LEGISLATIVE COUNCIL

Wednesday 13 February 1985

The PRESIDENT (Hon. A.M. Whyte) took the Chair at 2.15 p.m. and read prayers.

CLASSIFICATION OF PUBLICATIONS ACT AMENDMENT BILL

At 2.15 p.m. the following recommendations of the conference were reported to the Council:

As to Amendments Nos 1 to 6:

That the House of Assembly do not further insist on these amendments.

As to Amendment No. 7:

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendments Nos 8 to 15:

That the House of Assembly do not further insist on these amendments.

As to Amendment No. 16:

That the House of Assembly do not further insist on its amendment but make the following amendment in lieu thereof:

Page 6, lines 17 and 18 (clause 9)—leave out 'liable to a penalty not exceeding ten thousand dollars or imprisonment for six months' and insert 'liable—

(a) where the Board has subsequently classified the film under this Act and the defendant proves that he exercised restraints, or observed conditions, upon or in relation to the sale, display or delivery of the film that were not less stringent than the conditions (if any) imposed under this Act—to a penalty not exceeding two thousand dollars;

(b) where the Board has subsequently classified the film under this Act but the defendant fails to prove the matters referred to in paragraph *(a)*—to a penalty not exceeding five thousand dollars or imprisonment for three months;

or

(c) where the Board has subsequently decided to refrain from classifying the film under this Act—to a penalty not exceeding ten thousand dollars or imprisonment for six months.

and that the Legislative Council agree thereto.

As to Amendment No. 17:

That the House of Assembly do not further insist on its amendment but make the following amendment in lieu thereof:

Page 6, line 20 (clause 9)—After 'subsection (3)' insert 'that relates to a prescribed film'.

and that the Legislative Council agree thereto.

As to Amendments Nos 18 to 22:

That the House of Assembly do not further insist on these amendments.

As to Amendment No. 23:

That the House of Assembly do not further insist on its amendment but make the following amendment in lieu thereof:

Page 7, lines 16 to 35 (clause 9)—leave out all words in these lines and insert 'a film that is not classified under this Act or under a corresponding law and—

(a) that has been refused classification under the corresponding law;

or

(b) that has had a classification that has been revoked under the corresponding law.'.

and that the Legislative Council agree thereto.

As to Amendment No. 24:

That the House of Assembly do not further insist on its amendment.

Consequential Amendments:

That the following consequential amendments be made to the Bill—

Page 1, line 21 (clause 3)—After 'video-tape' insert 'or video disc'.

Page 1, line 23 (clause 3)—leave out 'optical or electronic record' and insert 'form of recording'.

Page 6, lines 45 to 47 (clause 9)—Leave out all words in these lines and insert 'by striking out from subsection (6) the passage "on a date specified in the complaint" and substituting the passage ", or had not been assigned a classification under this Act, on a date specified in the complaint, or that the Board had on a specified date decided to refrain from classifying a publication specified in the complaint," '.

Page 7, line 12 (clause 9)—leave out 'subsection (7)' and insert 'this section'.

Page 7, line 36 (clause 9)—leave out 'subsection (7)' and insert 'this section'.

Page 8, line 10 (clause 11)—After 'amended' insert:

'—

(a)'.

Page 8, after line 14 (clause 11)—

Insert word and paragraph as follows:

'and

(b) by striking out from paragraph *(b)* of subsection (2) the passage "restricted publications by the authority or body administering any particular libraries, or libraries of a particular class" and substituting the passage "publications by specified persons or bodies, or persons or bodies of a specified class" '.

QUESTIONS

NUCLEAR SHIPS

The Hon. K.T. GRIFFIN: I seek leave to make a brief explanation before asking the Attorney-General a question about nuclear ships.

Leave granted.

The Hon. K.T. GRIFFIN: Premier Tonkin and Prime Minister Fraser, during the time of the State Liberal Government, were corresponding on the admission to South Australian ports of nuclear powered warships of Australia's allies. Premier Dunstan had prevented nuclear powered warships from coming to South Australia in 1976. All ports are under the control of the State Government. The Tonkin Liberal Government had agreed to the entry of such ships to our ports, but was concerned to ensure that adequate safeguards applied in the remote event of an accident. We were also anxious to identify who had responsibility for any damage that may have been caused in the remote event of an accident involving such warship. A number of legal questions relating to the question of liability were examined by me as Attorney-General and by the Crown Solicitor. Satisfactory arrangements were reached between the State and Commonwealth Governments. My questions to the Attorney-General are as follows:

1. Has the Attorney-General or the Crown Solicitor been involved in the continuing arrangements with the Commonwealth in relation to visits of nuclear powered warships to South Australia?

2. What are the arrangements that presently apply for those visits?

3. Have there been any requests to the present State Government for visits to South Australian ports of nuclear powered warships?

The Hon. C.J. SUMNER: This matter has not been brought to my attention, in recent times at least. I will refer the other questions that the honourable member raised to the Premier and bring back a reply.

HEALTH PROMOTION UNIT

The Hon. M.B. CAMERON: I seek leave to make a brief explanation before asking the Minister of Health a question about Health Promotion Unit accountability.

Leave granted.

The Hon. M.B. CAMERON: In the Parliament on 6 December 1984, in response to a question by the Hon. Mr Lucas concerning Health Commission advertising, the Minister of Health replied, in part:

If the honourable member thinks that he is on to another Watergate or sausagegate or something else, that is just not so. I had been concerned about the Health Promotion Unit and its operations ever since I became Minister of Health.

He went on to say:

It had been described to me at one stage as a loose cannon.

In his statement yesterday, the Minister said:

I also initiated action action within weeks—

that being within weeks of the Minister's taking office—

which I hoped would place the Health Promotion Unit under more formal lines of accountability to the central office of the Commission.

The Minister claims to have taken action within weeks: yet he did not establish his inquiry involving Professor White and Mr Hicks until more than two years after his appointment as Minister, and then only after questions from members of the Opposition, and from the Hon. Mr Lucas in particular, about the activities of the Health Promotion Unit in this Council towards the latter part of last year.

The Hon. L.H. Davis: What would have happened if the question had not been asked?

The Hon. M.B. CAMERON: Precisely. If the Minister was concerned about the activities of the Health Promotion Unit, as he claims to have been, it is surely a reflection on his capacity that in two years between his appointment as Minister and the inquiry he took no positive steps to find out what was going on within the Health Promotion Unit, and to satisfy himself that taxpayers' funds were being used in a productive, honest and effective way.

The Hon. L.H. Davis: He accused the Queen Elizabeth Hospital of having a—

The PRESIDENT: Order!

The Hon. M.B. CAMERON: As Minister, he substantially lifted the funds made available to the Health Promotion Unit while he claims to have had reservations about the activities of the unit. My questions to the Minister are:

1. To whom did the Director of the Health Promotion Unit report?

2. What were the lines of accountability that the Minister claims he instituted?

3. Why did not those responsible for overseeing the Health Promotion Unit exercise this responsibility?

The Hon. J.R CORNWALL: I think it might be necessary to give a little background here. If one goes back to about 29 August or 30 August, that was when the Hon. Mr Lucas first raised by way of five questions without notice allegations that there might be some irregularities in the Health Promotion Unit. My response at that time was that I knew nothing of the matters that were raised and, to paraphrase part of that response also, if the Hon. Mr Lucas thought he could beat up a story that would implicate me in acting improperly in any way, he had another thing coming. That has been the position throughout. In fact, as I said yesterday, the Health Promotion Unit had caused me concern from the time I became Minister. It caused me concern for a number of reasons. Of course, it was particularly the brainchild and was personally endorsed very enthusiastically by the previous Minister of Health.

Indeed, it is interesting to look at the file and a proposal for a health promotion resource centre within the South Australian Health Commission. That was first produced on 29 March 1979, a time when the Corcoran Government was in office. Nothing came of it particularly until November 1979, at which time the Hon. Jennifer Adamson had been Minister of Health for two months. She embraced it with great enthusiasm. If one goes back to that time one remembers that that was in the former Minister's salad days when it was mostly health care in this State that was to be—

The Hon. M.B. CAMERON: I rise on a point of order, Mr President. The Minister is quoting from a document that he claims is a file, and I ask whether that document can be tabled so that we can have full access to the information—the whole file—contained therein.

The PRESIDENT: Order! I point out that the point of order raised is a request. If the Minister likes to reply he can do so.

The Hon. J.R. CORNWALL: I am delighted to table the file.

The Hon. C.J. Sumner: The whole file?

The Hon. J.R. CORNWALL: I believe that that is what I was asked for and I am a very co-operative fellow. I am only too pleased to table it. As I was saying before I was interrupted—the file will be available to everyone to peruse now that the Hon. Mr Cameron has demanded that it be tabled—point 3.6 at page 4 of the document states:

Funds should be available for contracting out material production and specialised services rather than employing—

And handwritten next to that in Mrs Adamson's own handwriting is 'Hear, hear!'. I had a minute of 30 November 1979; 2½ months after Mrs Adamson became Minister of Health—and she had embraced this new concept with enormous enthusiasm—the seeds were sown for the loose cannon effect, for the almost total lack of accountability that it was my misfortune to have to relate to this Council yesterday. The minute is addressed to the then Chairman of the South Australian Health Commission over the signature of one Jennifer Adamson, Minister of Health, and is dated 30 November 1979.

The Hon. R.I. Lucas: It was a different Chairman, too.

The Hon. J.R. CORNWALL: Yes, and I will have a bit to say about that in a minute.

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order! The honourable member asked a question and I ask now, after a series of interjections, that he allow the Minister to reply.

The Hon. J.R. CORNWALL: At point 3 of this minute of 30 November 1979, when the seeds of this entrepreneurial loose cannon effect were being sown, the Minister stated:

I endorse the proposal under 3.6, organisation and resources of a health promotion centre, for funds to be made available for contracting out production of material and specialist services, and emphasise the importance of making sure that this policy is adhered to.

In other words, the then Minister absolutely insisted at the time this unit was to be set up that all those services were to be contracted out, and that is where the seeds of this lack of accountability were sown.

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: That is where the seeds were sown. It is available for tabling.

The PRESIDENT: I interrupt to make the point that, once the document is tabled, it becomes the property of the Council and is open to perusal by all concerned. It would probably need a resolution of the Council to return it to the Minister's possession. Perhaps on the other hand the Minister would like to make the file available to those who had asked for it and they could return it to him after perusal. I am merely making a suggestion and warning the Minister that the document becomes the property of the Council once it is tabled.

The Hon. J.R. CORNWALL: I think it might be better in the circumstances to make it available to anyone who wants to have a look at it.

The Hon. R.I. Lucas: You tabled it, though. Can we have it now?

The Hon. J.R. CORNWALL: The honourable member can have it any time he likes.

The Hon. M.B. Cameron: Is it tabled or not?

The Hon. J.R. CORNWALL: The President has made the sensible suggestion that the document be made available to anyone who wants to look at it as distinct from its being tabled. I think that it should be returned to me to be put

in the file when everyone is finished with it. I do not care whether it is the young Mr Lucas, the elderly Mr Burdett, the press or anyone else. They can all have a look at it.

The Hon. M.B. CAMERON: I rise on a point of order. I ask that the Minister withdraw the terms 'the young Mr Lucas' and 'the elderly Mr Burdett'. I do not know whether the Minister thinks it is smart, but I ask him to withdraw those terms and to act like a Minister of the Crown, not like a ratbag.

The PRESIDENT: Order! I am not taking that as a point of order.

The Hon. J.R. CORNWALL: I ask that the word 'ratbag' be withdrawn, that I receive a suitable apology, and that Mr Cameron try to conduct himself with the decorum that one might expect from the Leader of Her Majesty's loyal Opposition.

The Hon. M.B. CAMERON: I withdraw the obvious term and apologise to the Minister. I ask that in future the Minister tries to conduct himself like a reasonable member of Her Majesty's Government.

The Hon. J.R. CORNWALL: Everyone knows that I have been an extremely active Minister, that I have been comparatively very much—

The Hon. M.B. Cameron: They know that in Port Pirie.

The Hon. J.R. CORNWALL: Indeed, they know it in Port Pirie and they have a $45 million clean-up which was not to occur under the previous Government but which has been done despite great resistance from a number of people, not the least of whom was the Hon. Mr Burdett.

It is well known that I have been an active and an interventionist Minister of Health. In fact, I established 21 inquiries within 21 months; they ranged across the board from the Sax Committee of Inquiry, which was a blueprint for the public hospitals service and other hospital services of this State, through the Smith inquiry, Foley inquiry into Aboriginal health, and so forth. The Kerr White Hicks inquiry into the health promotion unit was the 21st of those inquiries. I had had doubts about the Health Promotion Unit from the time the previous Minister authorised the expenditure of $110 000 on a set of polystyrene lungs at the Healthy State Shop in Rundle Street East.

It seemed to me that that, to say the least, was not a wise use of taxpayers' money. It was, however, in line with the gimmicks of the time—health policy and health administration by gimmick. I inherited a number of very severe administrative problems in the health industry in this State. It is well known, for example, that the last resignation of a senior officer in this State occurred only nine months after I became Minister of Health. I do not think that the Opposition would want to box on with that particular matter. That very senior officer was appointed by the former Minister of Health, Mrs Adamson, and there had been a number of serious irregularities and again, at the time, it was necessary for me to consult the Auditor-General.

The Hon. L.H. Davis: Are you impugning the previous Chairman?

The Hon. J.R. CORNWALL: No, I am saying that the Director of the Western Sector, which I inherited when I became Minister of Health, was appointed by my predecessor and that it is well known that that Director resigned following investigations of a number of irregularities, investigations made at my specific request by the Auditor-General. If the Opposition wants to box on about this whole area of accountability then so be it. I made the point yesterday that I was concerned about the operations and general policy of the Health Promotion Unit at the time I became Minister of Health. I repeat that that particular opening bout when they spent $110 000 for polystyrene lungs as a gimmick during the period of office of the previous Minister was one of the things that caused me concern. I gave two major reasons in my statement yesterday (a very lengthy and detailed statement) about why I did not intervene with an inquiry in those early days.

An honourable member: No you didn't.

The Hon. J.R. CORNWALL: Yes I did. The first in my recollection, was that the Health Promotion Unit was still relatively in its adolescence and, in my view, needed, as a trail blazing sort of operation, some stability if it were to settle down.

In the event, Professor Kerr White and Mr Ron Hicks found on the positive side of the Health Promotion Unit that it enjoyed, in some areas, a world reputation. I do not believe that I have to defend my decision not to intervene in the first few weeks after becoming Minister of Health, apart from the fact that I was working 17 hours a day, as were many other people in the Health Commission. As I said yesterday, the second reason was that it was by far the biggest publicity and promotion unit in the Government. It was, consequently, a matter of some sensitivity to have intervened prematurely. It may well have been interpreted—and I am sure would have been interpreted by some of the gurus on the Opposition benches—as political interference. It was for that reason that I did not appoint a major external inquiry, as I did some time later.

As to the specific question: who did the Director of the Health Promotion Unit have to account to? Well, when I inherited him under the loose cannon approach set up by my predecessor, he used to knock down the Minister of Health's door usually with material on which the Minister would be required to put a signature as it was required at the printer's at 9 o'clock tomorrow morning. That was a quite hopeless situation since it was not within my competence to assess sometimes quite complex material at short notice. I directed that in future Mr Cowley should report through the then Director of the Corporate Sector of the Health Commission. The lines of accountability were through the Director of the Corporate Sector of the Health Commission. The third question, which I did not have time to write down—

The Hon. M.B. Cameron: Why did not those responsible for overseeing the Health Promotion Unit exercise this responsibility?

The Hon. J.R. CORNWALL: It becomes quite clear, if one reads the Ministerial statement yesterday, that there were times when Mr Cowley deceived those to whom he was responsible. I make one further point: I really cannot understand why the Opposition wants to box on with some apparent political exercise over this. The simple fact is that on or about 30 August last year the Hon. Mr Lucas was quite clearly given accurate and extensive information.

The Hon. R.I. Lucas interjecting:

The Hon. J.R. CORNWALL: No.

The PRESIDENT: Order!

The Hon. R.I. Lucas interjecting:

The Hon. J.R. CORNWALL: The Hon. Mr Lucas was given quite accurate information. If he had decided to be responsible and bring that information to me or—

Members interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: —because he had a duty (and indeed he has a duty to the taxpayers of South Australia as a member of Parliament) then the proper course of action, if the Hon. Mr Lucas had shown any propriety at all (if he did not choose to bring that material to me, since he does not consider himself a warm personal friend of mine— and that does not cause me too much distress) and as he had a duty to the taxpayers and electors of South Australia, whom he represents, was to take it to the Chairman of the Health Commission. To have done less than that was a dereliction of duty because what he did was to delay

by two months what had been the immediate and diligent pursuit of the matter, which in the event took almost two further months to go into full gear.

The Hon. R.I. Lucas: Answer the question that was asked.

The Hon. J.R. CORNWALL: You have not done too well this time, son. If in fact the Hon. Mr Lucas had chosen to do his responsible duty to the electors of South Australia—

Members interjecting:

The PRESIDENT: Order! We have had so many interjections from so many members that they must cease at this point. Let the Minister proceed with his explanation, and perhaps members can ask further questions before Question Time expires.

The Hon. J.R. CORNWALL: Before I was shouted down by the Opposition, I was saying that, if indeed the Hon. Mr Lucas had chosen to do his duty to the electors of South Australia, he would have brought that matter responsibly to the attention of either me as Minister of Health or to the Chairman of the South Australian Health Commission. Instead, he chose to act like a latter day Davy Crockett, setting bear traps (as he thought) for the Minister of Health. Let me tell honourable members—

The Hon. L.H. Davis: He doesn't need to lay traps.

The Hon. J.R. CORNWALL: Ho, ho, ho! What a funny fellow Mr Davis is! He has all the humour of a 13 year old. I withdraw that, Sir, that is an insult to young teenagers. Instead of setting these traps, as the Hon. Mr Lucas thought, he could have brought that material forward, which would have been without prejudice to raising the matter in the Council. However, he did not see fit to do that. If the Hon. Mr Lucas has any more information, and if he will not bring it to my attention, the onus is upon him at this time to take it to the Chairman of the Health Commission.

I will make two final points: inquiries are continuing in a number of areas, and I will not and cannot comment on those matters. If the Hon. Mr Lucas is as serious as I am in his desire to ensure that we do not throw the baby out with the bath water, he has a duty to bring the information to the Chairman. As I have said, the integrity of the Health Promotion Unit has a world reputation in some areas or, more importantly, as Professor Kerr White said. I would be delighted to make the Chairman and other senior officers of the Health Commission available to the Hon. Mr Lucas at any time so that he may be fully briefed and informed in the most minute detail of all of the details available to me at this time. I also extend that offer to the shadow Minister of Health, the Hon. Mr Burdett.

The PRESIDENT: The Minister has now officially taken the file from the Clerk's table. I presume it has been agreed by members of the Opposition that the Minister make the file available to them for their perusal.

The Hon. J.R. CORNWALL: I think that is probably the preferable course, Mr President, but I must say that I am very relaxed about it. I believe the better course is for them to peruse the file and then return it to me. As I said, it can be made available on request to other interested parties. On your advice, Mr President, I believe that the tabling of it is not entirely desirable, but it is no big deal.

The Hon. J.C. BURDETT: My questions are directed to the Minister of Health, as follows:

1. In view of the Minister's concern from the time when he first became Minister about the Health Promotion Unit and in the preparation of annual programme performance budget documents, what steps did the Minister take to check the documents prepared in regard to the Health Promotion Unit against expenditure and performance?

2. Does the Minister accept responsibility for the two budgets presented since he first became Minister, including the programme performance budgets in regard to the Health Promotion Unit?

The Hon. J.R. CORNWALL: The second question is quite stupid. Of course I accept responsibility for the budgets that have been presented. With regard to programme performance budgeting as it affects the Health Commission and the health area generally, it is a programme that is not well suited to the health area, as I am sure the Hon. Mr Burdett would know, because of the peculiarities of the health budget. The Commission has 81 hospitals, almost 40 community health centres, and a number of other large incorporated health units each with their own individual budgets and each of which, as the Hon. Mr Burdett insists from time to time, has a significant degree of autonomy.

The budgets of those individual units (including the Health Promotion Unit, of course) to the best of my recollection are negotiated from before the beginning of the financial year and sometimes right through until November. In other words, because of the nature of the administration of the Commission—and it is not a Department—there is nothing miraculous about 30 June or 1 July. There is ongoing negotiation, so programme performance budgeting is diligently checked to the extent possible.

SUPERANNUATION PAYOUTS

The Hon. ANNE LEVY: Has the Attorney-General a reply to the question I asked on 6 December about superannuation payouts?

The Hon. C.J. SUMNER: The situation with the Adelaide and Flinders Universities, to which the honourable member has referred, was a special situation which arose because the existing schemes were wound up and the funds distributed. I understand that the approval of the Commissioner of Taxation was given for the winding up, provided the payouts were assessed as eligible termination payments. Generally speaking, the taxation implications preclude the payout of funds before retirement or resignation. The Superannuation Act precludes the possibility of this situation arising in relation to the State superannuation scheme.

There are some public authorities which are not covered by the State scheme but provide superannuation through arrangements with the private sector. These arrangements would be subject to the taxation constraints mentioned earlier and, in any case, the Government has taken steps recently to more closely co-ordinate policy in relation to these schemes. As to Parliamentary superannuation, the Government intends to introduce amendments to the Act so that members who transfer from this Parliament to another will not receive lump sum payouts.

HEALTH PROMOTION UNIT

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Minister of Health a question about the Health Promotion Unit.

Leave granted.

The Hon. R.I. LUCAS: Members will be aware that the Minister's Ministerial statement yesterday on the Health Promotion Unit contained a number of critical references to the performance of the Director of that Unit, Mr Jim Cowley. My questions are as follows:

1. Did the Health Commission give Mr Cowley a reference and, if so, who signed it, and what were its general terms?

2. Was the Minister aware of the reference prior to it being given, and did he approve of it? If he was not aware of it, what action has the Minister taken about it, and does he have a view on the appropriateness of such action?

The Hon. J.R. CORNWALL: I understand that, as part of the negotiations which were conducted by the Chairman and Deputy Chairman of the Health Commission with Mr Cowley over his resignation, a reference was offered.

The Hon. R.I. Lucas: By whom?

The Hon. J.R. CORNWALL: By the Chairman of the Health Commission. The honourable member should get it fairly right. My advice from the Crown Solicitor was that she was acting for the Chairman and for the Health Commission in the matter of the negotiation with Mr Cowley over his resignation; she was not acting for me. That point was brought out very clearly in a discussion that I had with the Crown Solicitor, the Chairman and the Deputy Chairman of the Health Commission, Commissioner Ric Allert and, in my recollection, one or two other people. It was made very clear that the Crown Solicitor was acting for the Chairman and the Health Commission (that is, the Commissioners), not for the Minister of Health. In fact, there was some brief discussion about section 15 of the Health Commission Act because the Solicitor-General had provided an opinion in 1979 that the expression 'the Commission is subject to the general direction and control of the Minister, meant that in its most broad and literal sense it was subject to the direction and control of the Minister in every sense.

Two successive Crown Solicitors, on the other hand, in verbal opinions, have suggested that that should be interpreted in a far narrower sense. I make the point very clearly that in the negotiations the Crown Solicitor's office was acting for the Chairman of the Health Commission and for the Commission itself. I understand that Mr Cowley, the Director, was given—

The Hon. R.I. Lucas: You'd better be careful!

The Hon. J.R. CORNWALL: I do not have to be careful at all! The honourable member sits there and smirks and thinks that there is something of which I have to be afraid.

The Hon. R.I. Lucas: It's embarrassing.

The Hon. J.R. CORNWALL: The fact is that from day one in this entire matter I have acted vigorously, with complete propriety, and it is not a matter of any embarrassment.

The Hon. R.I. Lucas: You refused to answer questions.

The Hon. J.R. CORNWALL: I have never refused to answer questions. When it became obvious that we needed to do a great deal of work and a good deal more investigation, including the investigation of the internal auditor, who was put into the Unit at my specific direction, I most certainly did not rush back to the Parliament with questions when there could have been any doubt as to their accuracy. Any of those questions, where there could have been any possible doubt as to their accuracy, were not answered until yesterday for the very good reason that the whole investigation had to proceed over three months or more to a point where I was able confidently to know that when I sought leave to have the answers incorporated in *Hansard* they would be as accurate as it was possible for them to be.

The Hon. R.I. Lucas: Did you give him a reference?

The Hon. J.R. CORNWALL: I did not give anybody a reference, no.

The Hon. R.I. Lucas: Did the Health Commission?

The Hon. J.R. CORNWALL: I understand that the Chairman of the Health Commission did give Mr Cowley a reference. The exact terms of that reference I do not know: I have not seen it.

The Hon. R.I. Lucas: But you are aware of it?

The Hon. J.R. CORNWALL: I am certainly aware of it.

The Hon. R.I. Lucas: And you hit the roof when you found out?

The Hon. J.R. CORNWALL: Full stop!

The Hon. R.I. LUCAS: I have asked the Minister two questions. I ask him whether he will reply to the question. He has answered the question as to who gave the reference: the Chairman. He says that he is aware of the general terms of the reference: he has not seen it, but he is aware of it. I asked him what were the general terms of the reference. Was he aware of it prior to its being given and, if he was not aware of it, what action has he taken about it, and does he have a view on the appropriateness of it?

The PRESIDENT: The Minister can answer that in whatever way he sees fit.

The Hon. J.R. CORNWALL: If the honourable member could restrain himself for just a moment so that this does not degenerate into a complete farce, I will answer in detail and with great accuracy, as I have in this whole matter. First, did the Commission give Mr Cowley a reference? I have answered that: the Chairman of the Health Commission, as I understand it, gave Mr Cowley a very limited reference. I have not seen it; I have not read it, but I understand that it is limited in its scope, shall we say?

Was I aware of the reference? I will be very clear that during one of the discussions—and I cannot recall the date of the particular occasion to which I am referring, but it was quite recently—with the Crown Solicitor, the Chairman of the Health Commission was not present; Mr Ric Allert, Mr John Cooper (the Deputy Chairman of the Health Commission), the Crown Solicitor (Ms Cathy Branson), and two or three other people were present, although I will not try to stipulate in great detail who they were because I cannot guarantee my absolute recollection. During that discussion it was drawn to my attention that the Chairman, as part of the negotiations with Mr Cowley (and they were negotiations to which I as Minister of Health was not privy and with which I was involved at no time), had offered some form of reference. I did see that reference. I discussed it with a number of people sitting around the table in my conference room. It was the opinion of Commissioner Allert, among others, that the terms of that reference were probably unwise in view of the material that was constantly unfolding at that time.

In fact, Mr Allert spoke to Professor Andrews and counselled him—remember, Mr Allert spoke to Professor Andrews: I had no role in that—about the terms of the reference. As I understand it—again I was not involved—the terms of that reference were subsequently amended. I make clear that I did not see the terms of the reference that were finally proffered. That was a matter between Mr Cowley's solicitors and officers of the Crown Solicitor's office.

It was not a question one way or the other whether I approved or disapproved. I make clear, as I said before, that there was some discussion about section 15 of the Health Commission Act, and the Crown Solicitor's advice to me at or about that time was that in her interpretation of the Act she was acting for the Chairman and for the Commission; she was not acting for me and would not so act unless I specifically instructed her to do so.

WATER METERS

The Hon. I. GILFILLAN: Has the Minister of Agriculture a reply to the question that I asked on 15 November about water meters?

The Hon. FRANK BLEVINS: The stopcock is provided by the Engineering and Water Supply Department primarily to facilitate the change of meters. It has a secondary role of assisting with backflow prevention, and for this reason is a loose jumper valve. The Department is opposed to the use of the stopcock as the normal means of controlling the flow of water because this type of stopcock is prone to damage if excess force is applied when shutting it off.

The Department repairs in excess of 200 boundary stopcocks every week. In the majority of cases, those repairs were made necessary by over-use, or the use of excessive force when shutting off. Consumers are therefore discouraged from using the boundary stopcocks except in cases of emergency.

Faulty boundary stopcocks are often cited as the reason for excessive water consumption, but there have been very few cases recorded of a damage claim based on failure of a departmental stopcock. Such claims have been refused because the Waterworks Act clearly places the onus on the consumer to keep his pipes and fittings in good repair.

The stopcock on the meter is provided by the Department for its own use and, whilst no objection is made to occasional use by a consumer, it is considered that a consumer should be responsible for his own water consumption and maintenance of his own pipes and fittings. The public at large should not be burdened with the substantial additional costs which would be involved if the Engineering and Water Supply Department was required to provide a control device, such as the boundary stopcock, for use by consumers. Not only would those costs include installation and regular maintenance, but claims for damage arising from failure of the device would possibly have to be met.

Except by way of a costly investigation, there is no way of establishing with any certainty the number of consumers who have installed a stopcock in their service piping. It is, however, thought to be a very low number, probably of the order of 0.5 per cent.

NEIGHBOURHOOD WATCH PROGRAMMES

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Chief Secretary, a question about neighbourhood watch programmes.

Leave granted.

The Hon. L.H. DAVIS: Last year the Victorian Police Department introduced a neighbourhood watch programme in an attempt to curb the dramatic increase in the number of break-ins in domestic dwellings. In that short space of time since the programme has been introduced 61 neighbourhood watch programmes have been established covering 128 000 people in 43 000 homes in the Melbourne metropolitan area. An evaluation of the impact of the operation of the first 11 programmes over an initial six-month period shows a reduction in the burglary rate of 45 per cent and a reduction in the overall crime rate of 30 per cent.

Neighbourhood watch programmes are established in areas where there is a serious burglary problem and where there is public support for the programme. The programme involves signposting the perimeter of the area with neighbourhood watch signs and providing a public education programme, including a home security night addressed by members of the Crime Prevention Unit. Members in the area are given a special telephone number on which to report break-ins or suspicious circumstances. In addition, the Police Department lends a vibrograving tool free of charge. This equipment is used by householders to engrave their drivers licence number on articles of wood, metal or plastic. Of course, this helps in the recovery of property, including property that may have been transferred interstate. Each neighbourhood watch has a monthly committee meeting to monitor developments and exchange information. Three significant aspects of this programme are—

The PRESIDENT: I must say that I find this all very interesting—it is excellent. I hope the Minister knows as much about it as the honourable member. Is it necessary for the lead-up to your question?

The Hon. L.H. DAVIS: Yes, I think it is, by way of background, Mr President. The three significant aspects of the programme are: first, that it improves communication and understanding with police; secondly, the initial results indicate that it has been an effective deterrent to burglars; and, thirdly, it does not necessarily require an increase in police resources. I understand that the South Australian Police Department is actively examining this very exciting programme that has been introduced recently in Victoria, and I wonder whether through the Attorney-General the Chief Secretary will provide a report to Parliament on the South Australian Police Department's intentions as to whether or not it will introduce a similar programme in South Australia?

The Hon. C.J. SUMNER: My recollection is that a similar programme will be introduced in South Australia. I refer the honourable member to the Police Department's strategic plan that was issued by me as Acting Minister of Emergency Services and the Commissioner of Police early in January. That was the second such strategic plan issued by the Commissioner of Police. It lays down the sorts of things that the Police Department will be doing in 1985. It comments on the plan that was released for 1984 and what has happened to the matters raised in the 1984 plan and gives an indication of the future programmes of the Police Department. That strategic plan was issued to inform police, the public, Parliament and the Government generally as to the directions of policing in this State in the coming 12 months. That report referred to the neighbourhood watch programme and a number of other such programmes such as the safe house idea. I suggest and it is also my understanding that the reference to it in that strategic plan also contained a statement that it would be proceeded with in South Australia, and I suggest that the honourable member peruses that.

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: There have not been any developments in the last month—it was only released a month ago—and I suggest the honourable member peruses the strategic plan and, if he has any further specific questions about the plan and about the future of neighbourhood watch programmes, I shall be quite happy to answer them.

ARTS EMPLOYEES

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for the Arts, a question about employees in the arts.

Leave granted.

The Hon. ANNE LEVY: An interesting article appeared in last week's *National Times* 'Looking after the dollars in the arts' and written by Gwen Robinson. This article was very complimentary to South Australia and held it up as an example for other States to follow. One point caught my attention specifically, that is, a quotation that the reporter gave from a report produced by Dr David Throsby and Dr Glen Withers 'What price culture'. It is apparently claimed in this report that culture is indeed a major industry in this country and that the arts in Australia now employ as many persons as mining or agriculture, yet the arts are still treated as the poor relations compared to other subsidised industries.

I was particularly interested in the comment that the arts employ as many people as mining or agriculture. The Australian Bureau of Statistics does of course publish figures on how many people are employed in agriculture in this country and how many are employed in mining, but it does not have a category of the people employed in the arts areas. Therefore, I wonder whether the Minister for the Arts could give an estimate of the number of people employed

in the arts in South Australia specifically so that this comparison with mining and agriculture can be made for South Australia to get an idea of the relative values of these fields of employment to our economy.

Members interjecting:

The Hon. ANNE LEVY: That is why I want to know.

The Hon. C.J. SUMNER: I will seek that information for the honourable member and bring back a reply.

SIMS FARM

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister of Agriculture, representing the Minister of Education, a question about Sims farm.

Leave granted.

The Hon. PETER DUNN: Since the Department of Agriculture has released its report on the review of research centres belonging to the Department of Agriculture in South Australia more than 18 months ago, the Cleve Area School Council and a number of local interested persons lobbied the Department of Education asking that the Department purchase Sims farm for further development of agricultural studies and courses now in place in Cleve. This farm is one of those properties that was deemed by the Research Centres Review Committee as suitable to be sold. The Minister of Education received further recommendations from a committee he set up to investigate the practicality of extending agricultural courses at Cleve as well as setting up a residential sector that could accommodate students unable to find accommodation in the town. As all these reports have been in the hands of the Minister for a number of months, I ask whether the Minister of Education has decided that the agricultural course now being offered at Cleve should be extended. Will it include a residential component? Has the Minister made a decision in regard to the purchase of the remainder of Sims farm? If he has not, how long will it be before a decision is made?

The Hon. FRANK BLEVINS: I will refer the honourable member's question to my colleague in another place and bring back a reply.

QUESTIONS ON NOTICE

ART AND CRAFT

The Hon. C.M. HILL (on notice) asked the Attorney-General:

1. As the Government promised in its 1982 election campaign to 'commission local works of art and craft for Government buildings, recreation centres, schools and parks' which commissions have been granted to date?

2. In view of the Government's 1982 election promise to 'support improvements and development of the Art Gallery of South Australia, particularly travelling exhibitions to schools, community and country centres', what travelling exhibitions have been improved or developed by the Government?

3. Has the clearing house for information about exhibitions, competitions, scholarships, availability of materials and equipment and other such information as could assist artists and crafts people, as promised in the Government's 1982 election platform, been established as yet, and, if not, why not?

4. As the Government promised in its 1982 election campaign to 'examine the feasibility of encouraging local production of raw materials for South Australian artists and craftspeople', what has the Government done to honour this promise?

5. As the Government promised in the 1982 election platform to 'strongly promote employment opportunities for South Australian performers' what action has been taken to honour this promise?

6. How many South Australian performers act in the current season of the State Theatre Company, and what is the percentage of such number compared with the whole acting company?

7. Has the Government honoured its 1982 election promise to 'investigate the establishment of a music foundation to promote a wider understanding and appreciation of all forms of contemporary music'?

8. As the Government promised in its 1982 election platform to review the South Australian Film Corporation Act in consultation with the Corporation, what is the current position, after two years of Government?

9. Has the Government investigated assistance to a major film festival in South Australia, as promised in its 1982 election platform, and, if not, why not?

10. Has the Government examined the feasibility of a riverboat museum, as the Government promised to do in its election platform of two years ago?

11. As told in an answer from the Minister dated 7 November 1983 that appropriate action in the visual arts would be considered during 1984, pending the outcome of a national survey involving State crafts councils, what has occurred during 1984 in relation to this matter which in turn involved the Government's 1982 election promise to 'assist in the promoting and marketing of local works of art and craft through tourist and other publicity outlets'?

The Hon. C.J. SUMNER: The replies are as follows:

1. Public art grants have been made to the four regional cultural trusts to commission South Australian artists to produce works of art for the regions, and to the Adelaide Festival Centre Trust to commission a work or works to commemorate South Australia's 150th anniversary in 1986.

2. The Art Gallery's travelling art exhibition to country regions has been greatly improved. The 1984 exhibition was the best hitherto produced. It was more comprehensive in its range of material; it was better designed, mounted and displayed; and it had better educational support. Moreover, it contained works of art of much higher quality than are normally entrusted to the rigours of display outside professional art-museum premises. The 1984 travelling art exhibition was superior to similar exhibitions in other States and it set a new national standard both for quality of presentation and of artistic content.

3. Development of a computerised crafts information service is under way at the Crafts Council of South Australia. Meanwhile, receipt of CEP funding will assist the Experimental Art Foundation in developing a visual arts information service during 1985.

4. A preliminary study has been made which suggests that problems exist regarding the range, quality, quantity, and continuity of supply of materials available in South Australia. Further work will be done on this question.

5. Increased funding to the performing arts in the last two financial periods has increased employment opportunities for South Australian performers.

6. The total number of actors employed by the State Theatre Company in 1984 was as follows: Playreadings/Workshops, 19—of which 18 were South Australians; Magpie Theatre in Education Team, 13—of which three were South Australians; and Playhouse Main Season, 45—of which 11 were South Australians. Converted to a percentage, South Australian performers made up 42 per cent of the total.

7. A preliminary investigation by the Department of the Arts revealed that the costs involved in establishing such a

foundation were substantial. As there are pressing demands upon the limited level of available funds, it has been decided not to proceed with such a development at this stage. In the meantime, the Arts Projects Assistance Scheme has given high priority to projects in this area, and, over several funding calls since that date, has provided significant funding to several projects in the contemporary art music field.

8. A working party was established by the South Australian Film Corporation Board to review the SAFC Act, aims, objectives, finances and organisation. The financial study was undertaken by a highly reputable firm of chartered accountants. The report has recently been completed. The implications of the recommendations are being studied by the Government.

9. The development of a commercial circuit of venues has meant that there has been no need for the establishment of a major Government funded film festival. In addition, there have been a number of smaller-scale initiatives in the area, such as the Fringe 'Festival of Australian Independent Cinema', held at the recent Adelaide Festival.

10. The Government has examined the feasibility of a riverboat museum. Bicentennial funds ($2.48 million) have now been made available for the establishment of a River Murray Interpretive Centre and Riverboat Museum at Goolwa.

11. Information on South Australian art and craft studios, galleries and shops is provided in relevant tourist material promoting South Australian regions. In July 1983 the position of Marketing Manager at the Government funded Jam Factory Workshops was upgraded from part-time to full-time. The Marketing Manager actively markets the work of independent South Australian artists/craftspeople as well as Jam Factory employees in South Australia and other states.

The Department for the Arts has actively supported initiatives to market and promote the work of South Australian artists and craftspeople in the United States.

JUBILEE 150

The Hon. C.M. HILL (on notice) asked the Attorney-General:

1. How many books will be published by the Wakefield Press in connection with this State's 150th birthday celebrations?

2. What are the titles and who are the authors?

3. Who was responsible for selecting these books and what criteria were applied?

4. How many books are to be published by other South Australian publishers with the aid of the Jubilee Committee's Publications Assistance Fund?

5. Who are the publishers, what are the titles and who are the authors?

The Hon. C.J. SUMNER: The replies are as follows:

1. The Wakefield Press hopes to publish about 30 books for the Jubilee 150.

2. The official list of Jubilee 150 books has not yet been finalised. As is usual in the book trade, the Press will announce and promote each of its publications several months before the date of publication.

3. Jubilee books are being selected by the board of the Wakefield Press, on the recommendation of the publisher of the Press, and from proposals which are put forward by committees of the Jubilee 150 organisation or private individuals, or which come from the Press itself.

The publications Advisory Committee of the Jubilee 150 organisation is responsible for approving financial support proposals for publications put forward by the public. The criteria applied to selection by committees of the Jubilee 150 organisation, the publisher and the board of the Press, and the Publications Advisory Committee is relevance to 1986 and reasonable public interest. The Publications Advisory Committee is also concerned to ensure that satisfactory arrangements are made for production and marketing.

4. Not finally decided.

5. See 4. above.

ROAD TRAFFIC ACT AMENDMENT BILL

The Hon. M.B CAMERON (Leader of the Opposition) obtained leave and introduced a Bill for an Act to amend the Road Traffic Act, 1961. Read a first time.

The Hon. M.B. CAMERON: I move:

That this Bill be now read a second time.

The purpose of this Bill is to require drivers of motor vehicles to keep to the left hand lane wherever practicable. It arises from a concern which I have had for a considerable time, which is shared by other members of the Council, and which has been put to me by members of the public about the dangers, particularly on dual carriageways, posed by slow moving vehicles which can block all laneways.

In the Parliament in September last year, I asked a question of the Minister of Agriculture representing the Minister of Transport that became the basis for this Bill. As I indicated in my explanation at that time, from time to time I travel on the South-East Freeway (as no doubt other members have, and they would travel on other parts of the country road system, and so they have faced the same problem) and I have suffered the not only frustrating but also dangerous experience of being caught behind a car which is travelling at well below the prescribed speed limit, sometimes as low as 60 km/h in the outside lane (the right hand lane, although sometimes there is confusion about that) whilst the left hand lane remains blocked by slow moving heavy transport or other similar vehicles. This is a problem which I am sure occurs frequently on two-lane carriageways where two lines of traffic move in the same direction.

I have seen other people who have faced other situations take dangerous risks to pass such slow moving vehicles, and generally the sounding of a horn or the flashing of one's lights has no impact on the seemingly blissful ignorance of such drivers. Frequently frustrated drivers who cut behind slow moving vehicles in the right hand lane are forced into the left hand lane and out again in what can be a very dangerous practice. In a number of countries overseas it is an offence to remain in the outside lane of a dual carriageway except when overtaking.

In response to my question, the Hon. Mr Blevins indicated he shared my concerns, and has himself advocated a requirement that vehicles should keep to the inside lane except when overtaking. I might add that he indicated that he failed to achieve any success in this regard.

The Hon. Frank Blevins: One of my few failings.

The Hon. M.B. CAMERON: Yes. He said that he would, to use his words, 'refer the honourable member's question with a great deal of vigour to the Minister of Transport in another place and bring back what perhaps on this occasion could be the reply for which the Hon. Mr Cameron is looking'. Regrettably, the Minister refused to introduce legislation of the nature sought by the Minister of Agriculture and me. I am forced, therefore, to introduce this Bill.

I was quite prepared for the Minister of Transport to introduce the Bill. I had no desire to be its author if the Minister was prepared to take that sensible step, but unfortunately he was not. In his written reply to me the Minister of Transport indicated that a driver travelling in the right hand lane could, if he were interfering with the movement

of other traffic, be prosecuted under section 45 of the Road Traffic Act, which states that a person shall not drive a vehicle without due care or attention or without reasonable consideration for other persons using the road. I would like somebody to tell me who has ever been prosecuted under that section of the Act for holding up traffic. I would absolutely guarantee that nobody has been so prosecuted. The police have not considered that that was an appropriate way to use section 45. It does need a specific duty on the part of drivers.

That reply is not good enough, because although that law may stand at present, the problem to which I have referred has continued and therefore stiffer or more direct measures are needed. Presently, dual carriageways carry signs requesting people to keep to the left except when overtaking. If it was not proper to do that, and if traffic authorities thought that that was wrong, then those signs would not be there. Those signs are put there for a purpose, that is, to bring people over to the left. If that is not the case, then take the signs away, we are better off without them, because people are not required to comply with that request. If it is a request and on a sign, then it should be part of the law and there should be a penalty attached to ensure that it is carried out.

There is no legal requirement at the moment for people to use this driving method and frequently slow moving vehicles cause a considerable bank up and pose a risk to road safety by failing to keep to the left. I urge honourable members, and I am sure the Minister of Agriculture will give sympathetic consideration to supporting my Bill, to support my Bill, which will provide a simple remedy to an important road safety problem.

The Hon. M.S. FELEPPA secured the adjournment of the debate.

FISHERIES ACT REGULATIONS

Order of the Day, Private Business, No. 4: the Hon. Barbara Wiese to move:

That Regulations under the Fisheries Act, 1982, concerning the West Coast Experimental Prawn Fishery, made on 27 September 1984, and laid on the Table of this Council on 16 October 1984, be disallowed.

The Hon. BARBARA WIESE: I move:

That this Order of the Day be read and discharged.

Order of the Day read and discharged.

FERTILIZATION PROGRAMMES (PRESERVATION OF EMBRYOS) BILL

Adjourned debate on second reading.

(Continued from 5 December. Page 2126.)

The Hon. DIANA LAIDLAW: I commenced my remarks on this Bill on 5 December 1984. At that time I indicated that the Hon. Mr Lucas had introduced this Bill because the Government had refused to withdraw the administrative instructions that the Minister of Health issued in June last year to allow the destruction of excess frozen embryos in certain circumstances. Those instructions did not allow the donation of embryos to other participating couples in the IVF programme. The administrative instructions referred to were announced by the Minister on 18 June following the rather sensational disclosure a week earlier that an IVF Programme in Melbourne held frozen embryos belonging to an Argentinian couple who had died a year earlier.

The instructions were in line with recommendation 20 of a working party report on *in vitro* fertilisation and artificial insemination by donor which had been prepared by Dr Aileen Connon and Ms Philippa Kelly and released in January 1984. Recommendation 20 of that report states:

That storage of fertilised gametes should be maintained until such time as any of the following events occur;

(a) the couple wishes to use frozen gametes themselves in subsequent treatment cycle.

(b) the couple requests in writing that storage of their frozen gametes be ceased; and

(c) the relationship of a couple ceases through death or any other reason; or,

(d) at the expiration of an agreed period of time, but in any other event no longer than ten years from the date of commencing storage.

Implementation of this recommendation and the Minister of Health's instructions to the IVF programmes operating at the Queen Elizabeth Hospital and the Flinders Medical Centre necessitated the preparation of new consent forms for participants in those programmes. As with most decisions in respect to the ground rules for the operation of fertilisation programmes the new consent forms prompted a wide range of reactions.

The Hon. J.R. Cornwall: Is this related to the latest one?

The Hon. DIANA LAIDLAW: I prepared this speech some time ago. Have you prepared new consent forms since then?

The Hon. J.R. Cornwall: Yes.

The Hon. DIANA LAIDLAW: I am referring to the time when the Minister first issued these consent forms in June. As all members would be aware, human reproductive techniques developed at lightning speed in Australia and elsewhere in recent years. The advances have been appropriately described as a revolution in reproduction.

However, while scientists and doctors continue to challenge the limits of accepted practices in the field of human reproduction, and people continue to clamour to avail themselves of the new techniques, scores of legal, ethical, and moral questions raised by the programmes remain neglected or unresolved. In fact, even the value and wisdom of developing the techniques to assist at any cost the treatment of infertile couples remains unresolved. In this respect it is interesting to note that the ethical and moral objections to IVF expressed by the Roman Catholic Church, in particular, do not seem to have had a major effect on curtailing demand for, or impetus behind the programme.

For instance, I understand that 20 per cent of our population is Catholic and the church's criticism of the programmes has received wide publicity. However, the proportion of Catholics on the IVF waiting list Australia wide reflects their numbers in the population as a whole. One of the more recent advances in human reproduction techniques has been the capacity of scientists and doctors to freeze and store embryos. This development has numerous advantages for those in charge of the programmes and for all the participating couples. However, this advance has raised the question of what society will accept as right in respect to embryos surplus to the requirements of the participating couple.

The Government's response to this dilemma, as I indicated earlier, has been to accept recommendation 20 of the Connon/Kelly working party report, which sets a limit for frozen embryo storage. This response, however, drew immediate criticism from a wide variety of sources: from Dr John Kerin, head of the IVF programme at the Queen Elizabeth Hospital, Roman Catholic Church leaders, the Anglican Archdeacon of Adelaide and also from the Chairwoman of OASIS for infertility support, which is a self-help group for IVF couples.

This Bill, introduced by the Hon. Robert Lucas, signals that the depth of feeling evident in the criticisms to which I have just alluded, has not abated since the Government announced its attitude to the preservation of embryos some eight months ago. Notwithstanding the range and intensity of the protest to the Government's administrative instructions, I believe in the circumstances that the Government's decision was the correct course to adopt. In fact, my immediate response was that the Government had not gone far enough. My view in this respect was echoed by Professor Warren Jones, head of the IVF clinic at Flinders Medical Centre. In the *Advertiser* of 18 June he said:

> . . . the Government's proposed 10 year limit—or sooner if the parents agreed; die or the marriage breaks down—was 'too long'. He said frozen embryos should be kept for two years, then destroyed. . .
>
> 'For practical purposes the 10 year contract with parents is too long and our thoughts are not well enough defined at this stage to develop a legislation package which will cover all aspects of IVF,' Professor Jones said.
>
> He said he favored simple controllable legislation at this stage which did not look at 'the mind-boggling complexities of IVF.' Further legislation later could relate to embryo donation.

In endorsing, at this time, the Government's approach to the conditions governing the storage of frozen embryos, I wish to quote from an article in the *Bulletin* of 26 June, which reviewed a book released in November by Australians Peter Singer and Deane Wells entitled *The Reproduction Revolution: New Ways of Making Babies.* In the book Peter Singer, who is Professor of Philosophy and Director of the Centre of Human Bioethics at Monash University, addresses the Right to Life argument which is the basis of the proportion of criticisms expressed to date in relation to the Government's administrative instruction. The *Bulletin* review states that Singer treats the Right to Life argument seriously. It continues:

> He starts boldly with the premise that it is not wrong to dispose of either the egg or the sperm before they have united. He then goes much further, arguing that there is 'no moral obligation to preserve the life of the embryo. Our argument applies specifically to the very early kind of embryo produced by the IVF programme.'
>
> He is referring to an embryo that has developed for some hours or perhaps a day or two. So far, the longest an embryo has survived *in vitris* is two weeks, so perhaps he is on safe ground here. Yet he also argues in another part of the book that an embryo does not feel pain or function as an individual human being until it is six to eight weeks old.
>
> Fortunately, perhaps, the scientists involved in IVF do not have to deal with anything more than the most embryonic of embryos.

Among the relevant points that were noted in the review I have just cited, the most important, I believe, is the fact that scientists and doctors involved in IVF programmes are not dealing with anything more than the most embryonic of embryos—embryos are fourteen days old at the maximum. I do not accept that at this age such embryos feel or function like a human being or are a human being. Further, in addressing this issue, it is wise also to keep in perspective the numbers of surplus embryos we are talking about. As the Hon. Mr Lucas noted, of the 40 to 50 frozen embryos stored with the QEH programme, most will be used in future treatment cycles for participating couples, and it is estimated that of those stored at present a maximum of 10 may be excess embryos.

One of the major arguments presented by the mover in his second reading explanation was that the new consent forms must be signed by any couple participating in the programme, even if that couple has social, moral or religious objections to the course of action envisaged in that consent form. The argument fails to acknowledge that there is no compulsion for infertile couples to participate in the programmes and any couple who hold such strong objections need not do so. In fact, the Hon. Mr Lucas's concerns for those who hold such objections underlines one of my nagging doubts about the whole human reproduction programme and, that is, the subtle and not so subtle pressure that such programmes are placing on infertile couples to participate. I repeat: whether or not people object to the new consent forms, there is no obligation for infertile couples to participate in the human reproduction programmes.

The Hon. Mr Lucas and others who object to the new consent forms have argued further that the forms fail to acknowledge that there is a further viable option for excess frozen embryos, that of embryo donation. I admit that the question of options in this field, as in others, always has an element of appeal. What I find difficult to come to terms with in this instance is the fact that the very people who are pushing the argument for broadening the options are the Right to Life advocates and the whole basis of their creed is so uncompromising. If they won their argument and the new consent forms included the option of embryo donation, I have no doubt that they would continue to be vocal in their criticism of the new consent forms if disposal of excess embryos remained an alternative option for participating couples.

Essentially, what I am arguing is that while the Right to Life lobby cries that the new consent forms deny the option of embryo donation, irrespective of the fact that they can choose not to participate, they are more than ready to deny to others the option of disposing of excess embryos if others wish to accept this option.

While on the subject of embryo donation, I point out that I believe that the Government was correct not to include this option in the consent forms at this stage. The Hon. Mr DeGaris, when speaking to the debate on the Family Relationships Act Amendment Bill on 28 August, addressed the subject of gynaecological bewilderment—the dilemma that many adopted or foster children face when unable to discover the truth about their parentage or origin. This problem is very real for many people, as evidenced from case histories on the subject. As such, I do not believe that it would have been appropriate for the Government or for us legislators to endorse embryo donation until the question of this bewilderment, the anonymity of donors and the like, has been investigated further and decisions on these questions resolved. In fact, to have endorsed embryo donation to satisfy the whims of some couples without addressing the problems that could be encountered in later life by these children born by IVF would have been irresponsible.

In addressing the option of embryo donation, I am aware that both the Waller Committee in Victoria and the Warnock Committee in England have recommended in favour of donation of embryos. At this stage I do not wish to quote those recommendations. I was interested, in reading the recommendations of the Waller Committee (6.31), to note that one of the members, Mrs Hay, dissented from that recommendation. She did so in the following terms:

> The argument that the process of embryo donation simply parallels the situation created by adoption is not, I consider, sufficiently convincing to provide either adequate or reassuring grounds for recommending that this procedure be implemented. It should be pointed out that while adoption attempts to deal with an existing problem in the best possible manner, in the case of embryo donation, an action is being taken at a stage when a potential problem may still be avoided. The committee has received submissions which indicate that there is a significantly higher level of psychological problems with adopted children.
>
> Throughout this inquiry it has been necessary to weigh the separate interests of the child, the infertile couple and the community. To date possibly the greatest consideration has been given to the infertile couples. The submissions received from these couples have been very moving. The whole committee is, in my opinion, extremely sympathetic to the circumstances and difficulties of the infertile.
>
> With the introduction of embryo donation, however, perhaps more attention must now be focused on the possible repercussions

to the child and the possible long-term implications for the whole community.

As I indicated, I agree with Mrs Hay's dissenting ruling in respect of the Waller Committee Report on Embryo Donor Gametes in IVF. In the meantime, I also acknowledge that I see little value in the argument that there is a need for a common response around the world in respect of embryo donation. Before concluding, I will briefly address a few specific points incorporated in the Bill.

First, I admit that I find the qualifications in the clauses dealing with the preservation of embryos and the destruction of embryos respectively most interesting. Clause 3 (2) provides:

(2) Subsection (1) does not—
(a) relate to an embryo which could not have any viable use in a fertilisation procedure;
(b) relate to the transferring of an embryo into the uterus of a woman as part of a fertilisation procedure.

Clause 4 (2) provides:

(2) Subsection (1) does not relate to the inadvertent destruction of an embryo during the course of a fertilisation procedure.

In my view, those qualifications undermine the argument presented by pro-life organisations about the integrity of an embryo from day one of fertilisation. However, I understand that this argument is the foundation of the Bill. It appears that those in charge of the IVF programmes can be permitted, in the terms of the Bill, to dispose of sperm, ova and embryos which could 'not have any viable use in a fertilisation programme', but that they cannot dispose of other embryos. The distinction is difficult to justify.

Further, it must be remembered that at best the pregnancy success rate with IVF procedures is only about 20 per cent. Therefore, the procedure, at best, involves a great amount of wastage. With specific reference to the Bill, I believe the penalty that has been assigned for those who are found not to have taken all reasonable steps to ensure the preservation of an embryo is extraordinarily excessive at $4 000 or one year's imprisonment. I certainly have not found any similar recommendation in any other inquiry on this matter within Australia or elsewhere.

Finally, when I began speaking to this Bill a while ago the Minister indicated that new consent forms had been approved recently. I admit that I have not seen them, nor was I aware of that fact. My notes for this debate were prepared in December last year, so some of my criticisms of the Bill may have been addressed by the Minister in the new consent forms. In conclusion, for a variety of reasons, I am unable to accept this private member's Bill introduced by the Hon. Mr Lucas, although I do not deny that his motives for introducing the Bill are sincere.

The Hon. J.R.CORNWALL (Minister of Health): I have asked to speak at this time because I have to make what I consider to be a major announcement, and I believe that it may significantly alter the general direction of this debate. The fact is that the talk of the consent form, as the Hon. Miss Laidlaw acknowledged, has now been overcome by a new consent form. It is quite different in many respects from the one that was originally recommended.

In December last year, I asked a working party consisting of Health Commission officers, Dr John Kerin of The Queen Elizabeth Hospital and Professor Warren Jones of Flinders Medical Centre to look at existing consent forms for the *In Vitro* Fertilisation and Embryo Transfer Programmes. I particularly asked the working party to look at the position of frozen embryos. The working party has now drafted new consent forms which take account of possibilities regarding frozen embryos. In particular, the new forms allow couples in the programme to make decisions for themselves as to the possible fate of their frozen embryos. This is quite unlike the aim of the Bill, by which the Hon. Mr Lucas seeks to place that decision in the hands of Parliament.

I do not believe that anyone could seriously contend that that decision should be placed in the hands of Parliament and the legislators, *vis-a-vis* the right of the couples themselves participating in the programme to make and take informed decisions for themselves. The consent forms allow the couples to make clear decisions whether, in the event that they no longer wish to transplant the embryo or if they should divorce, legally separate or if one or both partners should die, the embryos may be donated to another couple or for storage to be discontinued. Therefore, there is a clear choice for any participating couple that is taken when they enter the programme using that consent form. Of course, that is very different from the original form and is much less flexible than was suggested by the Connon/Kelly Report and recommended early last year.

The forms also call upon hospital departments to review and discuss these matters with couples annually. Again, there is a further element that takes into account changing circumstances. There is a much greater degree of flexibility and a much greater degree of sensitivity. Again, I suggest that that is far more appropriate than simply having this matter decreed in advance by members of this Parliament. Of course, it may be in the long-term, following the report of the Select Committee and the decision of Parliament that that course of action may be enshrined in the law. I think that would be entirely appropriate, without in any way pre-empting the decisions of the Select Committee. As a major interim measure I believe the degree of flexibility that is available in the informed consent in this latest consent form (which has been put forward by Professor Warren Jones, Professor Lloyd Cox, Dr John Kerin and by others both within and outside the programme) gives a much greater degree of flexibility and is a much more sensitive and sensible approach to the whole vexed problem.

The Hon. Diana Laidlaw: What about Dr Kerin's initial outburst that he would not abide by the Government's instructions? Can he now accommodate the Government's instructions? He can now accommodate the consent form.

The Hon. J.R. CORNWALL: He can now accommodate a couple's instructions. Quite clearly, the Government does not wish to be seen to be heavy handed in this matter one way or the other.

The Hon. Diana Laidlaw: I just wanted to be reassured of that. Initially he indicated that he could not participate in any programme that involved the destruction of embryos. He now finds that he can, if that is what a couple wishes.

The Hon. J.R. CORNWALL: Yes. Dr John Kerin participated in the working party which drew up the latest consent form. I have asked the Chairman of the Health Commission to have the Commission formally adopt these forms as soon as possible. I ask leave to incorporate that new consent form in *Hansard.*

The ACTING PRESIDENT (Hon. G.L. Bruce): Is it statistical?

The Hon. J.R. CORNWALL: It is a very formal presentation.

The ACTING PRESIDENT: Is it statistical information?

The Hon. J.R. CORNWALL: In the broadest sense, yes.

The ACTING PRESIDENT: The Council may assess it. Leave granted.

CONSENT FORM FOR ENTRY INTO A PROGRAMME OF *IN VITRO* FERTILISATION AND EMBRYO TRANSFER

Note: (1) Both sections (I) and (II) must be completed. The attending medical practitioner shall not witness any signature on this form.
(2) It is not necessary for a separate form to be signed for every treatment cycle. However, specific consent forms will be required for operative procedures. This

form is valid for an entire treatment programme subject to the wishes of the couple.

Section I CONSENT

We .....and ..... agree that should the (full name of female partner) (Full name of male partner) ..... (name of hospital) agree to consider ..... (name of female partner) as a candidate for the procedure of *in vitro* fertilisation and embryo transfer.

1. We consent to the proceduress of *in vitro* fertilisation and embryo transfer and acknowledge that they are medical procedures intended to produce pregnancy through the use of embryo(s) being transferred into the female partner's uterus by artificial means.

2. On the basis of our consent we authorise the attending medical practitioner, ... (name of medical practitioner) to employ and seek the assistance of such qualified persons as he may desire to assist him.

3. We understand that though the procedures of *in vitro* fertilisation and the subsequent embryo transfer will be performed by the medical practitioner, there is no guarantee or assurance or undertaking on his/her part that pregnancy will result.

4. We authorise the medical practitioner to implant no more than ..... (write in number) of our embryo(s) during any treatment cycle.

5. We understand that there may be embryo(s) in excess of the above number during any one treatment cycle. We authorise*/do not authorise* the medical practitioner to store those embryo(s).

6. (1) If we have given such authority to store those embryo(s) then we acknowledge that such storage will cease upon any one of the following events occurring:

(a) upon our joint request for their use in a future treatment cycle;

(b) upon our joint written request that they be made available at any time to another couple for the purpose of introducing such embryo(s) into the uterus of the female partner of that couple with the intention of producing a pregnancy;

(c) upon jointly signed written request by us to discontinue storage;

(d) upon cessation of our domestic relationship either through death or by divorce or legal separation provided that we may authorise in writing that any embryo may be made available to another couple in those circumstances; or

(e) at the expiration of an agreed period of time but in any event no longer than 10 years from the date of the commencement of storage.

(2) In the event that storage may be discontinued pursuant to subparagraphs *(a)* and *(b)* of subclause (1) of this clause for some of our stored embryo(s) we understand that storage will be continued for those remaining embryo(s) not immediately required.

(3) We understand that we may authorise in writing that in the event of either, or both, partner's death or in the event of divorce or legal separation any fertilised embryo may be made available to another couple.

7. We understand that as may occur in any spontaneous pregnancy, and despite the exercise of all reasonable care and professional skill, if pregnancy should result from this procedure there is a possibility of complications of pregnancy or childbirth or the possibility of the birth of a physically and/or intellectually disabled child or children.

8. We understand that the matters agreed upon by us in this form will be subject to an annual review and discussion with members of the Department of Obstetrics and Gynaecology and that as a result we may wish to either confirm or alter our wishes as stated in this form.

Dated this .....day of .....19 .....

Signature of female partner .....Signature of witness .....

Dated this .....day of .....19 .....

Signature of male partner .....Signature of witness .....

Section II CONFIRMATION

I, ... have described (name of medical practitioner) to the abovenamed wife and husband the nature, consequences and effects of the procedures of *in vitro* fertilisation and embryo transfer. In my opinion they both understood this explanation.

Dated this .....day of .....19 .....

*Delete whichever is inapplicable.

The Hon. J.R. CORNWALL: I asked both Professor Cox and Professor Jones for their comments in relation to this Bill. Indeed, I called a round table conference, which I also asked the members of my Parliamentary Labor Health Committee to attend. The joint opinion of Professors Cox and Jones, which was supported unanimously by their respective departments, is that the Bill is unacceptable. The strong concern is expressed that the Bill totally abrogates the rights of couples in the *in vitro* fertilisation programmes and denies them ownership of their own genetic material. There is also concern that the outcome of the Bill will be that there will be a progressive build-up of stored embryos with no authority spelled out at all for their use. Most importantly, the Bill is pre-empting the outcome of the Select Committee to which this Parliament referred for consideration late last year this important area of human endeavour. It is unwise—indeed, I cannot stress too strongly that I believe that it is most unwise—to prejudge and perhaps constrain the work of the committee. On this basis, also, I believe that the Bill should not be supported. In conclusion, I point out to all of my colleagues in this place an important scientific fact—and it is fact—that is generally misunderstood or forgotten when emotion or attention is focused on this area: as part of the process of *in vitro* fertilisation and the subsequent freezing of embryos, as the Hon. Dr Ritson would know, up to 50 per cent of embryos will not survive. This cannot be regarded as inadvertent destruction of embryos because anybody who is performing those technical procedures and any couple participating in the programme would know and must know in advance that 50 per cent of all of those embryos, by the very act of freezing and thawing, will perish. So, to try to write into law in the strictest possible way—

The Hon. Diana Laidlaw: With heavy penalties.

The Hon. J.R. CORNWALL: With very heavy penalties—an onus for people to preserve embryos at all costs places us on a very perilous slope indeed. In fact, members should be aware, on all the advice that I have been given—and this includes consultation, as I said, with Professor Lloyd Cox, Professor Warren Jones and Dr John Kerin—that if this Bill is to place the *in vitro* fertilisation programmes under such unrealistic and unworkable constraints as to include the attrition of embryos in this way, I am told, and I must inform the Council, the *in vitro* fertilisation programmes may have difficulty in continuing their operation. I therefore—

The Hon. R.I. Lucas: All those three gentlemen said that?

The Hon. J.R. CORNWALL: Indeed, they did.

The Hon. R.I. Lucas: All three of them?

The Hon. J.R. CORNWALL: Yes; they were on the working party, my son. I am sorry; I withdraw and apologise.

Members interjecting:

The Hon. J.R. CORNWALL: He is likely to finish up in the Clancy column if I do not watch out. Therefore, at this time, we have certainly reached a humane, sensible, sensitive, interim arrangement, at least until the Select Committee reports and approaches the matter in a far more workable and sensible way than does the Bill before us. I do not intend to support this Bill, as I have made clear: nor is that the intention of any of my colleagues on the Government side of the Chamber, and I very strongly urge members to consider carefully what I have had to say today. If they do, in the circumstances, maybe the sensible course would be for this Bill to lapse rather than our having to defeat it.

The Hon. ANNE LEVY: I rise to oppose most strongly the second reading of this Bill and I endorse many of the remarks that have been made both by the Hon. Miss Laidlaw and by the Minister. My first objection to this Bill is that it pre-empts the findings of the Select Committee that has

been set up. The possibility of donation of embryos and the methods of storage and ultimate disposal of embryos are very clearly matters that the Select Committee of this Parliament has been set up to investigate. For the Hon. Mr Lucas to bring in this Bill is jumping the gun and pre-empting any conclusions to which the Select Committee may come. It is prejudging the whole question of whether an early embryo should be regarded as having full human rights and should be treated as a human being instead of being regarded as a potential human being.

It is analogous to the right to life argument regarding termination of pregnancy. I certainly acknowledge that there are different views in the community of the status of an early embryo and of a foetus. These different views are sincerely and validly held by people of good faith and great moral integrity, but I maintain that with regard to the situation of stored embryos, as with termination of pregnancy, the view of one group should not be imposed on other people.

My strong preference is for the views of the donors of gametes to be respected and that their wishes are those that should be taken into account, in the same way as where the question of abortion is raised it is the wish and values of the woman concerned that need to be taken into account—not those of other people, and certainly not those of 69 members of Parliament sitting here.

When we are considering stored embryos produced by *in vitro* procedures, the wishes of the couple should be paramount and the potential parents should be the ones to decide the fate of any spared embryos. This is not the attitude taken by the Bill brought in by the Hon. Mr Lucas. He is saying, in effect, that the donors of the gametes are to have no say at all in the fate of their genetic material, and that even if they request that any spare embryos should be removed from storage and discarded the person they request is to refuse to undertake their wishes and that no liability will attach to this person for refusing.

I am very glad about the announcement of the Minister of Health about the new consent forms that acknowledge the rights of the gamete donors, so that the donors of gametes can either agree or disagree with the freezing and storage of any embryos produced from their gametes.

It is the gamete donors who will decide whether or not embryo freezing is to occur. If they agree to freezing occurring, then they agree that storage will cease. If the embryos are wanted in a future cycle or if the couple agree that spare embryos should be donated to another couple, or the couple request the storage to cease, the couple can decide whether or not to donate any spare embryos, should their relationship cease by death or separation. The new guidelines firmly put the matter into the hands of the donor of the gametes, and that, in my view, is where it should lie.

In this way, if people taking part in IVF programmes have certain moral or ethical objections to either storage or donation, they can give effect to their wishes, and the values of one group of people are not being imposed on other people who may have quite different values. Certainly, one effect of the Hon. Mr Lucas's Bill will be a progressive build up of stored embryos with no indication of what their subsequent use is to be. This alone could cause problems to hospitals.

As the Minister has pointed out, we know that 50 per cent of embryos do not survive going through these procedures. This is a known fact and, although the Hon. Mr Lucas's Bill states that there is no penalty for inadvertent destruction of an embryo in a fertilisation procedure, the definition of a fertilisation procedure certainly does not include freezing and thawing. A fertilisation procedure according to the Bill is fertilising an ovum outside the body and then transferring it into a uterus, so that inadvertent destruction in any process other than that would become illegal. As we know that freezing of embryos causes destruction, it would mean that no freezing of embryos could occur at all because there would be known destruction of 50 per cent of them that was not inadvertent, and so the people undertaking this activity would be acting illegally.

The Hon. R.J. Ritson: No, they would not; they would be taking all reasonable steps to preserve. Read the Bill: all reasonable steps to preserve. You know there will be some wastage, but you are doing all you can—

The Hon. ANNE LEVY: But no inadvertent destruction is permitted, except in a fertilisation procedure. Freezing and thawing is not part of fertilisation as defined.

The Hon. R.J. Ritson: You are working very hard to misinterpret the wording of the Bill.

The Hon. ANNE LEVY: I am certainly not misinterpreting the Bill. It is a known fact that freezing will cause destruction, and it will not be destruction that is permitted under the legislation because it is not part of a fertilisation procedure as defined.

The Hon. R.J. Ritson: They would never put you on the bench interpreting Statutes like that—

The Hon. ANNE LEVY: There is no doubt at all that under clause 3 all embryos produced would have to be preserved, and under clause 4 they could not be frozen because this would lead to known destruction, which would be illegal. The Bill's contents would mean that all embryos produced would have to be implanted in the one treatment cycle, certainly, with the resultant dangers of multiple pregnancies and all that that entails in terms of risks to a woman and to children. As the Minister has stressed, the staff at the two hospitals undertaking IVF procedures are unanimous in finding unacceptable the Bill produced by the Hon. Mr Lucas, and this is regardless of their religious and philosophical views, which cover a wide spectrum. Unanimously, they regard the provisions of the Bill as quite unrealistic and totally unworkable. If the Hon. Mr Lucas persists with his Bill there is no doubt that all IVF programmes would come to a full stop. The consequences of this will be frustration and misery for many couples who otherwise would be helped by these programmes, and I strongly urge all members of the Council to defeat this nonsense at the second reading stage.

The Hon. PETER DUNN: I merely wish to explain quickly that I support the Bill. Regardless of what has been said previously, I cannot understand the logic of the Hon. Miss Levy in saying that it is unreasonable to be reasonable in trying to preserve life. I find that difficult to comprehend.

The Hon. K.T. Griffin: There is no logic in that.

The Hon. PETER DUNN: There is no logic at all in that. As for the honourable member's saying that this Bill pre-empts the Select Committee, I would have thought that the Minister has pre-empted that by altering the consent form.

Members interjecting:

The Hon. J.R. Cornwall interjecting:

The Hon. PETER DUNN: Yes, but that is pre-empting what is going on. I believe that already the Minister has responded to that and has pre-empted the Select Committee. As for participants in this programme choosing whether they can withdraw the life support mechanism—and they are the words of the Minister, the words that he used in his previous second reading speech—or whether they wish to transfer those embryos to another couple or have them destroyed, that is playing God and I believe that that is a very difficult thing today, especially when we legislate that people shall not murder one another, yet we allow this to happen. Regardless of what Doctors Jones, Cox and Kerin have said, I believe—

The Hon. R.J. Ritson interjecting:

The Hon. PETER DUNN: We are only going on hearsay. I do not know whether they have the right to determine whether life proceeds, because I would have thought that it was their job to help and promote life to be easier, better, and longer. I would have thought that in a discussion with them they would use that term. It is only a short-term Bill in my opinion, because technology is advancing at such a rapid rate that soon it will not be necessary to flush the uterus to receive as many gametes to fertilise later—it will be done with improved technology—so that one egg alone will be fertilised outside the uterus and then returned, and for that egg to grow into normal life.

In the meantime, it is necessary to remove four, five or more eggs so that there is a multiple choice. I believe that technology will overcome that in the long run. As for the argument that freezing kills the eggs, I suppose that it kills only 50 per cent, so it helps to retain life because it keeps the other 50 per cent alive. Therefore, that argument is very poor indeed. If we withdraw support, having frozen the eggs, we are virtually flushing down the sink a potential life. My background does not allow me to continue in that vein.

The whole Bill revolves around the word 'reasonableness', and we all know that these highly technical procedures involve an element of risk. All the Bill is stating is that we should be reasonable in our endeavours to retain and to do what we can to support life and see that it grows. I see nothing wrong with that: in fact, I find it highly laudable, and I support the Bill.

The Hon. R.J. RITSON secured the adjournment of the debate.

LOCAL AND DISTRICT CRIMINAL COURTS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 5 December. Page 2135.)

The Hon. K.T. GRIFFIN: The Opposition supports this Bill, which seeks to give to civil litigants in the Local Court another option for service of originating proceedings. At present summonses in the Local Court may be served either personally on the defendant or non-personally by leaving a summons with a person at the address for service who is obviously over the age of 14 years, and by substituted service where the defendant cannot be located but the approximate whereabouts may be known. However, that method is rarely used in the Local Court; it is more frequently used in the Supreme Court, where often a much more substantial sum is involved in a claim and defendants in those circumstances are more elusive.

The procedure for personal service can be followed either by the court bailiff (and that involves a request at the time of issue of the summons to the Clerk of Court to have the court bailiff serve the summons personally), or the plaintiff can arrange for service (either through a private bailiff or by doing it himself or herself), or the plaintiff's solicitors can arrange service by a variety of means. I know from my own experience and from contact with a wide range of people within the legal profession that personal service or even non-personal service (by leaving a summons at the address of the defendant shown on the summons with a person over the age of 14 years) can be a time-consuming and expensive business. Even service through a court bailiff costs a prescribed fee, and then the court bailiff may have to make one, two or more visits to the address for service to arrange service, perhaps finding that the address is not the right address and then having to seek instructions from the plaintiff or the plaintiff's solicitors in order to redirect service. That can be very cumbersome, expensive, and time-consuming.

Under the Justices Act complaints and summonses for statutory offences may be served by post, and that system has been operating for several years. It does not seem to have caused particular problems, although I must say that sometimes my own experience with the post is such as to suggest that there should be reservations about the quality of the postal service in Australia, whether ordinary pre-paid post, registered post, certified post, or any other form of post. Notwithstanding that, generally the mail gets through. In the second reading explanation the Attorney-General indicated that inquiries made by his officers suggest that only about 65 per cent or 70 per cent of certified or registered mail gets through. There are a number of reasons for that, one being that the person to whom the correspondence is addressed must sign for it.

Secondly, often the identity of the person who is sending the correspondence is noted on the card that the prospective recipient has to sign. That alerts the recipient to the nature of the material in the letter and that person then refuses to sign for it. But, with the ordinary post there are no such problems. Perhaps 90 to 95 per cent of the mail gets through and if the person to whom a letter is addressed is no longer at a particular address the letter is either redirected according to a redirection notice at the post office, or returned, either through the dead letter office to the sender or direct to the sender if the sender's name and address is marked on the envelope.

Therefore, the ordinary post, which is proposed as the means of servicing this Bill, while it does have some hiccups, can generally be accepted as a reasonable mechanism for getting summonses to defendants, so I am prepared to support that. The procedure proposed for the Bill is that on issue of the summons by the court it will arrange for service by post and the date of posting will be marked by the Clerk of Court in the relevant process book. That will be evidence of service and service will be deemed to have occurred on the date of posting even though it may be a few days later that it is actually received, and within 21 days after the date of posting the plaintiff is entitled to sign judgment if a defence has not been filed by the defendant.

If there are delays in the delivery of ordinary mail the registrar of the subordinate courts division of the Courts Department is able to give notice in the *Gazette* extending the time for service. That, I understand, is necessary because if there is a mail strike, a flood or some other disruption to postal services the defendant ought not to be prejudiced by that but ought to have the opportunity for some further time within which to file a defence; so that facility is appropriate and I do not think that it is likely to be abused. If the summons is returned by the post office undelivered or, without that, the Clerk of Court believes that the summons has not been served the clerk can automatically enter into the process book the fact that it has not been served and judgment cannot be signed or entered against the defendant. If it has been, then the clerk can automatically set it aside and notify that action to the plaintiff.

If a defendant receives, for example, a warrant of execution or an unsatisfied judgment summons and claims that the summons was not served by post as indicated in the process book then the defendant has a right to set aside the judgment which may have been entered, and to defend it. However, the Bill provides for service in that event to take effect from the date upon which the unsatisfied judgment summons or other process was set aside by the court.

The court is to pay the cost of postage. That means a very substantial reduction in bailiff costs to the plaintiff as well as to the defendant who may be unsuccessful. It also

means that the Government will save a considerable amount of money that is presently consumed in the court bailiff system. It also means that summonses will be served much more quickly. I think that anything that will facilitate the conduct of proceedings is to be supported. The Bill does provide for penalties for persons who knowingly provide incorrect information for the purpose of service, or provide information being recklessly indifferent in the provision of that information.

I think that it is important to try to ensure that there is no abuse of the system by a plaintiff giving a false address with the object of having a document served, or at least deemed to be served, under the postal service provisions of the Bill. It is important to recognise that this form of service is not the only form of service. The other methods of service still remain; that is, personal service, non-personal service and substituted service. It is really just an additional option for the service of proceedings. I am prepared to support that, because I think it is important to provide that facility for plaintiffs. There is only one area of concern and I draw this to the attention of the Attorney-General so that he can give consideration to it. There may be summonses to be served in outlying areas of South Australia where there may only be a weekly mail service. It is quite possible that the 21 days will then not be sufficient time within which to allow for service and for the return of an appearance to the court, particularly if there is a weekly postal service that may be on a Tuesday, for instance.

If the Clerk of Court posts the document on a Wednesday it will not be delivered until the following Tuesday; that means that six days will have already expired. The recipient in an outlying area of the State will not get a chance to send something back until the following mail service on the following Tuesday. It may well be that a period of 21 days is not a sufficient period within which to allow a person in an outlying area of the State to obtain proper advice and file an appearance or defence within 21 days. I suggest to the Attorney-General that we amend the Bill during the Committee stages to give power to prescribe particular areas of the State within which the time for service may be extended.

I think that this has to be done by regulation. It is one of those occasions when I am happy to see something done by regulation because I can see that administratively it could be very difficult if we provided precise alternatives in the legislation. It seems to me that a regulation-making power could enable a different time limit to be set for certain parts of the State. In the light of current mail services that would be an appropriate mechanism by which it could be dealt with administratively. I am anxious to ensure that service by post does not prejudice persons who live in outlying areas of the State.

I am not sure what mail deliveries are to some outback stations, and not just to station owners but to workers on those stations—fettlers camps and other such places, and even to Aboriginal communities. I think, therefore, it is important to provide some sort of mechanism by which the 21 days can be extended. I do not think that litigants should be put to the expense of an interlocutory proceeding if the 21 days is not adequate and judgment is signed before the expiration of that time and there has not been adequate time to receive the summons and send back an appearance after getting proper legal advice.

So, that is the only problem I see in the Bill. I hope that the Attorney-General will give some consideration to it, but in all other respects I think the additional option is a good thing for litigants and I commend the Government for introducing it in this way.

The Hon. C.J. SUMNER (Attorney-General): I thank the honourable member for his support of the Bill. He has raised one issue which may be the subject of an amendment. Before agreeing to that amendment I guess that I should ascertain its ramifications and whether there is likely to be the problem that the honourable member outlined. I suggest that we report progress after clause 1 and, if it is considered that there is, administratively, some merit in the honourable member's suggestion, I would certainly be happy to consider it favourably during the Committee stage. My only qualification to that is that I would like to obtain further information about the practical ramifications of what the honourable member suggests.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

STATE DISASTER ACT AMENDMENT BILL

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

POLICE REGULATION ACT AMENDMENT BILL (No. 2)

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

LOCAL GOVERNMENT ACT AMENDMENT BILL (No. 4)

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

CLASSIFICATION OF PUBLICATIONS ACT AMENDMENT BILL

Later:

The House of Assembly intimated that it had agreed to the recommendations of the conference.

Consideration in Committee of the recommendations of the conference.

The Hon. C.J. SUMNER (Attorney-General): I move:

That the recommendations of the conference be agreed to.

When this matter was last before the Council on 6 December 1984, I indicated that the conference of managers between the two Houses had adjourned to enable me to take up with Commonwealth and State Ministers possible guidelines for the proposed ER category and also to raise the question of adult cinemas proposed in this Council by the Hon. Mr Lucas. I have corresponded with the Federal Attorney-General during the Christmas recess. I explained in my correspondence to then Senator Evans what had happened in South Australia with respect to the legislation introduced by the Government to ban the X and introduce an ER category of videos, subject to the Commonwealth introducing such a classification.

I indicated that we were in a conference of managers and that some compromises had been suggested. One compromise included the adult cinemas, suggested by the Hon. Mr Lucas, and I said that there may be another avenue of compromise if the guidelines could be tightened up in a number of respects as far as the ER category was concerned. It was generally felt that there may be capacity for an ER category

which confined itself to strictly consenting acts between adults in relation particularly to heterosexual activity and excluding homosexual activity.

In response to that letter I was advised by the new Federal Attorney-General, Mr Bowen, that he had considered my representations, and he advised me that New South Wales was legislating to ban X, and that Victoria intended to ban X but would have introduced an ER category had that been introduced in the Australian Capital Territory. Mr Bowen then went on to say:

> A Senate Select Committee on video material has been appointed and has commenced its inquiry with the intention of reporting to the Senate by 31 March 1985, subject to the possibility of appointment of a Joint Parliamentary Select Committee to continue the inquiry. The terms of reference of the Senate Committee specifically refer to the desirability or otherwise of a video classification above R and, with this in mind, I am not in favour of amending the ACT Classification of Publications Ordinance 1983 until the report of the Parliamentary committees have been received and been considered.
>
> Although I would certainly support a further meeting of relevant Ministers, to discuss the uniform videotape classification system, I do not believe, in the light of the circumstances I have outlined, that it would be appropriate to have a meeting at this time.

Mr Bowen indicated that the Commonwealth Government would not take any further action in this matter until the Federal Parliament Select Committee reported.

I ascertained further that it is likely that a joint Select Committee will be established with similar terms of reference to those which currently apply for the Senate Select Committee. Those terms of reference are very wide and pick up all the issues that have been raised in debate in this place to date, including the Hon. Mr Lucas's suggestion about adult cinemas. During the recess, I also took the opportunity to ascertain the intentions of other State Governments in Australia. Queensland and Tasmania indicated that they would always ban X and would not allow any replacement category. New South Wales, Victoria and Western Australia had also acted to ban X and, apart from Victoria, had not acted to bring in an ER category. The ER category in Victoria will come into effect only if it is adopted by the Commonwealth. I indicated that the Commonwealth was not prepared to do that at this stage and, in fact, was not prepared to do anything until the Select Committee reported.

That is the situation that I took back to the conference of managers. In the light of that, the conference decided that there was little point in proceeding with the ER category in South Australian legislation at this stage. I emphasise that the effect of the Bill at this moment, which will pass Parliament today, is the same as the effect of the Bill introduced by the Government, namely, that X will be banned and there will be no replacement category at this stage. That would have been the result of the Bill introduced by the Government; that is the result of the Bill that is now being recommended for passage by the conference of managers. The only substantive difference would have been that, had the Commonwealth decided at some future time to adopt the ER category, the South Australian Government Bill would have allowed that to happen. The Council amendments do not allow that to happen without further legislation.

I emphasise that at this moment the practical effects of both Bills are the same, because the Commonwealth has indicated that it will not adopt the ER category. Even if it was in the Bill, it would not have come into effect. In those circumstances, as I have said, the conference took the view that it was better to wipe the slate clean, and if the Federal Select Committee recommends some alternative means of dealing with this material—adult cinemas or an ER category—after a thorough investigation and broad terms of reference, then it would be possible, and I believe it would be incumbent upon Parliament to at least consider the Federal Select Committee report whatever it might recommend.

The conference agreed that Parliament could consider the ER category again once the Federal Select Commmittee reported, depending on its recommendations and consideration by the Federal and other State Governments. Of course, that is without prejudice to any future positions in relation to the ER category. At the moment, the situation as far as the conference is concerned is that the sale or hire of so-called X-rated videos is banned. It will still be possible to possess and show privately the majority of X-rated videos. It will be an offence to show an X-rated video which has also been refused classification by the Commonwealth Film Censor. Therefore, there will be that category of videos already banned in South Australia in 1983 as a result of this Government's action. It will be an offence to show that category of videos—the violent coersive type that began circulating in this State a number of years ago—to anyone.

The category of X-rated videos now circulating in the South Australian community can still be circulated, and I refer to those videos that involve sexual acts between consenting adults. They can still be circulated but cannot be sold or hired. The conference also disagreed with the Legislative Council amendment to restrict the display of R-rated videos to a special or restricted area of video shops. That was part of the compromise package that was put forward.

The basic penalty ended up at a fine of $10 000 or six months imprisonment, which has been the maximum penalty for some time for selling obscene or indecent literature. The maximum penalty for selling, for instance, an R-rated video to a minor is a maximum of three months imprisonment or a fine of $5 000, and the maximum penalty for selling a video without a classification, whether it be G, PG or M, is a fine of $2 000. Therefore, we now have a compulsory classification system for videos. As a result of the representations that I made at a number of Ministerial meetings we have a tightening up of the guidelines on violence in the M and R categories; we have a banning of X; and, of course, we had the initial action of the Government in November 1983 to ban video nasties—quite horrendously violent material that had been circulating prior to that date (and I indicate that it had been circulating prior to November 1982).

The future will need to be left to determine whether any ER category is allowed in South Australia for sale or hire or whether there is some other solution to this problem. Unfortunately, some black market will develop in this area. That is exacerbated by the banning of all of the X-rated videos, but that is a matter that the Commonwealth Select Committee can examine, and it may well wish to glean information from overseas on that point.

I know, for instance, that the Commonwealth Film Censor (Mrs Strickland) is firmly of the view that banning all of the X category would lead to a black market, which inevitably will involve criminal elements. That was her view put to a meeting of Commonwealth and State Ministers on the topic. Whether it is correct or not will now be a matter for the Commonwealth Select Committee to determine by its experience from overseas and by examining the operation of this legislation in Australia at present. So, the effect of this is to wipe the slate clean as far as X-rated videos are concerned, and we will now await the results of the Commonwealth Select Committee.

There was a substantial amount of misinformation in the community about this issue. Only on Monday there was a letter in the *Advertiser* from a person who claimed to have a B.A. and a Diploma of Social Studies; this person wrote and said that this X-rated material was violent and, therefore, that we should ban X-rated videos. After all the information

that has been disseminated about this topic over the past 12 months there is still that misinformation in the community.

The violent X-rated videos were banned as a result of the actions of this Government in November 1983; yet there is still the perception that that material is available for sale or hire in South Australia. The fact that there was this misconception meant that rational consideration of this issue in the community was not really possible, and it became less possible following the actions of the Commonwealth Government and the other States. I can only now say that, hopefully, the joint Select Committee of both Houses of the Commonwealth Parliament can take a dispassionate look at this issue, balance the competing interests and come up with some recommendation that we can further consider, whatever that might be.

Of course, I do not know what that will be. Its conclusions may well be that the *status quo* banning X-rated videos should remain. They may recommend adult cinemas; they may recommend an ER category; it is not possible to predict. I commend that recommendation to the Council, and indicate that I do not imagine that we will have to deal with it again until the Commonwealth Parliament has completed its deliberations.

The Hon. K.T. GRIFFIN: I am delighted to be able to support the motion of the Attorney-General to agree with the report of the committee. The Bill as it now stands after some 18 months of Parliamentary and public debate represents three major achievements: the first is the compulsory classification scheme. In 1983 the Government introduced a Bill for a voluntary classification scheme and at that stage the Liberal Party moved amendments to that legislation for a compulsory classification scheme. The Attorney-General indicated that he would have to discuss that with the Commonwealth Government because of the additional responsibilities that would then be placed on the Chief Commonwealth Film Censor. He did so in the early part of 1984 and, as a result, brought in this Bill, prior to its amendment, introducing a compulsory classification scheme.

We are pleased about that, because that gives a greater measure of control over videotapes and videodiscs than would a voluntary system, with the potential for more effective prosecution for breaches, but more particularly with a guarantee to members of the community as well as to retailers as to the suitability of particular videotapes for particular audiences. The compulsory classification scheme generally gained widespread, if not unanimous, community support—even from the video retailing industry.

The next major achievement relates to the banning of the X-rated videotapes and the prospective ER (or extra restricted) videotapes. The Liberal Party has been pushing a very strong view that those tapes ought not be available for sale or hire in South Australia. There has been a lot of community support for that view. They contain, as has been enunciated on so many occasions, depictions of explicit sexual acts of a fairly wide variety, but not involving acts of coercion or violence. But regardless of that, some 95 per cent of the X category would be reclassified under the prospective ER category.

The Liberal Party expressed a concern that inadvertently, carelessly or deliberately, those videotapes had the potential for falling into the hands of children. While parents have responsibilities for their chidren, there are, nevertheless, a large number of irresponsible parents who would not adequately control the availability of that material to minors. The information that the Liberal Party had was that particularly the responsible parents were very much concerned about the potential for availability to children of the ER material and the potential for that material to prejudice the balanced and steady development of minors and their attitudes towards sexual experience.

We adopted the view that it was not only the responsibility of parents or of the community at large, but also of individual adults to adopt an attitude of protection for those minors. For that reason, although we recognise that some adults would want to see the ER material, the overriding consideration must be the protection of minors.

The third major achievement was in the area of penalties. As a result of our concern, we were able successfully in some instances to double the penalties that were provided in the original Bill.

As a result of the conference there is now a coherent progression of penalties for varying offences depending on their seriousness. The Attorney has said that there was a measure of misinformation in the community about what was likely to be in the ER category. It is fair to say that some people may well have misunderstood what was in the ER category in terms of violence or acts between non-consenting adults but, notwithstanding that, I think it is much more appropriate to say that there was a great deal of concern among informed members of the community not only about the X category but also the ER category.

The position in other States, as the Attorney has indicated, is that Tasmania and Queensland right from the start indicated that they were not willing to see either X or ER category videotapes available for sale or hire, but it was interesting that the Labor Governments of New South Wales and Western Australia were willing to take action to ban the X category and not to make any provision for adopting the ER category that was proposed by the Commonwealth and by the Attorney-General. The Victorian Government has banned X or is in the process of doing so and has made some provision for adopting any ER category that may be established by the Commonwealth.

It was quite clear that the Commonwealth Parliamentary committees reviewing this whole area of videotapes were not likely to report for some time and on that basis the ER category would not be available in Victoria until the Commonwealth Attorney-General acted. Also, it was clear that the present Commonwealth Attorney-General was not willing to make any changes to the ACT ordinance until the Commonwealth Parliamentary committees had reported. So, South Australia by adopting the position that I have outlined has fallen into line with the majority of the States of Australia in its attitude towards the availability of both X and ER category videotapes.

On Monday night of this week a meeting organised by video retailers was held. Attendance was by invitation only, although the media were invited and the meeting became, in effect, a publicised private meeting and all members of the conference of managers were invited. That made it very difficult for the managers although, having been at that meeting and the Hon. Anne Levy having represented the Attorney-General, I can say that all the managers were able to tread that thin line between presenting a Party point of view and respecting the confidences of the conference according to the obligations placed upon them by the Standing Orders of Parliament. It was an interesting meeting.

Obviously, video retailers had a specific view to push and have been constantly pushing it, yet it was important that the varying points of view on this subject be made available. It is interesting to note that one very large video retailing outlet has decided as a matter of policy not to stock or deal in X or ER category videotapes. It is one of the largest if not the largest outlet in South Australia. That retailer can do it and it obviously believed that it would not prejudice its business by refusing to handle such material. One has to recognise that video retailers do have a vested

interest in this area and that the banning of X and ER categories will affect the business of some retailers.

However, I do not believe that it will be to a significant extent, and I do not believe that the banning of X and ER videotapes will significantly increase any underground or black market activity. Indeed, I believe that everyone has recognised that there has been some black market activity in pornographic videotapes. The amendments to the Police Offences Act in 1983 and now this legislation together will mean that there is much greater power resting with the Police Force to police adequately the availability of this material. With the penalties that have now been adopted by the conference and subsequently by the two Houses of Parliament there will be a considerably greater deterrent to those who might wish to deal in this sort of material, either in the black market or otherwise outside the law.

The increases in penalties are substantial in respect of those videotapes that are refused classification in the ACT. There will be a $10 000 maximum fine, six months imprisonment and the potential for the court to order suspension of business for up to 12 months. That is a very stiff penalty and, if there is organised criminal activity, then the greatest deterrent is the restriction on carrying on trade or business from which profits will be obtained.

I do not intend to go into detail about the amendments. The Attorney has given an adequate summary of them. I am pleased that he and other members of the Government were able to support the policy positions that the Liberal Party has been espousing.

I am satisfied that this legislation will give a great deal of comfort to a large number of South Australians who have had grave concerns about the availability of this material—not because they are prudes, but because they have a genuine concern about the effect of this material on minors. Their faith in the Parliamentary system will be restored if it was ever tarnished, and it will be maintained if they have had faith in the system, because they can recognise that public comment and public expressions of opinion do influence legislators. I am pleased with the result and support the motion.

Motion carried.

CONSTITUTION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 5 December. Page 2137.)

The Hon. M.B. CAMERON (Leader of the Opposition): This Bill seeks to achieve two things: first, it aims to limit the voting rights of the President and the Speaker to the second and third reading of any Bill relating to an alteration 'in the Constitution of the Legislative Council or the House of Assembly'. This intention, which the Liberal Party strongly opposes, seeks to deprive an elected member of Parliament of his or her right to vote and so represent the interests of those who select him or her.

This disturbing attack on the rights of a democratically elected member of Parliament is something which I will canvass in more detail shortly. Let me, however, next turn to the second intention of the Bill, which is to remove section 59 of the Constitution Act which presently requires a Governor's message to the House of Assembly in relation to a vote, resolution or Bill for the appropriation of any part of the revenue. The Opposition opposes attempts to remove this requirement from the Act.

Your voting rights, Mr President, are entitlements vested upon you as a democratically elected member of Parliament. We should not support the Labor Party's attack on them. The rights of the President and the Speaker as fully elected members of Parliament have been canvassed in this Chamber on several occasions since 1983. In 1983 in an effort to apply pressure on you, Mr President, over the Maralinga Land Rights Bill and because of his concern that you would indicate your non-concurrence with the third reading of that Bill, the Attorney-General tabled an opinion by the Solicitor-General which argued that you as President could indicate your concurrence or non-concurrence only with Bills to amend the Constitution and not on other matters. The Liberal Party believed that advice to be wrong. We continue to do so.

Subsequently in April 1984 you, Mr President, indicated your non-concurrence with a Bill to amend the Planning Act, and the fury of the Attorney-General was brought down upon you. The Attorney made all sorts of threats about taking you to court or at least putting before the Supreme Court the question of the President's voting powers. It was an extraordinary display in this Council. We should not underestimate the importance of this measure.

Like all of us in this Chamber, Mr President, you have been elected legally and democratically by the people of South Australia to represent their best interests and desires. It must remain a fundamental principle that all members of Parliament democratically elected have the right to exercise a vote on issues of concern to them and their electors. Such a right to vote on issues, not just those relating to the Constitution, is something which I have always strongly supported, and I continue to do so. I believe that I have always been faithful to the principle of equal rights in voting and I condemn the Attorney-General and the Government for their high-minded hypocrisy in bringing this proposal before the Parliament.

The Labor Party is becoming increasingly adept at depriving people of their democratic rights. One needs only to consider the blatant and undemocratic preselection system which operates within the Labor Party to see how committed the Labor Party really is to the principles of equal rights for all. What an absurd situation that a trade union official can walk into a meeting knowing that he has in his back pocket thousands of votes—or for the unions, as a whole to have a total of 75 per cent of the votes—in a preselection battle.

Where is the equality in that? Where is the democracy when a trade union leader can, without any consultation with the people he supposedly represents, wheel and deal in such a way as to deprive the average member of the Labor Party any real say in who will represent him or her in the Parliament? We have the farcical situation where the Labor Party is now talking of reforming its preselection system so that the trade union control of ballots will be reduced from 75 per cent to 60 per cent. Some reform! Trade unions will remain in control and ordinary members will be deprived of their democratic rights.

You, Mr President, seem to be under attack from the same mentality. Democracy is all right for the Labor Party, provided it is weighted in its favour. As I have indicated to the Council previously, the power of the President to indicate his concurrence or non-concurrence with any Bill at the second or third reading stage has been exercised in the past (in 1973) and at that time it was not questioned by the Government of the day (a Labor Government), nor should it have been, for the President is an elected member who has constituents to represent and accordingly he should be able to exercise what is in effect a deliberative vote on their behalf.

How can the Attorney-General, who prides himself on being impartial and, in the ALP's terms, non-factional, seek to challenge the right of a democratically elected member of Parliament on any issue which he sees fit? Mr President, in 1985 this Council is a fully democratically elected body. Every member is responsible to his or her electors. No

member is appointed or elected under some restricted franchise. As a result, every member has a right to freely exercise a vote on behalf of his or her electors on any issue where that member sees fit.

That power should be no less the President's than that of any other member of this Council. It is not just a right: it is a duty which should be accepted by every member of Parliament. The other issue to which this Bill relates is the repeal of section 59, which provides:

> It shall not be lawful for either House of the Parliament to pass any vote, resolution or Bill for the appropriation of any part of the revenue or of any tax, rate, duty, or impost, for any purpose which has not been first recommended by the Government in the House of Assembly during the session in which such vote, resolution or Bill is passed.

This procedure has been required since responsible government came to South Australia and was in the Constitution Act of 1855-56. It follows the procedure in the United Kingdom Parliament which has been in existence since the eighteenth century, the Governor being the representative of the Queen and exercising the Queen's constitutional responsibilities in South Australia. The constitutional significance is that the Crown (that is, the monarch and his or her Ministers) are the Executive arm of Government requesting supply or other appropriation from the Parliament. The Executive is distinct from the Parliament and the Parliament determines whether or not appropriation will be made.

The Government has given no substantial or good reason why we should abolish the requirement that the Government or its Ministers should by message to the Parliament request appropriation. To suggest that this procedure is anachronistic is meaningless. Where is the proof from the Attorney-General that the repeal of this section will achieve a positive improvement in the Parliamentary process?

The facts are that the procedure prescribed in section 59 flows logically from the structure of government which we have, namely a constitutional monarchy, and the Labor Party's desire to remove us from such a system is reflected in its cursory dismissal of section 59.

I appeal to members of this Council not to support this Bill but to put it aside at the first opportunity, to ensure that members of Parliament who are properly elected, including the President, are not deprived of their vote. We know that the Attorney-General must see that you, Mr President, have that right, because the third reading of one Bill has continually been adjourned since last year. The reason is that the Minister well knows your attitude to that Bill, that you have the right to vote and that he cannot deprive you of it. The Attorney is now setting out to do that through a change in the Constitution Act.

As far as the Opposition is concerned, that is not on. That move should not be made and I am surprised that the Attorney has even attempted it. I have always believed that he is a person who has some commitment to democracy, but I now withdraw that feeling, because I do not believe that he has that commitment: I believe that he is attempting to deprive a member of Parliament of a vote in the Parliament. I find the Attorney's actions reprehensible. I trust that he will not proceed and force us to vote on this measure. It would be far better for the Attorney to admit his mistake and to admit that that action was undemocratic. It is an action that I would not usually expect him to take. As I said, in the past I have believed that the Attorney is a man of some integrity in relation to constitutional matters, but—

The Hon. C.J. Sumner: You haven't listened to any of the argument.

The Hon. M.B. CAMERON: No, I do not intend to listen to the argument, because it is farcical: it is absolutely farcical for the Attorney to come in here and try to deprive a member of his vote. That is an action that I would not have expected from the Attorney. I suggest that he withdraw the Bill and accept that the President has voting rights. The Attorney should put to the vote the third reading of the Bill that has been hanging around for the past four or five months.

If he does that I will then once again believe that the Attorney-General has a commitment to democracy, although I would like to see him take a bit firmer action within his own Party because I can see that within that Party he is not elected by a democratic system. Frankly, I believe that the Labor Party believes in democracy only when it suits its purposes. When it does not suit its purposes its members throw it aside and try to manipulate the system. That is not going to work this time and I trust that this Council will put this Bill aside at the earliest possible opportunity.

The Hon. K.T. GRIFFIN: I oppose the Bill and will fight it at every stage of the proceedings. The Bill deals with two aspects of the Constitution Act. One is the right of the Speaker and President and the other is the Governor's message, which I will deal with later. The challenge to the powers of the President and the Speaker go back, so far as the present Government is concerned, to 1983. Honourable members will remember that we had the Maralinga Land Rights Bill before us, the Government did not look as though it was going to get its way and it looked as though the Bill might in fact be rejected by the Legislative Council with the President exercising a vote. On that occasion, and in rather dramatic fashion, the Attorney-General tabled an opinion from the Solicitor-General.

The Hon. C.J. Sumner: Three opinions.

The Hon. K.T. GRIFFIN: No, the Attorney-General tabled an opinion in a dramatic fashion and made a Ministerial statement in which he threatened court action. Although he says he has tabled a couple of other opinions, he referred to those opinions in his statement but never at any stage tabled them.

The Hon. C.J. Sumner: I have tabled them and they are available.

The Hon. K.T. GRIFFIN: They were not tabled on that occasion. The issue raised its head again in about April 1984 when a Bill was before us to amend the Planning Act. Honourable members would recall that the Government sought to introduce legislation to control the existing use provisions of the Planning Act, particularly to deal with native vegetation, although it had very wide application across South Australia and not just to vegetation clearance controls. On that occasion you, Mr President, exercised your vote and the Bill did not pass its third reading. On that occasion, also, the Attorney-General threatened court action but subsequently backed off from that (I think for two reasons—one the very grave doubt whether your vote could have been challenged in the courts, anyway, but more particularly because the Attorney-General could see that there was little prospect of success in taking a Parliamentary presiding officer to the civil court).

The Hon. C.J. Sumner: That was passed; don't misrepresent the position.

The Hon. K.T. GRIFFIN: A Bill was passed subsequently that contained different provisions from the one that was rejected by the Council. We also saw an indirect means by which the rights and powers of the President and Speaker could be challenged in the Acts Interpretation Act Amendment Bill. Quite curiously, the third reading of that Bill is still on the Notice Paper and has been there for three or four months. I suspect that it will just fall off the end of the Notice Paper at the end of this session because it is a pernicious piece of legislation which would allow the courts to have consideration of all Parliamentary debates, reports

of committees, committee stages, everything, to determine the interpretation of a particular provision in any legislation passed by the Parliament.

Also, it was retrospective so that in passing that piece of legislation not only would the Minister's speeches and responses, amendments and every other member's speech and interjections be taken into consideration hereafter by the courts, but also anything that had been said in the Parliament in relation to any Bill passed during the life of the Parliament of South Australia since responsible Government came.

The interesting aspect of that Bill was that in 1973 the then Premier, Mr Dunstan, introduced an Act to amend the Constitution Act, particularly section 26. That was to clarify the position of the President and the Speaker. That legislation arose out of some very significant changes to the franchise of the Legislative Council. When he introduced the Bill he made no reference to the fact that he believed that the right that he was clarifying in the Speaker and the President was limited to Bills to amend the Constitution Act. However, several days later he came back and said, 'Oops, I have forgotton to say something. This Bill to amend the Constitution Act is in fact to limit the rights of the President and Speaker to Bills amending the Constitution Act.' That was quite extraordinary in itself, but what it means is that, if a Labor Government ever sought to challenge the power of the President or the Speaker to exercise a vote at the second or third reading of any Bill, that secondary statement by the then Premier Dunstan could be brought in evidence and used in endeavouring to read down the true and correct meaning of section 26 of the Constitution Act.

I think that that is an extraordinarily backdoor way to find some means by which the powers of the President and Speaker can be limited. Let me just reflect upon the Constitution Act at the present time. Section 26 provides in subsection (3) that where a question arises with respect to the passing of the second or third reading of any Bill, and I emphasise 'any Bill', and in relation to that question the President or person chosen as aforesaid has not exercised his casting vote, the President or person chosen as aforesaid may indicate his concurrence or non-concurrence in the passing or non-passing in the second or third reading of that Bill. That is clear and, if one looks at section 8 of the Constitution Act, it refers to amendments to the Constitution but specifically refers to the passing of amendments to the Constitution Act with the concurrence of an absolute majority of the whole number of the members of the Legislative Council and the House of Assembly.

The emphasis in that section is on the word 'concurrence' and the opposite word 'non-concurrence'. It is quite clear that in that context 'concurrence' means 'vote', so that if one looks at section 8 and reads it together with section 26 the concurrence or non-concurrence is synonymous with the vote for or against the second or third reading of any Bill. I am surprised that the Solicitor-General has any doubts about it. I submit that he is wrong and that the clear interpretation of the Constitution Act demonstrates that he is wrong.

Concurrence or non-concurrence means a vote; and any Bill means any Bill. It is not limited in any way. Let us look at what the Government's Bill now seeks to do. Not having been able to bluster through a point of view on the Maralinga Land Rights Bill or the Planning Act Amendment Bill or take it to the courts or through the Acts Interpretation Act, there is now a direct confrontation over the powers of the President and the Speaker. The Bill seeks to limit the power of the President and the Speaker—duly elected members of the Parliament—to a vote on the second or third reading of any Bill affecting the constitution of the Legislative Council or the House of Assembly. If one reflects on how many Bills have come before Parliament, even this current Parliament, that affect the constitution of the Legislative Council or the House of Assembly, one would be hard pressed to find any more than one—this one—and perhaps the other Constitution Act Amendment Bill which is also before us.

The Government's Bill seeks to say that in this Parliament, unless there are any other Bills to affect the constitution of the Legislative Council or the House of Assembly before the next election, the President and the Speaker can only vote on any Bill on one occasion only—very limiting voting rights—unless, of course, there was a deadlock and the Speaker or President then had to exercise a casting vote. If one reflects on other occasions when Bills may have been introduced to amend the Constitution Act, there are very few of them, if any, that sought to affect the constitution of the Legislative Council or the House of Assembly.

That would mean, in some instances, that for a whole three years the President and the Speaker may not get a vote. There may not be an equal number of votes on either side in respect of a particular issue and, if there is not and the Government has a clear majority, then there is no occasion to exercise a casting vote. What we have is a President who is elected by some 80 000 or thereabouts electors of South Australia and a Speaker elected by some 18 000 to 20 000 electors being able to vote on maybe no occasion during the course of a particular Parliament.

That is totally undemocratic. It means that those electors are disfranchised and that those two members of Parliament, who happen to have been appointed to fill those particular presiding offices, do not have any rights of voting on issues that affect the citizens of South Australia and their particular electors.

What democracy will tolerate that removal of powers from duly elected members of Parliament? I do not think that there are any. Even the President of the Senate has a deliberative vote on every issue, although he does not have a casting vote. Maybe that is something we have to look at at some time in the future.

The Hon. C.J. Sumner: They do not have a deliberative vote in the House of Representatives or the House of Commons.

The Hon. K.T. GRIFFIN: If there is an occasion where it is necessary, perhaps they should have a deliberative vote.

The Hon. C.J. Sumner: You are saying that they should have, are you?

The Hon. K.T. GRIFFIN: I am not. I am saying that maybe it is something that has to be looked at. What I am saying is that there may be Parliaments where the Presiding Officer, because there is no equality of numbers on the floor of either Chamber, may not be entitled to vote on any Bill. That is totally undemocratic. It is for that reason that I cannot support, and never have supported, the concept that this Bill seeks to enact into law. There is another aspect of the Bill that causes me some concern. It is tucked away at the end of the Bill and concerns the repealing of section 59 of the Constitution Act. That requires a Governor's message to the House of Assembly in relation to a vote, resolution or Bill and the appropriation of any part of the revenue.

I suppose that if one looks at it on the surface and does not give much thought to it, one could say, 'What is the real purpose of that? Maybe it is outmoded.' But, if one looks at the constitutional basis for that one will see that there is a very important principle enshrined in section 59. In fact, it has been adhered to since 1857 when responsible government came to South Australia and has not been challenged at any time in that 125 to 130-year history of responsible government. It has been in effect in the United Kingdom in the House of Commons for several centuries

at least. The important constitutional principle is this: that the Governor acting on the advice of his Ministers requests the elected Parliament—the members of the House of Assembly—for money to be appropriated from the funds raised by taxation and charges imposed by the Parliament.

Only the Parliament can impose taxation, and of course we know, in terms of American independence, that 'No taxation without representation' was a cornerstone of that rebellion. In Australia, under the Westminster system, there is a division of responsibility between the Executive, the Parliament and the Judiciary, and the requirement of the Constitution Act for a Governor's message requesting the appropriation of money by the Parliament is a clear illustration of that very important constitutional separation of powers. For us to even contemplate removing it is an admission either that we have not bothered to consider the constitutional basis for section 59, or that we are anxious to diminish the powers of the Government. I oppose that.

The Governor is the representative of the Monarch and in our Westminster system plays a very important part in the constitutional system. Therefore, the Governor, acting on the advice of his Ministers, that is, the executive arm of Government, goes to the Parliament—to the House representing the people—seeking money—that is, an appropriation from taxation. It is important to retain that concept in our Westminster system and to retain it in the Constitution Act.

If either the Attorney-General did not know what was involved, or if there is something more sinister in the attempt to remove section 59, I oppose it. Again, that issue, too, is something I hold as very basic to our constitutional system and it is for that reason that I will strenuously oppose the abolition of it at any stage. Therefore, I do not support the second reading of the Bill.

The Hon. PETER DUNN secured the adjournment of the debate.

PRICES ACT AMENDMENT BILL (No. 3)

Adjourned debate on second reading.

(Continued from 5 December. Page 2141.)

The Hon. J.C. BURDETT: I support the second reading of this Bill. A number of members of the press have contacted me and have wanted to speak to me about the bread Bill. I refer to this Bill as the Clayton's bread Bill: it is a bread Bill that says nothing about bread. Concerning its history, members will recall that during the last session the Government introduced a Bread Industry Authority Bill that was rejected by the Council.

That Bill was very far reaching. It enabled the Authority to do almost anything in the control of the manufacture, sale, times of baking and anything else in regard to bread. Therefore, the majority of members of the Council regarded it as being too Draconian, and too interventionist and it was rejected by the Council. The Hon. Lance Milne and the Hon. Ian Gilfillan supported the Opposition in rejecting the Bill. When the Hon. Lance Milne spoke he acknowledged, as I did, that there were serious marketing problems in the bread industry. Indeed, that is a fact: there have been serious marketing problems in the bread industry for a long time, and I suspect that there may always be some problems.

The Hon. Lance Milne said that he thought the matter could be overcome by a simple amendment to the Prices Act. I think the Government took him up on that, and that is the reason for this Bill. I very much doubt whether the Hon. Lance Milne will agree to the Bill that has been introduced, because the important thing is that it has nothing whatever to do with bread. In fact, the Bill does not mention bread at all. The Bill seeks to remove the present regulation-making power in the Prices Act and replace it with a power which enables the Government to impose by regulation any conditions in respect of any specified declared goods.

In his short second reading explanation of the Bill the Minister said that some provisions in the Prices Act were evaded or avoided and that he believed that a wide regulation-making power would prevent that from happening. He then went on to talk about what he proposed to do in regard to bread. The point that I make and make very strongly, and the reason why I cannot agree to the Bill in its present form—although I am prepared to support it at the second reading stage—is that it enables the Government by regulation to impose any conditions at all in respect of any specified declared goods; and goods under the Prices Act may be declared by a stroke of the pen, so any goods could be declared.

The Bill could be used to make regulations and impose conditions in respect of the sale of not only bread, which is not mentioned, but, say, stuffed olives, ankle-length wedding frocks, over-sized panty hose, motor cars, aeroplanes, or anything else. I am certainly not prepared to go along with giving the Government such a power in regard to any sort of goods at all. The extent of the conditions could encompass anything. Presumably, they could include a condition that one voted Labor or, in respect of bread, that all the nasty conditions that applied in the Bread Industry Authority Bill which we rejected could be applied as conditions of sale. It is a quite frightening power and it is something that I am certainly not prepared to extend to the Government.

Bread is not the only product where there are marketing problems. In fact, I do not think it has the worst marketing problems which exist at the present time. There are very serious problems in regard to petrol, beer and other liquor. The problems are very largely the same and relate to chaotic discounting. In fact, I believe that the problems in regard to petrol are worse than those in regard to the marketing of bread. If we pass this Bill, I am quite sure that the next day the petrol resellers would be on the Minister's doorstep, and the day after that the hoteliers would be on the Minister's doorstep asking for the Government to act in their case because it was just as bad as the bread industry. They would say, 'The Government has the power, on your own initiative; you gave it to yourself, now use it.'

I am perhaps wrong in the order of who would be on the Minister's doorstep first. I know that the hotels are very active people and may be there first or at the same time. It is interesting to note from the press at the time when these measures were discussed in the press that on one day we had the Minister saying that when there were problems in regard to petrol that should be left to market forces, and on the next day there was discussion in the press about what the Minister proposed to do in regard to bread. Why one deals with bread and proposes conditions about it and not about petrol I do not know. If the Bill were passed in its present form minimum or fixed price could be attached in regard to any product.

At present, the only minimum prices which apply under the Prices Act—there is also the case of a fixed price in regard to city milk under the Metropolitan Milk Supply Act—are for wine grapes. That area has been fraught with the gravest of difficulty and problems, and the Minister will have received, as I have in the past few days, representations in regard to that very subject of the minimum price of wine grapes. Not only conditions in regard to price, but any conditions could be attached to the sale.

The Minister then went on to talk about bread and what he proposed to do in the regulations. First, he said that he would introduce regulations that would provide a maximum

mark-up on the actual wholesale price of bread. I, and bread manufacturers, have understood that to mean that the maximum mark-up would apply to the actual wholesale price charged in the particular case. The bread manufacturers have pointed out to me that this would mean at least three maximum prices at the maximum level, or three mark-ups: in regard to the corner deli and the smaller outlets, the actual price is the justified price. In regard to the medium-sized retailers, the actual price is a lower price because of ordinary commercial procedures where a discount is allowed by reason of volume of sales; and in regard to the supermarkets, the actual price would be lower again for the same reason: that they receive the maximum discount because of the ordinary recognised commercial practice in regard to volume of sales. So, one would have three maximum retail prices.

In any event, that would not overcome many of the problems of the industry. It would not overcome the problem of chaotic discounting. That in itself is not a minimum or a fixed price. I have mentioned that the power would be there, but that is simply a maximum retail price. It does not satisfy the bread manufacturers, who have informed the Minister's Department of that fact: they have proposed a different remedy.

Honourable members would have read in their *News* tonight of a new bread discounting war at the retail level. It is reported in the *News* that, the price being $1, Bi-Lo is selling bread for 69 cents, if I remember correctly. It must be remembered that in these matters certainly we consider the retailers, the employees and the bread manufacturers, but we must not overlook the consumers.

The Hon. C.J. Sumner: You did!

The Hon. J.C. BURDETT: We did not overlook the consumers at all. The consumers during our time of office were able to buy bread at the lowest price for which any retailer was prepared to sell it to them. That is what must be retained. I would hesitate very considerably before fixing a minimum retail price.

The Hon. C.J. Sumner: You did. You fixed a maximum discount. You got into trouble with the Trade Practices Act, I heard.

The Hon. J.C. BURDETT: We did not get into trouble with the Trade Practices Act, and we had a whole rational deal that was greater than that. The point that I have always maintained is that we must consider the consumer. The consumer, after all, does gain from discounting; it may be annoying and chaotic to him; in regard to petrol, it may annoy him that at some stations he may have to pay 50 cents, and in some 42 cents or whatever. Depending on which shop he goes to he may have to pay $1 for bread or 69 cents, but, nonetheless, it is to his advantage. He pays a lower price because of this.

I do not believe that there is any formula by which we can control the retail price of bread. We can have a maximum price—that is fine—but I do not believe that there is any suitable formula that is fair to everyone concerned whereby we can control a minimum or fixed price, and I am not prepared to go along with that.

The Hon. C.J. Sumner: It's not in the Bill.

The Hon. J.C. BURDETT: It is not in the Bill: what is in the Bill is that any conditions may be attached to the sale of any specified declared goods. That I am certainly not prepared to go along with, but in the Minister's second reading speech he talked about the bread industry and mentioned two things that he proposed to do by way of regulation. I have just mentioned one of them with regard to price and said that that does not seem to meet with anyone's satisfaction and that it certainly would not control discounting at the retail level.

I have a lot more sympathy with the other thing that he says that he is prepared to do and that is to prohibit credits for unsold bread. In the food industry bread is in a unique situation in this regard. The corner deli and so on do not get any credits for unsold bread; the supermarkets and the larger outlets do. The supermarkets do not order the bread: the manufacturers come along and fill up the shelves. Under the health legislation, unsold bread may not be returned, but many of the retail outlets such as supermarkets demand and receive credits in respect of unsold bread. That has been resented by the manufacturers, and it is in the food industry a unique situation.

It is a unique situation that in regard to bread the manufacturer carries the loss in respect of waste. In other areas in the food industry it has been accepted that the retailer carries the loss in respect of waste. In regard to chickens, for example, the supermarkets order the chickens and throw out what is left. In regard to fruit and vegetables they make their orders and throw out what is left. They accept the loss. For bread alone the manufacturer accepts the loss. In some other fields, including the sale of newspapers, the manufacturer accepts the loss. Unsold newspapers also are not returned, but in the food industry bread is unique in this way. At times, pressure has been brought to bear in this regard to get credits for unsold bread: this is something that ought to be able to be prohibited.

If credits in respect of unsold bread are prohibited the supermarkets will order carefully, as they do in regard to chickens, fruit and vegetables and so on, they will buy less bread, and less bread will be manufactured.

Nevertheless, I do believe that this is an area of abuse and it is something that ought to be able to be prohibited. I am willing to support the Bill at the second reading stage, although in Committee I intend to move amendments. One amendment will be to remove the very wide regulation-making power, to impose conditions in respect of the sale of any specified declared goods. I intend to seek to remove that by amendment. I believe that that power is far too wide and I intend to seek to take that out of the Bill. Further, I propose a further amendment to put into the Bill the power to make regulations to prohibit credits in respect of unsold bread.

The Hon. C.J. Sumner: Are you sure you are prepared to do that?

The Hon. J.C. BURDETT: Yes. I believe on reflection that it is better to—

The Hon. C.J. Sumner: It's not what you said in answer to my question a few months ago.

The Hon. J.C. BURDETT: I do not quite understand that.

The Hon. C.J. Sumner: You should have a look at *Hansard.*

The Hon. J.C. BURDETT: I am not sure what you asked me and when.

The Hon. C.J. Sumner: You asked me a question in December or November about bread. By way of interjection I asked whether you would support a measure like this, and you said that you would.

The Hon. J.C. BURDETT: I will look at *Hansard,* but I have never intended to support this kind of measure. This measure does something that I have never contemplated. It is quite incredible. It gives the power to impose any conditions of sale whatever in respect of any specified declared goods, and certainly I have never been prepared to agree to that. I have been willing to look at particular conditions in regard to bread. Certainly, I have considered being willing to recommend measures in regard to price. I have had talks with those groups with whom I am able to talk because they are sufficiently put together; namely, bread manufacturers and the RTA.

Of course, one cannot get a representative group that really represents all bread consumers. As a result of those talks, that have extended over a period, I have concluded that it is not practical to do anything in regard to prices. That was one of my concerns. However, I believe that it is practical to do something in regard to prohibition of credits on unsold bread. On reflection, I believe that it is better to leave that to regulation rather than writing the prohibition into the Bill because I am aware of the fact that prohibition of credits on unsold bread may be the subject of various kinds of avoidance and evasion. I think it better to leave the flexibility so that the actual prohibition can be put into the form of regulations that can be changed when Parliament is not sitting or changed with the minimum of fuss and bother. For these reasons I support the second reading. I object very strongly to the power by regulation to impose conditions of sale on any specified declared goods, and in Committee I will be introducing amendments in that regard.

The Hon. L.H. DAVIS secured the adjournment of the debate.

[*Sitting suspended from 6.5 to 7.45 p.m.*]

MENTAL HEALTH ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 12 February. Page 2381.)

The Hon. J.R. CORNWALL (Minister of Health): I thank honourable members for their contributions. I have nothing new to add at this stage. I believe that it is important to get this vexed and potentially controversial matter to a Select Committee as soon as possible. It is an area in which there has been considerable uncertainty for many years, and that uncertainty is causing increasing concern to a number of groups and professionals, not the least of whom are people such as the Administrator or the Medical Superintendent at places like Strathmont. The sooner we try to resolve this matter in the most sensible way (and that is through the Select Committee system) the better.

Bill read a second time and referred to a Select Committee consisting of the Hons G.L. Bruce, J.C. Burdett, J.R. Cornwall, Diana Laidlaw, Anne Levy, and R.J. Ritson; the committee to have power to send for persons, papers and records, and to adjourn from place to place; the committee to report on 2 April.

BAIL BILL

Adjourned debate on second reading.
(Continued from 14 November. Page 1851.)

The Hon. K.T. GRIFFIN: The Opposition is prepared to support the second reading of this Bill, which brings together into one measure most of the provisions of the law relating to bail. The Government and the Opposition are of one view on the principle of bringing together bail provisions into one Statute and to revise the law relating to bail to bring it up to date with modern needs. The Bill seeks to establish a principle that bail must be granted where a person is accused but has not yet been convicted unless a bail authority, after considering certain relevant matters, determines to the contrary.

The bail authority is the Supreme Court; a court before which an accused person has been charged with an offence in respect of which he has been taken into custody; a court to which the accused person has been committed for trial or sentence; a justice in certain circumstances, where the accused is charged with a summary offence or with an indictable offence but has not been committed for trial or sentence; or in some instances a member of the Police Force who is of or above the rank of sergeant or who is in charge of a police station. There is also a provision that in certain circumstances a person authorised by a court may grant bail. That person may not necessarily be any one of the bail authorities to whom I have just referred.

In respect of bail for persons who have been convicted of offences but not yet sentenced, the courts have an unlimited discretion as to whether or not to grant bail, except that, where a court is of the view that a convicted person is unlikely to be required to serve a custodial sentence, bail is, generally speaking, to be granted. The consideration of bail by a bail authority where the person has not been convicted may take into account the following: the gravity of the offence; the likelihood that the accused would abscond or offend again, interfere with evidence, intimidate or suborn witnesses, or hinder police inquiries if released on bail; the need for the accused to have physical protection; the need for any accused person to receive medical or other care; the previous history of the accused, who may have failed in the past to comply with a term or condition of a bail agreement; and any other relevant matter.

The Victims of Crime Service has made a submission to the Government and has indicated to the Government that a copy of that submission has come to the Opposition. I have read the submission from the Victims of Crime Service with some interest because it says that it is disappointed that a greater emphasis has not been given to the rights of a victim or alleged victim. The Service says, in relation to clause 10 of the Bill:

> It is a matter of record that most cases of violence occur between non-strangers, and so in many instances the victim would be a most knowledgeable person to provide information to the bail authority as to the likelihood of any repetition of the violence or of intimidation. Yet as far as we know there is no suggestion or direction to the authority [the bail authority] to seek the opinion of such victims. It seems that it is rare to do so now. We draw an inference from the documentation that this is to continue, and information sought from sources other than the victim.
>
> When we raised this point with an officer of your Department the response was that victims are likely to be too vindictive to give a fair reply. We are unaware of the basis for your officer's judgment. We do not know of any systematic research in this area of victim's reactions to crimes of violence. Certainly, some individuals may interpret a victim's desire for retribution for the harm caused to them as vindictiveness, but there is ample legal precedent from the highest courts of appeal that retribution is an accepted element in sentencing.

Later, the submission states:

> Victims frequently have complained of not being able 'to have any say' apart from answering 'yes' or 'no' to questions put to them in court. None of them remembered being consulted about the wisdom of granting bail, nor of being notified of the impending release of their assailant. When they have discovered by chance that their attacker was free, they have taken steps to improve their own safety by shifting residence, seeking police protection, installing alarm systems and the like.
>
> A requirement that a bail authority should consult victims of violent crime whenever practical before deciding to grant bail would provide them with the opportunity to participate more fully in the process of justice, and so lessen their feelings of dissatisfaction. Such a step would be innovative, but South Australia has established itself as a community prepared to undertake institutional and administrative reform.

The Victims of Crime Service is concerned that there is not adequate reference made to the need to consult with the victim about not only the question of release on bail but also the terms and conditions of such release. That is not to say that the victim's own view is to prevail, but it ought at least to be one of the matters that is taken into consideration by the court in determining whether or not bail should be granted.

In due course I will be moving an amendment to include in clause 10 as the relevant clause a provision that the bail authority should, wherever practicable, consult with the alleged victim of a crime unless, of course, it relates to what is generally regarded as a victimless crime, so that the bail authority will have some knowledge of the wishes of the alleged victim. There are a number of other areas to which the bail authority should have some regard. Although there is a reference in clause 10 to the need for the applicant (that is, the accused person) to have physical protection I think that it is also appropriate for the bail authority to have regard to the need for the alleged victim to have physical protection.

I think that it is also relevant to have some regard to the previous offences of the accused, because although that may not be relevant in determining innocence or guilt it may well be a clear indication of the character and possible behaviour of the accused if released on bail, for example, if the accused has a long history of convictions for offences of violence, assault and so on. I think that that is a particularly relevant matter that the court ought to take into account in determining whether or not bail ought to be granted and what are the terms and conditions of that bail.

The terms and conditions that the bail authority can apply are set out in clause 11 of the Bill. It seems to me, again, that that needs to be amended to provide additional terms and conditions that may be applied, for example, the surrender of a passport or the requirement to deposit funds as security for the bail. I know that in many instances that may not be necessary, but there are cases (for example, corporate fraud and others) where both a monetary deposit and the surrender of a passport may be appropriate conditions to impose as conditions of granting bail. However, my reading of clause 11 of the Bill suggests that certainly it is not clear that those terms and conditions may be imposed by the relevant bail authority.

There is another curious provision in the Bill that one of the conditions may be that the accused person comply with any direction by an officer of the Department of Correctional Services in respect of departure from South Australia.

That may facilitate the easy movement by the accused person, but it seems to me to be quite inappropriate that an administrative officer of the Department of Correctional Services should be in a position of determining whether or not the accused person should be able to leave the jurisdiction, in effect, to vary the terms and conditions of the bail to that extent. I believe that that decision should be made by the court or the relevant bail authority, and not by a departmental officer. After all, the accused person is bailed to appear at court on some subsequent occasions, so is subject to the jurisdiction of the court.

There is an interesting innovation in the Bill, which I am prepared to support, that is, where a bail decision is made by a member of the Police Force or a justice of the peace (not being a magistrate), there can be a telephone review of the bail decision on the application of the accused. That seems to me to be one way—while an application for review in those circumstances by an accused person can be supported, there may be circumstances in which it is appropriate also for a police officer to apply by telephone for review of bail. For example, if the accused has appeared before a justice of the peace and been granted bail. Although in the legislation there are review mechanisms by higher courts, if there is to be a right for an accused person to seek a telephone review of bail in those circumstances, it seems to me also to be appropriate for the police to have a similar right.

The other point about telephone bail is that there should be an application completed in writing. It is quite obvious that one cannot transmit that by telephone, but it means that there can be an appropriate record kept of the application and the result of the application, concurrently with the making of it. The Bill requires the bail authority to assist the application for a telephone review and, in that context, if the application is made by the accused to the bail authority (being a member of the Police Force or the justice of the peace) in writing, and then the telephone review is undertaken, the form of writing is an appropriate record of the events that have occurred.

Several other areas of concern have been drawn to my attention by those who have had an opportunity of looking at the Bill. For example, the Victims of Crime Service has given instances of a victim having travelled home only to find that the accused has already been released on bail and has arrived home before her. In those circumstances, the alleged victim has not been informed of the release on bail and the bail authority has obviously not made any attempt to ensure that the accused stays away from the victim. I think that it is important that wherever possible the victim be informed of the release on bail of an accused person. It is particularly relevant in cases of domestic violence, but also other forms of violence. I think that there is a very real need to clarify the position of the victim in that context.

The Victims of Crime Service also makes one other point, that it has instances of accused persons who are addicted to drugs and are readily granted bail, but upon release on bail commit further offences to sustain their habit. That organisation is concerned about it and has suggested that the question of addiction to drugs should be a relevant factor taken into consideration by the court in determining whether or not an accused is released on bail. I tend to support that point of view, that the likelihood of committing other offences while on bail is a particularly relevant matter and, with those who suffer a drug addiction, that course of conduct is more likely to occur. In any event, it may be that some assistance can be given to them whilst in custody to cope with that drug addiction problem.

It has also been drawn to my attention that there are problems of psychiatric disorders in accused persons. Again, it seems to me that there needs to be express provision for the bail authority to take into account any psychiatric treatment that the accused has undergone, if that information is known to the bail authority or the prosecutor. It should be relevant to consider whether or not that psychiatric treatment will place any other person at risk as a result of the release on bail, or any other offences likely to be committed on bail by such a person.

The other area of concern is that the Bill seems to provide a penalty of up to three years imprisonment for a breach of a term or condition of bail, that is, three years imprisonment or a fine in addition to any other pecuniary penalty. But no reference is made to any period of imprisonment that may be imposed by the sentencing court for the principal charge. It seems to me that, if that is not adequately covered, courts should have the power to consider a sentence of imprisonment both for the breach of a term or condition of the bail and also for the principal offence, and to be able to determine whether those sentences of imprisonment may be served concurrently or cumulatively.

It seems that no power is provided in the Bill for the court to be able to do that. Any period of imprisonment for a breach of a term or condition of bail is really to be merged in the period of imprisonment for the principal charge. That matter of concern needs to be addressed. Apart from those major areas of concern that I address on this Bill, the Victims of Crime Service and the Australian Crime Prevention Council, which has also made some comments on it, support the Bill. I think it is an important Bill. I am

prepared to support it but, as I have indicated, during the Committee stage I will seek to move some amendments.

The Hon. C.J. SUMNER (Attorney-General): I thank the honourable member for his support for the Bill and look forward to the early consideration of his amendments.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

STATUTES AMENDMENT (BAIL) BILL

Adjourned debate on second reading.

(Continued from 14 November. Page 1851.)

The Hon. K.T. GRIFFIN: This is largely consequential on the Bail Bill. It seeks to amend a number of Acts of Parliament, including the Children's Protection and Young Offenders Act, the Local and District Criminal Courts Act, the Offenders Probation Act, the Supreme Court Act, and the Police Offences Act to bring them in line with the provisions of the Bail Bill. However, the amendments to section 78 of the Police Offences Act are relevant to a wider consideration of police powers. Last year the shadow Chief Secretary (Hon. D.C. Wotton) introduced in another place a private member's Bill relating to very substantial amendments to the Police Offences Act to deal with police powers. One amendment referred to section 78 of the Police Offences Act.

Section 78 presently deals with the procedure that is to be followed on the arrest of an accused person, who must forthwith be transported to the nearest police station. In Opposition, we have made the point on a number of occasions that that is much too restrictive; on many occasions it has in fact stifled investigations; and there should be greater flexibility. In fact, greater flexibility was recommended by the Mitchell Committee back in the early 1970s. Section 78, as it now stands, has caused headaches for not only the police but also prosecutors. There is the notable case involving Miller, the Truro murderer, who was deliberately not arrested or apprehended when identified and when his whereabouts became known for fear that police officers who were not familiar with the case would apprehend him and then be required to take him immediately to a police station with the result that Miller may not have co-operated with the police in identifying the scenes of the murders and the various graves.

There are a number of other cases which have occurred over the years, and the Attorney-General would be as well aware of them as I am. For that reason, during the Committee stage I will seek to move an amendment to that part of the Bill dealing with section 78 of the Police Offences Act to give an arresting officer greater discretion in respect of the conduct of an accused person to a police station. We will be adopting what I recollect to be the recommendations of the Mitchell Committee, namely, that up to four hours may elapse between an arrest and the taking of an accused person to a police station, and the provision for certain extensions by application to a magistrate or a judge. That will facilitate the conduct of inquiries in respect of criminal offences and will be a very useful aid to law enforcers in both detecting criminal activity and bringing criminals to justice. That is the only amendment that I propose to the Bill.

The Hon. C.J. Sumner: You'll need an instruction for that.

The Hon. K.T. GRIFFIN: No, section 78 is being amended by the Bill.

The Hon. C.J. Sumner: That has nothing to do with it.

The Hon. K.T. GRIFFIN: The Attorney-General interjects and says that I need an instruction to do what I am seeking to do in respect of section 78 of the Police Offences Act. In fact, section 78 is expressly amended by this Bill. It seems to me that no instruction is necessary because all that I will be doing is to further amend section 78, which is already referred to in the Bill itself. Unless you give a different ruling, Mr President, I do not see the need for the Council to give an instruction to the Committee to enable it to consider amendments to that section. It is only if it was a totally different matter, not the subject of the Bill and not amending any current sections of the Bill, that an instruction would be necessary. If the ruling is that there is to be an instruction, I would seek the indulgence of the Attorney-General to have the matter adjourned rather than going into Committee. However, I do not see any need for that.

The Hon. C.J. Sumner: I will recommit it, if you wish.

The Hon. K.T. GRIFFIN: To enable me to do that, I support the second reading.

The Hon. C.J. SUMNER (Attorney-General): I thank the honourable member for his support for the Bill. His amendment seeks to introduce extraneous matters by way of amendment. I think there is some argument that he might need an instruction, but I do not think that will be necessary. The fact is that I have given notice (and, if the honourable member had been alert earlier in the day, he would have noticed that I had given notice) of my intention to seek leave to introduce a Bill for an Act to amend the Police Offences Act. I assure the honourable member that section 78 and the issue he raises about police powers will be dealt with fairly and squarely in that Bill. I raise that specifically for his attention.

The Hon. K.T. Griffin: Tomorrow?

The Hon. C.J. SUMNER: Tomorrow or early next week, but certainly in time for the honourable member to move his amendment to section 78. I suggest that that is a more appropriate way of doing it. It enables us to avoid the unseemly procedural wrangle, on which we now seem to be about to embark. Yes, there will be a Bill to amend the Police Offences Act introduced probably tomorrow and, certainly, if not tomorrow, early next week. Section 78 and amendments to it will be specifically included in it. I suggest to the honourable member that he could move his amendments in that context.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

CONSENT TO MEDICAL AND DENTAL PROCEDURES BILL

Adjourned debate on second reading.

(Continued from 12 February. Page 2381.)

The Hon. DIANA LAIDLAW: I support the second reading of this Bill, which seeks to clarify existing common law in relation to consent to medical and dental procedures, particularly in relation to consent by minors. Consent, as the Minister of Health noted in his second reading explanation, is an issue that is at the very heart of medical and dental practice. For consent to be valid, the law requires that a person makes an informed and reasoned decision to proceed with a treatment after considering information about the nature and consequences of such treatment.

As far as adult persons, 18 years and above, are concerned, it is accepted that informed consent by a patient to any

medical or dental procedures authorises the practitioner to proceed without risk of a subsequent charge of assault. This accepted practice does not affect the liability of a practitioner when negligence or malpractice may be alleged, and such liabilities are reaffirmed in clause 7 of this Bill.

While the law in respect of informed consent by adults is clear, the ability of minors to consent to medical and dental procedures is uncertain. There is no Statute law concerning this matter in South Australia, and the common law situation is somewhat confused. Accordingly, it is alleged that medical and dental practitioners are uncertain whether the free and informed consent of a responsible minor is sufficient to avoid the possibility of being sued for assault either by the minor or by his or her parents, or whether it is mandatory for the practitioner to obtain the consent of a parent or guardian before undertaking treatment of a minor.

The Hon. Anne Levy highlighted this ambiguity in November 1977 when she introduced the Minors (Consent to Medical and Dental Treatment) Bill, which sought 14 years as the age of consent. That Bill, as members will recall, was referred to a Select Committee, which subsequently reported that the Bill had merit and should be passed with amendments, the major ones being to insert the definition of 'consent' and to raise the age of consent from 14 to 16 years. The Bill, I understand, then lapsed at the conclusion of the session, leaving a void in legal precedent.

The Hon. Frank Blevins interjecting:

The Hon. DIANA LAIDLAW: Defeated in the Lower House? I understand that to date no action has been taken in the courts in South Australia or elsewhere in Australia alleging assault by a practitioner following treatment of a minor. Indeed, I have been advised that in the unlikely event of such a prosecution there would be several effective defences. Arguably, the lack of any such prosecutions could suggest that current practices pose no problem, that speculation in this area is without substance and, in turn, that the Bill is not necessary.

Certainly, in my discussions on the Bill I find no evidence to support the inference in the Minister's second reading explanation that, because the law is not crystal clear in this area of consent for minors, doctors and dentists traditionally have been reluctant to act for fear of legal actions for assault. Further, on the need for this Bill I was interested to learn of the opinion of Dr John Porter, Director of the Family Planning Association in South Australia, that essentially 'the practical issue of treatment and consent is one of professional ethics, not law'. I believe that this is also the view of the AMA. In both instances, the reservations stem from the fact that with or without Statute and legal precedent in this area of consent by minors the question will remain as follows: is the patient capable of forming a sound and reasoned judgment on this matter to which he or she is asked to give consent?

Whilst I have raised some qualifications as to the need for and value of this Bill, I do not deny that under the present situation there remains a remote possibility of legal action being taken. There are precedents in Statute law in both the United Kingdom and New South Wales that have operated since 1969 and 1970 respectively. Further, I recognise that under existing legislation in this State a minor of 16 years is considered sufficiently mature and responsible to consent to sexual intercourse, to drive a motor vehicle and to be employed, a decision in all instances which requires a high degree of judgment and which legislators in the past have considered a 16 year old able to accept.

I understand also that the Commonwealth Marriage Act defines that 16 years is an age when a boy can legitimately get married and that 14 years is the age for a girl. In addition, I am aware that instances of the criminal law in South Australia presume that at the age of 16 years, unless proved otherwise, minors can be held responsible for their actions. In this regard, the Select Committee to which I referred earlier considered that the criminal and civil law in this State should coincide. All the foregoing points have led me to conclude that if it is considered desirable to clarify consent for minors by Statute in this State the age of 16 years is appropriate.

A more vexed question is raised by the consent provisions to apply to a minor below the age of 16 years. I believe that the Bill incorporates adequate safeguards to ensure that the provisions are not abused by the minor or the practitioner, and I have sufficient faith in the medical and dental professions to believe that they would continue to act responsibly in the best interests of the patient. I am aware, however, of a considerable degree of concern that the provisions endorse the possibility of a minor under 16 years receiving medical and dental treatment without the prior knowledge and/or consent of his or her parents.

The question of patient confidentiality is not easily resolved. As honourable members will be aware, it has been a longstanding tradition in the medical and dental professions to ensure complete patient confidentiality, whatever the age of the patient. This practice does not deny that in the treatment of minors practitioners are not conscious of their responsibility to parents. For instance, Dr W. Lawson, a former President of the South Australian branch of the AMA in an *Advertiser* article in August 1978 defended the right of doctors to prescribe contraceptives to people under the age of consent. He said:

> In normal circumstances most doctors would advise any minor seeking contraception to discuss the matter with parents. However, there was clear legal precedent to show that there was a primary obligation to the patient.

Further, the handbook on medical ethics produced by the British Medical Association makes the following statement in respect to minors and abortion:

> If a girl under the age of 16 requests termination without her parents' knowledge, the doctor may feel conflict between his duty to confidentiality and his responsibilities to the girl's parents or guardian. This cannot be resolved by any rigid code of practice. The doctor should attempt to persuade the girl to allow him to inform her parent or guardian, but what he decides to do will depend upon his judgment of what is in the best interests of the patient.

At the present time the subject of confidentiality and under-age girls is being hotly debated in Britain and the arguments are relevant to the debate on this Bill. Honourable members will probably be aware of the case of Mrs Gillick, who recently was successful in her action against the right of the Department of Health and the Department of Social Security to withhold information from her in respect of the treatment of one of her 11 children, a minor. I understand both departments have indicated their intention to appeal to the House of Lords. Meanwhile, the issue is also being canvassed among members of the British Medical Association.

An article in *Doctor* (12 July 1984) the British medical weekly, reports that Dr Mervyn Goodman, a member of the General Medical Services Commission, warned the British Medical Association's annual representative meeting in Manchester in July 1984 that if family doctors refused to prescribe the pill to under-age girls, they may be creating a black market. He stated:

> If confidentiality for these girls cannot be maintained they will not visit their doctors. They will seek other ways of obtaining the Pill.

BMA Ethics Chairman, Dr Sandy Macara, is reported as having told doctors that they risked being struck off the medical register if they ignored a girl's request, or told her

parents without her consent. He said that the primary role of the doctor was the confidentiality of the patient—however old that patient was. He said:

> I'm hearing suggestions that there are some places where girls cannot trust their doctors to protect confidentiality—and in these circumstances I feel the general practitioners would be risking the setting up of a black market.

However, Dr Gordon Taylor claimed:

> We would have more public sympathy if we took a stand for family life and participated more in the consequences of our decisions.

He said:

> Doctors could be aiding and abetting unlawful sexual intercourse.

As I indicated earlier, I believe the Bill contains adequate safeguards to ensure that the provisions in respect to consent by a minor below the age of 16 years are not open to abuse and, further, I do have a long-standing regard for the tradition of patient confidentiality. However, overriding these factors I have been persuaded that the level of debate in the United Kingdom to which I have referred on the subject of under-age persons and confidentiality and a concern that has been directed to me by numerous parents of teenage children is sufficient to warrant the issue being canvassed by a Select Committee.

Also, I believe that there is some common sense in the suggestion put by the Hon. Mr Burdett that this issue is a twin to the issue that we earlier referred to a Select Committee; namely, the Mental Health Act Amendment Bill, and I consider that they should be considered together. Finally, my major concern in addressing this Bill and specifically the question of confidentiality and minors under 16 years is that young people under the age are not denied access to medical and dental treatment that is available to them at the present time—access which, incidentally, has not been the subject of any action of negligence against any practitioner to date. I support the second reading.

The Hon. ANNE LEVY: I support the Bill with great enthusiasm. As many honourable members will recall I introduced a private member's Bill a number of years ago to deal with a large number of the matters that are canvassed in this Bill. I realise that there are now several new members in the Council who will not remember the discussions that took place or the reasons for initially putting forward my Bill. My interest in the whole area began when I was approached by a constituent with a particular problem. A 17-year-old girl who did not get on with her parents had left home and was living in a house with a group of people. She was employed and was fully self supporting, self sufficient, and obviously capable of managing her own affairs. She found that she had a lump in her breast. A biopsy revealed that the lump was non-malignant and there was no question of her life being threatened if nothing were done. However, the medical advice was that this lump should be removed but, because she was 17 years of age, the doctor to whom she went refused to operate on her without parental consent. She went to her parents, with whom she had had no contact for quite some time, to get their permission to have this lump removed from her breast. Her parents refused to give permission.

It seems incredible, but that was the situation in this case. We had, to me, an intolerable situation that a medically recommended procedure could not be undertaken until this girl turned 18 years of age. She was going to have to spend the best part of 12 months with a lump in her breast, although the doctors had recommended that the lump should be removed. It was my contact with this case that led eventually to my introducing a private member's Bill in 1977. Of course, the question relates not only to cases such as that which I have described but to the provision of contraception to people under the age of 18 years. This problem is faced by many doctors, by the Family Planning Association, family planning clinics and many hospitals: can they provide this procedure to minors without having parental consent?

There is no doubt that if parental consent were required a lot of people would miss out on contraception because they would not come forward to obtain contraception if they felt that the confidentiality they expect as a patient would not be honoured and that contact would be made with parents if they had not already done so themselves. I would just remind people that the Bill as it was originally introduced was a mirror of Statute law in New South Wales, which provides that at the age of 14 years a minor can give valid consent for medical treatment.

The Bill was referred to a Select Committee and there are still several members of this Council who served on that Select Committee. I am sure that they would agree that it was a very worthwhile Select Committee on which to serve and a great deal of interesting information and a variety of opinions were put to the committee. As a result of the Select Committee, the Bill came back to the Council with a recommendation that the age of 14 years be changed to 16 years as the age at which a minor could give valid consent for medical or dental treatment. The age of 16 was taken from the United Kingdom Statute law on this matter.

Many witnesses before the Select Committee, while not unsympathetic to the legislation, did not approve of 14 year olds having a blanket ability to give consent for medical treatment, but they all, with one exception, agreed that they would be happy if the age was raised to 16 years. The only exception, those who were not happy with the age of 16 years, was the Festival of Light. All other witnesses agreed that 16 was an acceptable age in relation to the ability to give consent for medical treatment. The groups that agreed covered a very wide spectrum of political, religious and philosophical views. There was only the one exception. The Bill was then passed in this Council on the voices. No disagreement was expressed by any member when the Bill came from the Select Committee; it passed on the voices with no dissenting voice that I can recall being heard. Unfortunately, the Bill was lost in the Lower House, so it did not become law seven years ago.

I maintain that it is quite unnecessary to have another Select Committee on this topic. No controversy has been raised since this Bill was introduced several months ago. I have not received one complaint about the legislation, and I doubt whether other members have received more than the most token amount of opposition to it. The only opposition of which I am aware comes again from the Festival of Light. I know of no other group in our community that has expressed opposition. It would seem to be quite unnecessary to refer the matter yet again to a Select Committee, which would go over the same ground as the previous Select Committee covered, probably not as thoroughly because there is obviously no concern in the community about this matter.

The report of the working party on consent to treatment deals extensively with the question of minors and it is of course from the recommendations that the Bill before us has been drafted. It is a far more extensive measure than the Bill I introduced a number of years ago, because it not only states that 16 is the age of consent for medical treatment but it in effect puts into Statute law the common law situation, with one exception. As was very carefully explained to the Select Committee, the common law situation is that any person of whatever age can consent to medical treatment, provided they have an understanding of what the treatment involves, and this will obviously depend on the age of the patient and also on the implications of the procedure.

As has been suggested in some of the literature I have read on this topic, an eight year old is quite capable of understanding the consequences of setting a broken bone in the leg, and to hold up the setting up of a broken leg bone while the parents are found to give their consent would be ludicrous. The consequences of the medical treatment in that case are such that a well informed consent can be given by a quite young individual. This would not be true for all medical conditions, of course, and the common law situation therefore results in a fairly confused situation as far as the medical profession is concerned.

I was very pleased to note that the working party, having considered the confused situation that exists, stated that it was of the view that the social situation of a minor should not necessarily strengthen or affect the minor's ability to validly consent to treatment. In its opinion 'it is the minor's capacity to evaluate the information provided to him and his capacity to make a reasoned decision based on that information that is important'. It added that following a discussion in a book called *Ethics, Legal Medicine and Forensic Pathology* by Plueckhahn it is likely that courts would uphold a consent given by a 16 or 17 year old of normal intelligence. However, there are no cases in Australia that could act as a precedent and a lot of the discussion about what is informed consent and about the implications of a person being able to understand the medical procedure is theoretical and has never been settled by the courts. Therefore, it would be an advantage to have the matter clarified and put into legislation.

I point out that the legislation before us is tighter than the common law situation in one respect: this is where it refers to individuals below the age of 16 years and where it states that for such a young age group there must be two medical practitioners involved, both of whom must agree that the minor does understand the consequences of the particular treatment proposed and is capable of giving valid consent. There is nothing in the common law situation to say that two medical practitioners must be involved. I have never seen this matter discussed in any material regarding the common law situation and it is obvious that one medical practitioner is all that would be required.

I stress that since my private member's Bill of a number of years ago the Standing Committee of Commonwealth and State Attorneys-General gave a reference to the Western Australian Law Reform Commission to look at this whole question of the law relating to the provision of medical services for minors. The Hon. Mr Griffin would have been a party to that reference as he was then Attorney-General of this State. The attitude of the medical profession is, I think, presented by the submission from the Federal Council of the Australian Medical Association to the inquiry being conducted by the Western Australian Law Reform Commission—as I say, on behalf of the Attorneys-General of all States and the Commonwealth and not just for the Western Australian Parliament.

The Australian Medical Association was of the opinion that any consent to treatment legislation should respond to pragmatic reality and situations where delays in the provision of care occurred while parental consent was sought. The AMA also submitted that there should be a statutory age of 16 years for consent by minors to medical treatment. The AMA felt that this would embody the common law and would give health professionals and the public a definite statement of the law instead of the mish-mash of 'perhaps' and 'maybe' that we have at the moment. The working party certainly felt that legislative support should be given to the common law situation. The Bill that is now before us reflects the views of everyone in this community except the Festival of Light.

The working party certainly stresses that the role of parents in any decision-making process should not be completely disregarded with the introduction of such legislation. The prudent medical practitioner should, where practicable and possible, involve parents in the process, but should also respect the minor's wishes as to parental involvement. I think that this is the procedure that is followed in all the organisations that I mentioned before, that when minors present requesting, say, contraception that the medical practitioner will always suggest that consultation occur with parents, will discuss the matter, will offer to tell parents themselves if the minor feels hesitant about doing so, but in the ultimate analysis the confidentiality of the patient will be preserved. That is the paramount criterion to be followed, that no confidentiality will be broken and that parents or anyone else will not be informed without first obtaining the consent of the minor.

I point out that I have also come across a report prepared by the Institute of Law Research in Alberta, a province of Canada that has also done a thorough investigation of this whole matter. The institute's recommendation, also, is that the general age for consent to health care be fixed at 16 years. It goes through many of the same arguments that are gone through by our own working party. Although the institute recommends 16 years as the age of consent in the general situation, it considers four special situations—venereal disease, drugs and alcohol, contraception and pregnancy and its termination. In the discussion the institute states:

> In every one of these four situations there is a special reluctance to inform parents and undoubtedly the minor will be harmed by the failure to obtain treatment or even by delay in obtaining it.

The institute received many opinions expressing this point of view and found support for it in the literature that it examined.

Because of the importance of obtaining treatment in these four situations the institute felt that there should be no impediment whatsoever to children or minors obtaining advice or treatment in these four specific categories. Consequently, the institute recommended that there should be no minimum age of consent at all for these four particular categories of condition, and that where there is venereal disease involved, where there are problems with alcohol or drugs, where it was a question of contraception or abortion it felt that the urgency of the situation was such that there should be nothing that would prevent a child seeking treatment urgently and that, in consequence, if they felt inhibited by having to inform the parents, they should be able to obtain treatment without any parental involvement at all.

In other words, the institute's final recommendation was that a minor of any age may consent to health care in connection with any communicable disease, drug or alcohol abuse, prevention of pregnancy and pregnancy and its termination. Also, that where the minor is under the age of 16 years their power of consent under that recommendation is alternative to that of their parent or guardian.

I realise that the Bill before us is not creating special circumstances or considering matters along the lines that were taken in Alberta, but I point out that these are the four areas that are often brought up as reasons why parent involvement is so essential, and where, according to the Festival of Light, it would be irresponsible to allow minors of 16 years to be able to give consent. In Alberta they have taken quite a contrary view and said that these matters are so serious and require such urgent treatment that if parental consent would inhibit minors coming forward to get the treatment, then parental consent should never be required at any age for those particular conditions. That is rather the reverse of the argument one sometimes hears here, particularly from people connected with the Festival of Light.

The Bill before us is very clear. It sets out in Statute form the common law situation, or perhaps something slightly tighter than the common law situation in one respect. It makes clear that 16 years should be the age of consent for medical treatment. This has the support of all groups in our community—medical groups and many community groups—with the one exception I stated earlier. It would seem to me to be a total waste of time to refer this matter to a Select Committee again. It has been thoroughly canvassed. The Select Committee that has been established will have far more contentious matters with which to wrestle and it would seem an unnecessary dilution of its attention to these matters to give it a term of reference that is quite unnecessary, having already been thoroughly investigated by this Parliament. I can only suggest that we pass this Bill and turn it into law as quickly as possible, without any undue delay caused by messing around with Select Committees. I support the second reading.

The Hon. R.I. LUCAS secured the adjournment of the debate.

LOCAL GOVERNMENT ACT AMENDMENT BILL (No. 4)

Second reading.

The Hon. J.R. CORNWALL (Minister of Health): I move:

That this Bill be now read a second time.

It makes a number of amendments to the Local Government Act designed to improve the administration of the Act, to ensure that it is given effect to in the manner intended when the legislation was enacted, to clarify areas where doubt about the intention of a provision has arisen and to remove obsolete provisions.

The principal amendment is that contained in clause 5, which provides that a member who fails to lodge either a primary or ordinary return, as required by Part VIII of the Act, setting out certain prescribed information about his interests and activities which may lead to conflict with his public duties, shall forthwith forfeit his office.

In recent months much media attention has been paid to the grandstanding of a few local government members who say they have refused to meet their legal obligation to lodge the required return under the Act and are prepared to be seen as martyrs for the cause by being imprisoned for their contempt of the legislation and the courts by failing to pay any fine imposed.

This irresponsible approach has brought discredit on the local government industry and, in particular, the great majority of members who have acted responsibly and met their obligations. Their action avoids the real issue; that a person who undertakes public office and is involved in public decision making must be prepared to demonstrate that his involvement is not for personal gain. If a person is not prepared to subject himself to such scrutiny then he has an obligation to stand aside and make way for a person who is prepared to be openly seen to be acting in the public interest.

The amendment proposed by the Bill achieves this while, at the same time, providing an appeal mechanism for any person who can demonstrate that his failure to lodge a return was unavoidable in the circumstances. The Government's intention is that, using the provisions of clause 2 of the Bill, the operation of the amending clauses would be suspended until after the periodical election in May 1985, so that no person now in office would be affected by the amendment.

The other amendments contained in the Bill may best be described as 'house-keeping' amendments, designed to improve the administration of the Act and remove obsolete provisions. The amendments are explained in the clause explanations and may, if necessary, be further explained during the Committee stage of the Bill.

Finally, as a result of an amendment inserted by the Government in the other place, the Bill, by clause 14, proposes the repeal of that provision in the Act that prevents councils whose areas are divided into wards from opting to use the 'proportional representation' system of voting. Accordingly, all councils will be able to choose between the two systems of voting provided in the Local Government Act. I seek leave to have the detailed explanation of clauses inserted in *Hansard* without my reading it.

Explanation of Clauses

Clause 1 is formal. Clause 2 provides for the commencement of the measure. Clause 3 amends the provision setting out the arrangement of the Act and is consequential upon the repeal of Part XXXVII of the Act (Destruction of Sparrows).

Clause 4 inserts a further provision in the interpretive section of the Act to make it clear that a reference in the Act to a person being absent means absence from duties of office and includes a reference to the situation where the person no longer holds office. This is particularly relevant to the office of mayor or chairman and the office of chief executive officer. The amendment will leave no doubt that a deputy, or some other person appointed under the Act, will be able to act in the case where a person is not performing the duties of his office.

Clause 5 will amend section 48 of the principal Act so that the office of a member will become vacant if he fails to submit a return to the chief executive officer within the time provided by Part VIII. However, in order to cater for the situation where a member could not, for some good reason, submit a return within the prescribed time, a member will be able to apply to a court of summary jurisdiction for relief from the operation of the new provision upon the basis that the failure to comply with Part VIII was unavoidable in the circumstances of his particular case.

Clause 6 provides for the repeal of section 50 of the Act and the substitution of a new section. After the enactment of the Local Government Act Amendment Act (No. 3) earlier this year, submissions were received that the insurance coverage required by section 50 was far wider than that which had been previously applying to councils. Upon the basis of these submissions the Government undertook a review of the scope of section 50 and decided that some revision was appropriate. It is therefore intended to substitute a new provision that will simply oblige councils to provide insurance coverage for each member of the council and any spouse or other person who may be accompanying the member, and will restrict the obligation to risks associated with the performance of official functions by members. Furthermore, in order to avoid the situation where councils could be considered to be obliged to insure against all risks associated with the performance of members' duties, including those that are normally uninsurable, it is proposed that the coverage provided by a council simply be of a standard approved by the Minister.

Clause 7 proposes two amendments to section 58 relating to notices of meetings which would require the chief executive officer to post a copy of the notice and agenda for each ordinary meeting of the council in the principal office of the council and allow members of the public to obtain a copy of any such notice or agenda upon the payment of a fee fixed by the council.

Clause 8 proposes various amendments to section 61 of the principal Act that are intended to match, in the Act and not necessarily in regulations, the provisions dealing with the convening of council committee meetings with those provisions dealing with meetings of the council as a whole. Accordingly, it will be provided that committee meetings are to be held at times and places appointed by the council or, if appropriate, the particular committee. Notices of meetings will have to be given at least three days in advance and displayed in the principal office of the council. Special meetings will be able to be called at any time. Requirements as to the form and content of notices will have to be followed. In relation to the times of meetings of committees, a committee will still be required to hold ordinary meetings after 5 p.m. unless all members of the particular committee decide otherwise, but a committee will be able to hold a special meeting at any time.

Clause 9 is included to overcome a possible problem relating to the chief executive officer's obligation to keep minutes if he is excluded from attending at a meeting pursuant to section 64. In such a case, the person presiding at the meeting shall be responsible for ensuring that minutes are kept.

Clause 10 provides for clarification of the situation that is to apply if the chief executive officer is absent. It is proposed that section 66 (4) be revised to provide that in the absence of the chief executive officer his deputy will act in the office, if there is no deputy or he is absent, a person appointed by the council will act or, if a person is not appointed by the council (because of the occurrence of a disaster or an emergency, for example), a person appointed by the mayor or chairman, or any three other members, may act.

Clause 11 will amend section 69 of the principal Act so as to allow regulations to be made prescribing fees that may be charged for the performance by the Local Government Qualifications Committee of any of its functions. Section 69 presently only provides for the payment of a fee upon the granting of a certificate. However, it may be appropriate to impose fees for issuing appeals, conducting examinations, and so on. The amendment will allow regulations which will impose such fees to be made.

Clause 12 will effect a minor amendment to section 93 of the Act to ensure that a company or group of persons shall not be entitled to vote at an election or poll unless a person has been nominated in accordance with other provisions of the Act to act as agent on its behalf.

Clause 13 rectifies an incorrect cross-reference in section 106. Clause 14 remedies the restriction on councils with wards being unable to use the optional preferential method of counting votes. Clauses 15 and 16 provide amendments to Part VIII of the principal Act (Register of Interests) and are consequential upon the Government's decision to revise the sanction that will apply if a member fails to lodge a return within the time prescribed by the Act. It has been decided that the Register will not be laid before the council, although it will still be available to any member who may wish to inspect it. If a member fails to submit the return, the chief executive officer will be required to report that fact to the council and the Minister. It will still be an offence to submit a return under Part VIII that is false or misleading in a material particular.

Clause 17 proposes amendments to section 213a of the principal Act relating to the rate of interest that is to be paid on moneys credited to a ratepayer under subsection (3). Advice has been received from the Reserve Bank to the effect that the definition of 'prescribed rate' in subsection (4) is no longer appropriate. The situation is that the Reserve Bank simply specifies a maximum rate of interest that may be charged by trading banks on overdraft facilities with limits of less than one hundred thousand dollars. Alternatively, the Reserve Bank does provide certain special overdraft facilities to some Government accounts, but the rates of interest in these cases are kept confidential. Accordingly, it is intended to revise the definition and relate the rate of interest to that rate that is being charged by the council's bank on the council's overdraft facilities for its current account. At the same time, it is intended to insert a new subsection to clarify that the interest is to be paid on so much of the relevant amount as may from time to time stand to the ratepayer's credit.

Clause 18 provides for a new subsection to be inserted in section 214 of the principal Act to ensure that before a council declares a general or differential rate that it consider and adopt an annual budget for the ensuing financial year and approve or adopt the relevant assessments. The Government is concerned that a council be fully aware of its estimated receipts and expenditures, and decide upon the relevant assessments, before it sets its rates.

Clauses 19 and 20 propose the striking out of certain paragraphs in sections 288 and 289 concerned with the power of councils to expend moneys on providing personal injury insurance cover. These paragraphs may be deleted as the obligation to provide insurance cover under section 50, coupled with the general empowering provision in section 287 (1) *(l)*, are sufficient authority for councils to expend money on insurance premiums.

Clauses 21 to 25 (inclusive) alter references to a council survey in sections 322, 324, 331, 336 and 337 of the principal Act to the engineer. It is considered that the appropriate officer of council to perform the duties in these sections is the engineer. Clause 26 amends section 358 of the principal Act to provide that it is not an offence under that section to ride or wheel a pedal cycle or ride or lead a horse or other animal over a safety zone or median strip that forms part of a crossing-place across a public street or road. This amendment will ensure that there is no conflict between this Act and other statutory controls that relate to the use of refuges formed in streets or roads.

Clause 27 revises an out-of-date cross-reference to the Control of Advertisements Act, 1916, in section 363. The correct reference should be the Planning Act, 1982. Clause 28 changes the word 'surveyor' to 'engineer' in section 367 of the principal Act. Clauses 29 and 30 will amend sections 392 and 392a of the principal Act to provide that a scheme, or an amendment to a scheme, for work or an undertaking to be carried out by two or more councils jointly shall come into force upon a date to be fixed by the Minister when he gives his approval or, if no date is so fixed, upon the date that the relevant notice is published in the *Gazette*. It is often the case that schemes, or amendments to schemes, are submitted to the Minister well in advance of the date when they intended to come into operation. The amendments will facilitate arrangements to bring schemes, or amendments to schemes, into operation on the appropriate days.

Clause 31 clarifies that section 530c is to operate in relation to effluent from septic sewerage tanks only and that a scheme under the section must be put forward to the Minister with the consent of the Central Board of Health (and not simply after consultation with the Board). Clauses 32 to 42 (inclusive) alter various references to 'surveyor' to either 'building surveyor' or 'engineer', depending on the purpose of the particular provisions.

Clause 43 provides for the repeal of Part XXXVII dealing with the destruction of sparrows. The provisions contained in this Part are considered to be obsolete. Clause 44 proposes various amendments to the by-law provisions of the Act (section 667) to strike out obsolete powers, make consequential amendments or rectify incorrect references. Clause 45 provides for the recasting of section 668 (2) in order to

provide that no by-law made with respect to the suspension or prohibition of traffic or streets or roads, or the temporary closure of streets or roads, shall have force or effect until it is approved by the Road Traffic Board of South Australia. This will help ensure that action that may potentially restrict the proper flow of traffic will be subject to the scrutiny of the proper authority.

Clause 46 inserts a new subsection in section 679 to the effect that a resolution passed under this section that will result in the closure of a street or road must first be approved by the Road Traffic Board. Clause 47 alters a reference to 'surveyor' in section 778 to 'engineer'. Clause 48 corrects an obsolete cross-reference in section 781. Clause 49 alters a reference to 'surveyor' in section 789 to 'engineer'.

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

ADJOURNMENT

At 9.17 p.m. the Council adjourned until Thursday 14 February at 2.15 p.m.