## LEGISLATIVE COUNCIL

Tuesday, November 23, 1976

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

### SOUTH AUSTRALIAN HEALTH COMMISSION BILL

At 2.17 p.m. the following recommendations of the conference were reported to the Council:

*As to Amendment No.* 2:

That the Legislative Council do not further insist on its amendment.

*As to Amendment No.* 3:

That the Legislative Council do not further insist on its amendment.

*As to Amendment No.* 4:

That the Legislative Council do not further insist on its amendment but make the following amendment in lieu thereof:

Page 4 (Clause 8)—After line 24 insert new subclause (1a) as follows:

(1a) In nominating persons for membership of the Commission, the Minister shall have due regard to the need to ensure that the members of the Commission have a high level of expertise in the provision of health care or the administration of health services.

and that the House of Assembly agree thereto.

*As to Amendment No.* 6:

That the Legislative Council do not further insist on its amendment.

*As to Amendment No.* 7:

That the Legislative Council do not further insist on its amendment but make the following amendment in lieu thereof:

Page 8—After line 16 insert new clause as follows:

18a. (1) The Minister shall appoint a committee entitled the "Health Services Advisory Committee".

(2) The Health Services Advisory Committee shall consist of the following members:

(*a*) a member of the Commission (who shall be Chairman of the Committee) nominated by the Minister;

(*b*) two nominees of the Local Government Association of South Australia;

(*c*) one nominee of the South Australian Hospitals Association;

(*d*) one nominee of the Australian Medical Association (South Australian Branch);

(*e*) one nominee of the Australian Dental Association (South Australian Branch);

(*f*) one person nominated jointly by the Royal Australian Nursing Federation (South Australian Branch), the Public Service Association of South Australia and the Australian Government Workers Association;

(*g*) one nominee of the South Australian Council of Social Service;

(*h*) one nominee of the St. John Council for South Australia;

(*i*) one nominee of the South Australian Association for Mental Health; and

(*j*) four nominees of the Minister (all of whom must have had experience in the provision of health services and at least one of whom must have had experience in the education and training of those who propose to work in the field of health care).

(3) The members of the Committee shall hold office for such term, and upon such conditions as may be prescribed.

(4) The functions of the Committee are to advise the Commission in relation to the following matters:

(*a*) the provision and delivery of health services;

(*b*) the role of voluntary organisations and members of the community in the provision and delivery of health services;

(*c*) the co-ordination and the most effective deployment and use of health services;

(*d*) the advancement and improvement of health services; and

(*e*) any other matter referred to the Committee for advice by the Commission.

(5) The Committee may, with the consent of the Minister, establish such subcommittees (which may consist of, or include persons who are not members of the Committee) as it thinks necessary to assist it in performing its functions under this Act.

and that the House of Assembly agree thereto.

*As to Amendment No.* 9:

That the Legislative Council do not further insist on its amendment.

Consideration in Committee.

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

That the recommendations of the conference be agreed to.

The managers from both Houses wanted to ensure that the Bill was passed and, indeed, that it was improved. Its discussion continued from 9.15 a.m. yesterday until 1 p.m., and thereafter from 1.45 p.m. The main variations related to three Legislative Council amendments, the first of which concerned membership of the commission. Honourable members may recall that, as the Bill stood, the Minister had to consult certain people before making any appointments to the commission. After general discussion, the conference considered that the bodies nominated would think that they were entitled to have representation on the commission. As a result, the conference agreed to recommend that the persons nominated for membership on the commission should have a high level of expertise in health care or in the administration of health services, and that the Bill not stipulate groups from which the Minister should seek advice when making an appointment.

The second major variation related to the advisory council, regarding which this Council had moved an amendment, which was not acceptable to another place. It will be recalled that three committees were to be set up to examine health services, there being a right to appoint additional committees. It was agreed, following much discussion, that people with expertise in various areas should be appointed. In the main, this involved areas regarding which nominations had previously been made by this Council. It was agreed that another committee, to be known as the Health Services Advisory Committee, was to be set up instead of the advisory committee first contemplated. Certain bodies from whom I should seek nominations were named by the conference. As the Bill stood, one person was to be nominated by the Royal Australian Nursing Federation. However, the conference has recommended that that person be nominated jointly by the Royal Australian Nursing Federation, the Public Service Association and the Australian Government Workers Association. The conference considered that it would be desirable for those three organisations to make nominations and, indeed, that this would be in the best interests of nurses generally. The conference has therefore recommended accordingly.

The conference has also added a further nominee, that is, one from the South Australian Association for Mental Health, which had not previously been suggested. Also, the Health Services Advisory Committee is to have a member of the commission (who shall be Chairman of the committee) nominated by the Minister.

The third matter under discussion related to the retention of the levy on local government. I want to say in all fairness that the Chairman of the conference indicated that the Government had considered the matter and also said it had been previously discussed by Cabinet. The Chairman attempted to short-circuit the discussion and indicated what the Government's attitude was concerning the levy as far as councils were concerned. This did cause some extra discussion because it was believed that the Government was taking over from the conference. However, I do not accept that view, because the conference went all the morning, and it was Government policy that it was not prepared to delete the 3 per cent levy (which, incidentally, I might point out is in the Hospitals Act), and that, if the Bill is to be defeated, it is because of the desired wish of this Council that it delete this provision.

During the course of the deliberations I was asked whether I would go back to Cabinet and ask the Government if it would be prepared to reconsider the question of rating, or secondly, would the Government consider the possibility of totally phasing it out of the field of local government or limiting the total amount raised by the levy to a specific sum. I indicated that I would be prepared to raise these two matters at a subsequent meeting of Cabinet but in no way was I prepared, nor was the Chairman of the conference, to take that as a part of the discussion for the purpose of the conference. That was the right attitude to adopt, otherwise it could be assumed that the conference was being directed by Cabinet as to what to do on the advice before them. I believed that Cabinet should not be involved concerning a further discussion at that stage.

I did give an undertaking that I was prepared to take the two matters up with Cabinet, and I will give the undertaking that, subsequent to this Bill passing, I will raise the matter with Cabinet and that it will be for it to decide the attitude concerning the future levying of councils. I point out that the provision regarding rating is an improvement as far as councils are concerned in that at present the levy can be either above or below 3 per cent. The proposed clause now limits that levy to a 3 per cent rating. I want to thank honourable members who were on the committee as managers for the way in which they stuck to the consideration of the Bill and for the attitude they took that the commission be set up.

The Hon. R. C. DeGARIS (Leader of the Opposition): I support the motion. I may say that at no stage during the conference was any viewpoint expressed by the House of Assembly managers that the Council's amendments were designed to frustrate the Bill or the intentions of the Government. Indeed, their attitude was one of being co-operative, as I think was the attitude of the managers of this Chamber. As the Minister of Health has said, the only straight disagreement was in relation to the 3 per cent local government levy. Perhaps I should quickly cover the three areas of disagreement in the Bill.

The first, which was dealt with by the Minister, was that the commissioners should be chosen on a basis of expertise in their knowledge of the administration or delivery of health services in South Australia. We listed a number of qualifications and said that, where possible, the commissioners should satisfy those qualifications, which have gone out, but the introductory provision to that list that we had has been somewhat strengthened, in that it states:

In nominating persons for membership of the commission, the Minister shall have due regard to the need to ensure that the members of the commission have a high level of expertise in the provision of health care or the administration of health services.

I think that that clause interprets the general opinion expressed in this Chamber.

The second was possibly the most important amendment to the Bill, from the point of view of this Council. Although in this Chamber, when the amendment was first moved, the Government strongly opposed the idea of a health services advisory committee, at the conference the idea was accepted, with some minor changes mentioned by the Minister. I do not intend to detail those small changes but, in my opinion, the most important change made to the Bill is the acceptance by the Government of a Health Services Advisory Committee. As time passes with the establishment of the commission, the Government, whatever Government is in power, will find that the Health Services Advisory Committee will perform the excellent function of ensuring that the commission is made aware of the thinking of the people engaged at the grass roots level of the health delivery services. I predict the Government will be satisfied with this concept as time passes.

The third disagreement concerned local government rating. What the Minister has said is true, that this was not a matter negotiable at the conference. I admit freely that in this matter the Government held the upper hand because, if the Bill was lost on this clause, it would mean that the existing Hospitals Act, in which there is no upper limit to the local government levy, would come back as the existing position. Therefore, there was some guarantee to local government that the levy should not go beyond 3 per cent (last year, about $900 000) collected from local government for this levy. I do not want to recanvass all the arguments about the local government levy, except to point out that with the maximum limit of 3 per cent, if the Government imposes it, the rake-off from local government in the next financial year will rise from $900 000 to $1 400 000; and, as we in this Chamber all know, the amount of rates being collected by local government, because of inflationary pressures, costs, and so on, will increase, so that the rake-off to the Hospitals Department will increase as well.

The Minister was quite co-operative in this area when he said he would raise again with Cabinet the points made by the Council at that time. They were, first, that the Government should re-examine the question of phasing out the local government levy for hospital purposes and, secondly, if the Government found that it should maintain the levy, it should be on an aggregate sum basis, not a percentage basis. Honourable members can see the point of this when the figure for the last financial year was about $900 000.

The Hon. D. H. L. Banfield: How would we work this out amongst councils? I know you are a figure man, but I lost much sleep last night thinking about it.

The Hon. R. C. DeGARIS: I would not doubt that the Minister lost much sleep about it, because it is about a grade 7 sum. It is quite simple. All one does is relate the amount of money required for hospital purposes to the total amount collected and find a percentage. It could be done in about seven minutes.

The Hon. D. H. L. Banfield: I do not think that would be fair.

The Hon. R. C. DeGARIS: It is just as fair as a 3 per cent levy. The sum is simple, but I do not wish to debate that further. Although we knew when we went to the conference that it would be difficult to hold our position on this clause, for the reasons that I have given the Chamber, and although the Chairman of the conference stated clearly that as far as the Lower House was concerned the Bill would fail to pass if the Council insisted, as I have said, there was some advantage to local government in achieving a maximum of the 3 per cent levy.

I am pleased that the Minister has agreed to raise the matter of the levy with Cabinet and find out whether it can be phased out gradually or whether a formula can be introduced whereby there is a maximum taken from local government, in aggregate, for hospital purposes. I thank the members of this Chamber who attended the conference. In accordance with their usual attitude, they expressed the viewpoint of the Chamber well, and I am also grateful for the co-operative way in which the managers for the House of Assembly approached the task of reaching what I would consider a reasonable compromise on the Bill.

The Hon. C. M. HILL: As one who spoke at length on the Bill, particularly regarding the levy, and as one of the managers for this Chamber, I want my extreme disappointment recorded, because the Government did not agree to the amendment carried here to abolish the levy on local government. As the Hon. Mr. DeGaris has pointed out, honourable members, at least those on this side, had no alternative at the conference but to yield to the Government's unrelenting and stubborn attitude to this question. We knew that, if we insisted in regard to abolition of the levy, the Bill would fail to pass.

We knew, too, that the inquiry conducted soon after the Second World War, as well as the Bright committee and the Select Committee of another place, recommended in support of a commission. Therefore, the responsible approach was to agree to the Bill, because the principal change made by it was the setting up of a commission in lieu of the existing department. Also, as the Hon. Mr. DeGaris has said, if the Bill failed to pass, local government could be confronted with a higher percentage than the 3 per cent maximum proposed. Faced with such a situation, there was no alternative but to yield.

I did expect the Government, if it was insisting on continuation of the levy, at least to give some indication that, by some process in the future of fixing it or by some approach such as the Hon. Mr. DeGaris has mentioned regarding setting an aggregate sum, the burden on local government would not be as heavy as the 3 per cent provided for in the Bill. Such an announcement may have been forthcoming from the Government as a means of compromise on this issue, but no such indication was given and there was no alternative but to yield on this point. I hope that the time is not far distant when the Government will make an announcement indicating that plans for the abolition of the local government levy are in train. The case made throughout the debate in this Chamber was irrefutable.

The Hon. D. H. L. Banfield: To whom?

The Hon. C. M. HILL: It could not be refuted by the Government, and the evidence was overwhelmingly strong in favour of abolition.

The Hon. D. H. L. Banfield: Opposition members in another place supported the retention of the levy.

The Hon. C. M. HILL: One or two did, but I am speaking for myself now, and making the point that the debate in this Chamber showed that the Government's case was extremely weak, whereas the case for the abolition of the levy was extremely strong. I stress my utter disappointment at the Government's refusal to accept the provision passed in this Chamber. I express my extreme disappointment that, in regard to any compromise at all on this matter, the Government would not listen to us.

The Hon. J. C. BURDETT: I, too, support the motion. There were three controversial amendments to be considered by the conference, No. 4 relating to expertise on the board, No. 7 relating to an advisory council, and No. 9 relating to the local government levy. Regarding No. 4 and No. 7, the attitude of managers of another place was conciliatory, reasonable, and co-operative. There is no doubt about that because, whilst managers from another place did declare themselves to be opposed to those two matters, they were quite willing to discuss them. They said they were satisfied that there ought not to be any criteria as to expertise on the commission; they said they were not convinced that an advisory council was not necessary.

They readily agreed to discuss these two matters, and an eminently reasonable compromise was arrived at. Pursuant to this compromise, the principles the Council had insisted on were retained. First, the terms relating to expertise on the commission were changed considerably, but the principle is still there. There is a provision that the Minister, in making appointments to the commission, shall have regard to expertise, and the members of the commission shall be persons of expertise in the field set out in this provision.

Regarding the advisory council, the name has been changed to an advisory committee, and other changes have been made in a spirit of compromise. However, the principle that this Council stood out for is the same: there should be a general advisory body of some sort, representing the various interests and sectional groups. It could do things of its own motion and not just attend to things referred to it by the Minister. I again compliment the Assembly managers in that, in regard to these two matters, there was a genuine spirit of compromise.

Regarding council rating, there was no compromise at all. The Assembly managers stated that this matter was not negotiable and, if we insisted on it, we would lose the Bill. At this stage, the Bill, having amended in the Council (with some amendments accepted by the Government and others agreed to in conference), is a good Bill, and we were not willing to lose it. The general reason why the Council took the stand it did take on rating was this: in the context of this Bill (a general health and welfare Bill) it was reasonable to accept that the cost of the provision and delivery of health services should be borne by all taxpayers out of general revenue and that no part should be laid on any particular class of taxpayer, namely, the ratepayers. That reason was perfectly proper, and it has not been refuted. I attach some importance to the Minister's undertaking. He made clear that he was not willing to take the matter of phasing out or limiting council rating back to Cabinet as an aspect of this Bill, but he has undertaken that he will take the matter back to Cabinet for discussion in connection with phasing out council rating or limiting it; in this connection, an amount of $1 000 000 was discussed. I have considerable confidence in the Minister, and I trust the matter will be taken back to Cabinet and fully discussed. I support the motion.

The Hon. J. R. CORNWALL: My attitude to conferences of managers is well known. It has been documented many times. I have contempt for the system. However, we have all had dramatic evidence in the last 12 months of what can happen when Parliamentary conventions break down. For that reason I am happy to

report that I fought tooth and nail for the Council's amendments. Honourable members will be pleased to know that, when the verbal punching, kicking and gouging was on, I was right there in the thick of it!

Motion carried.

The PRESIDENT: The question is that the Committee's report be adopted.

The Hon. D. H. L. BANFIELD (Minister of Health): It is now two years since the project team was set up to consider establishing a health commission; that step followed the Bright inquiry. It is just over 12 months since the Bill was first introduced in another place. I am grateful to everyone who has assisted in any way with arranging for the establishment of this commission. I particularly thank those members of both Houses who have treated this matter as being above politics. I am confident that this Bill is in the best interests of the people.

Committee's report adopted.

## QUESTIONS

### AGRICULTURAL EDUCATION

The Hon. R. C. DeGARIS: Has the Minister of Agriculture a reply to my recent question about agricultural education?

The Hon. B. A. CHATTERTON: The Minister of Education informs me that, in 1976, 72 teachers with qualifications in agriculture were employed in 42 secondary schools in South Australia to provide programmes in agricultural studies. In addition, part-time ancillary staff (one day a week) is provided in about 30 of these schools. The salaries of these people represent the greatest cost in providing agricultural education in secondary schools. Assuming the agriculture teacher is involved in the teaching of agriculture for two-thirds of his teaching time, an estimate of the cost in terms of salaries is $600 000.

Expenditure through the Public Buildings Department is also incurred in the erection of standard agricultural buildings and other minor works programmes such as fencing and reticulation. Expenditure in this area is estimated at about $70 000 a year. Each year a budget allocation is given for the maintenance and development of agriculture programmes in agriculture centres in these secondary schools. The school submits an estimate of its requirements, and major and minor items of equipment are supplied on requisition according to the need. The overall agriculture budget must cover other expenses such as printing costs and travelling expenses of advisory personnel. The agricultural budget during the last five years has been as follows:

| Year | No. of centres | Budget approved |
|---|---|---|
| | | $ |
| 1972-3 | 32 | 45 000 |
| 1973-4 | 34 | 35 000 |
| 1974-5 | 37 | 45 000 |
| 1975-6 | 40 | 40 000 |
| 1976-7 | 42 | 33 000 |

Because of the expansion in the number of centres providing programmes and the rapid increase in the cost of agricultural equipment and materials, funds available have been insufficient to meet needs of schools in the past two years, particularly where new centres have been established. Development has, of necessity, been curtailed, and provision of new and replacement of obsolete equipment has been impossible. In some cases, schools have had to rely more upon contributions from the local community. Agricultural education is given no special priority over other areas of the curriculum in secondary schools.

### ELECTRICITY COSTS

The Hon. R. A. GEDDES: I seek leave to make a statement before asking a question of the Minister of Lands, representing the Minister of Mines and Energy.

Leave granted.

The Hon. R. A. GEDDES: I read with surprise in this morning's *Advertiser* that the Electricity Trust of South Australia will be contributing $164 000 towards coal exploration deposits required for future energy needs. As the trust is supplying power to 99 per cent of the population, and as it has lately been forced significantly to increase its charges to all consumers, will the Government underwrite this $164 000 that is to be used for new coal exploration so that the additional expenditure will not be borne by or passed on to the consumer?

The Hon. T. M. CASEY: I will refer the honourable member's question to my colleague and bring down a reply as soon as possible.

### FINANCE CONFERENCE

The Hon. ANNE LEVY: Has the Chief Secretary a reply to my recent question regarding propaganda issued from the Australian Finance Conference?

The Hon. D. H. L. BANFIELD: A copy of the pamphlet "Credit Care or Credit Cares?" was sent to the Minister of Prices and Consumer Affairs by Mr. R. N. Armitage, Assistant Federal Secretary of the Australian Finance Conference, with an offer to supply bulk quantities if the branch considered that the pamphlet was of assistance in its consumer education programme. The offer has been examined, and it is considered that the branch should not disseminate material prepared by non-government bodies.

### HER MAJESTY'S THEATRE

The Hon. C. M. HILL: Recently, just before a public announcement was made that the theatre, known as Her Majesty's Theatre, was to be acquired for the State Opera, I asked the Minister a question about its possible purchase. I understand that Minister now has some further information for me regarding that matter.

The Hon. D. H. L. BANFIELD: I do not agree that the question was asked just before the public announcement was made, as the newspaper was on the street before the honourable member asked his question.

The Hon. C. M. Hill: It wasn't in this House.

The Hon. D. H. L. BANFIELD: I did not say that the newspaper was in the Chamber. However, the announcement had been made before the Hon. Mr. Hill asked his question. Let us get that clear.

The Hon. C. M. Hill: What are you so upset about?

The Hon. D. H. L. BANFIELD: I am upset because the honourable member tried to insinuate that what I said was not correct. I do not mind being told if I am not telling the truth. However, if I am telling the truth I object to honourable members' implying otherwise.

*Members interjecting*:

The PRESIDENT: Order!

The Hon. D. H. L. BANFIELD: However, I have a reply to the honourable member's question. Prior to the question being asked, it was published in the press of that date that the Government had finalised the purchase of Her Majesty's Theatre. The report was substantially correct.

## ESCAPED PRISONER

The Hon. C. M. HILL: Has the Chief Secretary a reply to my recent question concerning an escaped prisoner?

The Hon. D. H. L. BANFIELD: The prisoner concerned in the question has not been regarded as a danger, and the departmental opinion seems to be borne out by the fact that twice he has escaped from legal custody (as distinct from a closed institution) and has twice given himself up without causing any danger to the public, his aquaintances or anyone else. There are, of course, a number of prisoners who would never be given the same opportunities to abscond, because they would be regarded as a danger to the public. Recommendations for the security rating and movement of prisoners are made by a committee that represents the best of professional and security types available in the department, and this committee has access to all professional and day-to-day reports regarding prisoners and their attitude and performance. It is probably inevitable that from time to time errors in judgment will be made, although generally South Australia has an excellent record regarding security and assessment.

## SHIPBUILDING INDUSTRY

The Hon. A. M. WHYTE: I seek leave to make a short statement before asking the Chief Secretary a question.

Leave granted.

The Hon. A. M. WHYTE: The Premier has claimed many times that he has a formula that will remedy the present situation regarding this State's shipbuilding industry. Has the Chief Secretary any idea what the Premier proposes? If he has not, will the Chief Secretary obtain some details of what the Premier says will solve this problem?

The Hon. D. H. L. BANFIELD: I understand that the Premier's formula involves discussions with the Federal Government, with which he has tried to discuss Whyalla's shipbuilding industry. Unfortunately, the Premier is not receiving co-operation in this respect. If and when he is able to get to the Prime Minister—

The Hon. A. M. Whyte: Never mind about—

The Hon. D. H. L. BANFIELD: I am telling the honourable member that the formula involves discussions with the Commonwealth Government, and this is part and parcel of the whole matter. It is no good our having only part of a formula. However, even though a portion of the formula involves discussions with the Australian Government, which is not at this stage willing to discuss the matter with the South Australian Government, I shall see whether any further information regarding the matter can be obtained.

## ALMOND GROWERS

The Hon. M. B. DAWKINS: I seek leave to make a statement before asking a question of the Minister of Lands, representing the Minister of Works.

Leave granted.

The Hon. M. B. DAWKINS: My attention has been drawn to the difficult position in which some almond growers on the Adelaide Plains now find themselves. As a result of the prolonged period of drought earlier in the year, and also partly because of the limited rains that fell on the Adelaide Plains compared to rains over large parts of the State in the past couple of months, almond growers are finding themselves in a situation in which their quotas of underground water are running out. Also, they face another period of several months before they can expect winter rains. Vegetable growers can relate their plantings to their water quotas, but it is not possible for almond growers to vary their plantings: they must either water their trees or let them die. In view of the situation in which some almond growers find themselves, and also because we have been told that the life of the basin will be considerably extended, possibly to 30 years, compared to the few years for which we previously understood it might last, will the Minister ask his colleague sympathetically to review the plight of these almond growers?

The Hon. T. M. CASEY: I will refer the honourable member's question to my colleague and bring down a reply.

## VEGETABLE OILS

The Hon. C. J. SUMNER: Has the Minister of Health a reply to a question I asked regarding vegetable oils?

The Hon. D. H. L. BANFIELD: It is considered that the position in this State does not warrant action to prohibit the use of such containers nor the withdrawal of any oils packed therein that are presently on the market. The department has been advising food packers for more than two years to ensure that plastic packages are suitable in all respects, including the content of vinyl chloride monomer and to obtain assurances of such suitability from their suppliers. Further, since late 1974 the plastics industry has reduced the vinyl chloride monomer content of polyvinyl-chloride food containers, and in most cases the amount now meets the current recommendation of the National Health and Medical Research Council for food packages and foods.

## ACCIDENT STATISTICS

The Hon. J. E. DUNFORD: Recently, I asked the Chief Secretary whether he could supply me with statistics regarding people with serious illnesses who are involved in car accidents. I believe that the Minister now has a reply to my question.

The Hon. D. H. L. BANFIELD: The honourable member asked how many car accidents could be attributed to epilepsy, heart attacks and diabetes. However, I am unable to assist, as such statistics are not kept.

## MUSIC COURSE

The Hon. M. B. DAWKINS: On behalf of the Hon. Mr. Hill, who has been called away to see a constituent outside the Chamber, I ask the Minister representing the Minister of Education whether he has a reply to the question regarding a music course that the honourable member asked on November 11.

The Hon. B. A. CHATTERTON: The Minister of Education informs me that he has written to the Chairman of the Board of Advanced Education asking that the board re-examine the matter raised in the honourable member's question. It should be explained that the course will proceed under whatever accreditation is granted, and the matter of courses within the Further Education Department is one

which is ultimately decided upon by the Minister of Education. However, Australia-wide recognition of whatever award is granted to students upon successful completion of the course is available only through the National Committee on Awards, and it is only possible for matters to be submitted to this body through the Board of Advanced Education. The Advanced Education Act gives the Minister no authority over the board in this matter.

## *ATLAS PIONEER*

The Hon. F. T. BLEVINS: I seek leave to make a short explanation prior to asking a question of the Minister of Agriculture.

Leave granted.

The Hon. F. T. BLEVINS: In this week's agricultural publication *Primary Industry Newsletter* No. 534, reference is made to South Australia and the ship *Atlas Pioneer*. Under the heading "South American take-over of live sheep trade", the report states:

The world's largest livestock carrier, the Columbus Line's *Atlas Pioneer* is in the South Atlantic bound for Montevideo, the capital of Uruguay. This piece of news, whispered to PIN on Monday, should send a shiver up the spine of Australian sheep producers. The *Atlas Pioneer*, which was banned from loading in Fremantle early in July and which later spent nearly two months out of action in Adelaide, is under time charter to the world's largest live sheep exporter the Clausen Steamship Company. Until recently it operated regularly on the 14-day Australia-Kuwait run, taking up to 53 000 sheep at a time.

The newsletter states that Australian farmers will suffer badly if union bans continue. Can the Minister of Agriculture tell the Council whether union bans are affecting this trade and what was the reason for the hold-up of this ship in Adelaide this year?

The Hon. B. A. CHATTERTON: The *Atlas Pioneer* was not held up in Adelaide because of any dispute with the Australian Meat Industry Employees' Union.

The Hon. F. T. Blevins: Or any other union.

The Hon. B. A. CHATTERTON: That is right. The *Atlas Pioneer* was held up in Adelaide because of the failure of the ship's owners to comply with the Commonwealth quarantine regulations. I have spoken to the Secretary of the A.M.I.E.U., and he assures me that there has been no interference with any shipment of live sheep from South Australia since the end of 1974. In 1974 a consultative committee was set up with representatives from the meat trade, the exporters, farmers' organisations, A.M.I.E.U. officials, the Department of Primary Industry and the South Australian Agriculture Department. The result of the meetings of that committee was that the shipment of live sheep would be unhindered if the Government and exporters gave the union an assurance that all efforts would be made to encourage Middle-East countries to establish chilling facilities at their ports and at various other distribution points so that carcass meat could be shipped from Australia and so that the continuing employment of slaughtermen and meat workers in Australian abattoirs could be assured. That assurance has been given, and there has been no ban on live meat export from South Australia since that period.

## SOLDIER SETTLER

The Hon. R. C. DeGARIS: Has the Minister of Lands an answer to a question I recently asked about a soldier settler in the South-East?

The Hon. T. M. CASEY: The Hon. R. C. DeGaris does not mention the name of the settler concerned. The account for insurance is not necessarily included in the annual account, and has not been for the past two years. Accordingly, the procedure would have been as follows:

1. The insurance account rendered August 1, 1976.
2. If no payment received a reminder issued, middle of September, 1976.
3. If still no payment or other communication received the letter as quoted would have been issued during the middle to latter part of October, 1976.

This is the normal procedure and, had the soldier settler concerned communicated in any way or paid his account, obviously the letter quoted would not have been necessary.

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## WORKMEN'S COMPENSATION ACT AMENDMENT BILL (NO. 2)

Adjourned debate on second reading.

(Continued from November 18. Page 2292.)

The Hon. D. H. LAIDLAW: The Minister of Labour and Industry, when presenting his second reading explanation, spoke at great length about the rehabilitation of injured workmen. He referred to his recent fact-finding trip and to the oversea countries that he visited. I wondered when I listened to the Minister of Health making the same explanation in this Chamber whether he was by mischance presenting an explanation prepared for some other Bill because, so far as I can ascertain, none of the clauses in this Bill has anything to do with rehabilitation.

The member for Davenport introduced an amendment in another place to facilitate re-employment of a workman with a known injury but the Government rejected it with little reason given. I can only assume that it was unacceptable to the Government in the other place because it did not think of it itself. I have given notice that contingently on the Bill passing the second reading I shall introduce the same amendment in this Chamber, and I hope that the Government will show some of its professed enthusiasm for rehabilitation and accept it.

I refer specifically to a new clause 7a which enables the Industrial Court to apportion liability between employers where a workman has sustained injuries whilst in the service of two or more employers. At present, the last employer is likely to be held liable for the total injury. This amendment would help to minimise a serious social problem, namely, the reluctance of an employer because of the likelihood of full liability and the high cost of compensation to engage a new workman with a known physical defect.

Subclause (3) of the new clause 7a enables the Industrial Court to apportion liability between two or more insurance companies which provided cover at different periods in respect of a workman who suffered two or more injuries whilst working for the same employer. The employer is liable to compensate this workman but under the existing Act, if the insurance companies dispute the extent of their respective liability, the employer may have to wait for many months to be recompensed.

I give notice that, contingently on this Bill passing the second reading, I shall seek leave to introduce a new clause 6a dealing with exchange of medical certificates. Under the existing Act, an employer is bound to disclose relevant medical reports to a workman at any time before

or during proceedings. This new clause imposes a corresponding obligation upon a workman in any court proceedings, but not prior to proceedings. The member for Davenport introduced the same amendment in another place. The Minister of Labour and Industry rejected it, but I remind the Minister that under our system of justice both sides are supposed to be given a fair chance, and the procedure in the existing Act is utterly biased against the employer.

I refer now to clause 7, which is the vital part of this Bill and deals with the basis of compensation for total or partial incapacity. The Government proposes that an injured workman should receive the highest of (1) the average weekly earnings (excluding overtime and special payments) received during the 12 months preceding injury, plus average weekly overtime for four weeks prior to injury; or (2) the weekly wage, excluding overtime and special payments at the time of incapacity, or (3) the prescribed wage. I repeat that the workman is to receive the highest of the three.

The Minister stated that this proposal gives effect to the Government policy that a workman should be in no better or worse position than if he had not been incapacitated for work. I do not accept this proposition because I believe that, although a workman should receive reasonable compensation (and in years past the rate of compensation was far too low) there should still be some financial inducement to return to work.

I point out to the Minister that the basis of compensation proposed by him in clause 7 of this Bill does not conform to the Government policy which he elaborated on in his second reading explanation. No allowance has been made for the cost of an employee travelling to and from work, the wear and tear on clothing, or the expense of buying lunches, etc.; and, of course, the injured workman would not incur such expenses whilst at home.

I have asked various workmen to assess the cost of such items. There were wide variations in their estimates, but $8 a week seems a reasonable average based on present-day costs. One estimate was as high as $20, but this was an unusual case of a person who lived a long distance from his place of employment.

If the Minister of Labour and Industry wants to uphold the principle that an injured workman should be no better or worse off at home than at work, he should deduct up to 7 per cent from his proposal for compensation in this Bill to cover the extra costs incurred by the employee who does go to work.

I foreshadow amendments to clause 7 regarding the basis of compensation. They provide for a workman to receive whilst on compensation the weekly earnings that he received immediately prior to his incapacity. This, as defined, would include his award wage and over-award and service payments, plus any leading hand, first-aid, tool and qualification allowances.

If a workman was employed on incentive work, he would receive in lieu of incentive benefits 10 per cent of his award plus over-award payments. I have selected 10 per cent because some awards provide that, if an incentive scheme is introduced, it should be possible for an average workman to earn at least 10 per cent above his award rate.

Weekly earnings, as defined in my amendment to clause 7, would exclude overtime and bonuses, as well as shift, industry, disability, weekend and public holiday penalty, and district, travelling, living, clothing and meal allowances. Disability is intended to cover allowances for dirt, danger, weather, confined spaces, heat, height, wet conditions, cold rooms, call back, camping, etc.

There is provision also in clause 7 for an adjustment from time to time of the weekly rate of compensation to reflect, first, the past or present condition of the workman and, secondly, any variation due to indexation, etc., in award, over-award or the other items included in weekly earnings by the definition in my amendment. The adjustments can be made by agreement of the parties or, failing agreement, upon application to the court.

My amendment regarding the basis of compensation has been devised with three main objects. First, it would take the speculative element from compensation by removing overtime payments. Whilst overtime is included, whether over an average of 12 months as at present or four weeks as proposed, a percentage of workers, who have enjoyed high overtime and see this about to lessen or disappear, may be inclined to concoct, say, a back or wrist injury. I do not want to enter into debate about the percentage of spurious injuries which attract compensation. The medical profession is far better informed than I. Some of its estimates are quite astounding.

Secondly, I have striven to achieve a degree of uniformity with the formula for compensation applying in legislation in the other States plus make-up agreements between employers and unions. The Government has on a number of occasions sponsored legislation in other fields to achieve uniformity between the States, and I hope that the Minister will see the wisdom of doing so in this instance. If he does so, he should then accept my amendments.

Thirdly, I wish to minimise the costs of administering this scheme. Under the existing provisions, it is time-consuming for employers to have to calculate average weekly earnings over a 12-month period preceding incapacity. The new Government proposals would add further to the cost of administration because, in addition to calculating average weekly earnings without overtime and special payments over the past 12 months, the employer would have to assess average overtime payments for four weeks prior to incapacity. I remind the Council that on June 18 last the Premier said in a speech that his Government was very conscious of the cost to employers of workmen's compensation.

I shall refer briefly to the provisions for compensation in other States and Territories, and honourable members will recognise that my amendments come close to achieving uniformity.

In Western Australia a workman is entitled to receive the ordinary wage including any over-award payment that he would have received for ordinary hours worked. However, because of confusion regarding interpretation of the term "ordinary wage", an amendment was passed in November, 1975, which specified that it included over-award payments but excluded bonus or incentive payments, weekend or public holiday penalty, and other special allowances.

Under the existing Victorian Act, an adult workman receives a minimum of $70 a week, rising to a maximum of $107, depending upon the number of his dependants. However, the Government has announced that it intends to introduce amending legislation, and a committee of inquiry is preparing recommendations. Meanwhile, a workman in Victoria employed under the Federal Metal Trades Award does receive, as a result of an agreement between employers and unions, make-up pay whilst on compensation. This brings his benefit to a level equal to his award rate plus over-award payments. Make-up does not apply when an injury is suffered during the first two weeks of employment, nor does it apply during the first two working days

of any incapacity. Furthermore, the maximum period of make-up pay for any incapacity is 39 weeks. Make-up pay agreements in Victoria apply in some other Federal awards in addition to the Metal Trades Award.

Under the New South Wales legislation, a single adult receives as compensation $64 a week, plus $14 for a wife or *de facto* and $10 for each child between three and 16 years and up to 21 years if a student. However, there are also make-up agreements under the Federal Metal Trades Award, and other awards. In the Metal Trades Award the make-up is to normal pay, which is defined as the award rate for 40 hours plus over-awards and, if a workman is employed under an incentive scheme, these are averaged over the three months prior to incapacity.

In Queensland, a workman receives his average pay over the previous 12 months or his present award rate whichever is the lower. If he is not covered by an award his rate will be based on the rate in the South-East Queensland Fitters and Turners Award depending on classifications or his average pay, whichever is the lower.

In the Australian Capital Territory, under an ordinance of 1975 which was accepted by Federal Parliament, a workman receives full pay for normal hours, excluding overtime, for the first six months of injury. After six months the benefit reduces to $67·68 a week for a single adult, plus $17·81 for a spouse and $8·31 for each child. I think that these figures may have escalated after the recent indexation. Provision is made for these amounts to be varied owing to indexation. It is to be noted that this ordinance, which excludes overtime from compensation, was accepted during the Whitlam Administration and after the South Australian legislation, which included overtime, had been in operation for about two years.

In Tasmania a workman receives average weekly earnings similar to the benefits applying at present in South Australia. However, I understand that the Labor Government in that State is concerned with the high level of claims and has set up a committee of inquiry to recommend modifications. I only hope that it tackles the problem with more resolution than our Government has done in the present Bill.

I turn now to the question of compensation for more than one job. Clause 7 of the Bill reiterates that a workman will continue to receive as compensation the aggregate earnings from two or more jobs which he had at the time of incapacity. I repudiate this concept, and it should be stressed that it does not apply in other mainland States. A subsection of my amendment to clause 7 provides that an injured workman should receive compensation for one full-time job so long as he did work full time at one of his jobs. It is undesirable at a time of high unemployment to condone the practice of more than one job. Safety should also be considered, because an employee working long hours at more than one job is more likely to injure himself and others.

By my amendment, the incapacitated workman with two or more jobs would receive the wages for ordinary hours which constitute a week's work in the employment in which he was engaged when injured. Suppose, for example, that he works full time as a press operator for Chrysler Australia during the day and on two evenings a week as a casual barman. If he is injured during the day he would receive, whilst on compensation, weekly earnings as defined previously for that one job. On the other hand, if he is injured whilst serving as a barman, he would receive weekly earnings as if he was working full-time as a barman.

This provision applies only to the workman with at least one full-time job and not, of course, to a workman with only one or more part-time jobs amounting to less than an ordinary week. I give two examples. If a casual employee had several jobs that do not add up to a full week, he would receive pay for a proportion of the week that he worked in total. Furthermore, a man who works part-time at one job would also receive pay for portion of an ordinary week.

The Hon. J. E. Dunford: Do you mean that, if he worked two days a week, he would get pay for 16 hours?

The Hon. D. H. LAIDLAW: Yes. He can have two jobs. A gardener who works only two days a week but works for two people—

The Hon. J. E. Dunford: You will never get away with that. You will have a man on $40 a week. Under your proposals, he gets only part time for the 40 hours.

The Hon. D. H. LAIDLAW: No. The weekly pay would be divided into five. I say that my proposal is the same as the Government's proposal, except in regard to the formula for compensation.

The Minister of Labour and Industry said during the debate in another place that according to the Bureau of Statistics only 4·2 per cent of the work force have more than one job and that the cost of compensating a man for the aggregate is insignificant. I disagree, because I suspect that the Minister is referring only to those workers who openly admit to having more than one job. He knows, as well as I do, that a great many do odd jobs at night or during weekends for which they are paid in cash. Neither the Bureau of Statistics nor the Taxation Department could know of these earnings; nor does the employer until a man becomes incapacitated and suddenly demands compensation for other jobs as well.

The Minister also pointed out that the right to receive payment for more than one job has been part of South Australian legislation since 1911, but he failed to add that until recent years, because the ceiling of compensation has been very low, the right to aggregate the wages from two or more jobs was seldom used. It applied principally to, say, the casual gardener who worked one day each week for various homeowners. The rights of such a person, whether he works in this type of job for either an ordinary week or less, would be covered by my foreshadowed amendment.

I wish to refer briefly to partial incapacity. I propose an amendment to the effect that the existing obligation upon an employer to provide suitable employment for a partially incapacitated person or, failing that, to make weekly payments at the rate as for total incapacity will not arise unless and until the workman has given to the employer a notice in the prescribed form that he is fit for suitable employment. This would overcome the existing anomalous position where a workman may be fit for light work but has not advised his employer of this fact. The employer is liable to pay total compensation for failing to provide light work, even though he is ignorant of the true facts.

I turn now to clauses 18 to 20 of the Bill, in which the Government proposes to make four important changes to insurance arrangements concerning workmen's compensation.

First, there is to be created a workmen's compensation insurance advisory committee to advise the Minister on allegations of excessive premiums, the refusal of insurers to provide cover, the level of premiums that are not related to accident records and other related matters. I commend the Government for creating the committee but I object to the composition proposed and I shall place on file amendments to this effect. There are to be six members and the chairman will have a casting vote. I do not seek to take

from the Government the power to appoint nominees of its choice in order to dominate this committee but, since it is to advise on insurance matters, it should consist of specialists in the field of insurance and employment of labour.

I shall place on file an amendment that there should be one person nominated by the Trades and Labor Council, one by the Chamber of Commerce and Industry, two by the Insurance Council of Australia, and two others, one of whom should have a specialised knowledge of insurance. With this structure it would be difficult for any Government to appoint Party faithfuls, without any special knowledge, to this committee. It may be argued that neither the Trades and Labor Council, the Chamber of Commerce and Industry, nor the Insurance Council of Australia represent all workers, employers or insurers. That is so, but they are the largest bodies in their respective fields and for ease of selection I suggest that they should nominate one or two members to the committee, as the case may be.

The second change creates a nominal insurer who will give protection to workmen in the event of the insolvency of an insurer or an exempt employer or an uninsured employer. The third change creates an insurer of last resort who will provide a means whereby hitherto uninsurable risks can be covered on a reasonable basis. I also commend these innovations although the Insurance Council of Australia has pointed out that, although there is talk of employers with a bad safety record who cannot obtain workmen's compensation cover, it should like to know more because up to now it cannot identify them.

The Bill provides that the funds needed to finance the activities of the nominal insurer and the insurer of last resort shall be provided in the first instance by approved insurers and exempted employers and, in the second instance, by approved insurers at the direction of the Minister. It is important in order to minimise premiums that approved insurers should know their actual commitments to these funds at the start of each financial year. I say this with much feeling. From my experience the hardest problem in setting overheads is to have to make provision for the unknown.

The Hon. F. T. Blevins: Workers have to face the same problem.

The Hon. D. H. LAIDLAW: I agree. As the Bill stands, insurance companies will be providing for the unknown and this is just added to their budgeted overheads. I have placed on file amendments to create a "nominal insurers fund" and a "fund of last resort". Moneys needed would be assessed actuarially at the start of each financial year. In this way, the approved insurers and exempted employers would know their actual commitment and this would be based on premiums collected or, in the case of exempted employers, as assessed by the committee.

My amendments provide for the members of the workmen's compensation insurance advisory committee to be the managers and trustees of these funds. When this committee is created it must be treated as a responsible body. I would hand the duties of the nominate insurer and the insurer of last resort as well to the committee. It is easier to have one specialist body controlling this aspect.

The fourth change concerns the activities of insurance brokers in the field of workmen's compensation. The Government suggested a fixed scale of fees depending upon the size of each account. The member for Davenport moved amendments in another place to delete these set fees. He proposed, and the Government agreed, that insurance brokers must disclose their fee in writing to their client before concluding a contract and, in future, premiums must be paid directly by the employer to the approved insurer. This overcomes the claims by insurance brokers that because of the difficulty sometimes in collecting premiums they need to charge a larger commission.

These amendments definitely improve the Bill, because I dislike fixed fees. A competent insurance broker should be allowed to charge a higher fee than his less competent competitor so long as the public know beforehand the size of the fee and is able to decide whether or not to engage an insurance broker or deal directly with an approved insurer.

Certain other amendments on file are either of a minor nature or consequential upon the amendments detailed above. They can be explained at the Committee stage. Therefore, I will support the second reading so that the Bill can be dealt with in Committee, where I will move the amendments indicated.

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

## LONG SERVICE LEAVE ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 18. Page 2292.)

The Hon. D. H. LAIDLAW: The Minister, when introducing this Bill, said that it was not an involved or complicated measure. That may be so, but it concerns an important matter of principle, namely, whether an employee should forfeit his right to long service leave due to serious and wilful misconduct. I oppose this Bill, as did my colleagues in another place.

In South Australia under the existing Act an employee after 10 years of continuous service receives 13 weeks long service leave and retains this right whatever the reasons for subsequent dismissal. After seven years and up to 10 years of continuous service he receives if his employment is terminated, pro rata long service leave unless he is dismissed for serious and wilful misconduct. This Bill eliminates serious and wilful misconduct as a reason for forfeiting pro rata long service leave.

The Minister pointed out in justifying this Bill that, since 1972, the South Australian Industrial Conciliation and Arbitration Act has provided that pro rata annual leave cannot be forfeited by misconduct on the part of the employee and that this concept should be extended to long service leave. I stress that there is a distinction between the accrual of annual and long service leave. The former grants a rest period at the end of each year of work whilst the latter, which is unique to Australia, makes a special concession for long and loyal service to one employer.

I have read the *Hansard* reports of the debate on the consolidation of the Industrial Conciliation and Arbitration Act in 1972. It was a complicated Bill. My colleagues moved many amendments and there was prolonged debate in the Committee stage. The Hon. Mr. Shard, when giving the second reading explanation, made no mention of the elimination of serious and wilful misconduct as a factor in long service leave. It was tucked away in section 81 (4), which says that, if employment is terminated, the worker will receive pro rata annual leave, whatever the reason for termination.

Since the Hon. Mr. Shard is no longer a member of this Council, I will not dwell on his failure to mention such a vital item in that Bill. However, I have little doubt that, if my colleagues had recognised the significance of section 81 (4), they would have opposed that section as vigorously as they did many other parts of that Bill.

The Minister of Health, when introducing this Bill, stated that it reflects modern industrial thinking, but that is poppycock.

The Hon. D. H. L. Banfield: Is that term Parliamentary?

The PRESIDENT: It is very descriptive.

The Hon. D. H. LAIDLAW: The Bill may conform to the views of the militants in the Trades Hall, but in the State Acts in Victoria and New South Wales serious and wilful misconduct has been retained as a cause for forfeiture of long service leave prior to the date of full entitlement. In Western Australia, an employee can lose his rights to long service leave if dismissed for serious, as distinct from wilful, misconduct, even when he has achieved full entitlement after 10 years service. I do not know the position applying in Queensland or Tasmania.

The timing of this Bill is deplorable. On October 21, only one month ago, the Full Bench of the Federal Conciliation and Arbitration Commission gave judgment in the test case to amend long service leave provisions in the Federal metal trades award. It is recognised that over 50 per cent of workers in South Australia are employed under Federal awards, and the effects of this judgment can be expected to flow on. The Full Bench decided to retain wilful misconduct as a reason to forfeit pro rata leave. The matter was debated at length. Mr. Justice Coldham, who presided, raised the matter of an employee, with over seven years of service, who embezzled $1 000 of funds and, after being found out, could then demand long service payments of $1 000 from his employer before leaving.

The Federal commission is striving to produce stability in industrial relations in Australia, and should be supported for its efforts. I can only conclude that the Labor Government in South Australia has introduced this Bill in an attempt to discredit or undermine the recent judgment of the Federal commission.

I wish to retain the provision of serious and wilful misconduct as a bar to pro rata long service leave in the South Australian Act. If an employee is dismissed on these grounds, facilities exist for him to apply to the Labour and Industry Department for it to examine his case. If the department thinks that he has a genuine grievance, it will seek redress on his behalf from the Industrial Court, which can grant him compensation or order reinstatement of employment.

This Bill is just another link in a chain of action originating from the Trades Hall in recent years to lessen the authority of managers and supervisors in factories and other work places. No wonder it is difficult to persuade men and women to accept supervisors positions today; I have found this, to my cost. I oppose the second reading of the Bill.

The Hon. R. C. DeGARIS (Leader of the Opposition): The principle contained in this Bill has already been before the Council in another form on another occasion, when the Council made a decision on that principle. I do not see any reason why there should be any change in our attitude. As the Hon. Mr. Laidlaw explained, the Bill allows an employee to gain long service leave entitlements even though he has been dismissed for serious and wilful misconduct. One could give several examples, but the Hon. Mr. Laidlaw has given the classic example: an employee could embezzle a sum from his employer, be dismissed, and then claim that sum or more as his entitlement in connection with long service leave; that situation is ridiculous. The argument that annual leave is in the same category as long service leave cannot be sustained. That a person dismissed for serious and wilful misconduct can get his annual leave is arguable, but there is no valid argument that one can advance in support of long service leave in these circumstances.

The Hon. N. K. Foster: Shouldn't the matter be dealt with through a charge before a court?

The Hon. R. C. DeGARIS: That has nothing to do with the question whether an employee should get long service leave entitlements if he is dismissed for serious and wilful misconduct. Long service leave conditions in this State are the most generous in Australia, and Australia is one of the few countries where long service leave applies. The Minister has claimed that modern industrial thinking regards leave of all kinds as being an accumulating right, but I ask: where does that modern industrial thinking prevail? Is that term a euphemism which the Government has invented and on which it can hang this Bill? Last October the Full Bench of the Federal Conciliation and Arbitration Commission decided to retain wilful misconduct as a reason for forfeiting long service leave entitlements. I stress that an appeal exists: if an employee believes that his dismissal in connection with serious and wilful misconduct was unjustified, he has the right of appeal; that situation should continue. I agree with the Hon. Mr. Laidlaw that the second reading of this Bill should be opposed.

The Hon. D. H. L. BANFIELD (Minister of Health): I thank honourable members for the attention they have given to the Bill. However, honourable members opposite are incorrect in their views. The same principle must apply in relation to pro rata long service leave as applies to pro rata annual leave. Since 1972 it has been provided that pro rata annual leave cannot be forfeited through serious and wilful misconduct. If an employee misbehaves in his first year of service, he does not forfeit anything other than his job. However, should he misbehave in his twelfth year or fifteenth year of service, he loses three months pay or four months pay which he has earned through long service given to the employer over that period. If he had not been a good employee, he would have lost his job earlier.

The Hon. D. H. LAIDLAW: Will the Minister give way?

The Hon. D. H. L. BANFIELD: Yes.

The Hon. D. H. LAIDLAW: The Minister was in error when he said that, if a workman served for 12 years or 15 years, he could lose entitlements. I point out that, after 10 years, the workman is fully entitled: we are talking about the interval between seven years service and 10 years service.

The Hon. D. H. L. BANFIELD: Then, I would say that, if an employee has given seven years service, the principle is the same. He has been a good employee for that period, but members opposite believe that that should not be taken into consideration. Their attitude is unjust. The principle I am advocating applies to pro rata annual leave, and there is no reason why it should not apply to long service leave. I ask honourable members to support the Bill.

The Council divided on the second reading:

Ayes (10)—The Hons. D. H. L. Banfield (teller), F. T. Blevins, T. M. Casey, B. A. Chatterton, J. R. Cornwall, C. W. Creedon, J. E. Dunford, N. K. Foster, Anne Levy, and C. J. Sumner.

Noes (10)—The Hons. J. C. Burdett, M. B. Cameron, J. A. Carnie, Jessie Cooper, M. B. Dawkins, R. C. DeGaris, R. A. Geddes, C. M. Hill, D. H. Laidlaw (teller), and A. M. Whyte.

The PRESIDENT: There are 10 Ayes and 10 Noes. I give my casting vote to the Noes.

Second reading thus negatived.

## STATE OPERA OF SOUTH AUSTRALIA BILL

Adjourned debate on second reading.

(Continued from November 17. Page 2212.)

The Hon. C. M. HILL: I support the Bill. Some four months ago, during the Address in Reply debate in the Council, I referred to the group then known as New Opera. I said at that time that I was very pleased indeed with that group's progress in establishing opera at a State level in South Australia. I concluded my remarks on that subject then by saying:

I ask the Government to give New Opera of South Australia Incorporated every possible encouragement so that it can expand its activities. I am sure that, if that encouragement is given, we will be very proud of that organisation.

This is certainly a step ahead for the company, in that in this Bill it is being given statutory authority. This places the group on a similar basis to the other statutory bodies which have been established in recent years and which specialise in various facets of the arts. I am pleased, too, regarding the acquisition of Her Majesty's Theatre for this company and for other purposes associated with the arts. On July 27, I asked a question regarding the possibility of obtaining that building, and I asked another question on the same subject on August 17. Only two weeks ago I asked a third question, because I was keen indeed to see that building retained for the arts generally in this State and for the New Opera or, as it has become known recently, the State Opera.

The Bill deals with the machinery that is required to change the existing organisation that has been known as the State Opera of South Australia Incorporated to a statutory body, to which I have just referred. Honourable members will note that some of the major proposals in the Bill include, first, clause 6, which deals with the establishment of a board of management. It is suggested that the membership shall comprise seven persons. The important changeover provisions from the existing organisations are dealt with in clause 17, under which the State Opera will absorb the former company.

The objects of the statutory body are set out in clause 18, and I have no quibble with them. In fact, I think they cover what ought to be the aims and aspirations of a group of this kind in the field of opera. There are important financial provisions in clause 26, which stipulates that there shall be budgetary control over the organisation in future. Honourable members will see, from reading that clause, that the company must adhere to its budget, which, in turn, will previously have been approved by the Minister. It is only right and proper that that kind of control should be exercised and, indeed, that it should be part of the legislation under which the statutory body will operate.

Parliament will be kept abreast of the company's activities under clause 28, which requires that annual reports be presented to and laid on the table of both Houses of Parliament. I draw honourable members' attention to clause 19, which gives the State Opera the power to acquire land compulsorily. I refer honourable members to this clause, as from time to time over the years there has been considerable opposition in the Council to statutory authorities having this power. Having given much thought to whether this is a wise provision, I have come down on the side that I do not oppose the company's having this right.

This clause has been inserted in the Bill because those who are planning the future activities of State Opera see the need for further acquisition of property immediately adjacent to Her Majesty's Theatre. Apparently, the theatre, which has been purchased as it has been on what might be termed a walk-in, walk-out basis, has not the potential for the full use that those in charge of the company would like to possess. In such a situation, I do not think it is unreasonable for Parliament to give this statutory body the power compulsorily to acquire premises. Other instrumentalities within our Public Service have that right. Traditionally it has been restricted to instrumentalities concerning themselves with public utilities and public works. I would think that probably this is the first time that power has been given to a body that has been associated with the arts.

With the increase in activity in the arts in this State and with the importance of cultural affairs in our quality of life in South Australia I believe that there is a strong case that can be made out for that particular provision to be contained in the Bill. In looking at the clause one sees that the Land Acquisition Act, 1969-1972, must apply, and the provisions of that Act lay down a fair and reasonable basis upon which compensation must be assessed, and in fact cases in dispute can be assessed by the court. The owners of property are assured of fairness when that particular machinery is set up. I commend the Government for its decision to acquire Her Majesty's Theatre. I think it is deserving of praise and I always want to be fair, particularly in matters of this kind. I was very pleased to see that matter resolved and the uncertainty concerning the future of that theatre settled for all time.

State Opera is a relatively young, enthusiastic and talented company in my view. The board comprises keen and energetic people who have an intimate knowledge of opera. I understand they are still in the process of what might be called building up, and they hope to reach their artistic targets in about two years time.

Honourable members may be interested to know of the size of the actual organisation. From information that I have been able to glean it appears that its present staff is about seven singers under contract in this current calendar year. In 1977 there will be seven additional guest artists for special performances. The administrative staff has numbered about eight and that includes the General Manager (Mr. Ian Campbell), the Planning Manager, the Director of Production, a bookkeeper and a schools officer who, I believe, was seconded from the Education Department.

It might well be that in the management of Her Majesty's Theatre, some new staff might be required, but that increase should not be of undue proportions. I think there is evidence that this rather compact group can probably maintain itself with its current efficient size.

It was not intended that New Opera should compete with the Australian Opera. It was, indeed, its aim to supplement Australian Opera by performances of small opera, of chamber opera, and to perform new and somewhat experimental works. In other words, as a State company it was to involve itself in areas where the Australian Opera did not perform. Also, it has performed very creditably in popular and short opera, and has maintained its activity in this area on a reasonable size scale. Also, as well as opera performances, it has presented vocal items and musical evenings and involved itself in school activities.

Its profit and loss account for the year ended June 30, 1976, shows a net deficit for the year of $91 733. It is apparent that it has passed through a very difficult year indeed. An analysis of these losses reveals that production costs were over the budget by $23 000, income was down

on budget by $35 000, and other non-production expenses were over the budget by $33 000. Those amounts total the approximate $91 000 to which I just referred.

The Government's funding of this company is considerable. The State contribution as far as I can ascertain has been $225 000 for the 1975-76 year. It comprised a basic operating grant of $180 000, a grant for orchestra assistance of $6 000, and advances for prepayments necessary for the 1976-77 season of $40 000.

As well as the State contribution by way of grant, Federal money has been involved and there has been an Australian Council grant of $65 000 and an Australian Council training grant of $5 000. The board of the company, from evidence which I have been able to obtain, is fully cognisant of the serious financial aspects of the operations of State Opera. Consideration has been given to pursuing financial assistance from the private sector. The State Opera Foundation has produced a brochure to help its fund raising. A new Friends of the State Opera has been formed and its purpose, of course, is to develop contributions and donations from the private sector. The company has not as yet really benefited by this promotional activity but it is hoped it will in the future.

It might be of interest to honourable members to know that one very generous South Australian company has however, made a donation of $10 000 to the State Opera as a gift and it is to be hoped, of course, that in the future other South Australian institutions might follow that example and be generous in their donations towards such a worthy cause as this one. Also, it is my personal hope that the time will come when the Federal Government will permit some tax deductibility for donations to the arts.

The Hon. F. T. Blevins: Have you asked them about it?

The Hon. C. M. HILL: No.

The Hon. F. T. Blevins: Will you?

The Hon. C. M. HILL: But I intend to carry out some correspondence concerning this matter, and I have had some discussions with people close to the Government. As I was saying, it is my hope that that can be achieved, and if it is achieved I think we will see a considerable change in the policy of private enterprise in this State because, of course, private enterprise will have a greater incentive to make donations than exists at the present time. Honourable members who are interested will be aware of an announcement made on June 4 by the Prime Minister—

The Hon. B. A. Chatterton: Do you suggest a taking over by private enterprise?

The Hon. C. M. HILL: No; I suggest it takes over more in the fields of the arts, and it would have a great incentive to make contributions of this kind if it could receive some taxation benefit. So, as that leadership has been given by Mr. Fraser in his encouragement to try to formulate plans for private enterprise to take a greater interest in the arts, I hope that it comes down to State levels and that in South Australia we shall see more contributions from private enterprise. If that target can be achieved, the subsidies and losses to which I have referred will not be so great and there will be more co-operation between the public and private sectors in assisting State Opera in the future.

However, there is the important aspect that cannot be overlooked—the need for strict Ministerial control over an operation of this kind. With strict Ministerial control and a realistic approach by the board, costs should be kept within reason. Certainly, there is no reason to fear the huge costs and losses associated with Australian Opera, which of course has involved itself in vast productions and grand opera as a national company.

Having made a close study of State Opera, I am of the view that its board and its general manager (Mr. Ian Campbell) realise the need for careful budgetary planning in the future. I have confidence in their ability to keep their losses, and therefore the Government subsidies, to reasonable levels. I believe State Opera will in time take a worthy place alongside the other instrumentalities such as the South Australian Theatre Company, the South Australian Film Corporation, the Art Gallery of South Australia, and the Adelaide Festival Centre Trust, to stimulate and develop the provision of varied entertainment for South Australians in the future.

I hope that more and more people will patronise State Opera as it establishes itself in its new home, Her Majesty's Theatre. I point out that this Bill has been to a Select Committee in another place, and the finding of that Select Committee was that, with a few minor amendments, which have been effected in another place, it should be approved. Whilst commending the company, as I have done, on its endeavours in its early years of establishment and expressing confidence in its future, I stress that the Government has a serious responsibility to oversee its continued establishment and its performance. Subsidies paid to such statutory bodies do not come from a bottomless well: the money comes from the people at large, by way of taxation.

A high degree of administrative expertise is essential to provide fair and reasonable subsidies for such instrumentalities and, at the same time, to see to it that in return the new State Opera performs to a high standard, excellence being its paramount goal. The Premier is fortunate that within his Arts Development Section and his Treasury Department he has officers who possess these administrative skills.

However, the ever-increasing grants (in the year 1975-76 these amounted to $1 516 785 for major continuing projects, and $184 777 for minor grants) highlight the ever-increasing responsibility on the part of the Premier and the Government to be watchful and most careful in this area. If waste or carelessness become apparent in such expenditure at any stage, the Government and the Premier will not escape severe criticism from the Opposition or from the people of this State. With those remarks, I support the second reading.

The Hon. J. A. CARNIE secured the adjournment of the debate.

## LONG SERVICE LEAVE (BUILDING INDUSTRY) ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 18. Page 2293.)

The Hon. D. H. LAIDLAW: The Bill contains three specific provisions. The first relates to whether or not a worker should lose his entitlement to long service leave if he is guilty of wilful misconduct. The second relates to the application of the legislation to employees dismissed from their employment during the period from October, 1976, to April 1, 1977, when the legislation will come into operation. The third relates to administrative matters in relation to the principal Act, and particularly to the collection of money.

When the principal Act was debated in this Chamber last February, honourable members on this side opposed the principle of portability of long service leave in industry, which is the gist of the Act. Amendments were passed. These

matters went to a conference and, as result of a compromise, it was enacted, in section 2, that the legislation should not take effect until April 1, 1977, and in section 23 that, where the Long Service Leave (Casual Employment) Board is satisfied that a worker with less than 10 years service was dismissed for serious and wilful misconduct, it may, after giving the worker and employer opportunity to be heard, remove the long service entitlement of that worker.

The Minister of Labour and Industry was Chairman of the conference to which I have referred. He moved in another place for adoption of the amendments which were agreed upon at the conference. I trust that honourable members will share my dismay that the Minister now proposes to delete the provision regarding serious and wilful misconduct before it comes into law on April 1 next.

The stand taken by honourable members with regard to the portability of long service leave and the need to preserve wilful misconduct as a deterrent was supported by the Full Bench of the Australian Conciliation and Arbitration Commission in its decision in the test case for amending long service leave provisions in the Federal Metal Trades Award. Mr. Justice Coldham, the presiding Judge, when giving judgment on October 21 last, said:

> The claims for portability of long service leave . . . must be rejected. Moreover, they present difficulties which run counter to the concept of long service leave.

I may add, for the benefit of the Hon. Mr. Foster, that it was a unanimous decision of the Full Bench. His Honour continued:

> Pro rata payment is made in all circumstances save where an employee is dismissed for wilful misconduct.

I gave other reasons in the preceding Bill on long service leave amendments why serious and wilful misconduct should be retained, but the action of the Minister is a further reason why in this Bill I shall oppose the deletion of section 23.

The second matter to which I refer is clause 10. It provides that, where a worker in the industry loses his job after October 1, 1976, but returns to the industry prior to October 1, 1977, he can be regarded by the board as being a worker in the industry when the Act comes into effect on April 1, 1977. Although the man is not working in the industry on April 1 next, he will be regarded as working there so that his long service leave can be protected. This provision has been supported by the Master Builders Association and the building unions and it is designed to assist the worker who may be prejudiced because of an expected down-turn in the industry next year. I support clause 10, and I shall support the Bill, other than the provision that repeals section 23.

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

## ELECTORAL ACT AMENDMENT BILL (No. 4)

Adjourned debate on second reading.

(Continued from November 17. Page 2224.)

The Hon. R. C. DeGARIS (Leader of the Opposition): This Bill is largely a Committee measure and makes several amendments and consequent amendments to the principal Act. I hope that the Bill does not reach the Committee stage today, because much work is involved in reading the Bill into the Act. However, the principles can be supported. The Council should give credit to the Hon. Mr. Whyte for having introduced a Bill to do what the main amendment made by the Bill now does, but the Government did not support the Hon. Mr. Whyte's Bill at that stage.

The concept is very worth while. One of the most important things that anyone can do in an electoral system is ensure that any person who has a right to vote has reasonable opportunity to do so. For many years, particularly recently when there has been short notice and when the time from the close of nominations to polling day has been about 10 days, everyone has not had a reasonable opportunity to cast a postal vote. No-one can say that this situation is fair or that it should continue. The Bill that the Hon. Mr. Whyte introduced about 12 months ago gave these people the right to be on the roll as permanent postal voters.

I do not think anyone can disagree that votes should be posted to these people as soon as nominations close, but I do not know whether this takes the matter far enough. I ask the Minister a question in relation to people in the outback who have a weekly mail service. They may receive the ballot-paper on the Monday or Tuesday before the Saturday when the election is held, and that ballot-paper does not always get back to the returning officer until after polling day. I ask the Minister whether there is provision in the Act for such a ballot-paper to be counted, or whether the returning officer must receive it by the day on which the election is held for it to be counted.

If such votes are not counted, people on the postal voting roll still may not have a reasonable opportunity to vote, because of difficulties of communication. I ask whether a ballot-paper that is sent back as soon as the voter receives it or as soon as practicable after receiving it is a valid vote. I believe that it should be valid, when the fault is not that of the voter. As the Hon. Mr. Foster stated some time ago, it may be that we should increase the amount of time between the close of nominations and polling day, but no person should be denied the right to cast a valid vote in an election.

Another amendment deals with the appointment of a Deputy Electoral Commissioner, and many provisions cover that matter. Although I have not checked these provisions thoroughly, there seems to be nothing wrong with having a Deputy Electoral Commissioner. However, I should like the opportunity to check the matter. Another provision applies section 110a of the Act to Legislative Council voting. That section allows a person whose name has been inadvertently omitted from the roll to apply to the returning officer and say that his name should be on the roll. That person can sign a declaration, get a ballot-paper, and have it placed in a sealed envelope for checking by the returning officer. When changes were made regarding the Legislative Council, this matter was overlooked and such a person has been entitled to vote for a House of Assembly election but not for a Legislative Council election. That anomaly should be corrected. Another amendment deserves close examination, and I urge all other honourable members to consider its ramifications. That provision allows electoral visitors to go to institutions to take the votes of people there, and I am concerned about the statement in the second reading explanation dealing with the matter. That explanation states:

> This voting procedure should eliminate the possibility, which exists in the case of postal voting, of an elector being improperly influenced in his vote by another person.

I have heard all sorts of tales of improper influence regarding postal voting in institutions, but I can honestly say that, in my experience, I have never known anyone to take an improper course in that regard, whether that person was a member of the Australian Labor Party or the Liberal Party. I have seen much of this work done, as I have spent a long time in hospital. At no stage was I ever

improperly approached or in any way canvassed for my vote when asked whether I wanted a postal vote. I merely applied for and was given it, and I was left to my own resources to mark the ballot-paper.

Whilst improper influence may have been used, to my knowledge that has not occurred in this matter. Nevertheless, I support the idea that it is a little degrading to see people running around hospitals in regard to postal voting. I would prefer to see a system whereby an officer of the Electoral Department attended various hospitals. In many hospitals a polling booth could be established and the secretary of the hospital could act as returning officer for that booth and could assist patients in voting. Certainly, I would not object to that procedure. Some change in the procedure is justified, and I support the manner in which it is done, although I will be considering amendments regarding those people and under whose control they shall be.

I believe they should be appointed by the Electoral Commissioner, and be under his control for the entire period in which they act in this capacity. Indeed, such officers could vote before election day; but I do not know. However, I do not object to this change, but I would like to examine the standing of the electoral visitors. I believe they should be described as returning officers for a specific institution, rather than merely being called electoral visitors. They should have the title of returning officer, the same title that other people hold in various polling booths.

The Hon. Mr. Whyte raised the matter of a person removed from the permanent postal voting roll. He said there should be a requirement for the Electoral Commission to advise such a person that his name is to be removed from the roll before it is, in fact, struck off. At present, the Commissioner can remove a person from the permanent postal voting roll, but the person may not know that he has been removed from the roll. That seems to be an anomalous position. Further, I do not agree altogether with the prescription for areas in which the postal voting roll will apply. The Hon. Mr. Whyte's original concept was correct: any person who is a certain distance from an existing polling booth should have the right and be granted the right to enrol on the permanent postal voting roll. Certainly, I do not believe there is any need for any prescription. That should be the one condition governing whether a person has the right to apply to go on the permanent postal voting roll.

I support the second reading, although I believe that this is a Committee Bill, and many small amendments need to be considered to ensure that the Bill carries out the exact functions detailed in the second reading explanation. For honourable members following this debate in *Hansard*, I point out that the second reading explanation can be found under the incorrect heading "Constitution Act Amendment Bill" at page 2038 (November 10) of *Hansard*.

The Hon. JESSIE COOPER secured the adjournment of the debate.

## CITY OF ADELAIDE DEVELOPMENT CONTROL BILL

Adjourned debate on second reading.

(Continued from November 16. Page 2152.)

The Hon. R. C. DeGARIS (Leader of the Opposition): I support the second reading of the Bill, which virtually continues the original legislation and which established the City of Adelaide Development Plan. Although I do not wish to speak at length on this matter, there are points that must be made. First, the Bill provides that the appeal from the committee's decision should be heard by the Minister. This is the present position, and it is also the position applying in Western Australia. However, Western Australia has decided that the appeal should no longer go to the Minister. I believe that the Minister is sick and tired of all the appeals made to him, and Western Australia is seeking to have the appeal heard by a single judge.

I believe it would be beneficial in South Australia for an appeal from the committee's decision to be heard by a single judge, rather than by the Minister. I invite comments from the Minister on that point. The committee is comprised of four members nominated by the Government and three by the City Council. However, it would be reasonable under the City of Adelaide Development Control Bill for the council to have an equality of numbers with Government nominees on the committee. Honourable members must realise that this Bill is unique in respect of planning in South Australia, the Bill placing the City of Adelaide in a unique position in respect of planning in this State. The Bill adopts principles laid down in a development plan, yet they are not all planning principles. The Bill refers to the principles set out in a previous document, and this is a unique situation. I suggest that the City of Adelaide should have equality in numbers with Government nominees on the committee.

There are several other aspects on which I wish to touch briefly. Clause 5 is a clause that does not bind the Crown. The argument in relation to this aspect has gone on almost interminably in this Council for many years. So far, the Crown is not bound in any planning legislation, although I have been approached by many organisations seeking that the Crown be bound in this Bill. However, looking at past decisions of this Council, I do not believe that that should be the case, but I ask the Minister to give the same undertaking he gave initially: that the Crown abide by the decisions made in relation to the City of Adelaide Development Plan. So far, this has been done. Will the Minister give such undertaking?

The Bill is peculiar in that it refers to the development plan, and the plan and the planning decision in it become the principles of this Bill. This Bill enshrines those principles in legislation, without those principles ever coming before this Council for examination. This is a unique position in South Australia. Those principles that are concerned with planning should come down to this Council in the form of regulations; they should not be adopted across the board through a piece of legislation such as this. The same principle that applies to other local government areas should apply to the city of Adelaide. The Subordinate Legislation Committee should have the opportunity of considering these matters. I repeat my three main points: first, the question of an appeal to a single judge, not to the Minister; secondly, the question of a four-four balance on the committee, not a four-three balance; and, thirdly, the question of the principles involved in this Bill, which refers to another document altogether, coming down as regulations, so that the people affected by the regulations can give evidence to the Subordinate Legislation Committee, which can then report to Parliament. I support the second reading of the Bill.

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

## SUCCESSION DUTIES ACT AMENDMENT BILL

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

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

*That this Bill be now read a second time.*

Its principal object is to remove the burden of succession duty on property passing between spouses and on all bequests to benevolent institutions. It is interesting to note that succession duty was first introduced in this State on October 23, 1876—almost exactly 100 years ago. Last year saw a significant easing of this tax in relation to property passing from a deceased person to his family, particularly where a matrimonial home was a major asset in the estate. Now, on the centenary of this tax, I am happy to be proposing these further concessions, which will go some way towards relieving the financial difficulties surviving spouses very often suffer, and will aid benevolent institutions in this State. It is heartening to be presenting a Bill that reduces, and not imposes, taxation, and this of course once again demonstrates the Government's declared intention of easing tax burdens on the people of this State wherever possible. The Bill also seeks to overcome several minor administrative problems. I will explain these as I deal with the clauses in detail.

Clause 1 is formal. Clause 2 renders these proposed amendments effective as from July 1, 1976. Clause 3 is a consequential amendment. Clause 4 provides that the proposed amendments will operate only in respect of the estates of persons who died on or after July 1, 1976. Clause 5 repeals the provision inserted last year exempting a gift between spouses of an interest in a matrimonial home. This provision will become redundant. Clause 6 exempts from duty all property passing between spouses.

Clause 7 provides for the filing of succession duty statements. The information to be contained in such a statement shall be as prescribed. It is intended that very little information need be provided in relation to property derived by a spouse, thus relieving the administrator of the obligation to have expensive valuations made. Clause 8 removes the present obligation of the Commissioner of Succession Duties to inform the Registrar of Probates of the "net present value" of all estates. The Commissioner will not necessarily know this in relation to property passing between spouses. It is intended that probate fees will be reviewed. Clauses 9 to 15 inclusive effect consequential amendments.

Clause 16 provides that the rate of interest to be paid on refunded duty under this section shall be as fixed from time to time by the Treasurer. It is not desirable to specify a rate of interest in the Act. A similar amendment was made in 1975 to sections 51 and 55 of the principal Act. Clauses 17 and 18 recast the wording of these sections in a less confusing form. Clause 19 inserts a new section that provides for the granting of certificates by the Commissioner in relation to the releasing of assets under the two preceding sections of the Act.

Clause 20 provides that regulations may be made for fixing and recovering valuation fees where a valuation is made at the instigation of the Commissioner. Clause 21 provides that all gifts for the advancement of religion, science or education and all gifts to a benevolent institution or society are exempt from succession duty. As the Act now stands, some charitable bequests bear duty at 10 per cent while others are completely exempt.

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

## LICENSING ACT AMENDMENT BILL (No. 2)

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

## URBAN LAND (PRICE CONTROL) ACT AMENDMENT BILL

The House of Assembly intimated that it had agreed to amendments Nos. 1 and 5 made by the Legislative Council; had agreed to amendments Nos. 3 and 4 with the amendments indicated in the schedule; and had disagreed to amendment No. 2.

*Schedule of the amendment made by the Legislative Council to which the House of Assembly has disagreed:*

No. 2. Page 1—After proposed new clause 1a insert new clause 1b as follows:

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

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

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

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

*Schedule of the amendments made by the House of Assembly to amendments Nos. 3 and 4 of the Legislative Council:*

*Amendment No. 3 of the Legislative Council:*

Page 1, line 17 (clause 2)—After "land" insert "to which this Act applies".

*House of Assembly's amendment thereto:*

Leave out the words "to which this Act applies" and insert in lieu thereof the words "within the controlled area".

*Amendment No. 4 of the Legislative Council:*

Page 1, line 21 (clause 2)—After "land" insert "to which this Act applies".

*House of Assembly's amendment thereto:*

Leave out the words "to which this Act applies" and insert in lieu thereof the words "within the controlled area".

Consideration in Committee.

*Amendment No. 2:*

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

That the Council do not insist on its amendment No. 2. This amendment deals with the question of the incorporation of commission charged by land agents as a legitimate cost to be allowed by the Commissioner. I earlier opposed the amendment because it would strike at the intention of the principal Act. The Government has considered the matter and, while we cannot accept the amendment, the Minister for Planning in another place has given an assurance, and I give the same assurance, that, where a person selling land would make an actual monetary loss because, after allowing for rates and taxes, stamp duty and transfer fees, the interest at the prescribed rate does not permit the vendor to cover the commission to a real estate agent, then the Commissioner of Urban Land Price Control will allow the commission payable to an agent to be recovered to the extent necessary to avoid the discrepancy. The Commissioner will use his discretion under the Act in the manner I have described, on application by the vendor.

The Hon. R. C. DeGARIS (Leader of the Opposition): The matter was discussed with the Minister in another place, who admitted that there were cases before the Commissioner in which persons purported to make a loss on the

sale of their land. This was the position that I tried to overcome by this amendment. The Act gives the Commissioner power to vary the amount that can be charged for a block of land. The Minister has assured me that, where a person is virtually forced to sell a block of land and to make a loss, he will take this into account and allow the agent's commission or part thereof to be recovered to the extent necessary to avoid the discrepancy. Although this is not exactly what I would have liked, with the exception of the first amendment, that is, taking industrial land out of the controlled area, I am willing to accept the Minister's undertaking.

Motion carried.

*Amendments Nos.* 3 *and* 4:

The Hon. B. A. CHATTERTON: I move:

That the Council agree to the House of Assembly's amendments.

The Legislative Council carried an amendment which limited the Commissioner's powers to investigate the areas to which the Act applied. As I said previously, it is not often possible for the Commissioner to make such investigations until the document involved has actually been produced to him. The House of Assembly has carried an amendment to insert "within the controlled area". This provides a limitation on the Commissioner's powers of investigation. It gives him some power to call for documents and to ascertain whether a transaction is one to which the Act applies.

The Hon. J. C. BURDETT: I support the motion. The Committee was correct in moving this amendment. The clause related to calling for documents regarding land transactions and asking questions relating thereto. In the original Bill, this provision applied to all transactions relating to land. It was stated in the debate when the amendment was moved and carried that it should apply only to land to which the Act applied, and that it was unreasonable to extend the provision beyond that.

The House of Assembly has not agreed to that amendment, although it has agreed to confine the calling for documents and asking of questions to land within the controlled area. That does at least exclude documents being called for and questions being asked about land outside the controlled area. However, I think it is still an undue imposition, in that documents can still be called for and questions asked about land within the controlled area.

The House of Assembly has said that it disagrees with the Council's amendment because "it destroys the basic purpose of the Bill". However, the basic purpose of the Bill was to extend the period of operation of the principal Act for 12 months, and the amendment has nothing to do with that. Nevertheless, I support the motion.

Motion carried.

## COUNTRY FIRES BILL

Received from the 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.*

It implements the recommendations made by a working party appointed in 1971 by a former Minister of Agriculture (Hon. T. M. Casey, M.L.C.) to inquire into and report upon all aspects of a proposed reorganisation of country fire services in the State. (These recommendations are to be found in Parliamentary Paper 106 of 1972.)

The Bill preserves many principles from the existing Act that have been proved valid by long experience. However, it also introduces much that is new. The provisions for administration are more comprehensive and complete than in the old Act, and there has been a good deal of rationalisation and simplification of substantive provisions previously contained in the old Act. The principle of a separate Act for bush fire control and country volunteer fire services is in keeping with the policy in every other State, each of which has its respective "country", "rural" or "bush" fires legislation. The title "Country Fires Act" was adopted as the most appropriate name because, although much of the Bill is applicable throughout the State, its major provisions relate to the establishment and maintenance of country fire services and the fighting of fires outside fire brigade districts.

The change in title from "S.A. Emergency Fire Services" to "S.A. Country Fire Services" is designed to avoid confusion with other emergency bodies and to obviate inappropriate calls upon C.F.S. services. The Bill provides for a board of 10 members, a Director of Country Fire Services, and such other officers as may be necessary to enable the functions presently performed by E.F.S. headquarters and the various bush fire committees of the S.A. Police Department, the Minister of Agriculture Department and the Agriculture and Fisheries Department to be consolidated under the management of the one statutory body.

Statutory fire control regions, regional and district committees are proposed by the Bill. A statutory fund is to be administered by the board. This fund will be applied both in defraying general administrative expenses and in subsidising the purchase of equipment by C.F.S. organisations. Contributions to the fund are to be made by Government, insurers, councils and C.F.S. organisations. An innovation of special interest is a provision for the formation of a joint "Fire-fighting Advisory Committee" to advise the Minister, the Fire Brigades Board and the Country Fire Services Board on any matter affecting the co-ordination or rationalisation of fire-fighting services in the State.

The Bill is significantly shorter than the present Act. The condensation of the old legislative provisions has not resulted in the omission of any major principle from the Act. However, many antiquated provisions have been dispensed with and a good deal of administrative and minor detail has been left to the regulations. A vast amount of time and effort has gone into the drafting of this important measure, which is designed to co-ordinate and rationalise the operations of country fire services and to simplify the law relating to wildfire suppression and control for the benefit of the general public. I seek leave to have the rest of the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

### Explanation of Clauses

Clause 1 is formal and clause 2 enables the operation of specified clauses to be suspended if necessary when the Act is brought into operation. Clause 3 sets out the arrangement of the Bill. Clause 4 repeals the Bush Fires Act, 1960, and its amendments, dissolves the Bush Fires Equipment Subsidies Fund and transfers the moneys to the Country Fire Services Fund. Clause 5 sets out the definitions necessary for the purposes of the Bill. The definition of "burning off" seeks to overcome the problem that the distinction between "burning off" and "lighting a fire in the open air" is often unclear. A new definition of "fire danger season" is included. This term comprises the periods that were previously known as the prohibited and conditional burning periods.

Clause 6 directs attention to the State-wide application of certain provisions of the Bill. This provision is designed to avert confusion as to the territorial application of the Bill. Clauses 7 to 16 establish the Country Fire Services Board, and deal with various matters pertaining to its membership and proceedings. Clauses 17 and 18 provide for the board to appoint a director and other officers and to determine the terms and conditions of the appointments. The board is constituted a public authority for the purposes of the meaning of the Superannuation Act. Clause 19 provides for the proclamation of fire control regions, and the establishment of regional fire-fighting associations.

Clause 20 empowers the board to register district fire-fighting associations. Clauses 21 and 22 provide for the board to register C.F.S. fire brigades and to register "group committees" for brigades which desire some formal interconnection for the purpose of training activities or major fire-fighting operations. Clause 23 enables the board to cancel the registration of a C.F.S. organisation at its request, or when the organisation has become defunct or is not properly carrying out its functions. Clauses 24 and 25 relate to the appointment, by the board or council, of fire control officers and fire party leaders. Provision is also made under which certain officers (e.g., foresters) become fire control officers *ex officio*.

Clause 26 provides for compensation for injury or death of a fire control officer, fire party leader or member of a C.F.S. fire brigade. The Workmen's Compensation Act applies as if his employer were the board. Clause 27 establishes a joint committee, appointed by the Governor, comprising a Chairman and four members; two members being nominated by the Fire Brigades Board and two by the Country Fire Services Board. The committee is to advise the Minister and the boards on any matter affecting the co-ordination or rationalisation of fire-fighting services in the State and on certain other matters.

Clauses 28 to 31 enable the board to establish and maintain the Country Fire Services Fund which comprises any moneys appropriated by Parliament or recovered by the board, for the administration of the Act. The board may, with the approval of the Treasurer, invest or borrow moneys. The clauses also provide for contribution by insurers to the expenses of administering the Act. Clauses 32 to 35 maintain the obligation of a council to provide adequate equipment in its areas for fire-fighting and enable the council to expand its revenue for that purpose. Where in the opinion of the board, a council has failed to provide adequate equipment, the board may require the council to acquire specified equipment to overcome the deficiency. An appeal lies to the Minister against such a requirement.

The board may, with the approval of the Treasurer, make a grant out of the fund to any council or C.F.S. organisation for providing buildings, equipment or materials and for defraying working expenses incurred in fire-fighting. Equipment, purchased with the help of grants, may not be sold or disposed of without the consent of the board. Clause 36 exempts the board from the payment of rates under the Local Government Act, the Waterworks Act, or the Sewerage Act, and land tax under the Land Tax Act. Clause 37 introduces the concept of a "fire danger season" which is to be the period from November 1 to April 30 or the period as altered under the terms of the Bill. The "fire danger season" replaces both the "prohibited burning period" and the "conditional burning period" under the Bush Fires Act.

The Board is empowered to alter the "fire danger season" in the whole or any part of the State but it must consult with a council before making any alteration that may affect the area of a council. A council may, on the ground of seasonal conditions, request the board to alter the fire danger season and the board must accede to such a request unless there is good and sufficient reason for not doing so. Clause 38, another new concept, deals with all types of fires in the open air whereas the Bush Fires Act has fragmented provisions dealing with various kinds of fires. Basic conditions for the lighting and maintaining of various kinds of fires are laid down in the clause and provision is made for detailed rules to be prescribed in the regulations. This clause further provides for February 16 to be the "prescribed day". This was, in effect, the commencing day of the "conditional burning period" under the Bush Fires Act. During this period the burning off of bush and stubble may be generally undertaken for the purpose of farm management. The board may alter the "prescribed day" for the whole or a part of the State and is required to consult with the council of any area which may be affected by such an alteration. A person may burn off bush or standing grass within 14 days after the commencement of the fire danger season or within 14 days of the prescribed day provided that he is authorised by an order of the board or by a resolution of a council. This provision thus preserves the power of councils, under a different form, to effect what is presently called the "seasonal alteration of periods" under the Bush Fires Act.

Clause 39 restricts burning off land on public holidays. Clause 40 empowers the board to prohibit the lighting of fires in the open air in any part of the State after consulting with the council of any area affected by the prohibition. The regulations may exempt certain fires from the terms of any such prohibition. Clause 41 retains the prohibition of the lighting and maintaining of fires in the open air on days of extreme fire danger. Clause 42 provides for regulations to be made for the prohibition or safe use of prescribed fires.

Clause 43 enables regulations to be made to deal with the wide variety of machines and appliances which produce heat or sparks and thus constitute a fire danger. Clause 44 provides for the board and councils to issue permits for the lighting of fires in certain circumstances. Clause 45 provides for the carrying in caravans of an efficient chemical fire extinguisher during the fire danger season. Clauses 46 and 47 prohibit smoking near flammable bush or grass and the throwing of burning material (e.g. lighted cigarette butts) from vehicles during the fire danger season.

Clause 48 empowers the board or a council to require the owner of premises situated outside a fire brigade district to take such action as is considered necessary to prevent the outbreak or spread of fire from those premises. An appeal lies to the Minister against such a requirement.

Clause 49 provides for the clearing of flammable debris from roads during or on completion of roadworks, and in the event of default, empowers councils to dispose of the flammable material and recover the costs involved. Clause 50 empowers the board or a council to give written directions for the clearing of bush or grass from any land to prevent the outbreak or spread of fire, and provides a right of appeal to the Minister against any such direction. The authority of the board in this regard extends over a council in respect of land under that council's care, control or management.

Clauses 51 to 57 describe the powers of fire control officers, fire party leaders and police officers in the control and suppression of fires and provide penalties for hindering officers in the performance of their powers and functions. Clause 58 provides a reciprocal arrangement for co-ordination of fire-fighting operations at or near adjoining

State boundaries by empowering a member of a recognised interstate fire-fighting organisation to take control of operations in the absence of a fire control officer. Clauses 59 to 61 relate to the installation and use of fire alarms and appliances and prescribe penalties for their misuse. Clauses 62 to 66 contain a miscellany of legal provisions. Clause 67 contains regulation-making powers, and clause 68 preserves powers conferred by the Fire Brigades Act, 1936-1976.

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

## CRIMINAL LAW CONSOLIDATION ACT AMENDMENT BILL

In Committee.

(Continued from November 17. Page 2219.)

Clause 12—"Offences involving sexual intercourse."

The Hon. J. C. BURDETT: I move:

Page 4, lines 13 to 18—Leave out subsections (3) and (4) and insert subsection as follows:

(3) Where—

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

and

(*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.

I gave my reasons for this amendment in my second reading speech. Other honourable members have given their reasons and I do not think there is any need to go into any great detail. I would just say that the Bill in its present form goes beyond the recommendations of the Mitchell committee report, and my amendment is exactly in accord with that report. Contrary to what the Hon. Mr. Foster sought to imply when he spoke last week, the Mitchell committee did fully investigate the matter as to whether a husband should be indictable for rape against his wife and, if so, whether it should be only while they were living apart or otherwise. It quite clearly made its recommendation which appears on page 15 of the subject report, which states:

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.

That portion of the report commences on page 13 and is entitled "Husbands". The question was fully canvassed as to what ought to be done and the committee specifically decided that a husband should not be indictable for rape against his wife except while they were living separately and apart, and it gave its reasons. The reasons included that a vindictive wife might be able to lay a false accusation against her husband which could lead to an injustice, and I suggest that such allegations might be made by other than vindictive wives.

In my second reading speech I said that this argument was valid but would not carry much weight with me if I thought clause 12 would give any real protection to any married woman, but I do not believe that it will. I prophesy that if clause 12 passes in its present form there will be more completely unjustified complaints of rape in marriage than there will be justified ones. In my view clause 12 as it stands will not give any practical protection. The Mitchell committee is a learned committee to which the South Australian public owes much. It is advanced in its thinking and in many respects radical in the best sense of that word.

Throughout its various reports I have not agreed with all of its recommendations, but I suggest that it would be a bold and unwise step to go beyond its recommendations. Some criticism of the reasons given by the committee has been made in its specifically declining to recommend that a man be able to be convicted of rape even while cohabiting with his wife. With a committee of this kind on a subject such as this it must be difficult enough to reach a conclusion but well nigh impossible to set out in a satisfactory way the reasons of the committee. Each individual member has, no doubt, various reasons and I think it likely that some members reached the same conclusion for different reasons. The important thing is that this responsible committee declined to take the step which the Government is asking us to take. I find the logic of the Hon. Anne Levy astonishing when she said:

Now that this matter of rape in marriage has been raised, to amend this Bill by defeating this clause would be taken as *carte blanche* for husbands to rape their wives. Before the matter had ever been raised, this need not have applied but, when this prohibition is being suggested, if members opposite reverse this or turn down this prohibition, it will be viewed as their condoning, and even encouraging, such behaviour.

The position is that the Government's own committee declined to recommend that husbands be able to be convicted of the specific crime of rape while cohabiting with their wives. If the Government chooses to go beyond this recommendation and if some members of this side accept the recommendation of the Mitchell committee it is ridiculous to suggest that we are condoning anything. We are not responsibile for the Government's rejection of the recommendations of the committee and surely we are entitled to say that we agree with a recommendation. If anyone wants to place any sinister interpretation on our motives and say that we are encouraging violence within marriage they are free to do so, but it would not be true and it does not follow from what we have said.

It is nonsense and it most certainly would be an attack on the institution of marriage to say that there is no difference between people who are married to each other and those who are not. I know that we are talking about violence and I in no way condone that, but we are asked to change the law and we should have regard to the facts. The question of sexual relations is fundamental to the matter of marriage. It is not the only or even the most important part of marriage but it is basic and fundamental. People who are married have the obligation to accede to the reasonable sexual demands of their partners.

We are talking about unreasonable and violent requests but there is a basic difference concerning people who are married to each other and those who are not. Those married to each other have an obligation concerning sexual satisfaction and people who are not married to each other have, to say the least, no such obligation. There is a difference, and as the Hon. Mr. Whyte said last week, if things are different they are not the same.

Susan Brownmiller said on *Monday Conference* last week and is reported in the *News* as saying that South Australia would be the first place in the world to introduce this kind of legislation. In her book she said that such legislation did exist in Sweden, Denmark, the Soviet Union, and some other communist countries. The research I initiated could not discover the authority for this statement but, be that as it may, she said in Adelaide last week that this State would be the first in the world. I am not sure whether she was right in her book or in what she said last week. It is an honour to be the first in the world if one is right, but one should be quite sure that one is right. If my amendment is defeated, we shall be creating a first

contrary to the recommendation of the Government-appointed Mitchell committee, contrary to the only available public opinion poll, whatever the Hon. Anne Levy may choose to speculate about it, and contrary to the responsible action recently taken by the Western Australian Government. If the Hon. Anne Levy would like another public opinion poll to be taken, I should be interested to see the results. If we pass this Bill, we are making a "first" and we should think seriously about it. For these reasons, I urge the Committee to support my amendment.

The Hon. ANNE LEVY: I oppose this amendment strongly. Many of the reasons for doing so have been canvassed broadly in the second reading speeches of most honourable members, but I think a few points should be made. The Hon. Mr. Burdett seems to regard the Mitchell committee's report as some sort of a Bible that is inviolable and must not be deviated from.

The Hon. J. C. Burdett: I did not say that at all.

The Hon. ANNE LEVY: It will be interesting to see whether he follows the same line of argument in dealing, say, with the crime of incest or age of consent, both of which have been the subject of recommendations by the Mitchell committee report, with the documentation and reasons for the changes given in that report. I trust that at that time the Hon. Mr. Burdett will take exactly the same lines as the Mitchell committee recommended and say that the recommendation should not be deviated from. I do not think the fact that the Mitchell committee has recommended something means that this Parliament must, or is in any way obliged to, follow exactly what that committee has recommended. We are certainly at liberty to do as we think is necessary in this matter, as in all other matters.

The Mitchell committee made only a recommendation: we make up our own minds, or at least I hope we do, in this matter. The same comments can be made about suggestions made by Susan Brownmiller. She is not a legislator in this State; she does not have the responsibility of making laws here, although the comments made by people outside this Chamber, and certainly in the community, are relevant to the comments made within the Chamber in which we legislate. It may well be true that South Australia is classed, under clause 12 of the Bill, as being the "first in the world". I for one would be proud if that were the case. In this context, I think that perhaps it is worth quoting a comment by the Hon. Mr. Carnie (admittedly, made in a different context) when he told us last week that it is the duty of Parliament to give a lead, not merely to follow. This is certainly an occasion when it is up to Parliament to give a lead. I still maintain my remarks in the second reading debate that, once the question of rape in marriage has been raised, it is impossible for any honourable member present to take a neutral stand: either we are condoning rape within marriage, or we are not. If we are not, we must say so in our law. That applies to everyone here.

The Hon. R. C. DeGaris: If we pass the amendment it does not mean that the law condones rape in marriage; it is untrue and unjust to make that statement.

The Hon. ANNE LEVY: I do not think it is. We have a Bill to criminalise rape in marriage. If one does not go along with the idea of criminalising rape in marriage, it must mean that one is condoning a husband's treating his wife as a chattel.

The Hon. R. C. DeGaris: Not at all.

The Hon. ANNE LEVY: Despite what the Hon. Mr. Burdett said, we return to the fact that wives are not the chattels of their husbands. They must have the right to make up their own minds about any act of intercourse; anything else is abhorrent in this modern day and age. Without labouring the point too much, I should like to quote a few remarks from the debate in this Chamber last week. I will not quote any from members on this side of the Chamber, as I assume that members opposite take less notice of what is said on this side than they do of what is said on their own side of the Chamber. The Hon. Mr. Laidlaw said:

> 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. . . . It seems illogical to discriminate against women in a legal, as distinct from a *de facto,* relationship.

I have not heard any honourable member opposite give any answer to that statement.

The Hon. R. C. DeGaris: There are any amount of reasons; you can see them in *Hansard.*

The Hon. ANNE LEVY: The Hon. Mr. Hill said:

> 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.

Then the Hon. Mr. Cameron said:

> 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.

I am sure honourable members opposite have read that in *Hansard;* I will not bother quoting any further from it, but we should all oppose this amendment on the ground of the principle that a married woman should have just as much protection in law against rape as any other woman in our community.

The Hon. M. B. DAWKINS: Both the Hon. Mr. Burdett and the Hon. Anne Levy have used the word "canvassed". I think it has been used correctly: these matters have been canvassed, clearly, in the second reading speeches, and I do not propose to go over what I said in that debate, as I made my attitude clear then. I support the findings of the Mitchell report in this instance.

The Hon. Mr. Burdett made it abundantly clear that he did not support the Mitchell report in every instance, but he did in this case, and I am in exactly the same situation as he is. I believe the Mitchell committee report is reasonable in this portion of it, and for that reason I shall support the amendment. I do not propose to canvass the matter any further, but I want to make one observation before I sit down. I do not say it in a critical way but only to point out the situation. I have noticed a tendency on the part of honourable members to quote from *Hansard* proofs, which are confidential and subject to correction but certainly not subject to alteration. If quotations are made of what honourable members say in this Chamber, those quotations should be made from the weekly *Hansard* volume. I support the amendment.

The Hon. F. T. BLEVINS: I oppose the amendment, and I want to clear up some matters. There was a rather hysterical report in the *Advertiser* of November 13 of a statement by the Rev. J. F. Bodycomb, a Congregational minister, and a gentleman from the Catholic church, Mr. P. Dight. They were concerned about a report in the *Advertiser* on November 11 headed "Churches meddle in rape Bill—M.L.C." That latter report was prepared by religious affairs writer Michael Grealy. His report was fair, and what was printed was substantially correct.

It seemed that the reverend gentleman and the Roman Catholic gentleman had difficulty in reading, and they took me to task in a serious way, saying that I was a sinister character. No-one would agree with that statement. The suggestion was that I was sinister, that I should get another

occupation, that I was not a democrat, and that I was all kinds of dreadful things. In my opinion the basis of their argument was very tenuous, and gentlemen in the business of Christian charity should have known better. The report of their statement includes:

Mr. Bodycomb said Mr. Blevins seemed to suggest by innuendo . . .

That is hardly something on which to attack a person and say he is sinister. The report also states:

If he is implying . . .

Nowhere in the report does the Rev. Bodycomb mention what I said, and if he had done that that would have been fair enough. These people say that I am all these things. What I object to was the legal opinions from these gentlemen. I thought those opinions were gratuitous. If I want a legal opinion, I go to a lawyer, not to a priest.

The Hon. R. C. DeGaris: Where would you go if you wanted religious opinion?

The Hon. F. T. BLEVINS: On questions of morality, I would welcome opinions of the priesthood and other reverend gentlemen of the church.

The CHAIRMAN: What about someone dealing with ecclesiastical law?

The Hon. F. T. BLEVINS: That is something else again. The only religious text that crossed my mind regarding this Bill was that it was better to give than to receive, but I changed my mind about basing an argument on that. A report in the *National Times* states:

Several Adelaide churchmen have spoken out against the changing law, among them the Aglican Archbishop of Adelaide (Rev. Dr. Keith Rayner). He says he is not crusading against it, and does not see it as a major concern. 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.

Dr. Rayner also stated:

. . . but to make the rape law applicable to husbands and wives living together would have some serious consequences.

I could not agree with that more and, hopefully, it would stop rape in marriage. The *National Times* report also states:

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 Young Women's Christian Association believes the principle should be recognised and as a matter of social responsibility supports the change in law.

A report of a statement by Father John (I have no idea what that means, but he is a cleric) states:

The political argument about the wisdom of creating an unenforceable law . . .

I suggest that those gentlemen read what has been written, not attribute to people what has not been written. It is most uncharitable and unchristian to do what has been done, and I should hope that these people could do something better.

The CHAIRMAN: I should like to ask a question, and I will put it to all honourable members. Perhaps they may be able to answer it. I come back to the Hon. Mr. Burdett's amendment. We have heard much about the Mitchell committee report, and that seems to me to be a mixed bag in some way, and it seems to me that some recommendations are inconsistent. In effect, the Hon. Mr. Burdett's amendment allows a married woman separated from her husband to charge her husband with rape, whereas married women living with their husbands cannot do that. We have heard much about the vindictive wife. In my experience, a woman separated from her husband is likely to be more vindictive than a woman living at home, and more likely to bring a fictitious or unreal charge of rape against the husband, yet by this amendment we would be giving that woman a clearer way to make a charge that would be denied the woman living at home. That seems to me to be almost a misconception by the Mitchell committee report, and I shall be pleased if honourable members could answer my question.

The Hon. F. T. BLEVINS: I have several more points to make. *Hansard* at page 2094, states:

The Hon. R. C. DeGaris: In other words, you are
The Hon. F. T. BLEVINS: Certainly, it is a reality today that *de facto* relationships happen, and I am not moralising about that.

That exchange occurred during my second reading speech, and at page 2133 of *Hansard,* the Hon. R. C. DeGaris stated:

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.

I am to blame in this matter to the extent that I am somewhat sloppy in reading *Hansard* proofs, unlike some honourable members, and I did not take up the fact that a comma was placed after the word "Certainly". Therefore, I do not blame entirely the Hon. Mr. DeGaris, although I suspect he knew what I meant.

The Hon. R. C. DeGaris: I knew, and that is why I referred to it.

The Hon. F. T. BLEVINS: No comma was intended. I said it was a reality today, and if the Leader knew anything about me he would know that it would be absurd to suggest that I used a *de facto* relationship or any other relationship as a model for such legislation. I am sufficiently jealous of my reputation in this matter to say that the validity of a relationship and whether that relationship could be used as a model for other relationships has nothing whatever to do with whether or not the people concerned are married in the eyes of the law. A homosexual relationship or a girlfriend/boyfriend relationship can be just as valid as the outwardly neat and tidy legal marriage. I would not want to be seen to be holding any "arrangement" aloft for approval or as a model. The only thing that is important about any relationship is what the people concerned think about each other and the way they respect each other.

The Hon. Mr. Burdett's amendment confirms what has been the consistent attitude of the majority of Opposition members, that the wife is a chattel. Members opposite can deny it, but this is how they consistently think. Does someone's merely saying "I do" in a marriage ceremony imply consent forever? In his second reading speech the Hon. Mr. Burdett stated:

Marriage includes a general consensual arrangement regarding sexual intercourse. I reject any suggestion that it does not.

Once one is married, can one no longer say "No"? The Hon. Jessie Cooper referred to the following quote:

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

The report of the debate that ensued is as follows:

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: I meant it—

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.

Clearly, according to Opposition members, once you are married, that is it. There is no more opportunity to say "No". The Hon. Mr. DeGaris stated:

The question of a wife's having the right to arrange for a prosecution for rape cuts across the concept of marriage. It is implicit in those remarks that there is total subjugation of the woman in marriage: whenever sexual intercourse is desired by the husband, the wife has to agree. That is what was said, but surely marriage is not a consent to rape.

The Hon. R. C. DeGaris: Who said it was?

The Hon. F. T. BLEVINS: The Leader, and the reverend gentlemen of the church.

The Hon. R. A. Geddes: Why not let us vote on the provision and see how we go?

The Hon F. T. BLEVINS: The amendment on file completely disregards the equality embedded in this clause. First and foremost, a wife is a human being, and it is the human being we should be protecting. I oppose the amendment.

The Hon. JESSIE COOPER: On all *Hansard* pulls we see printed "Confidential and subject to revision", yet the Hon. Mr. Blevins has seen fit to quote uncorrected speech from the pulls, rather than quote speech as it is reported correctly in the *Hansard* volume. I object to the honourable member's reference to the *Hansard* pulls.

The Hon. N. K. FOSTER: On a point of order, I take it that the honourable member objects to certain contents in a *Hansard* pull being used, because the corrected version reads somewhat differently. I seek your ruling, Sir, on this matter. Surely it is not beyond the propriety of members of this Chamber to quote in debate what appears in a *Hansard* pull. If that were the case, it would be a reflection on those people who are burdened with perhaps the greatest responsibility in this place, namely, the task of having to take down what is said.

The CHAIRMAN: I do not think that is a point of order, but I think I should say that the quoting of a *Hansard* proof may be all right so long as the printed *Hansard* is not in front of honourable members. When the printed *Hansard* is in front of honourable members, they should confine themselves to it.

The Hon. JESSIE COOPER: The words I object to are, "I meant it." That is a mistake. I corrected that phrase in *Hansard*, and honourable members will recall that I said in reply to the Hon. Mr. Blevins, "When I took my marriage vows I meant them."

The Hon. F. T. BLEVINS: I am full of apologies, which I proffer to the honourable member, although I cannot see what difference it makes.

The Hon. Jessie Cooper: You wouldn't.

The Hon. F. T. BLEVINS: If in any way I have offended the Hon. Mrs. Cooper by doing that, I tender as many apologies as I can, but I cannot honestly see what difference the whole series of exchanges has made to my point that the Hon. Mrs. Cooper sees marriage as a total subjugation of the wife to the husband.

The Hon. N. K. FOSTER: I strongly oppose the amendment. It seems to me that the Hon. Mr. Burdett is an unfortunate captive of a narrow minority viewpoint in the Liberal Party; since he has acquiesced in that viewpoint, he cannot acquaint this Council with an objective approach to the recommendations in the report and to the rights of people. The legal profession ought to have a percentage of people whom one could regard as reformists, but unfortunately that impression does not come through in connection with the amendment. The Hon. Mr. Burdett is splitting the rights of people in the community. The Hon. Mr. Hill would agree with me, and even the Hon. Mr. Burdett might agree with me, that today's younger generation does not regard the marriage oath in the way that most of us regarded it when we took that oath.

The Hon. R. C. DeGaris: What right have you to make that statement? Isn't it an opinion?

The Hon. N. K. FOSTER: I have made the statement in the firm belief that a greater percentage of people today are cohabiting in a way that would have been less likely in my younger days. For the first time, American statistics have revealed in New York that there are more children born out of wedlock than within wedlock. The Liberal Party is the past master of the "divide and conquer" tactic in connection with most things political.

The Hon. C. M. Hill: Where did you get the information about the American statistics?

The Hon. N. K. FOSTER: They are New York statistics; I am sorry if I said that they were total American statistics. The Hon. Mr. Burdett's trained legal mind says that all the legal precedents that he has been taught shall remain and that nowhere will he transgress those precedents to recognise the rights of people over and above them. The Hon. Mr. Burdett takes the attitude that he must be on a winner as regards the amendment, because it conforms to the report.

The Hon. D. H. Laidlaw: You are talking us out of voting with you.

The Hon. N. K. FOSTER: I do not intend to crawl across the Chamber to make up Liberal members' minds for them. A young married woman may go to the Hon. Mr. Burdett and say that she has been assaulted and raped; he might accept the brief. Some lawyers rip money off people right, left and centre, whether or not they have a case at law. Some lawyers get money through advising people as to whether they have a case. Some Liberal members think that the legislative process in this Chamber is based on reports, but that is a load of rubbish. Nothing in this report suggests that this Council cannot legislate in direct contradiction to a recommendation. On the one hand, a married woman can be brutalised and have no redress at all, whereas other women can have recourse to the law. It is as simple as that.

I point out to the mover of the amendment that his mind is so trained that he does not think there should be any form of legislation that might be contradictory to what he thinks. During the last few weeks, some of the women's movements in this city have said that the Hon. Mr. Burdett's amendment will not be easy to police. In fact, it will be fraught with difficulties. We ought to be objective and accord to people in the community the rights to which they are entitled.

The Hon. J. C. BURDETT: In reply to the Hon. Miss Levy, I repeat what I said when moving the amendment. I said then, as the Hon. Mr. Dawkins pointed out, that I disagreed with many of the recommendations made in the various reports of the Mitchell committee. However, I suggested that in this case we should not go outside the recommendations that have been made. In reply to your question, Mr. Chairman, it seems to me that there is an

obvious answer in the case of the husband and wife who are separated. Although I agree that there may be more motive for a wife to be vindictive, in order for there to be any possibility of rape the husband must come to and be with his wife. In such a case, the husband will have to prove that he was not there at the time. Certainly, to say the least, the occasions on which a wife could charge her husband with rape would be limited because he was living away from her. Also, honourable members will recall that on the occasions on which I have referred to vindictive wives I have not laid great stress on it. I said that, although it was referred to twice in the Mitchell committee report, it would not carry much weight with me.

The CHAIRMAN: As far as I can see, that was the only reason given why it was dangerous to introduce this.

The Hon. J. C. BURDETT: That is the only reason why I raised it. I referred, when I moved this amendment, to the difficulty of committees setting out reasons on matters such as this. I think the Mitchell committee was thinking of the case of a husband and wife living together under the same roof, of intercourse occurring, say, in the evening with some sort of consent (I pointed out during the second reading debate the difficulty of drawing the line between consent and non-consent), of the couple's waking up in the morning and having a blazing row, and of the vindictive wife then making an allegation against her husband. This would be much more likely to occur if the parties were living together. However, as I have made clear all along, I have not personally laid any great stress on the matter of the vindictive wife.

The Hon. R. C. DeGARIS (Leader of the Opposition): I believe that in most of their contributions honourable members opposite let emotion rather than reason influence them. The Hon. Mr. Foster, who appealed to honourable members to examine this matter objectively, said that the Hon. Mr. Burdett had a mind that was almost decadent. What did the Hon. Mr. Burdett say? He said that a wife should not be able to charge her husband with rape inside marriage. Because of that, the Hon. Mr. Foster says that the Hon. Mr. Burdett's mind is one of absolute decadence. If the Hon. Mr. Foster ceased his continual personal abuse, there would be little left in his contributions to debate. Let me now examine what the New South Wales Attorney-General, not the shadow South Australian Attorney-General, has had to say about this matter, and let the Hon. Mr. Foster comment on his New South Wales colleague. A report in this evening's *News* states:

The rape within marriage law is being studied by a committee established by the State Attorney-General in New South Wales, Mr. Walker. . . . But Mr. Walker has reservations about legislating to give women the right to charge their husband with rape. "Anyone who has practised in the matrimonial field would realise the viciousness associated with the break-up of some relationships," he said. "Both sides are prepared almost to say and do anything. It really concerns me that women would be given a weapon that could put a man behind bars for 14 years. I think some would use it." Mr. Walker said he accepted that a woman should be able to charge her husband with rape in cases where there had been a reasonable period of separation. But he was concerned about the practicalities of it when two people were living together.

That statement was made by the New South Wales Attorney-General in the last couple of days. We are seeing here not necessarily Australian Labor Party policy, and certainly not the recommendations of the Mitchell committee, but a group of people who want to be the first cab off the rank in the world. That is what we are achieving. I support the amendment moved by the Hon. Mr. Burdett.

The Hon. D. H. L. BANFIELD (Minister of Health): The Government opposes this amendment. I said previously that the Government did not think that a *de facto* wife should have any advantage over a married woman.

The Hon. M. B. Dawkins: She hasn't.

The Hon. D. H. L. BANFIELD: She has an advantage under this amendment. We have previously indicated our attitude to this amendment. Members opposite have said that our argument is based on emotion and that theirs is based on reason: if that is so, I think their reason is up to putty. I oppose the amendment.

The Committee divided on the amendment:

Ayes (7)—The Hons. J. C. Burdett (teller), J. A. Carnie, Jessie Cooper, M. B. Dawkins, R. C. DeGaris, R. A. Geddes, and A. M. Whyte.

Noes (13)—The Hons. D. H. L. Banfield (teller), F. T. Blevins, M. B. Cameron, T. M. Casey, B. A. Chatterton, J. R. Cornwall, C. W. Creedon, J. E. Dunford, N. K. Foster, C. M. Hill, D. H. Laidlaw, Anne Levy, and C. J. Sumner.

Majority of 6 for the Noes.

Amendment thus negatived.

The Hon. D. H. L. BANFIELD: The Committee has yet to consider another amendment to this clause, but as I would like to have a further look at it I ask that progress be reported.

Progress reported; Committee to sit again.

## STATUTES AMENDMENT (CAPITAL PUNISHMENT ABOLITION) BILL

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

## ADJOURNMENT

At 6.10 p.m. the Council adjourned until Wednesday, November 24, at 2.15 p.m.