page 14 of the Mitchell report. The report from which I have been quoting continues:

They said in this community today 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. Nevertheless it is only in exceptional circumstances that the criminal law should "invade the bedroom".

So says the Hon. Mr. Burdett. The report continues:

The committee considered that what the Government now proposes could add strain to a marriage and "put a dangerous weapon in the hands of a vindictive wife".

Where have we heard that phrase before? It comes from the Mitchell committee report. It was not a catchcry, but they used it. If I may use the term, Opposition members have prostituted that report by lifting these simplistic phrases from it. The press report continues:

So Mr. Duncan has gone against solid legal advice in extending the proposed law to include husbands cohabiting with their wives. The administrator of a North Adelaide women's shelter calls it courageous, the Anglican Archbishop of Adelaide predicts serious consequences, and a leading criminologist finds it "mind boggling". Executive Director Heather Crosby says: "We realise how difficult it would be to implement. Any rape is hard to prove. But many of us involved in counselling have heard horrific stories of husbands ill-treating their wives, and I don't think you'll get any social worker who's opposed to the rape-in-marriage proposal."

Women working at Adelaide's women's shelter say it's a "nice, comfortable, middle class" argument to oppose a piece of legislation because it might be impossible to prove. They doubt that many women would go so far as to prosecute their husbands for rape, but welcome the proposed change in law for "its recognition of the rights of women". They say that for most of the battered wives who contact the shelters it's a matter of chance whether their husbands have bashed or raped them. The women's shelter at Prospect has been surveying the 50 women who seek help each month and has found that most have been raped during their marriage. "Lots of assault cases don't reach the courts" said administrator Annette Wilcox. Several Adelaide churchmen have spoken out against the change in law, among them the Anglican Archbishop of Adelaide, the Rev. Dr. Keith Rayner. He says he's not crusading against it, and does not see it as a major concern.

That is why I said earlier today there is no real opposition from the church. The report continues:

"The criminal law is a clumsy weapon to intrude into the husband-wife relationship," he said. "It would be an unenforceable law, and any unenforceable law is a bad one." Mr. Duncan maintains that a married woman living with her husband is entitled to the protection of the criminal law like the rest of society—

no more, no less, and I have said it before. The report continues:

"A violent or callous husband who regards his wife as a passive piece of property can rape her—even repeatedly—and she has no protection. I suppose you could call this the 'vindictive husband' syndrome," he said.

That is quite so. The report continues:

"We're hoping this legislation will act as a deterrent to sexual abuse. It is quite probable that it will work to actually improve the quality of a marital relationship by introducing a need for more mutual consideration and sensitivity." The Government claims the support of most women's groups, but several organisations who welcomed the Mitchell committee recommendation have backed off from the new proposal. The South Australian Women's Council of the Liberal Party brands it "divisive, an attack on the family, and a ridiculous piece of legislation".

Is there any woman who suggests that her fellow women should remain unprotected from such men in this day and age? Is that the suggestion of the Liberal Party, which has expounded its ideas in this Council today and recently? The report continues:

The National Council of Women says it may undermine the family and contribute more to marriage breakdowns. The 12 000-strong Country Women's Association has no firm policy on the proposal, but a spokesperson said some members felt a law on rape within marriage should exist, "as some guarantee for women who are badly treated by their husbands". The Y.W.C.A. believes the principle should be recognised and "as a matter of social responsibility" supports the change in law.

The Hon. C. J. Sumner: Who said that?

The Hon. N. K. FOSTER: That is the Y.W.C.A. The report continues:

"As a Christian I entirely agree that wives are not owned by their husbands, to be used at will. I have no doubt that women in marriage can be subject to brutal, drunken and over-forceful husbands. The laws relating to the family or assault should be strengthened if they do not sufficiently protect wives, but to make the rape law applicable to husbands and wives living together would have some serious consequences."

We do not doubt that; we need some back-up legislation. The report continues:

Only one woman claiming to have experienced rape within marriage has publicly supported the rape-in-marriage clause. Separated from her husband after eight years of marriage, she wrote to the Adelaide *Advertiser* and said a rape within marriage law could have saved her own marriage. "This clause in the rape Bill will have its strength, not so much to charge a husband, more to make people aware that a woman has the right to choose . . . because she is not an automaton who must provide sex the way she provides meals and cleans clothes. Those who are outraged that there should be such a clause have never had to submit to physical or emotional blackmail, have not had to submit to a man after his blood has risen during beating you. They've not had vile things done to their genitals—all within the sanctity of marriage. . . . Those of you who have not had to submit under these conditions—you're fortunate. Don't deny to the rest of us this protection."

I do not intend to go on and on, but I cannot for the life of me understand why adult persons of the age of Opposition members in this Chamber make such a contribution to the debate. They have, in their time here, seen in the past few years all sorts of gains or reforms in a whole series of areas, but in no other area has reform been so widely recognised as reform so far as equality of the sexes is concerned. In saying that, I do not for one moment think that all has been done in regard to discrimination in our society between the sexes because of the reforms that have been made in regard to wage fixation, equal pay, and other rights. The surface has not been scratched when we really examine the disadvantageous position of women in the community, apart from the cases that may hit the headlines for a short time. I suggest that members opposite support the Bill.

The Hon. Mr. Burdett referred to the recommendation of the Mitchell committee; for his sake, let me read it so that it can be included in *Hansard*. The recommendation is as follows:

Recommendation with respect to rape by husbands. We recommend 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.

It was not necessary for me to read that, because I have dealt with that in a number of ways on several occasions.

The fact is that the legislation, from the Government's point of view, and particularly from the point of view of the Attorney-General and his advisers, need not necessarily be restricted to the dotting of i's and the crossing of t's in this Bill. The report is very good. Those who worked on it are to be highly commended, in my view, because it breaks new ground. It puts the onus on the politicians to come up with at least a vehicle that will enable those interested in equality in marriage to launch an attack on the institutions of this State and every other other State in the Commonwealth, making their voices heard in order to effect real change in the interests of each and every clear-thinking member of the community.

The Hon. M. B. DAWKINS: In his contribution the Hon. Mr. Foster made three points with which I agreed. First, he said that he did not intend to go on and on, and I agreed with that, if only. Secondly, he said that at some stage everyone had the right to put the other point of view. That is something I hope to do now, and I agreed with that comment. Thirdly, the Hon. Mr. Foster referred to a situation in which a wife left her husband, no doubt because she could not stand the situation any longer (no-one could blame her), and after four years this monster—he could have been nothing else—found her and ravaged her, causing her all sorts of problems because of his dreadful attitude. I agree with the Hon. Mr. Foster on that aspect, too, but I point out to him that that situation is provided for by the Mitchell report recommendations and by the Hon. Mr. Burdett's amendment, which provides:

(3) Where—

(*a*) married persons have ceased to cohabit as husband and wife;

That is what has happened in this case. The amendment further provides:

(*b*) are residing separately and apart,

neither shall, by reason only of the marriage, be deemed to have consented to sexual intercourse with, or an indecent assault by, the other.

Therefore, the situation referred to by the honourable member is completely covered by this amendment to be moved by the Hon. Mr. Burdett. I am completely opposed to violence, rape, and ill treatment in marriage. I support wholeheartedly the concept of Christian marriage. I express my thanks to the Hon. Jessie Cooper, who gave an adequate summary of what St. Paul meant. I always believe that, when one talks about what is in the Bible, when one reads two translations one gets a more accurate picture.

Whatever else has been said about St. Paul, for a single man he had a very good idea of how people should live together, and how they should react towards one another. I support the second reading of the Bill, but I must oppose clause 12 as it now stands, but I will support the amendment foreshadowed by the Hon. Mr. Burdett because provision already exists in society for a wife to make a charge against her husband for indecent common assault if he attacks his wife in the common matrimonial home. Seldom does a woman lay a charge in such a case. Indeed, often when a charge should be laid a woman says that it is her husband and she does not want to proceed. If this provision becomes law, how many woman will take advantage of the law as it will be? How much good will the provision do? In common with the Hon. Mr. Whyte, I doubt that this provision will do much good. True, it could cause much harm. New section 73 (3) provides:

No person shall, by reason only of the fact that he—

"he" according to the Acts Interpretation Act includes "she"—

is married to some other person, be presumed to have consented to sexual intercourse with that other person.

While the intent of the provision may be sincere, it negates the usual interpretation of Christian marriage. I do not believe that, because of the exceptions that have been raised (and all honourable members have heard of exceptions and instances which we abhor), this provision will help. The Mitchell report recommends that a wife should be able to charge her husband with rape if the couple are separated and living apart, as referred to by the Hon. Mr. Foster, but not if the couple are living together.

As I have indicated, if a married couple are living together the wife should be able and is able to lay a charge of assault. The question has been raised about the attitude of various people and church bodies concerning this Bill. I have received much correspondence, as have most honourable members on this matter, the great bulk of it not so much against the Bill but against this one clause, to which I have already referred. Much consternation and concern has been expressed about this one provision. On the other hand, I have received very few letters supporting the provision. In respect of the various churches, I have received a letter from the Rev. Clem Koch, Australian President, Lutheran Church, who stated:

Having considered the proposed new legislation "An act to amend the Criminal Law Consolidation Act, 1935-1975" we wish to state.

he was speaking on behalf of his church—

our deep concern particularly over the proposed section which deals with rape in marriage. On page 4 of the proposed legislation, paragraph 12, which amends section 73 of the principal Act, clause 3 states, "No person shall, by reason only of the fact that he is married to some other person, be presumed to have consented to sexual intercourse with that other person." This section would therefore deny that the relationship established by marriage has any reference "to consent to sexual intercourse". Interestingly enough, the Family Law Bill under part 5, section 26, paragraph 3 certainly makes it clear that "a decree of dissolution of marriage shall not be made if the court is satisfied that there is a reasonable likelihood of cohabitation being resumed".

In other words the question of the relationship between the estate of marriage and cohabitation is clearly implied. If this Bill is purporting to safeguard people in marriage against common assault, then surely this is not the way it should be done.

I emphasise that point, "Surely this is not the way it should be done." There may be other ways of providing for adequate protection concerning the legal aspect of what the marriage partners own or what they should own, as well as from the physical examples given to the Council. I believe that further investigation should be undertaken. I agree with Pastor Koch, who stated, "Surely this is not the way it should be done." Pastor Koch's letter continues:

As the Bill stands, it needs to be seen for what it really is, a blatant attack on the estate of marriage in our society. People who enter marriage no longer are seen to be giving any consent in regard to sexual intercourse or cohabitation according to this legislation. This legislation makes it clear that for a person in a position of trust to seduce a person under their guardianship or care is but a small matter requiring a sentence not exceeding seven years. On the other hand, a person who is "recklessly indifferent" (however the term is to be applied!) to consent to sexual intercourse even while living in the state of cohabitation with that other person is liable to be imprisoned for life.

I do not wish to say any more about that. I am in favour of the Bill as it stands, except for clause 12. I believe that the majority of the public is also, basically, in favour of the rest of the Bill, but does not want this provision. According to a poll by Peter Gardner and Associates, published last month in the *Advertiser*, the provision was opposed by 62 per cent of men and 55 per cent of women. I know that public opinion polls can be inaccurate but surely this poll would not be wrong by more than perhaps 5 per cent.

I must oppose clause 12. I suggest that we ought to ask ourselves how often this provision will be used, what improvements it will effect, how often the existing provisions are used now, and what this portion of the Bill will provide. The answers to those questions should suggest to all thinking honourable members that the Bill should be amended as the Hon. Mr. Burdett has indicated. If further consideration should be given to other amendments, that should come later, not now. I support the second reading and I will support the amendment. If the amendment is not carried, I will have to oppose the third reading.

The Hon. C. J. SUMNER: I support the second reading of the Bill in its entirety. The main thrust is to lessen the trauma involved for a complainant in giving evidence in a court dealing with the charge of rape or other sexual offence. One of the important provisions is that there will now be no need for a complainant to give evidence at committal proceedings unless a magistrate directs otherwise.

The PRESIDENT: I think the honourable member may be speaking about a different Bill, namely, the Evidence Act Amendment Bill.

The Hon. C. J. SUMNER: It is, in fact, in the Justices Act Amendment Bill, but it is technically correct to say that it is part of one body of legislation that has come to this Council at the same time. The other aspect is that there should be no cross-examination on prior sexual conduct unless a judge directs that there shall be prior to embarkation on the trial proper. The provisions retain the traditional requirement that there be the condition of *mens rea* before a criminal offence can be established. That means that a person should not be convicted of a criminal offence unless he intended to commit the offence.

Despite the decisions in Brown's case in South Australia and Morgan's case in the United Kingdom, the committee saw fit not to recommend alteration of the original definition of "rape", and this Bill does not alter it. The accused must have the belief that the woman was not consenting or that he was reckless about whether she was consenting, and it is still up to the prosecution to prove him guilty beyond reasonable doubt. The corollary is that that belief may be unreasonable, but it is a traditional rule in the criminal law that no-one should be convicted unless he has actually performed the act and intended to commit the offence.

I certainly support the legislation so far as it will enable a complainant to have less fear of reporting an offence and certainly less trauma in appearing as a witness in a case involving a charge of rape or other sexual offence. The most important provision which has occupied the attention of members of the Council and which has been the subject of controversy is clause 12. I think honourable members have indicated support for all provisions except that one. Clause 12 amends section 73 of the principal Act to revamp the section, but a new subsection, subsection (3), is being included. That new subsection provides:

No person shall, by reason only of the fact that he is married to some other person, be presumed to have consented to sexual intercourse with that other person.

That provision has been opposed by honourable members opposite, but I believe that this opposition is grounded on a misconception of the relationship between husband and wife, which should be one of equality and mutual love and respect, not one of subservience. Historically, the relationship has been one of subservience of the wife to the husband but gradually this has changed to give expression to a desire for equal partnership. The provision being made by this Bill is one of those changes.

Despite many changes that have been made, there is still a patriarchal attitude to marriage and the family, and this has been emphasised by Biblical injunction, to which the Hon. Mr. Blevins has referred. As a result of this attitude, women often have no real option to develop their own interests and talents but are, by the very fact of marriage, seen as an appendage to their husbands, destined to a supportive role in child-rearing and household chores.

Attitudes have been changing slowly to provide women with a real choice in adopting a lifestyle suited to their individual desires and capabilities. The fact of marriage should provide a free and equal partnership, without pre-ordained roles of obedience. To achieve a change in these deeply ingrained attitudes is not easy. Legislative enactment on its own is insufficient. Clearly, the patriarchal ideas that have been accepted for centuries as being appropriate for society require a revolution in thinking. That may be painful for society and for both partners to a marriage, and it will not easily be achieved. However, if we are to pay more than lip service to the notion of equality, it must apply within the most basic and still important institution in our society, namely, marriage and the family. I see clause 12 as a necessary addition to the legislative framework within which this revolution in thinking can continue.

I will place the measure in historical context and describe some changes that have occurred in the attitude of society to the marital relationship. I will do that not in detail but in summary, and I am indebted to a report by Enid Campbell, entitled *Legal Status of Women in Australia.* The report is an appendix to Norman Mackenzie's *Women in Australia,* which was a report to the Social Science Research Council in 1962. In referring to the report, I will summarise the common law disabilities in marriage to which women were subjected. Perhaps the most convenient summary is in the introduction to the report, which states:

Most of the disabilities which emancipationists sought to have removed were of ancient origin; some of them affected women generally while others applied only to married women. For example, at common law, no woman was legally qualified to exercise public functions, that is, no woman was qualified to vote at elections for any public offices, to appoint public officers or be herself elected or appointed to any public office. Entry into the learned professions was impossible while the civil and proprietary incapacities of marrried women were such that no wife could successfully embark on any commercial venture on her own account. Though duty bound by law to support his wife and children, to pay his wife's debts and to answer for her wrong, a husband had control over his wife's lands, had the custody and control of the children of the marriage and the power physically to chastise and restrain his wife. For practical purposes, the wife was under her husband's dominion.

To emphasise this common law restriction, I point out that, in regard to nationality and citizenship, the common law requirement was that women lose their nationality on marriage and assume that of their husbands. That provision was altered in Australia generally in 1948 by amendments to the Citizenship Act. I will not go through some of the other general restrictions in regard to single women that are mentioned in the introduction to the report but will confine myself to the restrictions in marriage, which are the most pertinent factors in this debate. Obviously, until recently married women were discriminated against within the Public Service and the teaching profession; that situation probably still exists to some extent. Further, until towards the end of the last century, married women did not enjoy the same rights to property as did men. Previously, there were extraordinary restrictions on women's rights to property. The article says:

While a married woman could own freehold land at common law, the land remained during coverture subject to the exclusive control, management and power of disposition of her husband. In the event of her husband surviving her, he took a life estate in the land as tenant by the courtesy. At common law married women were also incapable of acquiring and disposing of leaseholds, chattels, and choses in action. If upon marriage the wife already owned leaseholds, the husband was entitled to the income therefrom during the joint lives of himself and his wife, and during his lifetime could dispose of such interests without his wife's concurrence. The wife's chattels became her husband's absolutely but her choses in action (e.g. debt claims and companies shares) only vested in her husband if he reduced them into possession. If a debt was owed to the wife, the husband could transfer that debt claim to himself; similarly, in the case of shares owned by the wife, it would be sufficient for the husband to arrange for his name to be substituted for his wife's in the share register. Should the husband predecease his wife she was entitled to such of her choses in action as he had not reduced to his possession, and to such paraphernalia (jewels and ornaments which her husband had permitted her to wear, excluding family jewels) as he had not disposed of during his lifetime.

In the area of contracts, married women could not contract in their own names, and a husband and wife could not contract as between themselves. Thankfully, that restriction was removed many years ago. Regarding torts, at common law married women were in a disadvantageous position. The article says:

At common law, single women were subject to the same liability for torts as were men. While capable of suing and being sued in tort, the married woman was in a different position: her husband had to be joined as co-plaintiff or co-defendant, and since she had no separate property out of which claims might be satisfied, her husband was considered jointly liable both for ante-nuptial and post-nuptial torts. Being one at law, husband and wife could not sue one another in tort. Persons who interfered with the husband's right to consortium, that is, to the services, comfort and society of his wife, might be held liable in damages to the husband.

Regarding successions, a wife could make a will only with her husband's assent, and that assent could be revoked even after the wife's death. All personal property passed to the husband; freehold land was subject to the husband's life interest, and it could then go according to the wife's wishes. The custody, control, education, and religion of legitimate children were vested in the father. Until recently, the marriage vows taken in most churches emphasised the wife's duty to obey her husband. This provision still exists in many of the ceremonies conducted in churches, but it has been struck out from some ceremonies. The intending wife can delete the provision if she so wishes. This is symbolic of the change that has occurred in society's attitude to the role of the woman in marriage. The common law restrictions have now, for the most part, been removed. I have mentioned this to indicate the process of emancipating women over the years. Much legislative advance has been achieved, and the matter we are now discussing represents further progress in this direction. It reinforces the changing attitudes of society to the roles and responsibilities within marriage. Further, it recognises that a wife should not be a chattel in law, in fact, or by custom.

I turn now to arguments advanced against this provision, the first argument being the statement in the Mitchell committee's report that it is only in extreme circumstances that the criminal law should invade the bedroom; the Hon. Mr. Burdett referred to this matter. I suppose that this proposition received some notoriety through the statement of Mr. Trudeau, who said that the State had no right in the bedrooms of the citizens, and the citizens had no right in the bedrooms of the State!

The Hon. Mr. Burdett referred to the legislation dealing with homosexual acts between consenting adults, which acts were decriminalised in a previous session. The honourable member said that the criminal law was not the place for setting out ethical codes. However, there is an important distinction between that situation and the situation we have here. Clearly, when this Council dealt with the legislation on homosexuals, honourable members were talking about a consensual situation—the so-called victimless crime. However, here we are talking about a completely different situation—an act that has been described by honourable members opposite as one of the most brutal and violent that can occur. So, to match the so-called victimless crime with a crime of rape and thereby maintain that in both cases the criminal law ought not to invade the bedroom seems to me to be completely erroneous.

The Hon. Mr. Burdett and the Hon. Mr. DeGaris said that marriage was a general consensual arrangement and, within that, there is general consent to intercourse. I do not suppose anyone in these days would enter into a marital relationship not expecting to have intercourse at some time, but the fact that there is a general consensual arrangement to that effect surely does not mean that on every occasion a husband wants to have intercourse with his wife he ought to be permitted to do so. Obviously, it must be a mutual situation—not one-sided. Of course, that has been recognised by the Mitchell committee, which says in its report:

The view that the consent to sexual intercourse given upon marriage cannot be revoked during the subsistence of the marriage is not in accord with modern thinking. In this community today 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.

The consent must be mutual consent, based on equality within the marriage partnership. Next, the question of vindictive wives has been referred to. I do not really believe that the Hon. Mr. Burdett agreed with the Mitchell committee's report, in which it was stated that to provide for rape within marriage would be to give a dangerous weapon to the vindictive wife. Certainly, I do not see that it would give to a vindictive wife any greater lever than she has already got. This was recognised by the Hon. Mr. Burdett, when he got himself into a complete logical contortion when talking about assault and rape. In this respect, he said that one cannot establish rape without being able to establish assault. I ask why we should draw that artificial distinction. There does not seem to be any reason why the Hon. Mr. Burdett drew the line at assault. If a wife was really vindictive, she could use the matter of assault to try to drag her husband into the law courts. In other words, there would not need to be an offence of rape within marriage on the Statute Book to enable her to do so.

The Hon. Mr. Burdett, in this logical confusion, also said that many proponents of this clause had suggested that inserting this provision in the legislation would act as a deterrent to a husband, in that wives could threaten to report their husbands to the police if they were behaving in a violent manner. His answer to that was, "They could also threaten the husband with assault. Surely that is a sufficient deterrent." Why does the honourable member draw the line there? What is the logical distinction between assault and rape in that respect, particularly when the honourable member says that one could not establish rape without there being an assault? I have not reconciled what logical difference there is and why, at marriage, there ought to be a cut-off point with respect to rape. Assault is an offence that can apply across the board, including within marriage, and I can see no reason why rape should not be in the same category.

The next argument advanced is that it would be difficult to prove rape within marriage. I concede that that is certainly a problem. However, the figures quoted by the Hon. Miss Levy indicate that rape generally is difficult to prove. I also agree that many cases would probably be resolved through the family law agencies. One would not want to downgrade the importance of the role that the agencies set up to deal with reconciliations within marriage will continue to play. However, to say that that ought to be the only way that matrimonial problems should be resolved seems to me to be inadequate.

Related to this, it is suggested that it would be difficult to decide whether rape had occurred within marriage. However, it needs to be pointed out that there are many fine definitions in the law. There are many grey areas in all sections of the law that must be adjudicated upon by judges and juries. Many of these things are difficult. Matters contested before the courts are not always open and shut cases. However, that does not necessarily mean that there should not be legislation on the Statute Book. Legislation of this kind gives some force to society's general condemnation of the act of rape.

Some mention has been made of the Law Society and distinguished jurists. In this respect, I make two points. First, I do not believe that in a matter such as this the Law Society or any judge, lawyer or jurist is in a better position than the average citizen to decide what ought to apply. This is a matter of general public concern, and I think the average citizen or Parliamentarian is in as good a position as the average lawyer to make up his or her mind on the matter.

That does not apply in some areas. In technical legal matters we must obviously rely on the opinions of lawyers. However, this is a general matter concerning society, and the average citizen is in as good a position to make up his mind on it as are distinguished jurists and lawyers.

The Hon. J. C. Burdett: What about the public opinion poll, then?

The Hon. C. J. SUMNER: If we decided everything by public opinion polls, it would—

The Hon. R. C. DeGaris: You're arguing against yourself there.

The Hon. C. J. SUMNER: In what sense?

The Hon. R. C. DeGaris: In what you said.

The Hon. C. J. SUMNER: Not at all. I said that the average citizen or legislator is just as able to make up his mind on these matters as is the average lawyer. We have been elected to pass legislation. One can place too much credence on the opinions of experts. We as Parliamentarians are in as good a position as anyone else to make up our minds, perhaps taking into account what experts have said, but without giving undue weight to it.

The other thing that needs to be said about the Law Society's recommendation is that it was carried with a narrow majority. Obviously, therefore, many people within the Law Society Council supported the Government's position on the matter. The other argument that is used (and I find this somewhat incredible) is that this provision will destroy the family unit, and that it is yet another attack by this shocking socialist Government on the family. I reject that completely. It is certainly an attack on the traditional notion of families and the role of the husband as the head of the family and of the wife as the subservient partner in it. Then again, that role of the family has been under attack for 100 years, and I hope that the examples I have given of the changes that have occurred in that time will be sufficient to convince people that it is an attack not on the family as such but on the old outmoded views of the patriarchal societies.

The Hon. R. C. DeGaris: What about the matriarchal societies?

The Hon. C. J. SUMNER: I suppose they are subject to the same problems as are patriarchal societies. However, I do not wish to to go into an excursion on matriarchal societies. In so far as we are operating within the Australian context, the family relationship ought to be one of equality and partnership. However, the matter of a matriarchal society is not one with which we are concerned at present. We are concerned with correcting the injustices and inequalities that are manifest in a patriarchal society.

Far from destroying the family, this Bill will provide another legislative back-up for the family and marriage as a co-operative enterprise based on equality, which will thus enhance the modern idea of family relationships. One or two other matters have been mentioned during the course of the debate today. The Hon. Mr. DeGaris made some rather extraordinary comments and attributed to Susan Brownmiller opinions that I do not believe she really holds. If in his research over the weekend the Hon. Mr. DeGaris had cared to look at the Hon. Anne Levy's speech and the quote that she read out from the book by Susan Brownmiller, it would have been clear to him that she was in favour of legislation proscribing rape within marriage.

I did not see the programme last night, but I would doubt very much, if the tone of her book is anything to go by, whether she would have changed her views to any significant degree. I refer to the quote that the Hon. Anne Levy made last Thursday from Susan Brownmiller's book, and it is clear from that that she would support this legislation. In her book Susan Brownmiller says:

The ancient concept of conjugal rights (female rights as well as male) might continue to have some validity in annulments and contested divorces—civil procedures conducted in courts of law—it must not be used as a shield to cover acts of force perpetrated by husbands on the bodies of their wives. There are those who believe that the current laws governing assault and battery are sufficient to deal with the cases of forcible rape in marriage and those who take the more liberal stand that a sexual assault law might be applicable only to those men legally separated from their wives who return to "claim" their marital "right." but either of these solutions fails to come to grips with the basic violation. Since the begining of written history, criminal rape has been bound up with the common law of consent in marriage, and it is time, once and for all, to make a clean break. A sexual assault is an invasion of bodily integrity and a violation of freedom and self-determination wherever it happens to take place, in or out of the marriage bed.

I cannot imagine anything more categorical than that. I believe that the Hon. Mr. DeGaris was taking what was said out of context.

The Hon. R. C. DeGARIS: Will the Hon. Mr. Sumner give way?

The Hon. C. J. SUMNER: Yes.

The Hon. R. C. DeGARIS: The only point that Susan Brownmiller made last night was when she was being cross-examined at the end by Miss Mathews, the barrister, who said that there should be no prosecution for rape in marriage unless violence or a threat had been proved, and with that point she agreed. I make it plain that Susan Brownmiller would not support this clause as presently drafted.

The Hon. C. J. SUMNER: I doubt whether that is the case. You lawyers on the other side perhaps ought to

get together, because the Hon. Mr. Burdett has indicated that in a case of rape there would be an assault and therefore there would be a violence. That must be the simple answer.

The Hon. F. T. Blevins: Mr. DeGaris a lawyer! I notice the Hon. Mr. DeGaris didn't correct you.

The Hon. C. J. SUMNER: The Hon. Mr. Foster continually refers to him as being a bush lawyer and the Hon. Mr. Blevins has referred to him—

The Hon. F. T. Blevins: I wouldn't use that phrase.

The Hon. C. J. SUMNER: I certainly do not wish to downgrade his ability as a man familiar with the law. He has not been admitted to the bar but he certainly has a great knowledge of the laws of this State and does indeed make many erudite and interesting contributions to debates on legal matters in this Chamber.

The Hon. F. T. Blevins: Look at him lapping it up. Look at the smirk on his face.

The Hon. C. J. SUMNER: The point I was making was that honourable members opposite should have got together to work out that point because, as I said earlier in my speech, the Hon. Mr. Burdett has indicated that rape would not occur without an assault, and there is the qualification of the condition of violence that is apparently necessary. The other matter that the Hon. Mr. DeGaris took up is what I could describe as an incredible attack on the Hon. Mr. Blevins.

The Hon. R. C. DeGaris: I defined what St. Paul had to say.

The Hon. C. J. SUMNER: You also made some very snide remarks about the Hon. Mr. Blevins' use of the Parliamentary research staff. That was completely out of place, as the Leader, more than anyone else here, would use the services of those officers. To say that the Hon. Mr. Blevins cannot do his research without that help is a complete smear—

The Hon. R. C. DeGaris: I didn't say that.

The Hon. C. J. SUMNER: That was the implication.

The Hon. R. C. DeGaris: There was no such implication.

The Hon. R. A. Geddes: This is one of your arguments of "shades of grey".

The Hon. C. J. SUMNER: I refer also to the implication that the Hon. Mr. Blevins had not heard of Bertrand Russell before he went to the Parliamentary Library last week.

The Hon. F. T. Blevins: And incorrect.

The Hon. C. J. SUMNER: It is further evidence of the Hon. Mr. DeGaris's rather pitiful contribution to the debate. Then, of course, in his usual devious way, he quoted one or two passages from St. Paul referring particularly to the necessity for celibacy for priests, but did not quote the balance of St. Paul's attitude on women in marriage, which, of course, is completely out of date in modern times—

The Hon. R. C. DeGaris: That's your opinion.

The Hon. C. J. SUMNER: —and in the minds of most reasonable thinking people in the community today. I think the Hon. Mr. Blevins quoted St. Paul to indicate that there had been some change in general society's attitude to the institution of marriage and the role of the wife in it and that many churches had not kept up with that change and were still invoking the injunctions of St. Paul some 900 years ago. In conclusion—

The Hon. R. C. DeGaris: The comment I made concerning the Hon. Mr. Blevins was about the "incredible attitudes". He was not quoting that what St. Paul said was an incredible attitude.

The Hon. F. T. Blevins: It is an incredible attitude if you live by those tenets today and if you say that is what St. Paul gives you today.

The Hon. R. C. DeGaris: You said that. You are the man who made that statement.

The PRESIDENT: Order!

The Hon. C. J. SUMNER: In conclusion, I can see no logical reason why marriage ought to be the point at which the offence of rape can no longer be committed. It does not seem to have any justification in logic or common sense. Secondly, I reiterate that I see this legislation as part of a continual historical process leading to a changed attitude to the relationship between the partners in a marriage. The conditions which held women in bondage were summed up by the first Women's Rights Convention in Seneca Falls, New York, in 1848. These were stated to be woman's grievances against man:

"He has compelled her to submit to laws in the formation of which she has no voice . . . He has made her, if married, in the eyes of the law civilly dead. He has taken from her all right to property, even to the wages she earns . . . In the convenant of marriage she is compelled to promise obedience to her husband, he becoming to all intends and purposes her master—the law giving him power to deprive her of her liberty, and to administer chastisement. He closes against her all the avenues of wealth and distinction which he considers most honourable to himself. As a teacher of theology, medicine or law, she is not known. He has denied her the facilities for obtaining a thorough education, all colleges being closed against her . . . He has created a false public sentiment by giving to the world a different code of morals for men and women by which moral delinquencies which exclude women from society are not only tolerated, but deemed of little account to men. He has usurped the prerogative of Jehovah himself, claiming it as his right to assign for her a sphere of action, when that belongs to her conscience and to her God. He has endeavoured in every way that he could to destroy her confidence in her own powers, to lessen her self-respect, and to make her willing to lead a dependent and abject life."

We have certainly made some progress since that time, yet many deeply embedded attitudes of male supremacy and female subservience still pervade our society. We must continue the process towards the true emancipation of women both in law and in sentiment. This Bill is a small step in that process; therefore, I support it.

[*Sitting suspended from 5.47 to 7.45 p.m.*]

The Hon. D. H. LAIDLAW: I shall confine my remarks to clause 12 (3), which repeals section 73 of the principal Act and would allow a lawful wife to lay a complaint of rape against her husband. I am pleased that this issue is subject to a free vote by honourable members on this side of the Council, because I have decided, after due consideration, to support clause 12.

My colleagues and I have been subjected to correspondence on this matter expressing forcefully both sides of the case, and we have also received a number of deputations. I have been in favour of this provision since it was first mooted by the Government, and my opinion is based on the experience of being a manager of or being associated with factories situated on the western side of Adelaide during the past 20 years.

As a manager, I have spent much of my time dealing with problems that came from the "too hard" baskets of others, and many of these concerned human problems. This is not surprising, because the ability to manufacture well depends primarily upon the willingness of one's employees to work harmoniously and without stress.

Many of our employees were born and brought up in countries distant from Australia, some quite feudal and with

very different social standards from our own. At the last count, our factory at Mile End had in its work force employees who were born in 31 different countries. Some years ago, we had employees at Mile End from 42 different countries.

Without boring honourable members unduly, may I name a few of the countries from where our employees originated—Bulgaria, Chile, Cyprus, Croatia, Greece, Hungary, India, Indonesia, Iran, Lebanon, Malaysia, Rumania, Arabians from Palestine, Pakistan, Peru, the Philippines, Saudi Arabia, Syria, the Ukraine, and Yugoslavia. I could go on and name more.

This is not unusual among factories in this State because we must remember that over 300 000 of our population of 1 250 000 in South Australia were born outside Australia—that is, one person in four. Honourable members must never forget that Australia is one of the most cosmopolitan societies in the world, and we must be prepared to adapt our legislation, especially social, to meet the needs of such a mixed community.

The Hon. R. A. Geddes: How do you assert that we are the most cosmopolitan society in the world?

The Hon. D. H. LAIDLAW: I did not say we are the most cosmopolitan society in the world: I said we are one of the most cosmopolitan societies in the world.

The Hon. R. A. Geddes: How do you qualify that?

The Hon. D. H. LAIDLAW: Because we have a large number of people born in a large number of countries. I am not talking even of the second generation.

The Hon. F. T. Blevins: It is self-evident and true.

The Hon. A. M. Whyte: I just wondered why we should restructure everything we stand for in favour of a 25 per cent minority instead of their accepting our qualities and standards.

The Hon. D. H. LAIDLAW: I do not suggest that we should restructure everything. From time to time, we may be the first to legislate in a certain field. There is no magic in being first, but we should not be afraid to be ahead of less fragmented communities in the Western world. Some of these people (and the same, unfortunately, can be said of some native-born Australians) seem to regard their wives as chattels to provide them with free sex, cheap housekeeping and, if they can send them to work, an augmented income as well.

During the past 20 years, I have had brought to my notice hideous cases of sexual brutality towards wives, who were at the time either employees of ours or married to some. I assure the Hon. Anne Levy that some of these cases would more than match the examples quoted by her last week. It is common for personnel officers in factories to intervene and try to settle or reduce antagonism existing within families, because an employee with unhappy domestic relations is rarely a reliable person. As a result of these experiences, I hold the view that further action is needed to deter a brutal husband.

The Mitchell committee pointed out that at common law a husband cannot be guilty of rape upon his wife, because the fact of marriage denotes consent to sexual intercourse except where the wife has obtained a decree *nisi* for divorce or an order for separation. It has been stressed by honourable members that, although a wife cannot at present lay a charge for rape, she can have her husband convicted of assault for compelling her to have intercourse and, if the assault is serious, convictions may be obtained for assault occasioning actual or grievous bodily harm. The Mitchell committee said 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 wishes. But it added that only in exceptional cases should the criminal law invade the bedroom.

With respect to the members of the Mitchell committee and to some of my colleagues, I think this is an instance where the criminal law should invade the bedroom. I do not think that the threat of an assault charge is sufficient to deter a rapist husband, but there is stigma for a husband to be charged or convicted of raping his wife. The fear of public scrutiny may deter some of these would-be rapists.

It is claimed that the right of a wife to charge a husband with rape will not really protect the wife, because the Crown has to prove the charge beyond reasonable doubt, and generally there will not be outside witnesses. This may be so, but it would assist the wife who is raped by her husband in front of her family or her friends. Such events, unfortunately, are not uncommon in this State or in my experience.

The Mitchell committee warned that to grant to a wife the right to lay a charge of rape might become a dangerous weapon in the hands of a vindictive wife who wanted to be rid of her husband. This is certainly a danger, but it must be remembered that the charge must be proved beyond reasonable doubt. If amendment of this legislation leads to a state of spurious litigation, it would be possible after a reasonable period of trial to amend the legislation.

It is also claimed that the best course for a wife who is subjected to sexual brutality to adopt is to leave home and desert her husband, rather than be given the right to lay a charge of rape against him. In practice, this may not be as easy as it sounds. Often, she will have children, and the houses in which her friends would accept her and her children may well have no spare rooms. There are some shelters for such women, but these are limited. The aggrieved wife, in my opinion, should have the right to charge rape as well as be provided with ways in which to desert her husband.

Honourable members have pointed out that a *de facto* wife can charge her *de facto* husband with rape, and therefore enjoys a privilege not granted to legal wives. This is a valid argument because, although there are no reliable statistics about the proportion of *de facto* relationships in South Australia, some specialists in this field claim that at least one permanent relationship out of five is *de facto,* whilst others assert that the proportion is as high as one in three. It seems illogical to discriminate against women in a legal as distinct from a *de facto* relationship.

It has been argued that by giving a wife the legal right to charge her husband with rape we shall destroy the sanctity of marriage. I repudiate that argument. Women are no longer chattels who must submit to every whim and fancy of their husbands. Clause 12 merely gives to a woman, who enters into a contract of marriage, the same protection from sexual brutality that she enjoyed when she was single. I am as strong a supporter of the concept of marriage and its stabilising influence on our society as any honourable member in this Chamber. I support marriage, but I do not want to be seen to protect the rapist husband. Therefore, I support clause 12 (3).

The Hon. C. M. HILL: Clause 12 includes one of those deep social issues that gives cause for much soul searching and serious consideration. It is, in some respect, a conscience issue, although not quite falling into that category, as do some other major social questions. It is, however, one in which one's own convictions greatly influence one's view. The issue requires mutual respect between those with

differing views, and I emphasise that I respect the opinions of those whose views both within and without this Chamber are different from mine.

I will vote for the measure and I give my reasons briefly for finally deciding to support the clause in question. When the proposal was first discussed, I held the rather pragmatic view that the law, if changed, would tend to be impractical and unworkable. The problems that would arise during a police investigation, during court proceedings, and the difficulty of proving the offences, together with all the other minor uncertain and disputable aspects, were apparent. On further reflection, I questioned myself as to whether this was a sufficient reason for forming such an opinion on such a complex and deeply human question. I gave the question much deeper consideration.

I rejected the argument that, because the Mitchell committee did not advocate change in this aspect of the law, one should also reject the clause. There are certainly other recommendations in the Mitchell report with which I and many other citizens do not agree, so one should not be automatically bound to all recommendations therein. I cannot escape the force of the underlying principle that no woman should be in a situation in which she is raped, and the rapist be free or exempt from punishment for that crime. That situation can occur within marriage, and no doubt has occurred, but because it happens within marriage does not mean that the situation until now has been right or just. It has been tolerated or accepted, but that does not mean that it is right or just. It is the duty of the law, no matter how cumbersome the criminal law may be in the eyes of some people and no matter how few instances of this kind occur, to rectify such injustice provided, of course, that community interest is not adversely affected.

I cannot agree that this change would be adverse to the community interest. Most people who have addressed letters to me advocating that I oppose this measure have claimed that the sanctity of marriage will be threatened if this Bill is passed. I find this difficult to believe or understand. If the institution of marriage requires a right by a husband to rape his wife to ensure its sanctity, then the real virtues of, and reasons for, a happy and successful marriage are overlooked in the extreme.

I see the measure as possibly achieving, in time, a better relationship within marriage than exists in some marriages at present. The attitude of some husbands may well become a little more respectful towards their partners than those attitudes are now. The reason for this is obvious, and whilst this possibility may be doubted, nevertheless, the new law would tend, in my view, to influence, or discipline, some rather unscrupulous husbands in their relationships with their wives. In this way, the measure might improve the institution of marriage.

Much has been said and written of the possibility that the measure will place too strong a weapon in the hands of a vindictive wife. It is impossible to say how many so-called vindictive wives will resort to actually reporting their husbands to the police. In instances where they do, the marriage is surely at the point of collapse and separation procedures in such instances have been simplified by recent Federal legislation.

The Hon. R. C. DeGaris: I think you're confusing "vindictive" with something else.

The Hon. C. M. HILL: I assure the Hon. Mr. DeGaris that I have examined the question deeply. Therefore, I cannot place much weight upon the vindictive wife argument. Finally, the old customs and established practices of marriage are not under attack in this Bill. What is under attack in the measure is cruelty and brutality. The right of all women to be fully protected against rapists must surely be undoubted. In most instances such protection already exists. This measure will complete that chain of protection. I support the Bill.

The Hon. R. A. GEDDES: That there is a need for the application of the provision contained in clause 12 to give the right to a wife to charge her husband with rape and, if the charge is proved, for the husband to be sentenced to a prison term, must exercise many minds at this time. Is it a result of the introduction of pornography, the greater freedom of access to and circulation of pornography in society and of the all-pervasive manner in which pornography alerts the male ego to various sexual acts? Is it the ready availability of the R certificate film that makes a man more aware of his fictitious prowess? Is it now a greater problem because so many marriages involve husbands and wives who work and whose priorities are work and then marriage, instead of marriage and then work?

Is it our permissive licensing laws that contribute to this problem? A husband can patronise the excellent surroundings provided in hotels in which he enjoys a convivial glass, despite the frustrations of a wife and children. Then there are the very frustations of one's own existence. A husband, well-meaning at the time, may wish to express his love or his desires towards his mate (his wife) who, because of her own frustrations and problems, may not be a willing partner. These are the primitive reactions of a male for which he is so noted, whether he be in the lower order of education and intelligence or otherwise. Is he, because of these inhibitions and frustrations in the circumstances at the time, to be charged with rape, and is he to face the consequences of that charge? Is it the objective of the Government to break the thread of men and women groping for the most primitive of their needs, and to liberate the woman and denigrate the man? Is it the intention to break the will of a man because of his possibly higher intelligence?

This afternoon the Hon. Mr. Sumner wisely told us that often laws have shades of grey and can be decided on only by a judge and jury. I do not wish to quote the Hon. Mr. Laidlaw out of context, but I wrote down the term "sexual brutality" while he was speaking. I also wrote down the reference by the Hon. Mr. Hill to where cruelty and brutality occurred. Does this Bill cover those points, the shades of grey, the brutality, and the problems that the Government is trying to consider? This is the nub of the argument.

To me, it is not an argument of rape in marriage: it is an argument of what occurs in a family home when the wife is assaulted, where we know from history that sexual intercourse takes place and the Police Force will not take action. Is it not the fact that we wish to give a direction to the Police Force and to the courts that we want some help, but not for the type of intercourse that occurs in the instances that I have given, such as where the husband and wife are working and there is incompatibility at some stage, and not for the husband who comes home amiable and happy from the hotel and his wife is frustrated from the worries of the home?

It is rape in its worst meaning that we are trying to attack, control, and find a way around. I suggest that we consider carefully the wise words expressed by the Hon. Mr. Sumner and the suggestion by the Hon. Mr. Laidlaw and the Hon. Mr. Hill that it is the point of brutality or the area with shades of brutality that we should consider in this matter. We should see that there is written into the

Bill some provision that a marriage should not be broken up because the wife, for whatever reason, says that her husband has raped her and tries to lay a charge.

Regarding my reference to trying to lay a charge, once she goes to the police to lay that charge, it is a matter of whether she readily accepts and realises at that stage that she is taking a clear step in the break-up of her marriage, if her husband has any decency. That is in the circumstance of no brutality taking place, where the act of intercourse involves sexual rape, which is what I understand we are discussing. I support the second reading and ask the Government to consider the suggestions that have been made from both sides of the Council that this is a serious measure and that a capricious person should not be allowed to lay a charge without there being some substance in that charge.

The Hon. M. B. CAMERON: This matter has been debated at length, and I have had extreme difficulty in coming to a decision. As I understand the situation, having heard the most recent two speakers from this side, whatever decision I have made becomes irrelevant, because the matter will pass.

The Hon. C. J. Sumner: No, you could abstain from voting.

The Hon. M. B. CAMERON: It is difficult for a male to understand fully the implications involved in rape in these circumstances, because he is unlikely to be on the receiving end of such a situation. I assure the Hon. Mr. Whyte that I am not a church basher. I am not an expert on St. Paul or on many other things. I have merely tried to consider what happens at present. If Parliament is to be consistent and if we do not pass this Bill with the clause that is causing so much debate in it, next we should take away the right of *de facto* wives to have the same right, because at present *de facto* wives are, through legislation, gaining more and more status. The Family Law Act and other measures show that.

Some people who live in a *de facto* relationship have a right that wives in a legal marriage do not have, and I could not approve of that strange situation. To me, a marriage contract is fairly serious. It is entered into by two people not on the basis that they will have sex forever and a day but on the basis of equal understanding and relationship.

One of the biggest problems is the tendency to teach males, from boyhood, that the one great thing in life is to be successful sexually. Everything we hear discussed is based on that. Of course, when one marries, far too much emphasis is placed on this particular section of the marriage contract. One only has to go to weddings and hear the general humour to know that that is the case.

It is time we got a better basis for the marriage contract and a better understanding that it is a partnership between two people. Perhaps this Bill is the way to do that. To me, the moment a married man rapes his wife, he has abrogated the marriage contract. He has stepped outside it and it is cancelled from that time.

Members interjecting:

The PRESIDENT: I ask the Hon. Mr. Cameron to continue and I ask all other honourable members to cease interjecting.

The Hon. M. B. CAMERON: Once a marriage contract is voided, it is a matter of what is done about it. At present, the wife is in a difficult situation. What steps can she take? As I understand it, the police are reluctant to move into any situation where there is any hint of rape in connection with a marriage. It therefore behoves us as members of Parliament to give some guidance. For that reason, I support the Bill. It is important that we should protect females in a marriage contract. One honourable member opposite often refers to me as a male chauvinist pig, and I freely admit to being one. Because womenfolk have some weaknesses, they need our protection. Being physically weaker, they have problems when they are physically threatened. It is therefore important to give them some other weapon. Perhaps there are some vindictive wives, but we must remember, too, that there are some brutal husbands. Perhaps we should equalise things a little. I realise that a marriage in which the woman is raped is virtually finished, but it is important for Parliament to give guidance in connection with the penalties. No man should have the right to rape any woman, whether or not she be his wife. I support the Bill.

The Hon. D. H. L. BANFIELD (Minister of Health): I thank honourable members for the attention they have given the Bill. The debate has been of a high standard. It is obvious that honourable members have varying views. I cannot agree with those honourable members who oppose the Bill, which is worthwhile. In my Ministerial duties I am saddened by some of the cases that come to my notice. Because all honourable members are good, decent-living people, it is hard for them to understand what some wives have to put up with, because of necessitous circumstances. I do not agree with the Hon. Mr. DeGaris's implication that, because a couple had married, the husband had the right to claim his wife as his chattel.

The Hon. J. C. Burdett: The Hon. Mr. DeGaris did not say that.

The Hon. D. H. L. BANFIELD: He said that, because a couple had married, the wife belonged to the husband; by that, the Leader implied that the husband had the right over that woman, body and soul. However, I believe that no person has the right to own another person, male or female, body and soul. The law should provide protection in these circumstances. It is hard to believe that any honourable member would withhold protection from women who undergo degradation and abuse. I sincerely trust that all honourable members, after reflection, will support the Bill.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—"Arrangement of Act."

The Hon. D. H. L. BANFIELD (Minister of Health): As honourable members are considering the drafting of amendments, I am willing that progress be reported. I indicate to honourable members that I would like this Bill dealt with tomorrow.

Progress reported; Committee to sit again.

LICENSING ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.

(Continued from November 11. Page 2106.)

The Hon. R. C. DeGARIS (Leader of the Opposition): Amendments will be placed on honourable members' files that outline my views on Sunday trading in hotels. I do not believe that clubs, whether sporting clubs or community clubs, should have any advantage in trading.

The Hon. F. T. Blevins: What about the reverse?

The Hon. R. C. DeGARIS: The question comes down to the philosophy behind the principal Act, under which

the Licensing Court has power to grant various kinds of licence. This matter has been decided by Parliament and, if the honourable member wants to change the situation, he should move an amendment accordingly. At present an anomaly exists, whereby about 1 000 South Australian clubs have the right to trade on Sundays, but hotels do not have that right; that anomaly should be corrected.

The Hon. F. T. Blevins: Logically, you would agree with the reverse.

The Hon. R. C. DeGARIS: Not necessarily. The Licensing Court should have the determining say on whether hotels open on Sundays, whether clubs open on Sundays, and during what hours.

The Hon. F. T. Blevins: If there is a provision in the Act that gives a distinct advantage to hotels, would you agree to its being deleted and the clubs being put on the same basis?

The Hon. R. C. DeGARIS: I suggest that the honourable member put amendments on file so that we can see them.

The Hon. F. T. Blevins: I will remind you tomorrow of what you have said tonight.

The Hon. R. C. DeGARIS: Be that as it may, the honourable member has the same opportunity that I have to put amendments on file, and I suggest that he does so. The third major amendment relates to the holding of licences by companies. All honourable members would be concerned about recent practices in trading responsibilities under the Act that have come to their notice. No honourable member could support the tactics used by certain people in and out of South Australia in the past, and every effort should be made to prevent the evasion of licensing responsibilities.

Clause 22 tries to close loopholes in company take-over procedures that may allow such evasion. The clause in the Bill provides that no change in the directorship of a company that holds a licence under the Licensing Act and no change in the membership of a proprietary company or a public company that is not listed on the Stock Exchange is to take place without the approval of the Licensing Court.

I would want to be convinced by the Government that such a wide amendment covering all licences was necessary. There is in the Act a whole range of licences. In this respect, I refer to full publicans' licences, limited licences, club licences, wine licences, retail storekeepers' licences, wholesale storekeepers' licences, distillers' licences, packer licences and theatre licences. They are only some of the licences covered by the Act.

I want much more evidence from the Government to show that it is necessary for all these licences to come under clause 22. For example, if it is necessary to ensure the receipt of revenue under the Licensing Act from publicans, and so on, why should this apply to the whole range of licences? In this State, we have many proprietary companies that operate in the vignerons' and brewers' fields, and it will be extremely difficult, under this amendment, for those companies to continue operations. Indeed, if it applies to distillers, brewers, packer licences, and so on, it could well have ramifications in the whole industry as yet not understood by the Government.

I am open to being convinced that my views on this matter are wrong, if the Government has examined it fully. However, I should like to make these final comments regarding clause 22. First, the amendments deny shareholders in the company the rights of limited liability. There may be excellent reasons why this denial should apply to publicans' licences. There is a whole range of licences, to all of which this provision applies.

Secondly, they make shareholders responsible for the actions of a manager over whom they have no day-to-day control. I make the same point on that matter that I made previously: they can make their weight felt at a shareholders' meeting only. Thirdly, they make it impossible for any small or large shareholding to be sold to a new shareholder without obtaining transfer approval from the Licensing Court. This represents a considerable delay and denial of a shareholder's right of selling. Further, it might require special restrictions in the articles of a company. Fourthly, people would refuse to hold shares in a company in which management's shortcomings could automatically involve them in heavy penalties.

There may be good reasons why these provisions should apply to a full publican's licence or perhaps to a restaurant licence. I am certain that in many areas of operation in this State this amendment will have a serious impact on companies of which this State should be justly proud. I have had drafted amendments to clause 22 which will soon be on honourable members' files. I hope that the Government will consider those amendments and either accept them or explain to me why it is necessary that this clause should be drawn so widely as to catch every licence that is issued in South Australia, irrespective of its nature.

My next point relates to a number of complaints that I have received regarding the noise emanating from some of the large discotheque operations in some South Australian hotels. People who live in certain residential parts of the city have complained bitterly about the activities of and the noise made by people in the early hours of the morning at these licensed premises. There is justification for people who live in residential areas to complain if the quiet of their area is being upset by these operations, and for those complaints to be heard.

I do not object to discotheque operations if young people, or indeed any other group of people, want to patronise them. However, I believe that these operations should be established in areas in which they will not give cause for complaint by people in residential parts of the city. I do not know what is the answer to this problem, although I raise the matter with the Government. The number of complaints I have received regarding this matter inclines me towards the opinion that the Licensing Court should be given some control so that people living in the area are not unduly disturbed by such operations.

My final point relates to the matter of winery operations on Sundays. I do not have any real objections to this. Indeed, I point out that wine sales on Sundays may well be justified. However, complaints have been made to me that many wineries have wine tastings on Sundays. Whether there should be some control regarding these operations remains to be seen. Perhaps the Government may care to comment on this matter.

In our society, people like to take a drive on a Sunday afternoon, and perhaps visit a nearby exclusive winery and purchase a bottle of wine. To that, I do not object. However, complaints have been made to me that in many of these wineries the matter of tasting, not that of sales, is the main aspect involved. It involves a day out at wineries tasting wines. This seems to be a matter that the Licensing Court could examine. By and large, I support the second reading, although in Committee I shall move the amendments to which I have referred and which, I hope, will soon be placed on honourable members' files.

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

CITY OF ADELAIDE DEVELOPMENT CONTROL BILL

Second reading.

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

That this Bill be now read a second time.

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

Leave granted.

EXPLANATION OF BILL

This Bill is intended to provide for the imposition of Development Control within the City of Adelaide in accordance wth certain principles that this House is invited to approve. Honourable members will be aware that for some time there has been in existence a draft City of Adelaide Plan and this draft has been widely disseminated and has also been open to scrutiny and comment by interested members of the public. The draft plan covered a wide range of actions of all levels of Government, Federal, State and local, not all of which were related to development control.

Accordingly, those proposals in the draft plan that relate to or touch on development control *simpliciter* have been extracted and are now placed before you for your approval. The means by which these principles will be implemented will become clear from an examination of the clauses of the Bill.

Clauses 1 to 3 are formal and clause 4 sets out the definitions necessary for the purposes of the measure. Clause 5 provides that the Crown is not to be bound by the measure. I would point out that it is the intention of the Government that, as a matter of policy, it will endeavour in its development activities to conform to the plan and in appropriate cases arrangements will be made for the Commission (as to which see clause 11) to examine Government development proposals. Clause 6 ensures that the land within the municipality of the city of Adelaide will no longer be subject to planning controls under the Planning and Development Act but at subclause (2) will permit the controls exercisable under this Act to be depicted on authorised development plans under that Act.

Clause 7 at subclause (1) formally approves the Principles and at subclause (2) provides for their amendment. Clauses 8 and 9 which are self explanatory spell out the machinery whereby representations made to the Council on any proposed amendments to the Principles may be considered by the Commission. Clause 10 provides for the making by the Governor of amendments to the Principles. Clause 11 sets up the City of Adelaide Planning Commission constituted of seven persons appointed by the Governor of whom three are to be appointed on the nomination of the Council. From amongst these three nominees the Governor is to appoint one member to be Chairman of the Commission. The composition of the Commission will accordingly reflect the interests of those bodies concerned in the development of the City.

Clause 12 provides for the remuneration of the members of the Commission. Clause 13 provides for the conduct of business by the Commission. Clause 14 is a validating provision in the usual form. Clause 15 provides for the appointment of staff for the Commission and also empowers the Commission to make use of State Government and Council officers with the consent of the Government or the Council. Clause 16 is a general statement of the powers and functions of the Commission and clause 17 provides an appropriate power of delegation by the Commission. Clause 18 empowers the Commission to consider and report on any matter relating to the planning and development of the City referred to it by the Minister or the Council.

Clause 19 is a clause of considerable importance and the attention of honourable members is particularly drawn to it. It is intended to ensure that where an application to the Council involves a substantial Government interest it will be considered by the Commission in lieu of Council, since in these circumstances an authority representing a wider range of interests appears a more appropriate body to determine the matter. Clause 20 vests in the Commission a power to consider applications by the Council in its capacity as a developer. Clause 21 provides for the fixing of an Appointed Day as the day on which the development control provisions of this Act shall come into operation.

Clause 22 exempts from the operation of the development control provisions Developments that have previously been approved by the Council or the City of Adelaide Development Committee. Clause 23 provides for approval of Development applications and sets out in some detail the sanctions that are available to deal with unauthorised Developments. It is commended to honourable members' particular attention. Clause 24 sets out the machinery for approving applications. Clause 25 enables the Council with the consent of the Commission to approve an application which is not in conformity with the relevant regulation but nevertheless does not conflict with the Principles. Clause 26 provides a power of delegation for the Council and should enable approval to be given expeditiously to applications of lesser significance.

Clause 27 provides for an appeal to the Minister by any applicant aggrieved by a decision of the Council or the Commission on an application for approval of a Development. Clause 28 is intended to ensure that, before the Minister considers the appeal, a conference of the parties or their representatives will have been held. It is hoped that this procedure will ensure that appropriate steps to resolve the matter have been taken before appeal proceedings are commenced. Clause 29 is formal. Clauses 30, 31, 32 and 33 are intended to ensure that the Minister will have as much information before him as is possible before he determines the appeal. Clause 34 sets out the powers of the Minister in determining the appeal.

Clause 35 renders the decision of the Minister on the appeal final. Clause 36 provides a power of entry and inspection by persons authorised by the Council or the Commission. Clause 37 provides for "default penalties" and is in the usual form. Clause 38 is intended to ensure that lawfully existing uses of land in the municipality may continue. Clause 39 is at subsection (1) formal and at subsection (2) provides that proceedings may be brought within one year of the day on which the offence is alleged to have been committed. Normally the "limitation period" in summary prosecutions is six months. The reason for this extension to twelve months is that breaches of this measure are often difficult to detect and may not come to the notice of the authorities for some time.

Clause 40 sets out an appropriate regulation-making power. Clause 41, together with the schedule to the measure, makes a consequential amendment to the Planning and Development Act which in effect ensures that the City of Adelaide Development Committee established under that Act will continue in existence until the Appointed Day fixed under clause 21 and that the State Planning Authority will still be able to act as a redevelopment authority in

relation to the City of Adelaide. Clause 42 merely ensures that pending proceedings under the Planning and Development Act can be continued and completed under the Act.

The Hon. R. C. DeGARIS secured the adjournment of the debate.

JUSTICES ACT AMENDMENT BILL

(Second reading debate adjourned on November 11. Page 2088.)

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

EVIDENCE ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 11. Page 2089.)

The Hon. R. C. DeGARIS (Leader of the Opposition): Most of the provisions of the Bill I support, but I do query the provision in clause 3. The Hon. Mr. Burdett has touched on the matter in his speech and I will not be long in dealing with it. I agree entirely with the viewpoint that he expressed. Under clause 3 an accused person would be able to impugn the character of a Crown witness without having his or her own character exposed. I think that this is taking the situation to a ridiculous position where an accused person can do that, can impugn the character, can blacken the character, of a Crown witness without himself being exposed to the same sort of cross-examination as to his own character.

I may be wrong in this, but, I do not know of any other country in the Western tradition that allows such a position to exist, but I will stand corrected if someone can find that evidence for me. For example, I know it does not exist in England. I may be wrong, but I am unable to find a country where an accused person, simply because he is an accused person, can impugn the character of a Crown witness without having his own standing and credibility put in question. The jury should know, if such accusations are made, the standing and character of the person making such an accusation, and if that is not so I believe that a frank injustice is being done.

There is an argument that such a right to challenge the character of the accused may unduly influence the jury. That position still stands with the exception that if the accused person does impugn the character of a Crown witness then I believe that at that point it is only fair and just that his own character should stand some examination. I do not believe that the modern juries with the presiding judge can be over-influenced by such an ability to cross-examine a person on his own character. I believe that the position, as outlined by the Hon. Mr. Burdett, is correct and I do not agree with clause 3. I will be opposing that clause, but I support the second reading.

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

PASTORAL ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 10. Page 2019.)

The Hon. A. M. WHYTE: The Bill before us is a relatively simple one and I agree with most of it. The Pastoral Board has been accepted by the industry over the whole of my lifetime association with the pastoral industry as being a most competent and co-operative group. Clause 3 seeks to define more clearly what is meant by the dog fence. The dog fence refers to that accepted buffer fence which stretches from the New South Wales border and dog-legs around through the lakes, north of Marree, south of Coober Pedy, across to Ceduna, and then further along the coast until it reaches the sea.

Clause 3 deals just with the definition of the dog fence. The dog fence plays a very important part because without this fence (or buffer fence as we have known it) there would not be very many sheep kept in South Australia. It is this fence that is so necessary for the pastoral industry. Its maintenance is met jointly by the pastoralists and the Vermin Board under the administration of the vertebrate pests group at the present time, which of course includes as its Chairman the Chairman of the Pastoral Board. In all it is a good thing that some of these old references are more clearly defined and people know exactly what is meant by a dog fence.

The Hon. C. M. Hill: Mr. President, I draw your attention to the state of the Council.

A quorum having been formed:

The Hon. A. M. WHYTE: Clause 4 of the Bill amends section 42c of the principal Act. This is an important amendment. Section 42c of the principal Act empowers the Minister to add small areas of land to existing leases without inviting application for the land. This is an important clause, because the Minister should have this power to add where he and his board decide that a lease can be advantaged by the addition of a parcel of land, without interfering with the present lease or calling for applications. This power should rest with the Minister and the Pastoral Board.

This power is similar in the present Act but this amendment means that, instead of having three different categories that apply in this section of the Act, the Minister will have discretion to allot sections of land which can make viable propositions out of those areas that previously were not viable. I have no hesitation in recommending that clause to the Council.

Clause 5 amends section 44a of the principal Act, specifically by inserting a new subsection (3), which reads as follows:

If the board is of the opinion that the condition of the land included in the lease of any lessee indicates that the lessee is depasturing on the land such a number of stock that the land is likely to be permanently injured thereby the Minister may by notice in writing to the lessee require him (*a*) within the time specified in the notice to reduce the number of stock so depastured . . .

That means that the Minister has always had the power (and rightly so) to keep a pastoralist or a lessee controlled regarding the number of stock on his lease; it has been well administered and great co-operation has been received by the lessees from the Pastoral Board and the Ministers throughout all my knowledge of the industry. If the season is good and there is abundant feed and water, how does a person judge whether or not he is overstocked, although a covenant of the lease is a specified number of stock that a lessee can have pastured on his property?

The problem arises when a person backs his judgment against the seasons and carries stock because the price is so depressed that he cannot sell that stock at a profit; in many instances he cannot even give them away. There has been a tendency over the years to allow the lessee to try to make a decision, because it is all very well to say, "You are overstocked" or "You will be overstocked in 12 months time", because the crystal ball never quite shows that, and in many instances the fellow who keeps his sheep or cattle

will find that after a cloud-burst he is in clover, because he has stock, while his neighbour who predicted a drought has sold all his.

Of course, it can work in reverse: a drought becomes prolonged, conditions get worse, and everyone knows that the pastoralist is then overstocked. We can see items in the newspaper where all the experts say, "This person is grossly overstocked." This is where discretion is needed by the Minister and his board to ensure that hardship is not incurred, on top of the drought and the deterioration in prices, by a stupid judgment of the Minister. He has always had great power under the Act to cancel the lease and evict the lessees. This present amendment is supposedly to give the Minister not only the right just to cancel the lease but also the power to make an imposition on the landholder—a fine of $2 000 plus $50 a day for not complying. That is a very heavy penalty, in my opinion.

The ACTING PRESIDENT (Hon. R. A. Geddes): Order! It will be appreciated if some honourable members on my right would keep quiet so that *Hansard* can hear the Hon. Mr. Whyte.

The Hon. N. K. Foster: I am sorry; my apologies. Of course, we don't hear much about rural affairs nowadays.

The Hon. A. M. WHYTE: This is an opportunity for members opposite to learn, so they should take some notice of what I am saying. The Bill now provides that the Minister can, as he could under the principal Act, cancel the lessee's lease if he does not comply with his request to reduce stock numbers. I do not think this has happened very often, because much discretion has been used in these matters, and I compliment the Pastoral Boards, both present and past, on the way in which they have administered the Act; but in this new provision, instead of the Minister having to say, "You will either do as I say or get off the property", he can impose a fine not exceeding $2 000 and a further $50 for each day on which the offence occurs. That is a fairly hefty fine. Does the Minister mean to say that, in addition to that fine, he may then also order the forfeiture of the lease?

I think it should mean one or the other but, as I read this provision, he can do both. Is that his intention; is that what he desires to do? It seems to me that, that being a new provision that allows the Minister to exert certain pressure, it should not perhaps be necessary for him also to cancel the lease as well. There could be the $2 000 fine, plus $50 a day as well as forfeiture of the lease. Is not "or" more applicable than "and" in this provision? If the Minister can give me an explanation of this provision there is no reason why the Bill's passage should be delayed.

The Hon. T. M. CASEY (Minister of Lands): I thank the Hon. Mr. Whyte for his deliberations on the Bill. I draw his attention to the fact that at present the only way in which a lessee is faced with a deterrent, if he carries greater numbers of stock than are required or are set down by the Pastoral Board, is for the board to order the forfeiture of the lease. That is the present provision. We believe that is a drastic action to be taken by the board and the Minister. I do not believe that this action has ever been taken, but there have been many breaches of the Act in relation to the number of stock that property owners are permitted to carry under the Pastoral Act.

The board believes that, in order to maintain the state of the country as it should be maintained, without overstocking and so forth, the best way to handle this matter is to fine those responsible for breaches of the Act, if the Bill is passed. This is the best way of deterring leaseholders from overstocking, by imposing a fine, by hitting them in the hip pocket. If leaseholders do not comply and refuse to reduce their stock numbers the other provision should be left in the Bill so that the board can recommend to the Minister that the lease should be cancelled. The Bill provides that the Minister may order the forfeiture of the lease, but he would not do that unless he was under extreme provocation by the leaseholder who would not reduce his stock numbers. Apparently that is a provision in the Bill that the board considers desirable. It is a severe penalty but, when one considers the number of stock involved when a landholder is responsible for overstocking by about 1 000 head of cattle or 5 000 sheep above the number he is supposed to carry, then such a fine is justified.

The forfeiture of a lease has never been imposed in my experience under the existing Act. No doubt that situation will continue to prevail, because sanity prevails in the pastoral industry. I do not believe that the situation would come about. The Minister should have the power to order the forfeiture of a lease on the recommendation of the board if the landholder does not do the right thing.

Bill read a second time.

In Committee.

Clauses 1 to 4 passed.

Clause 5—"Overstocking."

The Hon. A. M. WHYTE: I move:

Page 2, line 22—Leave out "and" and insert "or".

This is a heavy penalty because it imposes a fine of $2 000 plus $50 a day, or forfeiture of the lease. No-one cares about overstocking if there is an abundance of feed and water, but when the country dries out and there is an excess of stock on a lease, then concern arises. A farmer gets caught with excess stock because he cannot quit it at an equitable figure. Such a fine would drive most people off the land, anyway.

The Hon. C. M. Hill: Should the fine be less?

The Hon. A. M. WHYTE: No, it is a maximum, anyway. I believe that either the fine should be imposed or the lease should be forfeited, but both penalties should not be imposed at the same time.

The Hon. T. M. CASEY (Minister of Lands): I am willing to accept the amendment.

Amendment carried.

The Hon. N. K. FOSTER: The Hon. Mr. Whyte almost said that, if there was overstocking, that ought not to be regarded as a serious offence, provided the season had been good and there was an abundance of feed. The seriousness is evident because, if the legislation is not complied with, there will be serious erosion because of overstocking all over Australia, particularly in the dry and semi-dry areas of this State. Penalties are provided for stockowners who tend to overstock properties.

The Hon. A. M. WHYTE: I was trying to explain that the pastoral industry was well managed by the Pastoral Board and by pastoralists, with the co-operation of the Minister, who understands the position much better than the honourable member does. What the honourable Mr. Foster has said is not quite true, because people are not overstocked when there is plenty of feed. If the stock are up to their knees in grass and there is plenty of water, people are not overstocked. To say that South Australia is devastated because of overstocking is not right. We have one of the best pastoral industries in Australia.

Clause as amended passed.

Remaining clauses (6 to 18) and title passed.

Bill read a third time and passed.

ELECTORAL ACT AMENDMENT BILL (No. 4)

Adjourned debate on second reading.

(Continued from November 10. Page 2038.)

The Hon. A. M. WHYTE: Mr. President—

The Hon. N. K. Foster: The hick from the sticks again!

The Hon. Anne Levy: The man from the Birdsville track!

The Hon. A. M. WHYTE: I do not mind how much honourable members say about the people and try to denigrate them. They are the people whom members opposite tried to prevent from voting.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr. Whyte will please address the Chair.

The Hon. A. M. WHYTE: Mr. President, you will remember my trying in February this year to have the Electoral Act amended to do exactly what this Bill does. I compliment the Government on now realising the value of my amendments. Although the Government would not accept those amendments, perhaps for political reasons, it is now doing what I suggested should be done. It took some time for the Government to wake up, although I am not sure that the Government was not awake at the time. It did not want kudos to go to someone who understood the position perhaps better than the Government did.

The Hon. N. K. Foster: We wanted time to consider the matter.

The Hon. A. M. WHYTE: The more members opposite interject, the more *Hansard* speeches I will have to check. It irks me that members go through *Hansard* for hours, repeating what someone else said in the past. It is not a nice tactic.

The Hon. F. T. Blevins: It is shameful.

The Hon. A. M. WHYTE: The honourable member would know.

The Hon. C. J. Sumner: You people are ashamed of your past.

The Hon. A. M. WHYTE: I remember some things that the Hon. Mr. Foster said, condemning me for having the audacity to suggest that people should have the right to vote, regardless of where they were, despite the fact that the Electoral Act goes out of its way to give everyone the opportunity to vote and was written precisely to give that opportunity.

The position created by the Bill is exactly the same position as my amendments would have created in February. Those amendments dealt with the need to allow people to register as postal voters so that, when nominations close, people on the permanent rolls would be sent a postal ballot-paper.

The Hon. F. T. Blevins: There is no great objection to it.

The Hon. A. M. WHYTE: Then why did the honourable member suggest that what I was doing was corrupt?

The Hon. F. T. Blevins: Did I say that?

The Hon. A. M. WHYTE: I think the honourable member probably did.

The Hon. F. T. Blevins: If I didn't, I shall ask for your apology tomorrow.

The Hon. A. M. WHYTE: Certainly the Minister of Health and the Hon. Mr. Foster did. On February 4, 1976, the Minister of Health said (*Hansard*, page 2067):

I oppose the honourable member's amendments. Existing postal voting provisions are already wide, and any attempt to make permanent registration will create a risk of abuse of the system. Who will declare that a person is permanently ill? A person could recover within three years and be fit again. Will a doctor have to determine whether a person is incapacitated? We know of many people who are incapacitated in one year and who might feel that they may be permanently incapacitated, yet they recover within a three-year period. We do not believe that a permanent voting application should apply in this regard at it lends itself to abuse. Who will determine when permanent illness or infirmity is reached?

The Hon. Mr. Foster did not understand the provisions that I advocated last time, and it is clear that he has not examined the Bill this time.

The Hon. N. K. Foster: The second reading explanation points up your inconsistencies, not mine.

The Hon. A. M. WHYTE: The honourable member will find that the intent of the provisions I advocated earlier is almost identical with the intent of the appropriate provisions in this Bill.

The Hon. F. T. Blevins: The entire Bill?

The Hon. A. M. WHYTE: Of course, this Bill has other provisions, too. However, it includes the provisions I advocated earlier, which honourable members opposite at that time opposed violently. They accused me of a political gerrymander. I seek leave to conclude my remarks.

Leave granted; debate adjourned.

CONSTITUTION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 10. Page 2039.)

The Hon. J. C. BURDETT: I support the Bill, which gives prisoners the right to vote. This is an important question which is not without difficulty, but the matter can be briefly examined. Why is a prisoner in gaol? He is there, as a rule, because he has committed an offence and has been committed to prison by the court. Why is he committed to prison by the court? One theory is the retributive theory of justice—the theory that society is exacting revenge on the prisoner. I do not agree with this theory, except in so far as it is implicit in the punitive theory, which I support. One of the proper reasons for imprisonment is that the offender should be punished for his offence.

Earlier this year I attended a seminar at the university on the subject of correction addressed by Professor Wilkins, an English professor who had been in America for some time and had been associated with the parole system in that country. He, being a mathematician, has initiated a computer programme that has put some certainty into the granting of parole. The professor was asked how he thought the length of a sentence ought to be determined by the judge in the first place. He gave the very old-fashioned answer that the sentence ought to reflect the amount of time that the community thought was a proper punishment for the offence: the Mikado theory—let the punishment fit the crime.

Next, there is the deterrent theory (with which I agree) that the purpose of imprisonment is to deter the offender and others from committing the offence again. Finally, there is the theory that one purpose of the incarceration is to rehabilitate the offender, and I also agree with this theory. To deprive the prisoner of the basic right, in a democracy, to vote for Parliamentary representatives will obviously not assist in his rehabilitation, nor will it deter him or others from offending again. We politicians may like to think that the threat of deprivation of the right to vote may act as a deterrent, but we do not believe it.

Returning to the punitive theory, what comprises the punishment? The punishment is the deprivation of personal, physical liberty. Obviously, this necessarily involves some other disabilities. It involves the inability to earn a significant income. At present, at any rate, in this State, it involves the loss of conjugal rights. These are consequences of incarceration. However, the loss of the right to vote is not a necessary consequence of incarceration, and I do not believe that a prisoner ought to be deprived of this right. I will just look briefly at the argument that could be advanced against what I have said. It could be said that the prisoner by his offence has deprived himself of this basic human right. I believe that he has not deprived himself by his offence of any of his basic human rights.

I would sooner put it in the positive form and say that, by his offence, he has subjected himself to the action of society to punish him and provide a deterrent. This need not involve deprivation of the right to vote, and I believe it should not. The only other argument against the Bill that I can think of is that a person who is being punished is not fit to vote for members of Parliament. I cannot accept this argument. There is some bad in the best of us and some good in the worst of us. We are in no position to judge who should and who should not vote. I support the Bill.

The Hon. C. M. HILL: I also support this short Bill, which provides that those serving sentences in prison should have the right to vote. The penalty which is to be served by a prisoner, in my opinion, is that which is laid down by the courts, and that does not include having this right taken from one whilst one is serving a sentence in prison. Many other privileges must be forgone by the prisoner, such as his normal freedom and usual way of life but, thinking the Bill through, as I have done since it was introduced, I see no reason why a prisoner ought not to retain the opportunity to vote for his or her Parliamentary representative. Accordingly, I support the Bill.

The Hon. N. K. FOSTER: I want to seek information, if I may, at this stage. Does it include persons who are in prison in the forces or even political prisoners?

The PRESIDENT: I think that that question would be better asked at the Committee stage.

The Hon. N. K. FOSTER: I was wondering whether the Minister could give a nod or a wink.

The PRESIDENT: This is not to be done at the second reading stage.

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

TEACHER HOUSING AUTHORITY ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 11. Page 2104.)

The Hon. C. M. HILL: This very short Bill provides that employees of the Kindergarten Union of South Australia shall be included in the group of teachers who can gain accommodation under the Teacher Housing Authority Act. As I believe that kindergarten teachers should be included, I support the extension into that group. The only other alteration made by the Bill to the principal Act is that property that will be held by the Teacher Housing Authority is to be property held henceforth for and on behalf of the Crown. The objective is that on transfer to the authority of such property the authority does not have to pay stamp and other duties as a result of owning it in that form.

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

COTTAGE FLATS ACT AMENDMENT BILL

Received from House of Assembly and read a first time.

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

That this Bill be now read a second time.

This short Bill amends the principal Act, the Cottage Flats Act, 1966-1971. Honourable members will recall that the principal Act provided for the payment by the Treasurer to the South Australian Housing Trust in the past 10 financial years of amounts formerly $50 000 but latterly $75 000 for expenditure by the trust for the purposes, expressed in section 4 of the principal Act, "of building cottage flats which shall be let by the trust to persons in necessitous circumstances".

The source of these payments, specified in the principal Act, was the Homes Purchase Guarantee Fund established under the Homes Act, 1941, as amended. This fund is now exhausted. Both the Government and the trust are firmly of the view that subventions to the trust of the order provided for should be continued particularly since the trust has, from its own resources, provided "matching" expenditure in this area. The Government has come to the view that a suitable source of funds would be the Housing Loans Redemption Fund established under the Housing Loans Redemption Act, 1962, as amended.

Honourable members will, no doubt, be aware that the Housing Loans Redemption Act is available as a means by which borrowers from certain approved authorities can by contributions to the fund provide for the repayment of their outstanding liabilities in the event of their premature death. The Government is aware of the argument that may be advanced to the effect that if there are surpluses in this fund sufficient to make grants available there is a case for reducing the rate of contribution to the fund. However the Government considers that, since the contributors already enjoy a cover against a substantial risk at lower rates than would otherwise be available to them, the use of surplus money in the fund for this clearly useful social purpose is justified.

The measure contains only one operative clause, clause 2, which is generally self-explanatory and provides for the annual grants to the trust adverted to. Subclause (2) of this clause is intended to ensure that payment of the grants will in no way prejudice the prime object of the fund, which is to meet the commitments for which it was established, by ensuring that only "surpluses" in the financial sense are available to meet grants.

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

THE STATE OPERA OF SOUTH AUSTRALIA BILL

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

ADJOURNMENT

At 9.35 p.m. the Council adjourned until Wednesday, November 17, at 2.15 p.m.