LEGISLATIVE COUNCIL

Tuesday 16 February 1988

The PRESIDENT (Hon. Anne Levy) took the Chair at 2.15 p.m.

The Clerk (Mr C.H. Mertin) read prayers.

PETITION: ST JOHN AMBULANCE SERVICE

A petition signed by 3 111 residents of South Australia concerning funding for career staff for the St John Ambulance Service and praying that the Council will defer decision to make such funds available until further consideration is given to ambulance staffing levels was presented by the Hon. M.B. Cameron.

Petition received.

PETITION: TOBACCO LICENCE FEES

A petition signed by 117 residents of South Australia concerning State licence fees on tobacco products, and praying that the Council will urge the Government to not increase State taxes on cigarettes, nor to increase funding for anti-smoking campaigns, was presented by the Hon. L.H. Davis.

Petition received.

OMBUDSMAN

The PRESIDENT: I have received a letter from the Ombudsman dated 9 February giving details of activities and procedural matters in his office which I table for the interest of any honourable member who would like to examine it.

PAPERS TABLED

The following papers were laid on the table:

By the Attorney-General (Hon. C.J. Sumner):

Pursuant to Statute—

Motor Fuel Licensing Board—Report, 1987

Classification of Publications Act 1974—Regulations—Acre Industries (Amendment).

Financial Institutions Duty Act 1983—Regulations—Exemptions and Prescribed Amounts.

By the Minister of Corporate Affairs (Hon. C.J. Sumner):

Pursuant to Statute—

Friendly Societies Act 1919—Manchester Unity-Hibernian Friendly Society—Variation of general laws.

By the Minister of Health (Hon. J.R. Cornwall):

Pursuant to Statute—

Dried Fruits Board of South Australia—Report, year ended 28 February 1987.

Regulations under the following Acts—

Crown Lands Act 1929—Examination Fees.

Drugs Act 1908—Lubricants, Motor Fuels and Inorganic Pigments.

Planning Act 1982—Development Controls, Exemptions and Consultation.

Real Property Act 1886—Examination Fees.

Planning Act 1982—Crown Development Report—Department for Community Welfare Receiving Home at Enfield.

By the Minister of Tourism (Hon. Barbara Wiese):

Pursuant to Statute—

South Australian College of Advanced Education—By-laws—Parking and Traffic Control.

By the Minister of Local Government (Hon. Barbara Wiese):

Pursuant to Statute—

Corporation By-laws—

Port Adelaide—

No. 2—Vehicle Movement

No. 3—Streets

District Council By-laws—

Lacepede—

No. 1—Permits and Penalties

No. 2—Obstructions to Vision near Intersections

No. 3—Cattle and Sheep.

Paringa—

No. 30—Repeal of By-law.

QUESTIONS

ST JOHN AMBULANCE

The Hon. M.B. CAMERON: I seek leave to make a brief explanation before asking the Minister of Health a question about the St John Ambulance Service.

Leave granted.

The Hon. M.B. CAMERON: Last November I raised in this Chamber the issue of the Government's allocation of an additional $462 000 of taxpayers' money to make changes to the St John Ambulance service—a service which one of the Minister of Health's own senior executives, Mr Ray Sayers, has already acknowledged in the Industrial Commission as one of the best, if not the best, in Australia.

At the time I stated that it was amazing that the Minister could find such funds—to be used towards the cost of six or seven paid crews in the ambulance service—at a time when he was cutting back on allocations to virtually every health unit in the State. I also questioned whether he was aware that his proposal to implement the Echo Advance life support system on a 50/50 integrated staffing basis would signal the end of volunteer ambulance crewing in the metropolitan area.

I also stated that the Minister was simply interested in getting industrial peace at any price and that the allocation of these extra funds was a way of achieving it. It was a way of satisfying his union mates who have long been pushing for a fully paid ambulance service—a service that would have no place for volunteers.

Since then I have received new information that only reinforces that conviction. I am told that the Minister recently gave undertakings to the Secretaries of both the Ambulance Employees Association and the Federated Miscellaneous Workers Union that if a Labor Government was returned to office at the next State election he would guarantee them a completely paid ambulance service during the term of the next Government. That information was subsequently relayed to executive members of both unions—the clear implication being that if members wanted to see a fully paid up ambulance service in the next five years a vote for the Labor Party at the next election was necessary in support thereof.

This information clearly demonstrates that the Minister has given in to pressure from the unions and that he is keen to solicit any votes he can to ensure that he, and a Labor Government, are re-elected. In view of what I have said, and the widespread opposition that there is to the spending of additional funds for achieving integrated ambulance crews—with more than 5 000 signatures having been collected throughout the State, of which I have presented a number today—my questions are: first, will the Minister reverse his decision to allocate $462 000 towards the cost of these paid ambulance crews and, secondly, will

he reject any moves to allocate additional funds to employ extra paid staff to the detriment of volunteers in the ambulance service?

The Hon. J.R. CORNWALL: That was really a quite pathetic effort. First, the allegation that I have given the AEA and the FMWU some sort of undertaking that if a Labor Government is re-elected at the end of 1989 or the beginning of 1990 I will ensure that we move to a fully paid service is entirely without foundation. It is a monstrous untruth. The Hon. Mr Cameron seems to find the peddling of untruths both inside and outside this place quite acceptable. He deals in untruths, as I have said on quite a number of occasions. Let me repeat: it is, in fact, a monstrous lie. It is a monstrous lie to suggest in any way that I have given the AEA or the FMWU any understanding along the lines that he has suggested.

To put this in perspective, the Hon. Mr Cameron then goes on in this Hans Christian Andersen fable that he tries to weave to say that I have done this because I want to ensure my own re-election. Whether that is re-election or preselection, I am not sure. With regard to preselection, I feel very confident, actually. I have very broad support across all factions.

I am the patron of the independent faction, and I believe that my colleague is probably eligible to be President. We have an unblemished record in these matters. My colleague the Attorney and I are very well known independents, but I have broad support.

So, on the matter of selection, or preselection, of course, it is quite laughable for anyone who knows anything about contemporary South Australian politics. I might say, if I was battling for preselection, that the AEA has a little in excess of 200 members so, in the total scheme of things, I fear that they could not possibly save me if I were on the skids—although I most clearly am not. So, the idea that I have dealt with either of the unions on this sort of basis, giving them any undertakings whatsoever, is totally false and, I repeat, Ms President, a monstrous lie.

As to the good conduct of the ambulance service and guaranteeing a high quality ambulance service, that is a different matter altogether. I think we must be very careful in South Australia of continuing to repeat parrot fashion that we have one of the best ambulance services in the world. Historically, it is true—

The Hon. Peter Dunn interjecting:

The Hon. J.R. CORNWALL: Well, you do repeat it *ad nauseam.*

The Hon. Peter Dunn interjecting:

The Hon. J.R. CORNWALL: Well, with many things in the health system in South Australia, and particularly in relation to our public hospitals, we can claim to be of world class.

The Hon. Peter Dunn interjecting:

The Hon. J.R. CORNWALL: No—if the honourable member thinks it is arrogant to claim that the cranio facial unit is not world class, so be it. Let it be on the record that the honourable member thinks that that is an arrogant claim.

Members interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: If members opposite think it is arrogant to claim that the cardio thoracic unit at the Royal Adelaide Hospital is not world class, let them put that on the record. But let them in their middle age be damned careful that they do not finish there as patients. I suggest that they ought to be very circumspect in that regard.

The Hon. L.H. Davis: What are you suggesting by saying that?

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: I am suggesting that anybody who knocks the cranio facial unit, the cardio thoracic unit or the pain unit at Flinders Medical Centre, or any one of a dozen of world centres of excellence that we are fortunate to have in Adelaide, ought to be bloody well ashamed of themselves—and for saying that I make no apology whatsoever.

The Hon. C.J. Sumner: It is unparliamentary.

The Hon. J.R. CORNWALL: It may be unparliamentary but it is true.

The Hon. M.B. Cameron: You should withdraw it.

The Hon. J.R. CORNWALL: No, certainly not. Having set that environment, let me say that, historically, there is no doubt that we have enjoyed one of the best and finest ambulance services in this country, and among the best in the world. It was developed in the early 1950s on the basis of a handshake between Sir Thomas Playford, or Mr Tom Playford as he then was, and Sir Edward Hayward, or Mr Bill Hayward as he then was. That service served its purpose in the early or middle 1950s very well indeed. It was run almost entirely as a volunteer ambulance service. However, one has to consider the retrieval systems, intensive care facilities and the developments in neuro surgery, and all the present sophistication, such as CAT scanners, magnetic resonance imaging, and so forth—all those very high tech areas that have been developed since Mr Bill Hayward and Mr Thomas Playford first shook hands in 1953, now 35 years ago.

What has evolved in that time is an ambulance service in which, perforce, there has been a mixture of paid officers and volunteer officers, and it has served South Australia very well. It is a great pity that the Hon. Mr Cameron was not on the St John Ambulance Select Committee; he may have been able to learn a great deal. I was fortunate enough to chair that committee, of course. We have now reached a stage where we do, necessarily, have a mix of paid officers and volunteers. One of the reasons for having paid officers is the purely pragmatic one that we cannot find enough volunteers to staff the service in the daytime hours, Monday to Friday. Volunteers have to go and work for a living to earn an honest crust. So, during that period one of the reasons that we employ paid officers is that we cannot staff the service with volunteers. But there are other very good reasons.

It is important in the late 1980s and as we advance into the 1990s that we have paid professional officers who are able to make the ambulance service their career. I do not think that any sensible person would suggest that that should be otherwise. One cannot run a 24 hour, high tech service and keep it well staffed with adequately trained officers on a purely volunteer basis. So, we do have a mix. The two questions that then arise are: what is the appropriate mix and what levels of training should these ambulance officers have, whether they are paid officers or volunteers? I think that in 1988 there are concerns about those levels of training in South Australia. I make no judgment at all, but it is stating a simple fact to say that there are some concerns—

The Hon. M.B. Cameron: About the volunteers.

The Hon. J.R. CORNWALL: —about the level of training for both paid officers and volunteers, yes. I think the time is behind us when we should continue parroting that we have the finest ambulance service in the world. We still have a very good service, but we must be very vigilant. For example, if we look at the courses of training in this State versus some of the courses in the Eastern States, I believe that the Ambulance Board which is charged by statute with the good conduct of the service in South Australia, must

be very vigilant, because on the advice that I have been given some of the courses that are now run in the Eastern States are considerably more extensive than the courses that are run in South Australia.

The Hon. M.B. Cameron: You are implying that our people are not up to scratch.

The Hon. J.R. CORNWALL: I am not implying anything.

The Hon. M.B. Cameron: You are so.

The Hon. J.R. CORNWALL: I'm what?

The Hon. M.B. Cameron: You're implying that they're not up to scratch.

The Hon. J.R. CORNWALL: For a moment I thought you said something else—I thought you said something very unparliamentory. For the record, the Hon. Mr Cameron said, 'You are so.' My advice is that some of our training and refresher courses are not of the same standard as those of the Eastern States. It is a simple statement of fact. The board is charged by statute with the good conduct of the ambulance service and it is the board that has to look at training, so that is quality assurance, standards and ensuring that we continue to have a very fine ambulance service together with ensuring that any South Australian who has the necessity to use it can be assured of continuing to get the best service that we can provide.

The correct mix of volunteers to paid officers is an ongoing vexed question. As I know the Hon. Mr Burdett would appreciate, the board is charged with the good conduct of the service. The select committee was specifically asked, as one of its terms of reference, to address the question of the right mix of volunteer and paid officers. The most recent dispute arose over the staffing of ambulances in the metropolitan area with what are called echo crews, that is, an advanced life support system for which the crews require additional training and levels of skill. It is quite possible to train volunteers to echo standard. Nobody doubts that fact, but as to what number of volunteers can be kept at that standard and what hours they need to serve as volunteers within a period of a week, a month or a quarter are matters that are not simple. You cannot be exposed to the necessary clinical material by doing a night shift as a volunteer, for example, once a month, so not only do you need the training but also you need the experience. The ultimate judgment was that the mix we finished with was about right. That mix was adjudicated in the Industrial Commission. All the parties—

The Hon. M.B. Cameron: That's nonsense—you know that's nonsense. You gave the money and then they had no choice.

The Hon. J.R. CORNWALL: I think he's practising to be a fool, but he has not quite perfected his act.

The Hon. M.B. Cameron: I haven't got to your standard yet.

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: The negotiations were conducted—

Members interjecting:

The Hon. J.R. CORNWALL: If the Hon. Mr Cameron wants to run the risk of being in contempt of the South Australian Industrial Commission, let him go outside and repeat the allegations. He is, in fact, inferring—

The Hon. M.B. Cameron interjecting:

The PRESIDENT: Order! I remind the Hon. Mr Cameron that he has asked his question and should attend to the answer. I remind the Minister that an answer may not debate the question. He is perfectly free to ignore all interjections.

The Hon. J.R. CORNWALL: I challenge the Hon. Mr Cameron to repeat the allegations that somehow the Industrial Commission was tampered with, that Commissioner Cotton was tampered with—

The Hon. M.B. Cameron interjecting:

The Hon. J.R. CORNWALL: I challenge the honourable member to repeat those allegations outside: he certainly will not have the intestinal fortitude to do so.

The Hon. M.B. Cameron interjecting:

The PRESIDENT: Order!

LEGISLATIVE COUNCIL STAFF AND EQUIPMENT

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking you, Madam President, a question about Legislative Council staff and equipment.

Leave granted.

The Hon. L.H. DAVIS: When the Bannon Labor Government was elected in November 1982, the first change noticed by Liberal Legislative Councillors was a fridge for every room—a fridge for which we did not ask and which we did not particularly need. Following your election to the Presidency—

Members interjecting:

The PRESIDENT: Order!

The Hon. L.H. DAVIS: —you appointed a full-time secretary. The previous President, the Hon. Arthur Whyte, had a secretary who also relieved other Council staff when on holidays and assisted with select committees. I understand that that is not the case with your secretary and, quite clearly, this changed practice has added thousands of dollars to the Legislative Council's annual salaries bill.

Recently I became aware that you, Madam President, had installed a television and video in your office which, as you recollect, cost some $11 000 plus to refurbish 18 months ago. Presumably the television and video would have cost at least $1 000. In the meantime the Opposition in the Legislative Council has watched while staff attached to Ministers and their offices, according to budget papers, have increased from 112.1 staff in 1982-83 to a projected 143.6 in 1987-88—an increase of 28.1 per cent in just five years.

Four Liberal shadow Ministers and five backbenchers in the Legislative Council share two secretaries, compared with the Australian Democrats who have two secretaries for two members when the House is in session. And there are two secretaries for six Labor Party backbenchers.

The Hon. C.J. Sumner interjecting:

The Hon. L.H. DAVIS: We do not have a word processor for Liberal Legislative Councillors, apart from one paid for personally by the Leader, the Hon. Martin Cameron, who simply got sick of waiting—surely one of the few places in the public sector still languishing without a word processor.

I employ a person regularly to assist me with my research and secretarial work, as do a number of my colleagues. The lack of adequate staff, a word processor and a shredder for sensitive material is a source of great frustration for members of the Opposition in the Legislative Council. My questions are—

The Hon. C.J. Sumner interjecting:

The Hon. L.H. DAVIS: When the Attorney stops interjecting—

The Hon. C.J. Sumner: I did all my research myself when in Opposition.

The PRESIDENT: Order!

The Hon. L.H. DAVIS: You can't remember when you were last in Opposition. My questions are as follows:

1. Who authorised the purchase of the television and video for the President's room?

2. What was the cost of the television and video and do you, Madam President, believe that a television and video for your own private use was of the highest priority for scarce Legislative Council resources?

3. Do you believe that the television and video would be of greater benefit to the Legislative Council if it were in neutral locality and available for use by all members?

4. Is the fact that you have secured a full-time secretary, refurbished your room and purchased a television and video, while Opposition requests for additional support have gone begging, an example of democratic socialism at work?

The PRESIDENT: I do not recall the exact cost of the television and video in my room but it was of the order that the honourable member mentioned. I can find out the exact cost. The purchase of the television and video was authorised by me and the Clerk, as are all purchases for the Legislative Council under the relevant budget line. The equipment is not only available for my use: it has been used by, and made available to, all members of the Council for specific occasions such as the video which was prepared of the unveiling ceremony in the Legislative Council lounge a few weeks ago.

With regard to the suggestion that the equipment would be better in a neutral locality, there is a television in the lounge if people wish to see things. I believe that it is important for me to be able to record any televising by any local station which occurs in this Chamber. Television and other media representatives are permitted in this Chamber under certain conditions. I am very glad to say that they have never, to my knowledge, departed from the conditions under which they are permitted to televise. However, it is important that I be able to establish that the conditions are in fact being observed. I fail to see any way of doing that without having a video, as the Speaker has had for many years.

The Hon. C.J. Sumner: Bruce Eastick ordered that, didn't he?

The Hon. L.H. Davis: No.

The PRESIDENT: It has been there for many years; I don't know how long. The honourable member had another question in relation to my secretary?

The Hon. L.H. Davis: I just made an observation about it. I did not ask a specific question.

The PRESIDENT: In terms of the facilities and staff that are available to all members of the Council, I make no secret of the fact that I have long wanted greater staff, facilities and equipment for members of this Council. I frequently stated as much before I became President and while being President—

Members interjecting:

The PRESIDENT: Order! I will not answer questions addressed to me personally if there are interjections. I cannot both call for order and answer a question; it would seem most unreasonable on the part of members to expect me to do so.

I have made no secret of the fact that I have tried to obtain more benefits for all members of the Council. I have certainly exercised no partiality in seeking benefits, and I add that the television set in my room cost about the same amount as a new desk for the Hon. Mr Davis's room, which was obtained under the current budget.

The Hon. L.H. Davis: I did not ask for a new desk; I just asked for a bigger one and got a new one.

The PRESIDENT: The cost was of the same order. In terms of other equipment of a minor nature for the staff and members of the Legislative Council, we have a priority list of things we will obtain as finances permit. However, I stress again, as I have done frequently in the past, that to me the greatest priority is to ensure that every member of the Legislative Council has a room of his or her own.

I find it unacceptable that, in the late twentieth century, members of Parliament who have no electoral offices must share rooms. My first priority is to try to obtain a room for every member of Parliament. While this has not yet been achieved, we have managed to obtain better accommodation for numerous members, and I hope that by the end of this year it may be possible for all members to have a room of their own. I make no apology for this and for making it my highest priority, which I hope to achieve while President of the Council.

CRIMINALS' STORIES

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Attorney-General a question about payments for criminals' stories.

Leave granted.

The Hon. K.T. GRIFFIN: On Friday last week it was reported that a television channel had negotiated a deal with Spiers, as a result of which he would give a televised interview from prison, telling his life story, in return for a fee reported to be $5 000. Spiers, a criminal convicted of conspiring to import a large quantity of cannabis, has had a colorful career and undoubtedly he would highlight the drama and omit the unsavoury. Undoubtedly, the prospect is that crime will be glorified and honest endeavour will suffer. Spiers, in submissions on sentence, submitted that he would campaign against hard drugs, but he indicated that he has used cannabis and probably would do so again.

The prospect of a former athletics champion's endorsement of cannabis use and the image of criminal behaviour would not be a good example to the young people of Australia and is to be deplored. When the issue was raised last week the Attorney-General said that he would consider banning payments (or at least that was the report). That would not prevent payment into an interstate bank account or into a trust for the criminal.

What neither the Attorney-General nor the Minister of Correctional Services has addressed is access to the prison by television crews to get the interview. Obviously, the Minister of Correctional Services has already given his approval to the entry of television crews to the prison for the purpose of interviewing Spiers when the story broke. That, Madam President, is the decision which must be addressed. There may not be much else that can be done after the prisoner is released, but a prisoner is a prisoner after all for crimes against society, and the Government can control what goes on in the prison. My questions are as follows:

1. When was approval given by the Minister allowing a television crew into the prison to inverview Spiers?

2. Does the Government support such access as a matter of principle whether or not money is paid to the criminal?

3. Will the approval to allow a television crew into the prison to interview Spiers be revoked?

The Hon. C.J. SUMNER: I do not know when approval was given or indeed whether approval was given—that is a matter for the Minister of Correctional Services.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: I am not sure whether or not it is relevant but, if the honourable member wants anything on that, I can attempt to ascertain the information. Nevertheless, the Minister of Correctional Services, since he has

been Minister, has taken the view that there ought not to be any restrictions placed on media access to prisons. It has been a policy decision by the Minister, because he feels that it is in the interests of openness, fairness and of ensuring that nothing untoward or illegal goes on in the prisons, for the press to have access to them. That has been the general policy position taken by the Minister, and I think it has been appreciated—and rightly appreciated, too—by the media.

From time to time members opposite accuse—as do all Oppositions—the Government of being secretive and trying to hide things, and so on. The reality is that, to avoid those sorts of accusations and to ensure that there is proper scrutiny of what goes on in our prison system, we have tried to overcome the sorts of problems that occurred when the Hon. Mr Griffin was Minister, when there were major disruptions in the prisons, when there were issues that led to his setting up a royal commission into prisons. That is what happened when members opposite were in Government: they had to set up a royal commission to examine allegations of malpractice and mistreatment of prisoners and misbehaviour in the prisons.

The Minister of Correctional Services has taken the view that, to avoid these sorts of accusations, prisons should be open to the media and that the media should have access to the prisons. They have that access in any event because prisoners are able to telephone out from prison. But that is the general principle. It was in accordance with that principle that the Minister of Correctional Services dealt with this particular issue of Spiers. As I have said, I do not know whether or not approval was given for him to be interviewed, but I would expect that, in accordance with the policy that I have just outlined, approval would fit in with it.

However, the Government took a very strong position on whether or not it was reasonable for Spiers to be paid. I say quite categorically that I do not believe that it is reasonable for Spiers to be paid for any interview, and indeed I do not believe that it is reasonable for any criminal to profit from criminal activities by selling their story to the media or anyone else.

This issue has been addressed in the United States of America in, I believe, over 30 States. The first case, in New York in 1977, followed the so-called 'Son of Sam' murders in that State. Following the conviction of this person—I think one Berkowicz—he sold his story to the media for a considerable sum of money. Following that transaction legislation was introduced to prohibit that happening again. In 1982 the President's Task Force on Victims of Crime in the United States recommended that payments of that kind should be confiscated and made available for compensation for victims of crimes. Other jurisdictions in the United States have passed legislation to provide that any money received by convicted persons in those circumstances should be confiscated and used to cover the cost incurred by the State for, for instance, imprisonment, and as reimbursement for legal aid or for payment to victims by way of direct compensation.

So, the issue has been addressed in the United States in the face of cases where convicted persons have sold their stories to the media for considerable sums of money. In Australia, as far as I am aware, that sort of chequebook journalism has not existed to the same extent. Indeed, the only case that I can recall where it has been thrown up so much into the public arena has been this recent case involving Spiers. So, I make the statement that the Government would consider so-called son of Sam legislation if this sort of chequebook journalism took off in this State. However, obviously, I hope that legislation of that kind will not be necessary.

I hope that media restraint and commonsense will prevail. Nevertheless, I certainly will examine the issue. In this case I am now informed, via Mr Rick Burnett, that channel 9 will not be paying Spiers anything for the interview. That is an undertaking that one has to accept from a person like Mr Burnett at its face value, and the Government has done just that.

The question of payment being set aside (and there does not now seem to be any issue of payment to Spiers, in this case), the general principle that I outlined at the beginning of my answer seems to me to prevail. All I can say is that, if there is any suggestion that this sort of chequebook journalism will become more common, and the media will pay criminals for their stories, legislation will definitely be introduced to stop that practice.

MUSEUM

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Premier in his capacity as Minister for the Arts, a question on the subject of research into herpetology, South Australian Museum.

Leave granted.

The Hon. J.C. BURDETT: Two articles in the *Advertiser* of 23 December 1987 by Paul Mann, one headed 'Skeletons in Museum's Cupboard', refer to the resignation of Dr Terry Schwaner, the former curator, herpetology, in the South Australian Museum. Let me first say that Dr Schwaner, as Paul Mann says, is 'widely acknowledged within the Australian scientific community as the most eminent herpetologist (the study of reptiles) working in Australia today'.

His qualifications, awards, overseas experience and publications are most impressive, to say the least. As to specifics, I will just refer to the fact that Dr Schwaner three times received an Australian research grant without an interview, which is unique. Paul Mann writes of Dr Schwaner:

> In seven years he has won national and international recognition for the South Australian Museum with his research into the oprigins of reptiles. He established the first museum laboratory in the Southern Hemisphere for the study of molecular biology and the collection of frozen tissues, and has discovered at least one new species of Australian lizard.

He has made his department profitable through generating grants. Dr Schwaner found that the interference with his department by the Museum management, the lack of communication and the failure to make decisions promptly were such that he was unable to continue his work. The last $15 000 grant which he received from the Australian Research Grant Scheme he sent back, because he felt that under the conditions under which he had to work he could not do justice to the research. Late last year he resigned, his resignation to be effective from 31 January 1988.

It was the research departments which were hard done by to the advantage of the artistic aspects of the Museum's activities. The Evolutionary Biology Unit, which was even more profitable than Dr Schwaner's department, had similar problems. More than 10 people having close knowledge of the situation, and some of them having very considerable qualifications and experience themselves, wrote to the Premier expressing concern that Dr Schwaner had found it necessary to resign, and calling for some action. I have copies of six of those letters. An inquiry was set up with the following terms of reference:

> . . . adequacy and appropriateness of the current administrative policies and practices relating to the management of curators and their research programs in the Division of National Science at

the South Australian Museum. Particular reference will be made to the circumstances which prompted the resignation of Dr T. Schwaner, Senior Curator of Reptiles, South Australian Museum.

It was to report by 21 December 1987. A report in the *Advertiser* of Thursday 4 February by Arts Editor, Tim Lloyd, is headed 'Museum Differences are Irreconcilable: Report'. The report says that Mr Bannon after reading the report reaffirmed his confidence in the Director of the Museum. He said that he was disappointed that a scientist of Dr Schwaner's calibre had been unable to adjust to the changes at the South Australian Museum, but he had every confidence in the Director and his staff. Madam President, nothing is said about the management making adjustments to enable Dr Schwaner to operate effectively. And of course Dr Schwaner's resignation still stands, and nothing has been said about accommodating this kind of research. Dr Schwaner gets all the blame in the report in the *Advertiser*, emanating from the Premier. Paul Mann in his original article said:

The outcome of the inquiry is expected to be known after the Christmas break. However, from the evidence available and still to come, it is clear that this dispute is only the tip of an iceberg. Evidence exists suggesting a far greater scandal at the Museum, with the potential to make a very lively start to the new year for the Bannon Government.

The comments of the Premier have done nothing to fix anything. The report has not been made public. Paul Mann raises the matter again in today's *Advertiser*. He says:

Dr Schwaner's grievance is that his work suffered because of bureaucratic interference. He supports his claim with material indicating that some of his most important findings—

including, I think, that of a new species of lizard—

were allegedly suppressed by Museum management.

My questions are:

1. Will the Premier exonerate Dr Schwaner from the implied total blame for the situation which the Premier's statement appears to attribute to Dr Schwaner?

2. Has the Premier informed himself about this serious situation in any way other than by reading the report and, if so, in what other ways?

3. Will the Premier investigate means of enabling effective research into herpetology to continue either under Dr Schwaner or otherwise?

4. Will the report be released and, if not, why not?

The Hon. BARBARA WIESE: The Premier has indicated publicly that the report which was commissioned by the Government and compiled by senior consultants from the Government Management Board and the Commissioner for Public Employment will not be publicly released, and it will not be released because it is an inquiry which deals not only with matters relating to Dr Schwaner but also with other administrative matters relating to the Museum.

With respect to the issues relating to Dr Schwaner and differences which have occurred between him and people in management in the South Australian Museum, a number of statements were made by individuals which were confidential, and it is considered undesirable and unprofitable to anyone involved—including Dr Schwaner—for such a report to be made public. So, it will not be made public.

There are, however, a number of issues which have been addressed in the article by Paul Mann in this morning's *Advertiser* which, really, should be addressed along with a couple of other issues raised by the Hon. Mr Burdett and which I think should be clarified and corrected. The article, for example, referred to the claim that Dr Schwaner had sought a meeting with the Premier at some stage to discuss the issues that were being contested. Neither the Museum nor the Department for the Arts, nor anyone in the Premier's office, nor the Premier's Department has any knowledge of any contact made by Dr Schwaner either in writing, by telephone, or by visiting the Premier's office in order to seek such a contact with the Premier.

The Hon. J.C. Burdett: I didn't say that.

The Hon. BARBARA WIESE: I know you didn't, but I am saying it, because there are inaccuracies contained in the article from which you have quoted, and I think it is important that the article should be placed in its appropriate context. I will address a couple of the issues that the Hon. Mr Burdett did take from the article whilst addressing some of these inaccuracies. If I can come back to moves by Dr Schwaner to make contact with the Premier, it is true that he delivered a copy of his letter of resignation to the Premier's office.

The honourable member referred to allegations of suppression from museum reports of research work that Dr Schwaner had engaged in. I think it is important that these matters should be clarified, too. For example, it was suggested in the article that important findings were suppressed by the museum management and that reports had been edited and summarised. The system that applies at the museum in respect of reports is that there are summaries of the quarterly reports prepared by the scientists and they are presented to the Museum board for its consideration at meetings of the board. Those summaries usually amount to about two pages. In addition to those summaries, the full reports as written by the scientists are also tabled at board meetings for any member of the board to peruse should they wish to do so. So, no attempt has been made to keep information from board members about the achievements of people in the Museum.

Perhaps one indication of the knowledge that exists amongst board members of work that is done by scientists—and Dr Schwaner in particular—is demonstrated by the fact that at the opening of the 'Behind the Scenes' exhibition recently the Chairman paid a tribute to the work of people working in the Museum and he paid particular attention to Dr Schwaner's work. At another public function recently he also made the same sort of remarks, and referred to particular things that were taking place within the Museum. So, it is the case that board members and people in management were aware of the things that were happening and of the very considerable work that is being carried out by people in the institution.

It was suggested that information about a new species of lizard was not brought to the attention of the board or other people; that this information was suppressed. However, the fact that such information is tabled and that reports are summarised and include specific information about some of these discoveries and that some of the particular things that Dr Schwaner has achieved were brought to the attention of the board should satisfy people that the allegations that were made are not well founded.

The grant of $15 000, which was applied for by Dr Schwaner—and which was one of a number of grants that he was successful in achieving for his work and to add to the fine reputation of the South Australian Museum, with the research that is being done there—was a matter that the Museum management and the Department for the Arts believed could have been resolved and dealt with to everyone's satisfaction, if Dr Schwaner had consulted with management of the Museum prior to declining the grant. He did not refer this matter to other people within the Museum before he told the Federal Government that he would not be able to accept the $15 000, and this was prior to avenues

being explored that might have enabled the taking up of that funding in an appropriate way. As it turned out, as I understand it, in relation to that grant, there was a project that happened to coincide with a requirement for Dr Schwaner to take leave and investigations were taking place as to how the grant could be taken up and the project commenced in his absence, so that the terms of the grant moneys could be met. But before that matter could be resolved Dr Schwaner took his own action to terminate the agreement. That is unfortunate. The management of the Museum believes that it would have been possible to resolve the issue—but that is now history.

In respect of Dr Schwaner's reputation and his standing in the scientific community, it has been acknowledged by everybody who has been associated with this matter that Dr Schwaner is a scientist of international reputation. He brought great credit to the South Australian Museum during the time that he worked there and, indeed, the Director of the museum late last year provided a testimonial to Dr Schwaner, to make it clear that no stigma at all should attach to his professional reputation because of the circumstances surrounding his resignation. I think it is important that I read this testimonial into *Hansard* so that people can be aware of it and that this reference is indeed a very generous one. Mr Russell wrote as follows:

Dr Terry D. Schwaner took up the position of Curator of Reptiles (Scientific Officer, Grade 2) at the South Australian Museum on 1 July 1980 and resigned from that position effective 31 January 1988. He was appointed at a time when the herpetology collection of spirit specimens was well organised and curated, so more emphasis was to be placed on research relating to the collection in the future. Even so, the collection grew substantially during his curatorship.

Dr Schwaner established the first museum collection of deep-frozen viable tissue in Australia using equipment purchased from grant funds. As the collection grew he established a laboratory for biochemical systematics to begin studies of phylogenetic relationships and origins of elapid snakes. As well as the value of the studies themselves these studies exemplified the usefulness of tissue collections in museums. A major study of adaptive radiation of tiger snakes on South Australian and other offshore islands was begun and this has been his principal research theme during his curatorship. This research was supported by grants from several different sources including the Australian Research Grants Scheme and Wildlife Conservation Fund (S.A.)

Dr Schwaner was often called upon to identify products which were made from reptiles and imported for sale by retail stores, to ensure that Australia complied with the Convention on International Trade in Endangered Species (CITES). He devised and conducted workshops for buyers from leading retail shops and was responsible for the Museum being commissioned by the Australian Customs Service to design and build a display of prohibited imports to be placed at each of the country's international air terminals.

He was responsible for the successful transfer of the herpetology collections and associated equipment and working facilities to the Museum's new natural science building completed in 1985.

In 1985 Dr Schwaner was reclassified to Senior Curator (Scientific Officer, Grade 3). Dr Schwaner actively encouraged and interacted very well with volunteers and amateur groups who provided much assistance to his section. He thus fulfilled the important function of communicating knowledge to the general public, which he also achieved through many popular articles in magazines and newspapers. Of particular note was his encouragement and support of Brian McMahon, a deaf boy, who has made an outstanding contribution through his meticulously prepared reptile skeletons which now comprise the largest collection of its kind in any Australian Museum.

During his time at the South Australian Museum, Dr Schwaner published almost 30 articles in local, national and international journals in addition to the many popular articles mentioned above. He succeeded in obtaining over $100 000 in grants to the Museum to support research and collection management. Dr Schwaner undertook some university lecturing and supervision of undergraduate and post-graduate student projects relating to his areas of expertise. Dr Schwaner is a forward looking energetic and dedicated scientist who keeps up to date with developments in his field and whose work would be recognised as leading work in the field.

That is signed L.D. Russell, Director of the South Australian Museum, and was forwarded to Dr Schwaner who, for his own reasons, was not happy with it and returned it to Mr Russell. I think that the conclusions of Paul Mann in his article this morning are correct when he says that the differences between Dr Schwaner and the Museum are irreconcilable. Over the past couple of years there has been a breakdown in respect and communication.

Unfortunately, this has led to Dr Schwaner resigning from the institution. I do not think that anything more can be done about this. The report of the consultants suggests that the museum is being properly administered. These events have been occurring in a period of rapid change and development in the Museum and I think that it should be taken into account that they have occurred during a period when people have felt concerned about those changes. It is unfortunate, but I do not think that anything more can be done about it.

ADOPTION BILL

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

That the time for bringing up the report of the select committee on the Bill be extended until Tuesday 1 March 1988.

Motion carried.

OPTICIANS ACT AMENDMENT BILL (No. 2)

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

That the time for bringing up the report of the select committee on the Bill be extended until Tuesday 23 February 1988.

Motion carried.

BEVERAGE CONTAINER ACT AMENDMENT BILL

In Committee.

Clause 1 passed.

Clause 2—'Interpretation.'

The Hon. L.H. DAVIS: During the second reading debate I raised the question concerning the definition of 'wine-based beverage'. The Minister will recollect that coolers include not only wine-based beverages but also spirit-based beverages and we understand that shortly a cooler with a beer-based beverage is to be introduced. I understand that the question that was discussed in another place was whether it would not be wiser to broaden the definition currently contained in clause 2 *(b)* to 'alcohol-based beverage' rather than 'wine-based beverage'. The Minister for Environment and Planning in another place undertook to look at that matter and I now raise it with the Minister.

The Hon. J.R. CORNWALL: My advice is that it is not necessary in this legislation. The whole question of the use of the term 'cooler', 'wine cooler', 'beer cooler', 'spirit cooler' and so forth has been discussed at great length by Ministers who are represented on the Ministerial Committee on Drug Strategy. It has been the clear intention of the Ministers in the various jurisdictions throughout Australia that this question will be addressed in draft uniform regulations under the food legislation: this is not the appropriate vehicle. All that is sought in this amending Bill is to give the Minister and Parliament flexibility to adopt standards from time to time by regulation.

As to the question of what should be designated a 'wine cooler', a 'spirit cooler', a 'beer cooler' and so forth and

what would be a low alcohol beverage versus a normal alcohol beverage are all matters that have been addressed ever since the wine cooler controversy blew up in the summer of 1987. They are ongoing matters and I am sure that they will be addressed again when the Ministerial Committee on Drug Strategy meets in Alice Springs early in March.

The concern of the Health Ministers in particular is that there is not a no-man's land, or is it a no-person's land, between a 3.2 per cent (which generally is 3.2 per cent alcohol by volume as an upper limit of the so-called low alcohol beverages) and 8 per cent, but those matters should not be addressed in this legislation and that is the reason why my advice is that at this stage we do not need to pursue any further the matter raised by the Hon. Mr Davis.

The Hon. PETER DUNN: When this Bill was previously amended, a problem arose with non-returnable containers. The Bond Corporation said that it would challenge the State Government regarding non-returnable bottles and the very high cost attached to those containers. Can the Minister explain the state of play at this stage? Has that matter been proceeded with, or has that challenge been dropped?

The Hon. J.R. CORNWALL: I think that that question would be better addressed by my colleague the Attorney.

The Hon. C.J. SUMNER: The latest information I have on that is that the matter is still being litigated and is still before the courts. The proceedings have not been withdrawn, as far as I am aware. I am not sure how vigorously they are being pursued, but at this stage the matter is still the subject of legal proceedings.

Clause passed.

Clause 3 and title passed.

Bill read a third time and passed.

DISTINGUISHED VISITORS

The PRESIDENT: I draw honourable members' attention to the fact that a delegation from the Parliament of Nauru is currently in the gallery. The delegation consists of the Speaker of the Nauru Parliament and three members from that Parliament. On behalf of all members of the Legislative Council, I wish them a warm welcome.

FRUSTRATED CONTRACTS BILL

Adjourned debate on second reading.

(Continued from 2 December. Page 2373.)

The Hon. K.T. GRIFFIN: The Opposition supports the second reading. The issue has been around for a number of years. In this State it was first the focus of consideration by the Law Reform Committee of South Australia when it published its thirty-seventh report in 1977 on matters relating to the doctrines of frustration and illegality in the law of contract. That matter had been a reference several years before that date, but represented a comprehensive review of the law of frustration and the legislation which, up to that time, had been enacted in other parts of the world dealing with frustration of contracts in particular.

Legislation was passed in British Columbia in 1974 and in New South Wales in 1978. The English Law Reform Frustrated Contracts Act was passed in 1943 providing the model for subsequent statutes enacted in Victoria in 1959, New Zealand in 1944 and Canada in 1948. This area of the law is unlikely to set the blood of campaigners boiling. It would not stir the social conscience but nevertheless it is an area of the law important in the commercial arena and could very well, when enacted, result in considerable savings in those circumstances where a contract has been frustrated.

The Bill provides that, where a contract is frustrated by a supervening event, the occurrence of which is not expressly provided for in the contract, the supervening event has not been caused by the fault of either party to the contract and has resulted in a radical alteration in the obligation of the parties, then a procedure will provide for repayment of any payment made before frustration, for payment for any benefit that a party has obtained or received from what another party has done under the contract and for reimbursement of costs that a party has incurred for the purpose of performing the contract. The Bill does not override the provisions of any contract made before the commencement of the Act or a charter party which is not a time charter party or a charter party by way of demise.

It does not apply to a contract, made before the commencement of the Act; to a charter party (except in certain instances); to a contract for the carriage of goods by sea; a contract of insurance; a contract under which an association is constituted or rules governing the administration of, or rights of membership in, an association are laid down; or a partnership agreement. Nor does it apply where a provision exists in the contract itself as to the consequences of frustration. Where the Bill applies to a contract a procedure is set out in clause 7 to provide for an adjustment of losses between the parties on the frustration of that contract. That is appropriate and appears equitable.

The Bill will certainly clarify the common law. Initially there was no doctrine of frustration in the common law. As the Attorney-General said in his second reading explanation, the doctrine was of absolute obligation and was explained by an English court as long ago as 1647 in the case of *Paradine v. Jane* where it was stated:

> When the party by his own contract creates a duty or charge upon himself he is bound to make it good, if he may, notwithstanding any accident by inevitable necessity because he might have provided against it by his contract. Therefore, if the lessee covenant to repair a house, though it be burnt by lightning or thrown down by enemies, yet he ought to repair it.

That is a harsh interpretation of 'contractual liability' and since then a number of cases have modified the harshness of that principle and accommodated a variety of situations where it would have been manifestly unjust to maintain that theory of absolute obligation. The Bill takes the matter one step further. It has a number of positive aspects, although from one of the people to whom I referred the Bill several matters have been raised by way of question, which may indicate interpretive problems within the Bill.

I will read the comments made to me as there may be a simple answer to them and the concern may be ill founded. The first difficulty is as follows:

> Clause 6 (2) *(a)*, when read with clause 4 (1) *(b)*, would appear to operate only where an express provision of the contract provides for an obligation to survive frustration. Thus the wording 'proper construction of the contract' should not apply to implied terms.

The second matter raised was as follows:

> Clause 3 (4) poses some difficulties of interpretation in that the circumstances enumerated in that clause, which would have the effect of diminishing the contractual benefit for the purposes of calculation of adjustment of loss, may constitute circumstances which prevent the contract from being frustrated at common law.
>
> Since the Bill only operates if the contract is frustrated, clause 3 (4) may have no application. Frustration only arises at common law if an unexpected event occurs which is not the fault of either party and the event radically alters the nature of the contract. If one party is negligent (clause 3 (4) *(a)*) or should have insured (clause 3 (4) *(b)*) there is an element of fault or expectation which may be sufficient to deny a discharge of the contract under the doctrine of frustration. The Bill would then have no application as the contract would stand and be enforceable. No doubt clause 3 (4) would be interpreted as a matter of degree since the common law is not clear on the extent of negligence (or perhaps gross

negligence) required before one party is denied a discharge on the grounds of frustration.

This Bill does not seek to define what, in fact, is an event of frustration. It relates that to the principles which have been developed over centuries by the common law. It may be, therefore, that in that context the difficulty to which I have just referred becomes more apparent.

Regardless of those matters, as I have already indicated, the Opposition is prepared to support this Bill. It is a reform measure that I looked at when I was Attorney-General and asked my advisers to put into legislation. However, it was always one of those matters (as I suspect it was for the current Attorney-General) that was either put into the too hard basket or on the back burner on the basis that there were other more pressing matters that required attention.

I am pleased to see that the matter has now seen the light of day and is the subject of a Bill. One can only hope that other difficult, and perhaps obscure, questions of law which are the subject of Law Reform Committee reports may be the subject of legislation before long because these areas of law reform, while not being high profile issues, nevertheless are important in the ordinary administration of justice and in the relationship of citizens one with the other and do, in themselves, provide some assistance when enacted to resolve difficulties which have dogged lawyers and their clients for many years. I support the second reading.

Bill read a second time.

SEXUAL REASSIGNMENT BILL

Adjourned debate on second reading.

(Continued from 2 December. Page 2374.)

The Hon. K.T. GRIFFIN: This area of the law is difficult. The Bill seeks to find a mechanism for assisting that very limited number of people who have undergone sexual reassignment as adults and, in some respects, deals with certain matters relating to sexual ambiguity in children. It is a controversial piece of legislation and it always will be. Nevertheless, because a few people—four or five cases a year—are affected by the present difficulties in the law, it is proper that we do focus some attention on the issue.

This matter was on the agenda of the Standing Committee of Attorneys-General when I held that office. However, I notice in the Attorney's second reading explanation that it is no longer on that agenda. It was difficult to reach any satisfactory conclusion or agreement on the issue six or seven years ago, and I suggest that it is probably just as difficult now. Notwithstanding that, I think that we should address the issue and endeavour to find some solution, if that is at all possible. Therefore, if the second reading of the Bill is passed, I will seek to persuade the Council to refer the matter to a select committee with a view to hearing all sides of the issue so that the Council can more easily come to grips with the moral and ethical questions involved in a way which is more conducive to that objective than debate in this Chamber.

We found that consideration of matters relating to *in vitro* fertilisation and artificial insemination by donor and related fertilisation procedures by a select committee resulted in significant agreement on some very difficult questions. My hope is that this Bill, which raises the difficult question of sexual reassignment, may be treated in the same way. There are quite diverse points of view on the issue, and they should more readily be resolved or at least understood in the less formal environment of a select committee after hearing all points of view by way of evidence and submissions rather than in this Council.

The Bill deals with two aspects of sexual reassignment: first, infant reassignment where a child is born with, or develops, ambiguous genitalia and a decision is made to alter the child's physical appearance and to raise the child as a person of the other sex; and, secondly, the reassignment of transsexuals—persons who suffer from what is described in the Bill as 'primary gender dysphoria syndrome'. This syndrome is defined in the Bill as a condition where a person suffers with the following characteristics:

(a) the person believes that his or her sexual characteristics do not accord with his or her true sex;

and

(b) desires to alter his or her sexual characteristic so as to accord with what the person believes to be his or her true sex.

The Bill establishes the South Australian Sexual Reassignment Board, which will comprise a presiding officer, who is a legal practitioner of at least seven years standing, and a number of other medical practitioners. The board will sit in two divisions: the adult reassignment division and the child reassignment division. When it sits as the adult reassignment division, it will also have among its membership a clinical psychologist who specialises in sexual counselling appointed by the Governor on the nomination of the Minister.

The Hon. R.J. Ritson interjecting:

The Hon. K.T. GRIFFIN: The Hon. Dr Ritson would obviously be more familiar with the qualifications of the persons available than I, so I take his word for it. The adult reassignment division will not deal with the question whether or not a reassignment procedure will be carried out—it will deal only with the approval of a hospital which might carry out the procedure and the approval of medical practitioners to carry out the procedure. It will also deal with what is described in the Bill as a 'recognition certificate'.

So, the adult reassignment division will not determine whether or not a procedure should be carried out—it will deal only with matters which can be described as perhaps preliminary, namely, what hospital should be approved for the purpose of carrying out these procedures and which medical practitioners should be approved to carry out these procedures.

According to the Bill the so-called recognition certificate will be issued by the adult reassignment division after any surgical and medical procedures have been carried out. The child reassignment division will deal with all those matters and will also deal with the granting of approval to undergo a reassignment procedure.

The Bill sets out certain criteria for a person other than a child as to the eligibility of such a person to undergo a reassignment procedure. A reassignment procedure is defined in the Bill as a medical or surgical procedure to alter the genitals and other sexual characteristics of a person. To be eligible for such a procedure a person must be suffering from primary gender dysphoria syndrome; have attained the age of 23 years; not be married; over a period of at least 24 months since attaining the age of 21 years, have received counselling of a kind approved by the board; and have lived the lifestyle appropriate to the sex with which the person seeks to be identified; and have consented to the procedure.

When a recognition certificate is produced to the Registrar of Births, Deaths and Marriages, the Registrar must register the certificate and make appropriate entries and alterations on any index or register and issue a new birth certificate recording the sex of that person as the sex to which he or she has been reassigned. In other words, the Registrar must amend the birth certificate, issue a new birth certificate and show no record of the earlier birth details.

The question is complex and controversial. I am told that there has not been any consultation with medical practitioners who work in this area of medical practice, and that Flinders University, which undertakes four or five reassignment cases per year, proposes to stop when 30 cases have been handled in order to evaluate the benefits and detriments of the treatment. I am also told that in the United States the pioneer of sex change operations has stopped work because of the uncertainty of its value.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: I am not saying that at all. I am pointing out that there is dubious value in it, according to the pioneer of these procedures. Because of these difficulties (and I will deal with this in detail in a moment), is it appropriate for the Bill merely to recognise the changes which have occurred, or which may occur in the future, without a more careful look at the way in which the authority is granted for the changes to occur or, more particularly, a distortion of the details on a birth certificate?

There is the problem of children with a physical abnormality in relation to their sex, and there is also the problem of those persons who are unequivocally male where the problem is psychiatric. It has been suggested to me that in the case of a child with ambiguous sexual genitalia the child's chromosomal patterns should be tested and should be the determinant of sex, with some focus on surgery if that test results in a clear conclusion inconsistent with the genitalia.

With those who are unequivocally male, the suggestion has been made that appropriate psychiatric counselling should be available before any physical surgery becomes available, but it has also been put to me—and I certainly have a great deal of sympathy with this—that an amendment to the birth certificate should not be permitted, because such alteration would, in fact, be compounding a lie.

Where there is a child with ambiguous sexual genitalia and there has been a mistake, in effect, in the registration of the sex, then procedures ought to be available—if they are not already available—to enable the birth certificate to be corrected in those circumstances. However, that is quite different from the area of adult sexual change. I think that we ought to note in relation to birth certificates that in the area of adoption there is a significant move towards truth being recorded on the birth certificate, whereas this Bill appears to be going in the opposite direction and proposes a lie or the cover-up of a fact with respect to the sex of those persons affected by the Bill. I think that it has to be recognised that with birth certificates there is some difficulty which may well arise if the facts are covered up, particularly with respect to passports.

There is also the question of marriage, which is largely within the jurisdiction of the Commonwealth, although the presentation of a birth certificate is usually sufficient evidence upon which a marriage celebrant can rely for the purpose of conducting a marriage ceremony and, subsequently, for that celebration of marriage to be recorded in the appropriate registry. There is no indication as to what the Commonwealth will do on this issue. There may even be, I suppose, questions raised in the area of adoptive parents as to the gender of those who seek to adopt, particularly if adoption is ultimately allowed to unmarried couples, where a person who has benefited from the provisions of this Bill is able to produce a birth certificate which covers up the facts.

If one looks in detail at the Bill, I think that a number of questions must be raised. There is the question of the establishment of a board to deal with four or five cases per year in the adult area. One must ask the question: is the establishment of a board with its two divisions and, undoubtedly, the infrastructure which is required to go with it the appropriate way to deal with these matters? If it is the appropriate way to deal with the matters referred to in the Bill, who are the parties that appear before the board to have the matters referred to in the Bill resolved? Where there is, for example, an application for a recognition certificate, does the Registrar of Births, Deaths and Marriages have a right to intervene?

Is there anyone who will put an alternative point of view, or is the board merely to be a rubber stamp? Who will question whether or not the criteria set down in the Bill have been satisfied? Is the board able to make an interim declaration, for example, if there is a person who has not yet undergone the surgical procedures to change that person's sexual characteristics? Is that person to be able to go to the board to seek some interim indication of whether or not a recognition certificate will be granted if the prerequisites are satisfied?

In satisfying the criteria, on whose evidence is primary gender dysphoria syndrome to be established and is it to be established by complying with the rules of evidence or on hearsay evidence, or by some other means? Is the period of 24 months since attaining the age of 21 years, during which the person has received counselling and lived in accordance with the lifestyle appropriate to the sex with which the person seeks to be identified, a continuous period of 24 months or some aggregation of periods totalling 24 months? What sort of counselling is required? Is it counselling which is to be objective and to offer alternative points of view, or is it to be counselling which encourages the move towards changing sexual characteristics?

What is the evidence required to determine that the person making the change has lived a lifestyle appropriate to the sex with which that person seeks to be identified and, in any event, what is the lifestyle? It seems very ambiguous. There is provision also for the board in certain circumstances to shorten or extend the period in relation to an applicant, and I would raise questions about the circumstances in which such extension or shortening is to be made. Who is to apply, for example, for an extension of the period?

Where a child is the subject, then an application is made to the board for an authorisation for a reassignment procedure to occur in relation to that child. Who makes that application? Is it the guardian; is it a social worker, as it may be, I suppose, in some instances under the Community Welfare Act? In other circumstances may it be the parent? If some medical practitioner or social worker, are the parents and guardians to be involved in the decision-making process? It is very much up in the air.

Appeals may be made to the Supreme Court, but it is not clear who has the right to make those appeals. Is the Registrar a party? Is the Attorney-General a party? Does the Registrar have the right to intervene? Who, in fact, may appear? Is it the parents of an adult, the parents who gave birth to a son who are seeking to change his sexual characteristics? Do they have any rights in relation to such an application? In relation to anyone who might query the extent and quality of counselling, does that person have a right to put that point of view, and what notification is to be given, and to whom, that such a hearing will occur? They are all matters which I think need to be addressed—not just the moral and social questions which are important and which can be more easily dealt with in a select committee than by debate in this Chamber but also the various procedural and other matters to which I have drawn attention. As to the important question of whether or not a person's history should be covered up by the issue of a new

birth certificate, what are the ramifications of that? These questions ought to go to a select committee. It is for that reason that I indicate that I will support the second reading of the Bill but I will do so only for the purpose of enabling it to go to a select committee.

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

The Hon. K.T. GRIFFIN: Mr Acting President, I draw your attention to the state of the Council.

A quorum having been formed:

ACTS INTERPRETATION ACT AMENDMENT BILL

In Committee.

(Continued from 10 February. Page 2609.)

Clauses 2 and 3 passed.

Clause 4—'Schedules, headings, marginal notes and footnotes.'

The Hon. K.T. GRIFFIN: I move:

Page 2, lines 8 to 15—Leave out subsection (5) and insert new subsection as follows:

(5) For the purpose of resolving questions affecting the construction of an Act, punctuation appearing in the text of the Act as printed by the Government Printer may be taken into account.

I have already said during the second reading debate that, while headings, marginal notes and footnotes do not form part of an Act (and it is important to clarify this matter), I have some very grave reservations about enabling headings to the sections of an Act, and marginal and other notes as printed by the Government Printer, to be taken into account for resolving questions affecting the construction of an Act.

There is some law on the matter which I think is ambivalent in its conclusion. Some favour marginal notes, footnotes and headings being taken into consideration and others do not. I make the simple point that headings to the sections are not matters on which Parliament has voted or to which it has given any consideration. Likewise, marginal and other notes to the text of the Act as printed by the Government Printer are not matters on which Parliament makes a decision. In fact, the footnotes are frequently added by the Government Printer for the purpose of referring to other legislation or to some other matter which has occurred in the context of the development of that legislation. I do not think that any harm is done by leaving out paragraphs *(a)* and *(b)* of the proposed subsection (5). I think that their deletion makes it much clearer for everybody and puts us into line with the very clear principle that only matters that are the subject of consideration by both Houses of Parliament ought to be the matters which form part of an Act and which are referred to in determining questions affecting the construction of an Act.

The Hon. I. GILFILLAN: I support the amendment and I agree with the argument put by the Hon. Mr Griffin. It seems to be quite inappropriate that material that is appended to legislation after it has been debated, amended and determined by Parliament should then be officially allowed in an Act for the purposes of resolving questions affecting the construction of that Act. I believe that, before that material is interpreted, it is essential that Parliament itself gives due consideration to those factors.

Further, I believe that the punctuation is essential in interpreting the construction and understanding of an Act. The amendment provides:

For the purpose of resolving questions affecting the construction of an Act, punctuation appearing in the text of the Act as printed by the Government Printer may be taken into account.

I emphasise the word 'may', because I would prefer that it be even more emphatic and that the word 'should', if not 'must', be inserted. It seems extraordinary that any piece of written material can be interpreted without due weight being given to the way that it is punctuated. If one were to consider a conglomeration of words and to disregard full stops, commas, colons, and semicolons which are in their appropriate places, the wording becomes meaningless, except in many cases for subjective judgment. That seems to be quite inappropriate in interpreting the Act. The Democrats support the amendment.

The Hon. R.J. RITSON: The Hon. Mr Gilfillan indicated that he would like to see the section strengthened and the words 'should' or 'must' used. I point out that generally we do not specifically consider punctuation when we debate Bills. I understand that some licence is granted for Parliamentary Counsel to correct apparent errors of punctuation in the final presentation of the Bill, so on some occasions punctuation would be an aid to interpretation and on other occasions perhaps the punctuation may be obviously in error and would make nonsense of what otherwise was a clearly understandable phrase or sentence. I think it is very important to leave some flexibility in this matter so that the judiciary, with its skill and training, can decide which punctuation is an important aid to construction and which punctuation is not. I am happy with the more flexible arrangement.

The Hon. C.J. SUMNER: The Government's intention was to restate the common law on these points so, if the attempt to restate the common law is removed, then the common law will remain. It seems that we are achieving the same objective whether or not it is in the Bill. In the light of what members have said, I will not take the matter any further.

Amendment carried; clause as amended passed.

Clause 5 and title passed.

Bill read a third time and passed.

LOCAL GOVERNMENT ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 11 February. Page 2681.)

The Hon. L.H. DAVIS: I support very strongly the remarks made by my colleague the Hon. Diana Laidlaw when she addressed this Bill. I think it is true to say that on the subject of minimum rates the Minister of Local Government, the Hon. Barbara Wiese, has performed gyrations which would put a professional contortionist out of business. I will confine my remarks to that part of the Bill because, amongst the vast majority of councils in both metropolitan and rural South Australia, it is a matter of universal concern.

It is of interest to reflect on the history of minimum rates, because the Minister sought to suggest that there is some doubt about the legality of minimum rates as they now stand. The fact is that the minimum rate was introduced in South Australia in 1929, which is nearly 60 years ago. It has been unchallenged since that time. When the Local Government Act in 1934 was passed by Parliament, the minimum rate issue was written into that legislation and there was little debate on the subject at that time. It was accepted as a very vital part of local government, even in those days. Again, when there was further debate on the subject in 1959 minimum rates were accepted. So, councils throughout the State have grown up using minimum rates as a very key instrument in financial management of their

affairs. There has never been any suggestion in South Australia that the minimum rate is illegal. There has never been any protest about the minimum rate as struck in the vast majority of council areas. There has never been any petition or deputation to the Parliament protesting about the minimum rate. So, we should make quite clear that the minimum rate has been part of the local government scene in South Australia for a very long time.

When the rewrite of the Local Government Act second phase commenced many years ago, the minimum rate certainly was part of the debate. But the review committee, which consisted of representatives of the Local Government Association and Government, in 1986 failed to resolve the problem of the minimum rate and the Minister decided that she would press ahead regardless and abolish the minimum rate. So, the Minister said that she would leave out the minimum rate clause in the Bill and thus ride roughshod over the wishes of a vast majority of people. I will seek to trace through the history of minimum rates in the past 2½ years because the gyrations of the Minister of Local Government have to be seen to be believed.

First, let me reflect on the Minister's view at the Local Government Association annual meeting held on 25 October 1985 when, as Minister of Local Government, she stated:

Two issues seem to have arisen that I believe should be settled, issues, that is, of particular concern to local government. First, there is no suggestion whatsoever that the ability to levy a minimum rate should be removed.

That is the Minister speaking to the annual meeting of the Local Government Association—the most important meeting of the year for local government in South Australia. In unequivocal terms the Minister is saying that the minimum rate will remain, that it is not an issue, and that it was not on her agenda. Of course it is well to note that she made that claim just a month before South Australia went to the polls in November 1985.

Just a little more than a year later, on 26 November 1986, I asked the Minister why she had changed her mind on minimum rates because, undoubtedly, in the period that followed the State election of November 1985, the Minister turned 180 degrees on the subject. In the answer to my question as to why she had changed her mind, the Minister stated on 26 November 1986 in *Hansard*:

... since that meeting—

that is, the meeting of 25 October 1985—

no organisation—the Local Government Association included—has been able to provide adequate information to me which supports the case for maintaining a minimum rate.

In other words, she is saying quite categorically that she had given the opportunity to show that the minimum rate is a good thing, no-one responded, so she is going to abolish it.

Again, in *Hansard* of 19 February 1987 the Minister stated:

The Local Government Association assured me prior to that point—

again she refers to 25 October 1985—

that it was possible to provide figures that would make up a reasonable composition upon which to base a minimum rate. However, the Local Government Association was unable to provide that information that led to my decision which I announced last year, that is, in 1986.

I was fascinated at the time to see the Minister flip-flopping around on the issue of local government minimum rating. So, on 20 March 1987 I wrote to the Secretary-General of the Local Government Association, Mr Hullick, as follows:

You will no doubt recollect that at the Local Government Association annual meeting held on 25 October 1985 the Minister of Local Government, Hon. Ms Wiese, when addressing the meeting said, 'Two issues seem to have arisen that I believe should be settled, issues, that is, of particular concern to local government. First, there is no suggestion whatsoever that the ability to levy a minimum rate should be removed.'

On 26 November 1986, in the Legislative Council I asked the Minister why she had changed her mind on the matter of minimum rating. In her answer, she stated '... since the meeting ... no organisation—the Local Government Association included—has been able to provide adequate information to me which supports the case for maintaining a minimum rate.'

She argued that in October 1985 'my advice was that it (that is minimum rating) was possible and that information would be supplied to me ... that there was a basis for a minimum charge to be levied by local councils on ratepayers. Since that time, although I have asked for that information to be provided to me, it has not been possible for people, apparently, to make the assessments. ... Therefore, since that information has not been available, it has been reasonable in my view to change my mind.'

My colleague and I are greatly concerned about the adverse financial consequences for many councils if minimum rating is abolished. Therefore, I would be pleased if the Local Government Association could provide an answer to the following questions:

1. What assurances and/or information on the matter of minimum rating was sought from your association by the Minister of Local Government prior to 25 October 1985?
2. What assurances and/or information on minimum rating was given by your association to the Minister in response to her request?
3. What information was provided by your association to the Minister after 25 October 1985 which may have caused her to change her mind?
4. Does your association have any estimate of the financial benefit to the South Australian Government if minimum rating was abolished because of the saving of money which would occur in relation to the pensioner concession scheme and any other concessional schemes?

I would be pleased to have copies of any correspondence on this matter, if you feel it is appropriate to release such documentation.

That was on 20 March 1987. Shortly after that, I received a reply from Mr J.M. Hullick, Secretary-General of the Local Government Association of South Australia, dated 24 March 1987 as follows:

Thank you for your letter of 20 March and for your interest in the minimum rating issue. This association strongly believes minimum rating to be a local issue to be decided within local communities and views with grave concern the State Government's proposals to interfere with such local matters.

With regard to your specific questions, I am afraid I can be of little assistance. To my knowledge there has been no written or verbal request from the Minister for any assurance or information from this association as suggested. Further, I know of no written or verbal assurance or information subsequently provided by this association to the Minister. I have caused a search of the minutes of our executive committee and the association's correspondence files to be undertaken and no record of any request from the Minister or response by the association on this specific matter in relation to minimum rating could be located.

It seems quite clear that the Minister has been caught very badly with her hand jammed in the cookie jar. The letter continues:

Therefore, in response to your specific questions:

1. To my knowledge no assurances or information on the matter of minimum rating were sought by the Minister of Local Government from the Local Government Association prior to October 1985.
2. To my knowledge no assurances or information on minimum rating have been supplied to the Minister apart from our submission to the Local Government Act Review Committee which reflected our members' support for the retention of minimum rating.
3. The only information supplied by the association to the Minister has been our position that minimum rating is a local issue which should be decided within local communities and not by central government. In addition, the association has issued verbal requests for the Government to present its case for abolishing minimum rating. To date, no Government case for the abolition of minimum rating has been presented to the association or, to my knowledge, publicly.
4. It would appear that, if the Government were to proceed with the withdrawal of minimum rating, it could receive windfall gains in the order of $10 million to $20 million. These windfall gains would be made to the

Government's pensioner concession program and to the South Australian Housing Trust.

I share your concerns about the adverse financial consequences for councils if minimum rating were interfered with but view with greater concern the likely effects on the community.

It would appear to me that either abolishing minimum rating or introducing the Government's latest option would have severe effects in many areas on middle income groups including many pensions, mortgage belt families, small businesses and farmers.

As this move appears to have come from within the Government and not from the community, I believe this to be yet another attempt by central government to control local communities—something which local government and I have fought against for many years.

That letter is a damning document. It damns the Minister; it shows the Minister to be a confabulator of the first order. It answers very clearly the question raised by way of a very good-natured interjection from my colleague the Hon. Bob Ritson. Indeed, the Minister was not taking advice from local government; indeed, she had not sought information from local government. Rather, she was taking her marching orders from Caucus. The real reason why minimum rating was on the agenda for abolition was that it would save the Government $10 million to $20 million. The Government would receive a windfall gain (as Mr Hullick described it) of about $10 million to $20 million by saving on Government pensioner concession programs and in relation to the South Australian Housing Trust. It is quite clear that the Minister has been caught in a squeeze and she has been caught out very badly in her confabulation about the facts of the case.

During 1987 we saw the Minister's credibility shredded. In this Parliament on four different occasions she actually said that the Local Government Association had been unable to provide her with information to justify maintaining minimum rates but, as we can see from the correspondence from the Secretary-General, Mr Hullick, the Local Government Association was not asked, at any time, for information on the matter and at no time did it give information on this most important matter of minimum rates.

The Minister refused to apologise to the Parliament and to the association for misrepresenting the facts. She was quite unrepentant despite the fact that she had been caught out very badly on a crucial issue. This clearly reflects the fact that the Minister was well out of her depth in this important area of local government and that she certainly had not represented the interest of the State's 126 councils in making what certainly appeared to be a unilateral decision to abolish minimum rates and save the State Government $20 million in the process.

The Minister used various ruses to explain her move on minimum rates when it was announced that the Australian Democrats would join with the Liberal Party in blocking the State Government move to abolish minimum rating by local government. The Minister is quoted in the *Advertiser* of 8 August 1987 as saying that she was disappointed with the move because the minimum rate as now used by councils was 'unfair and of dubious legality'. In other words, she sought to hide behind this sham of an argument that minimum rating really might not stand up in the courts if tested. No one has seriously suggested this as a possible avenue for knocking down minimum rating.

The Hon. Mr Keneally joined with the Minister of Local Government in suggesting that in Victoria 11 or 12 years ago a case had thrown doubt on minimum rating in that State. No one has seriously suggested that minimum rating could be knocked over on a legality in this State. It is interesting to see that, having attempted to justify the abolition of minimum rating on the ground that it was of dubious legality (back in August 1987), the Minister has not dared repeat that argument. While the Minister has filibustered on this important matter, important legislation has been sitting on the Notice Paper. The Local Government Act Amendment Bill has been around now for well over 12 months, and it is to the detriment of local government that other important areas affecting it have been left trailing because of the Minister's determination to rip the guts out of minimum rating and have it abolished through legislation.

It is interesting that the Minister has not said how many councils favour the abolition of minimum rating. It is interesting, too, that the Minister does not quote any other argument, apart from the very doubtful argument of legality, and from the report on minimum rating that she arranged to be prepared by the Centre for Economic Studies of South Australia. I do not doubt for one moment the integrity of the Centre for Economic Studies but to suggest that a study on minimum rating could be achieved by examining just seven councils—the city of Port Adelaide, the city of Kensington and Norwood, the city of Whyalla, the District Council of Willunga, the District Council of Berri, the District Council of Burra Burra and the District Council of Tatiara—is really stretching a very long bow.

The Minister sought to use the very controlled study by the Centre for Economic Studies as further justification for the abolition of minimum rating. I do not buy it and, quite clearly, the Local Government Association and the vast majority of local councils that it represents do not buy that argument, either. The Hon. Bruce Eastick, the Shadow Minister of Local Government in another place, and the Hon. Diana Laidlaw are to be commended for the enormous amount of work that they have done on this Bill, and particularly on the several contentious issues that it contains. I commend the Local Government Association and councils for the keen interest that they have taken in this matter, and for the very open way in which they have made their views known.

I refer to one of the very many comments that have been received on this matter over the past few months. The District Council of Loxton, which is strongly opposed to minimum rating, states:

In the Minister's own words . . . council's are competent and responsible bodies capable of providing unique local solutions to unique local needs and circumstances . . . the administration of local government employs increasing numbers of highly trained professional officers. Its members are accountable to their electorates of residents and ratepayers through a representative electoral system and a visible and accessible decision making process, both of which were improved by the measures of the first revision Bill.

That certainly turns the Minister's own words back on her very strongly indeed, because local government is closest to the people and is in the best position to make judgments on matters such as minimum rating.

The Hon. C.M. Hill: Why isn't the Minister in the Chamber during this debate?

The Hon. L.H. DAVIS: I am not surprised that the Minister is not in the Chamber. She is taking such a towelling on this issue that I think it is safest for her to hide her face. I refer to a press release from the Local Government Association dated 6 May 1987. The Local Government Association conducted a survey which showed that the Government's proposal to replace the minimum rate with a minimum charge would place an unfair burden on the average ratepayer. The survey also showed that in many cases properties with a higher value would pay less under the Government's proposal to have councils levy an administrative charge on every property. In fact, the press release states:

Our survey shows that this option places an unfair burden on the average ratepayers with properties valued between $35 000

and $80 000. These ratepayers could have increases of 12 per cent and 20 per cent, and even more in some cases.

Mr Roberts, who was acting Secretary General of the Local Government Association when Mr Jim Hullick, its hard working Secretary General, was overseas, said:

The State Government is yet to put up a convincing argument to councils as to why the minimum rate should be abolished. Instead it has now proposed an alternative without understanding its impact on the community.

The press release goes on to say that the President of the Local Government Association, Councillor Ken Price (again, another well respected person), had said that councils throughout South Australia had expressed overwhelming support for the association's stand in demanding the retention of the minimum rate. In this respect, a press release stated:

'The Government has demonstrated with their proposal for a minimum charge that they have no understanding of its impact on the local community,' said councillor Price. 'To insist that councils need only charge a minimum charge based on its administration costs is to overlook the fact that local government is now involved in a comprehensive range of services to the community, from sport and recreation facilities to libraries, gardens, parks, health and community support services, and many others', he said.

The Local Government Association's research showed that the real winner from the Government's proposal was the Housing Trust, which stands to save thousands of dollars in reduced council rates.

I could not put it any more succinctly than that. Quite clearly, that very thorough research from the Local Government Association, backed up by Mr Don Roberts, Mr Jim Hullick and the President of the Local Government Association, Councillor Ken Price, has put very clearly the united concern of councils on this most important matter. In fact, their concern is mirrored by the Chamber of Commerce and Industry when, at a meeting of its full council in May 1987, the chamber resolved that it simply could not support the abolition of the minimum council rate.

That was the basis of an argument that was put on behalf of the chamber and made public in a letter from Lindsay Thompson, General Manager of the Chamber of Commerce and Industry, addressed to the beleaguered Minister of Local Government (Hon. Barbara Wiese). I do not want to refer in much more detail to the facts except to read into *Hansard* a few comments from local councils themselves, because this reflects very clearly the strength of feeling not only of council areas which may be said to be Liberal on the State scene, but also of councils which are very much in the heartland of the Labor Party, because the minimum rates matter transcends political boundaries. It is too important to be politicised, as we have been forced to do. It is a matter of commonsense; it is a matter of justice. It is, most importantly, a matter of recognising the responsibility that rests with local government in these financial matters.

It seems to me that this Government preaches autonomy for local government on the one hand, and tries all in its power to take it away with the other. I refer to the Salisbury-Elizabeth-Gawler Messenger Press newspaper dated Wednesday 11 November 1987. This is a pretty strong area which, I would suspect, encompasses the electorates of a couple of Federal members, as well as a few State Labor members. Here we have a full page advertisement headed 'Stop the abolition of minimum rates'. This is the City of Elizabeth and the City of Munno Para joining together to condemn the proposal to abolish minimum rates. The advertisement states:

Every resident enjoys the same standard of service. It is unfair for the Government to change the rules for its own benefit.

That advertisement is signed by the Mayors of Elizabeth and Munno Para.

The Hon. Diana Laidlaw interjecting:

The Hon. L.H. DAVIS: It sounds pretty good to me, Ms Laidlaw: that advertisement is right on the ball. We then have strong protests from groups such as the District Council of Kapunda, as follows:

The council is very concerned at the strongly entrenched centralist mentality that exists within State Government bureaucracies at the present time. Until such time as this changes, rural citizens of South Australia are doomed to a second rate existence.

Quite clearly there is a lot of apprehension about this in country areas. This is reflected also in a letter dated 18 January 1988 from the District Clerk of the District Council of Pirie to my colleague the Hon. Diana Laidlaw, which states:

Council can commend you on your speech in the Legislative Council attacking the Minister of Local Government's actions. It considers the Minister has been far too dictatorial and is out of tune with the wishes of the local government industry. Council urges that your fight, particularly in relation to the retention of the minimum rate, be continued.

The Hon. C.M. Hill: And a very good council, too.

The Hon. L.H. DAVIS: The District Council of Pirie is a top council. We have a letter addressed to me from the District Clerk of the District Council of Waikerie, again reflecting concern. I quote from the letter dated 16 February 1987, as follows:

Waikerie council believes that the retention of the legislation empowering councils to declare minimum amounts payable by way of rates is imperative and, if used properly, is a flexible link which enables councils to ensure a consistency of payment by electors receiving similar benefits, irrespective of valuation. The loss of this power would, of course, mean that either services within an area must be reduced or that the additional rates necessary for the standard established to remain must be collected from the remaining electors already paying more than the minimum rate set.

That is more commonsense from the District Council of Waikerie. Then, we have the very important and influential Council of the City of Mount Gambier, again expressing great concern about the proposal to vary minimum rates. In a letter addressed to the Hon. Bruce Eastick, the council states:

If satisfaction cannot be achieved on these matters, then council strongly recommends that the entire Bill be disallowed.

In other words, the council feels so strongly about it that it is prepared to have the whole Bill knocked out rather than to allow those bad parts, particularly in relation to minimum rating, to slip through and so destroy the financial base of so many councils in South Australia. Quite clearly, from the number of letters on this issue from city and country alike, from Liberal and Labor areas alike, we see great and growing concern on this issue of minimum rates.

This is not a passing fad: it is not an issue that they have taken up in the heat of the moment in response to a political request. It is an opposition which has been strongly maintained over a period of more than 12 months, and the Government should know that this opposition is growing in its intensity. When one sees a headline such as 'Enfield council fights axing of minimum rates' in a metropolitan newspaper of only a few weeks ago, then it may perhaps start helping to explain to the Government why it has lost touch with local communities to the point that it lost the Federal by-election of Adelaide in such devastating fashion.

I can only reiterate what my colleague the Hon. Diana Laidlaw has said so succinctly and so very well: that this Opposition is absolutely united in its condemnation of the Government on the matter of minimum rating and, in particular, of the Minister's most devious way of trying to manipulate the issue to give the impression that it is other than buck passing and passing on a financial burden to local government. That is the real reason why the Government is seeking to abolish minimum rating.

No satisfactory reason has been given for the abolition of minimum rating. The argument of legality has fallen over. The argument advanced by the Centre for Economic Studies has no logical basis, given that it was such a small sample. The argument that the Government sought information from the Local Government Association and none was forthcoming has been shown to be palpably untrue. The Government has been exposed and shown up for what it is—a Government that is trying to rip off local government by passing on a financial burden estimated to be worth at least $20 million in a financial year.

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

EVIDENCE ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 11 February. Page 2683.)

The Hon. DIANA LAIDLAW: Most of the provisions in this Bill arise from the Government Task Force on Child Sexual Abuse. Child sexual abuse is something that I find absolutely abhorrent. However, this subject is one on which I have been reluctantly compelled to focus during the five years that I have been in this place. I certainly came to appreciate very early in my time as a member of this Council the gender power nature of this form of abuse, and over the past two years as shadow Minister of Community Welfare I have found that at times I have been in danger of being swamped by the subject. Over this period I have been bombarded with representations and submissions from groups representing the victims of child abuse, from one or both parents angry at the conduct of Department of Community Welfare officers, by one or both parents exasperated with perceived injustices in the legal system, by lawyers frustrated with aspects of the system, including the preparation of submissions and applications by DCW officers, and by case workers and other professionals upset with the protocols insisted upon from within the higher echelons of the department.

Upon reflection, my experiences have not only confirmed how very complex this subject is but also, due to the highly emotive environment that tends to envelop each case, how difficult it is to be confident that one is acting in a child's best interests or that one's responses are actions that a child is psychologically able to handle. In my view, these difficulties have been compounded by the fact that the term 'abuse' is such an all-encompassing expression, ranging from unwanted attention to fondling, to penetration. Many feminists, for instance, do not make a distinction between any of these actions—they deem all to be rape. I find this definition most difficult to accept, particularly when endeavouring to determine the appropriate legal responses to this vexed issue.

I am conscious also that in this Parliament in the recent past, when considering reforms to our rape laws, it was generally accepted that the grading of offences was an important initiative, as it was more likely that an offender would plead guilty and/or that a jury would convict and that, as a consequence, the trauma for the victim would be reduced.

Another complicating factor which arises when addressing the subject of child abuse, and particularly sexual abuse, relates to the age of the alleged victim, anywhere up to the age of 18 years, and whether or not a child of any age can at all times be believed. I consider that if we are all prepared to be honest with ourselves, when reflecting on our own childhood, it would not be possible to say that at all times we were not guilty of distorting the truth. Any number of individual circumstances can give rise to such a situation—a wish to please, a wish to hurt, or a wish simply to be naughty, or just pressure from one's peer group. At the same time, I acknowledge that these same factors can persuade a child to hide the truth, the consequences of which can be most harmful to their development.

Also, at various times in recent years I have been troubled by the number of non-offending parents who have refused to allow their children to appear in court in order to prosecute an accused person because of the trauma that they foresee that the child will be forced to undergo. There is no doubt that an appearance in court by any person of any age can be a most traumatic experience, but I do consider that in terms of children appearing before the court it is greater in their case, especially if a child is a victim or an alleged victim of sexual abuse. For such children a court appearance follows a period of exacting physical and verbal examinations and it is also possible that a child may have been the subject of an application heard earlier before the Children's Court for an 'in need of care' order or possibly has been removed from his or her home, school and friends in favour of placement in a foster home or a series of homes.

Because of these acknowledged problems, it has often been suggested to me that one way of alleviating the added evidentiary problems would be to allow a child to avoid examination-in-chief and/or cross-examination. I appreciate the sincerity of the advocates of such arguments, but after a great deal of soul searching I have been unable to accept this proposition. The abuse of children in any form is a heinous crime or act and it should be treated with disgust and loathing, and the criminal offence should recognise the community's disgust and loathing. Yet, I appreciate also that the accusation of child abuse is possibly the most damning of charges on our statutes. Unlike possibly any other charge, a person accused of child abuse or child sexual abuse in particular attracts immediate social stigma, imputing, I suggest without recourse, their reputation and branding the person as a social outcast.

These factors associated with child abuse require that when a charge is challenged the accused must be able to exercise his or her fundamental right to test the evidence against him or her. I note that this conclusion was the opinion of the majority of members of the South Australian Government Task Force on Child Sexual Abuse. I have no doubt, however, that these members agonised before reaching such a conclusion, for it is not an easy conclusion to reach if one's focus is that a child's best interests are to be the paramount consideration. However, in support of their recommendation, the majority of members of the task force stated (at page 219 of the report):

> . . . it would be unfair and contrary to the international covenant to remove the right [of an accused] to cross-examine the child witness.

Article 14 (3) of the International Covenant on Civil and Political Rights states:

> In the determination of any criminal charge against him, everyone should be entitled to the following minimum guarantees, in full equality . . . *(e)* to examine, or have examined, the witness against him.

The minority of members of the task force did not consider that a child should be required to undergo any examination in a courtroom. Having resolved in the majority that the current position in relation to examination-in-chief of a child witness should be retained, members of the task force addressed options to amend the law relating to competency of child witnesses and corroboration of their evidence. In

my view there is no doubt that the trauma that a child may experience when appearing in court is compounded by the current approach taken by the courts in not accepting the sworn evidence of children under 10 years of age and the requirement that for a successful prosecution corroboration of unsworn evidence is required. At page 224, the task force concluded as follows, when it recommended:

(a) The age set out in section 12 (1) of the Evidence Act 1929 should be lowered. No consensus was reached on the age to be adopted. The majority of members thought the age of 7 years should be adopted, while the minority considered that the age set out in section 12 (1) of the Evidence Act 1929 should be 5 years.

(b) it should be clear that children under the set age should be able to give sworn evidence where the judge considers them to be competent. A minority view was that children under the set age should not be able to give sworn evidence under any circumstances;

(c) unsworn evidence of children should require corroboration as a matter of law;

(d) the State Child Protection Council should oversee the development of a cognitive competency test as envisaged in the Australian Law Reform Commission Report;

(e) the warning currently given in relation to the uncorroborated evidence of young children who are the alleged victims of a sexual offence should continue to be given; and

(f) the oath used to swear in children should be simplified.

At page 7 of his second reading explanation the Attorney-General stated:

The recommendations made by the Task Force on Child Sexual Abuse were aimed at balancing the interests of victims and accused persons.

I endorse that analysis of the report, but I question whether this Bill fulfils that objective because, in preparing the Bill, it seems that the Government has been highly selective when it came to the crunch of resolving which of the task force recommendations it would accept. For instance, the Bill seeks to provide that, where a child of or under the age of 12 years is to give evidence before a court, that child is not obliged to submit to the obligation of an oath unless the child is of or above the age of seven years and, in addition, that the judge is satisfied that the child understands the obligation of an oath.

As the Hon. Trevor Griffin pointed out in his well argued contribution to this debate, the Liberal Party believes that there is a good case for lowering the age at which children can give evidence on oath. The age of 10 years under the present legislation is a very arbitrary means of determining when a child should be competent to give evidence.

The Bill also seeks to provide that, if a young child who is not obliged to submit to the obligation of an oath is to give evidence before a court, in certain circumstances unsworn evidence should be treated in the same way as evidence given on oath. This situation can arise where the child appears to the judge to have reached the level of cognitive development that enables the child to understand and to respond rationally to questions; to give an intelligible account of his or her experiences; and where the child promises to tell the truth and appears to understand the obligations of that promise.

It is proposed that this alternative will apply in two circumstances: first, to children under the age of seven years and to children who are of or above the age of seven years; and secondly, to children of or under the age of 12 years, where the judge is satisfied that the child understands the obligation of the promise to tell the truth. In neither circumstance, however, does the Bill propose that the unsworn evidence of a child implicating the accused, (where the accused denies the offence on oath) must be corroborated. However, corroboration of a child's unsworn evidence would continue to be required if a child did not meet either of the competency directions set out in proposed section 12.

The absence of a requirement for corroboration of a child's unsworn evidence in circumstances where it is proposed that the evidence be equated with evidence on oath is opposed without qualification by the family law section of the Law Society. I note also that this proposition was not endorsed by the task force which noted in recommendation No. 85(c) that unsworn evidence should require corroboration as a matter of law. When one refers back to the Attorney-General's statement that I quoted earlier that 'the recommendations made by the task force were aimed at balancing the interests of victims and accused persons', it must be questioned if the absence from the Bill of the task force's recommendation No. 85(c) ensures that this Bill maintains the desirable balance of interests between victims and accused persons.

A further concern, as highlighted by the Hon. Trevor Griffin, is the confusion that is likely to arise from the two levels at which evidence can be given and which will be equated with evidence on oath. Another concern raised with me in respect of new section 12 (1) is that, in determining whether a child is sufficiently competent to give evidence, the judicial procedure will develop into a situation where there is a case within a case. The situation of a judge making such a determination will be such an important matter in terms of its impact on the rest of the case that it will become an extremely complicated and keenly fought fight. So, while this amendment may seek to assist the child in presenting his or her own evidence, it may complicate the situation to quite a major degree. As I indicated earlier, a case within a case could well be developed.

The Bill also proposes a number of reforms to ease the ordeal of an alleged child victim giving evidence before the court. I support these initiatives. They include a child being able to have present, at their request or with their consent, a person to provide emotional support for the child. There is also a provision for the court to order all persons, except those whose presence is required for the puproses of the proceedings and/or a person present to support the child, to absent themselves when the child is giving evidence. However, in both instances, the Liberal Party has proposed amendments to clarify the administration of these provisions. The amendments will enhance and not negate the value of these provisions.

Before concluding, I wish to make two general comments. First, the Bill has been portrayed as one of a package of three child protection measures introduced by the Government. As such, it has been my view that this very complicated Bill has been embraced, without qualification, by some of the groups to whom I have spoken or from whom I have received submissions. These groups believe the Government's story that it is a child protection Bill and, as such, the groups representing victims have embraced the Bills without question. However, they are extremely complex Bills and they do require questioning. The fact is that not only do they relate to child sexual abuse applications but also it must be recognised that they deal with the criminal law and their main aim is to seek to facilitate convictions. The task force itself acknowledged that fact on page 220 of its report when it stated:

The operation of sections 12 and 13 of the Evidence Act 1929 makes it difficult for the evidence of a child under 10 years to result in a successful prosection against the accused.

On page 7 of his second reading explanation the Attorney-General repeated the same statement. No one should be deceived that by redressing this deficiency criminal convictions are by themselves a key measure to ensure the protection of children.

The court proceedings, however, modified by us in this Chamber at this time or later, are likely to continue to be

an ordeal for a child and one that prolongs the anguish of that child well after the incidence of abuse. The avenues and measures to protect children are provided by way of the Community Welfare Act and the Children's Protection and Young Offenders Act and should not be confused with this Bill.

Secondly, two matters were raised by the Attorney in the second reading explanation. They refer more to the Children's Protection and Young Offenders Act, but the Government chose to refer to them in this Bill to amend the Evidence Act. They relate to the status of other recommendations in the Government's task force report on child abuse. The Attorney-General noted in the second reading explanation that, although the task force had recommended that interlocutory protection jurisdiction be established in the Children's Court and, further, that the Children's Court be empowered to remove an alleged offender from his or her home during the interlocutory stage of proceedings, yet the Government at this stage had decided not to proceed with either recommendation. My personal view is that it is a disappointing decision on the part of the Government. I am keenly aware that there are other measures, as I have indicated, in the Community Welfare Act and Children's Protection and Young Offenders Act, to ensure that children are not put at risk. The measures available in both those Bills can hardly be seen without qualification to be within a child's best interest.

The evidence I have received both verbally and in writing from within this country and overseas suggests that in many cases of child abuse it would be much wiser action to ensure that the offending parent or person leave that home rather than remove the child from the home. Either action would ensure that the child was not at risk, but in terms of the child's best interests, with all the horror that is involved with an allegation of child sexual abuse, if the child can remain within an environment that that child knows, is comfortable with and in a community with which it is familiar, that would be the desirable course. The Government's decision not to proceed at this stage, if ever, with these two very important recommendations from the task force report is, in my judgment, a great disappointment, particularly as I note that in Victoria the Government has seen fit to move in that regard.

In conclusion, I note that in December of last year Victoria became the first State to legislate to remove offenders from their homes in cases of domestic violence or child abuse. In December of last year the Crimes (Family Violence) Act came into force. It allows a court to issue restraining orders against a person who assaults, molests, harasses or damages the property of a family member or who threatens or seems likely to cause assault or damage. This order can be taken out by a member of the police, the victim or another family on the child's behalf and magistrates may refuse bail to people charged with breaching the intervention order.

It is heartening to see that Victoria has so enacted. I conclude my remarks by saying that I am disappointed that this Bill does not include a similar measure as it would be in a child's best interest and, after all, this is what the Government purports to be seeking to achieve in bringing forward these Bills. It is certainly what the Liberal Party seeks to achieve in addressing these Bills. I support the second reading.

The Hon. C.J. SUMNER (Attorney-General): I thank honourable members for their contributions and seek leave to conclude my remarks later.

Leave granted; debate adjourned.

ELECTORAL ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.

(Continued from 10 February. Page 2631.)

The Hon. K.T. GRIFFIN: The Bill seeks to make several substantive changes to the electoral laws and a number of relatively minor amendments. It has in fact been amended in the House of Assembly in some minor respects as a result of propositions put by my colleague the member for Mitcham and also by the Government through the Minister of Education. So, a number of issues have already been addressed.

I refer to clause 4 which deals with the entitlement to enrolment in a number of contexts. The first is to make some amendment to the entitlement to enrol by a person who is a British subject. Another Bill which relates to this Bill—the Acts Interpretation Act Amendment Bill—removes the definition of a British subject on the basis that, in the Acts Interpretation Act, the determination of a British subject is by reference to the Commonwealth Citizenship Act which has not had a definition of 'British subject' in it since 1984. Therefore, the amendment to the Acts Interpretation Act is appropriate but, in the context of clause 4 of the Bill, the amendment is essentially a matter of drafting.

The most substantive amendment to section 29 is in relation to the rights of prisoners. In this amendment, the Government is seeking to vary the basis on which a prisoner may identify his or her principal place of residence for the purpose of enrolment. The issue of whether or not a prisoner should vote has long since been resolved. In this State prisoners do have the right to vote. However, the question here is the address for which they should be enrolled. Present section 29 provides:

(4) Where a person is in prison, it shall be presumed, for the purposes of this Act, that the prisoner's principal place of residence is—

(a) the place that constituted the prisoner's principal place of residence immediately before the commencement of the imprisonment;

(b) if—

(i) the place of residence referred to in paragraph *(a)* was owned wholly or in part by the prisoner, or was the place of residence of a parent, spouse or child of the prisoner, at the commencement of imprisonment;

(ii) the prisoner, or the parent, spouse or child of the prisoner, acquires during the term of imprisonment some other place of residence in lieu of the place of residence referred to in paragraph *(a)*;

(iii) the prisoner intends to reside at that new place of residence on release from prison;

(iv) the prisoner elects to be enrolled in respect of that place, that place; or,

(c) if—

(i) there is no place of residence in the state in respect of which the prisoner may be enrolled under paragraph *(a)* or *(b)*; and

(ii) the prisoner has been sentenced to imprisonment for two years or more—

the place at which the prisoner is imprisoned.

What that requires is that there should be some stability in the address of the principal place of residence for which the prisoner is enrolled. Therefore, it imports into the criteria a criterion of ownership. What the amendment seeks to do is to remove that criterion of ownership and merely allow the acquisition of a place of residence—acquisition being not necessary anything more than a right to occupancy, not even some registered, or even unregistered, lease or tenancy.

The Opposition opposes this provision. We believe that this amendment would make it easier for prisoners to add their names to the roll where it may be politically advantageous to do so—that is, effectively to stack the roll. The

criterion of ownership in the present section 29 ensures that there is less likelihood of such stacking of the roll. It very largely removes the potential for that to occur. I remind members that, when the 1985 Electoral Act was before us as a Bill, one of the concerns that I and a number of members of this House expressed was that as the proposal was then drafted it would have given a prisoner a capacity to shift addresses, virtually at the stroke of a pen, without satisfying appropriate residential criteria which would ensure some stability in the roll.

I believe that in the provision which came out of the Parliament in 1985 we had effective compromise which very much minimised the potential for abuse. I suggest that with the amendment that is now before us the potential for abuse is revived and there are few safeguards in the provision against roll-stacking. Prisoners do have rights, and their right to vote is recognised. However, it should be no easier for imprisoned criminals to change their address than it is for electors who are law-abiding citizens; and it should not be easier for criminals who are in prison to acquire a principal place of residence for the purpose of the electoral roll than it is for ordinary citizens. It is for those reasons that we oppose the modification of the qualification for prisoners in respect of the principal place of residence which will be the address for the purpose of enrolment.

At this stage I refer to the fact that when the Bill was introduced in the other place and circulated to members it contained a provision (clause 6) which sought to provide for compulsory enrolment. That provision is not in the Bill now before us. It appears that there was some error in the appropriate Bill which had to be circulated in the final week of sitting in the House of Assembly last year. It is interesting to note that that error has flagged that the Government was considering trying to get into this legislation a requirement that a person eligible to enrol should be compelled to do so, as is the case at the moment with Commonwealth legislation.

When the Electoral Act was before us in 1985 we were successful in having compulsory enrolment rejected. However, we were not successful in having compulsory voting prevented. So, we have compulsory voting but we do not have compulsory enrolment. I hope that the Government will not try to reintroduce any proposal for compulsory enrolment because it should be a matter of choice for citizens not only as to whether or not they should enrol (and we will deal with that tomorrow during private members' business) but also whether or not they should enrol. They ought to have the choice whether or not they should enrol and then be compelled to go to polling booths on polling days and have their names marked off the roll.

Clause 13 amends section 69 by striking out subsection (3). Section 69 deals with the entitlement to vote, and subsection (3) provides:

> A person is not entitled to vote at an election unless his principal place of residence was, at some time within the period of three months immediately preceding polling day, at the address for which he is enrolled.

The Bill seeks to remove that requirement. It seeks to provide only that a person, to be entitled to enrol at a particular address, should have been at that address for one month prior to the claim for enrolment. A provision is to be inserted into the Act to allow electoral officers to object to an enrolment in order to facilitate the change of address. There is also a mandatory requirement that within 21 days of a change of address it be notified to the appropriate electoral officers. The difficulty is that the removal of section 69 (3) will facilitate stacking of the rolls.

In the 1985 State election it was clear from inquiries that I made in several marginal seats that there were people who were on the roll who had voted but who had not lived at the address for which they were enrolled for something like two or even three years. I think that that is wrong because it distorts the roll. There should be some mechanism by which persons who exercise the vote, although not entitled to do so for the address for which they are enrolled, can be brought to account.

The Minister handling the Bill in the other place said, 'We now have better checking facilities and we have ways to ensure that the roll is more accurate. We use computers more effectively and, therefore, to oppose the deletion of subsection (3) is to ignore the reality of the steps that the Electoral Commissioner is taking to ensure the accuracy of the rolls.' I suggest that that is a red herring. The fact is that you can never check regularly on the residency of electors. Periodically there is a purge of the roll. However, it does not, and will not, happen so frequently as to ensure that the roll is 100 per cent accurate.

I take the view that, if there is a requirement for residence as the basis for enrolment, and thus the right to vote, it should be honoured. If you are going to have electoral rolls, they should be beyond question. If there are problems with the roll—for example, a person has not lived for some time at the address for which he or she has enrolled (and three months is the period referred to in the present Act)—some action should be taken. That person should not be able to vote but should be required to satisfy the formal requirements of the Electoral Act. There is no point in having legislation which requires you to do something or which establishes the basis for elections unless it is complied with.

I do not think it is harsh on electors if they are purged from the roll in circumstances where they have not complied with a requirement to notify change of address or no longer satisfy the criteria for a particular electorate which would enable them to vote validly. The Government says that to leave this provision in the Bill militates against honest electors. I am sorry, but I do not see it in that light. It is not a question of who is or is not disadvantaged. You do not compromise the law because some people are not caught; you try to catch those who are presently not caught.

If there are so-called honest people who admit that they have not lived at an address at some time within three months prior to polling day, then I would say that the strict view ought to be taken that they are not eligible to vote. Whether or not they have been honest about it is irrelevant to the principle and is irrelevant to a consideration of whether or not they should be entitled to vote. If they satisfy the criteria, then they can vote. If they do not satisfy the criteria, they should not be able to vote and the roll ought to be subject to challenge.

Although the Government argues for the inviolability of the roll, the fact is that if we have on the roll people who do not satisfy the criteria at the time of the election they ought not to be on it. The roll ought to be subject to challenge in those circumstances. It is all very well to try by legislation to cover up the fact that people do not qualify. It is another matter to say that they should, therefore, be entitled to vote and their vote should determine who should be the elected member for a particular electorate.

I feel very strongly about this provision. I do not believe that it ought to be deleted from the Act, and I would like, in fact, to somehow give it more strength. The very fact that the Commonwealth has moved to remove this provision does not mean that we ought to do it in South Australia. I think that that is a fallacious argument which ignores the fact that this Parliament is sovereign; that it makes the laws; and that, if something changes in Canberra, it is no reason for us to change it here. I am not concerned

that perhaps a Liberal supported it in Canberra and that for some reason we are then bound to support it here. The fact is that we are not.

The laws of this State are the responsibility of this State Parliament and whatever happened in Canberra, while it may be taken into consideration, should not be the basis upon which alteration is argued for in this State without considering the merits of the issue.

There are several other matters to which I wish to draw attention. One is that under the Bill prosecutions for failing to vote may be commenced at any time within 12 months from polling day. There seems to be no justification for that. The Electoral Commissioner's report on the 1985 State election was arguing for six months within which to issue proceedings, and I am happy to agree with that and to allow the proceedings to be served within that period of six months rather than the usual four months.

There is a question about the authorisation by a candidate to his or her registered political Party of which he or she may be a member to ensure that political affiliation is endorsed on the ballot-paper and that a voting ticket indicating the distribution of preferences is lodged within the due time with the appropriate returning officer. I understand that an amendment has been moved in the House of Assembly which may in fact address that issue; that is, to require the registered officer of the registered political organisation to produce the authorisation when the two matters are dealt with by that registered officer.

The only other matter relates to clause 22 of the Bill, where a penalty is imposed upon a person who removes the ballot-paper from the booth. In the other place it was proposed that the voter could deliver up the ballot-paper as a spoiled ballot-paper and would be required to deposit the ballot-paper in a ballot-box before leaving the booth, on the basis that that places the obligation upon the elector more firmly than the provision in clause 22. I understand that in the other place it was indicated that the Attorney-General would consider this matter.

With respect to the penalty which is fixed at a maximum of $500, again one ought to give some consideration to whether or not that ought to be $500 or some lesser amount. I must say that I tend to the view that a lesser figure would be appropriate. There are other issues of principle in the Constitution Act Amendment Bill which need to be addressed and which may require amendment to the Electoral Act Amendment Bill when the two are considered at the Committee stage, but when I get to the Constitution Act Amendment Bill I will deal more fully with those matters of principle. I indicate that the Opposition, subject to the issues which I have raised, is prepared to support the second reading of this Bill.

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

[Sitting suspended from 5.48 to 7.45 p.m.]

JUSTICES ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.
(Continued from 10 February. Page 2632.)

The Hon. K.T. GRIFFIN: The Opposition is prepared to support this Bill, as it is very much an incident to the amendments to the Electoral Act and the Constitution Act. The Bill seeks to amend section 27a of the Justices Act to enable the service of summonses for summary offences under the Electoral Act to be made by post within six months after polling day, rather than the usual four month period for all other summary offences. The view expressed by the Electoral Commissioner in his report on the 1985 State election and the view expressed in the Minister's second reading explanation was that the volume of summonses for offences, such as failing to vote, is such that, unless the usual period of four months is extended to six months, when the four months period expires the summonses can only be served personally—a process which is time consuming and expensive.

To facilitate the operation of the office of the Electoral Commissioner we are prepared to agree to the extension of six months. I should say, though, that if we had voluntary voting there would not be any problem of service of summonses for failing to vote. That would be outmoded and there would be a considerable saving in time and effort. But having made that point about the question of principle, while compulsory voting remains and there is a statutory obligation on the Electoral Commissioner, I am prepared to indicate that the Opposition will facilitate his operation by accommodating the Government in relation to this amendment. I support the second reading.

Bill read a second time and taken through Committee without amendment.

CONSTITUTION ACT AMENDMENT BILL (No. 3)

Adjourned debate on second reading.
(Continued from 10 February. Page 2632.)

The Hon. K.T. GRIFFIN: To a very large extent this Bill runs parallel with the Electoral Act Amendment Bill. Some aspects of the Bill relate to recommendations made by the Electoral Commissioner particularly in relation to clarifying the qualifications to be a member of the Legislative Council or the House of Assembly, and in relation to qualifications which are required of persons to be enrolled as electors. The Electoral Commissioner indicated that there was some confusion between the requirements of the Constitution Act and the Electoral Act 1985 in each of those areas.

The Bill seeks to repeal section 12, which sets out the qualifications to be a member of the Legislative Council as the entitlement to vote and residence in South Australia for three years. The qualification for nomination is included in section 52 of the Electoral Act. Under section 52 of that Act, the period of three years residency in South Australia for a Legislative Council candidate is not a prerequisite. The view expressed by the Attorney-General in his second reading explanation was that, because the Electoral Act deals with candidacy, section 12 can be repealed.

There is an important issue here. It is probably a question of preference rather than anything more than that, although I think that there is probably a question of principle involved as well, and it is: where should qualifications of members be provided in our statute law? Traditionally, it has been in the Constitution Act, because that Act provides for the establishment of the House of Assembly and the Legislative Council, the Executive arm of Government and matters related to the Supreme Court. Certain parts of the Constitution Act can only be amended with the support of a referendum of the people. A part can only be amended by a Bill which attains support of the majority of the whole number of the members of both the Legislative Council and the House of Assembly. Other parts can be amended by an ordinary Act of Parliament.

Section 12, sought to be repealed, is one of those latter provisions. It does not need any special constitutional

majority, nor does it need a referendum. Notwithstanding that, it seems to me that it is important that the qualification to be a member of the Houses of Parliament should be in the Constitution Act, and I see no difficulty with it being duplicated in the Electoral Act. I would prefer to see it only in the Constitution Act, and not in the Electoral Act, but if it has to be in both then that creates no difficulty. But I express a concern about removing the qualification of members from the Constitution Act.

While I suppose one might argue that, because of the system of voting for the Legislative Council, electors do not have the same opportunity to express concern about a person who may have come only recently into South Australia and be nominating for elective position, the fact is that I do not see that we can justify the requirement for candidates for the Legislative Council to have been in residence in South Australia for three years prior to nomination. As much as one might regard Legislative Councillors as being the democratically elected representatives of the people—which they are—I do not think we can justify the distinction in qualifications to be members.

The franchise qualification in respect of property was amended in 1973. My recollection is that at one stage a person had to be 30 years of age to be eligible to be a candidate for the Legislative Council. That restriction has now been removed and, because of the quality of the Houses, notwithstanding their respective independence, the three years residential requirement cannot be justified, so we support the removal of that provision. I ask the Attorney-General not to be so concerned about the duplication of the other qualifications for membership of either House of Parliament as to remove it from the Constitution Act.

The Bill also seeks to repeal section 29, which deals with the qualification of members of the House of Assembly and, for the same reasons as I have just expressed, I believe it is important for qualifications of members of the House of Assembly to remain in the Constitution Act. If it also has to be in the Electoral Act, I see no conflict with its being in both, although I can see and concede that identical qualifications must be provided.

Sections 20 and 33 of the Constitution Act deal with the entitlement to vote for the Legislative Council and the House of Assembly. Again, I believe that the entitlement to vote should be expressed clearly in the Constitution Act, which is really the basic document regulating our constitutional affairs, although the conduct of elections, nominations and so on can be appropriately in the Electoral Act, as they have been for many years. I propose that the provision relating to entitlement to vote in elections for both Houses should remain in the Constitution Act and ought to be consistent with the provisions of the Electoral Act.

One of the requirements is that a person must have lived continuously in the Commonwealth for at least six months, and in South Australia for at least three months, preceding the claim for enrolment before being eligible to enrol. Entitlement to enrol is one month's residence at the place for which enrolment is sought and that will become the minimum residential requirement before a person is eligible to become an elector for both Houses of Parliament. Again, I do not see any difficulty in removing that from these provisions and we support that amendment. There must be consistency.

One can see that, for the purpose of ensuring stability of residence and association with the Commonwealth on the one hand and the State on the other, there ought to be minimum periods of residence but, if a person is otherwise eligible to be an elector, then I suggest that one month's residence is appropriate. To the extent of removing that longer residential requirement, we support the amendment of sections 20 and 33. In order to enable us to consider those matters at the Committee stage, and notwithstanding my indication that we will not support some aspects of the Bill, I support the second reading.

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

ACTS INTERPRETATION ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.
(Continued from 10 February. Page 2632.)

The Hon. K.T. GRIFFIN: The Opposition supports this Bill. Again, it is partly consequential upon the amendments to the Electoral Act and the Constitution Act. It is also partly relevant to Commonwealth legislation. Section 29 of the Electoral Act provides for the entitlement to enrolment as a voter as being a person who is an Australian citizen or a British subject who was, between 26 October 1983 and 26 January 1984 (that is, a period of three months), enrolled as an elector under the State or Commonwealth law. For the purposes of our law, 'British subject' is defined by section 33c of the Acts Interpretation Act by express reference to the Commonwealth Australian Citizenship Act 1984, but that Act no longer refers to a British subject. In view of that, the provisions of our Acts Interpretation Act, which refer to the definition in the amended Commonwealth legislation, really have no work to do and are no longer relevant. For that reason, I am prepared to support this Bill, although I ask the Attorney-General: in view of the fact that the concept of British subject is retained to a limited extent in our Constitution Act, can he indicate by what means the reference to British subject is to be defined?

It seems to me that, if the definition is removed from the Acts Interpretation Act, you just have a concept of British subject referred to in the electoral legislation, but nothing by which 'British subject' is defined. Perhaps I have not read the Electoral Act Amendment Bill correctly. Some other provision may determine the definition of 'a British subject', but can the Attorney-General give some consideration to clarifying that description and how it is to be defined at law? The other provision that is repealed by this Bill (section 33b) deals with citizens of Ireland, and again it appears to be no longer relevant to the electoral legislation or to the Constitution Act.

The Hon. T. Crothers: Are you saying that the Irish are no longer relevant?

The Hon. K.T. GRIFFIN: No, I was referring to the provision in the Act. I am not saying that the Irish are no longer relevant, but now that I have flagged the point in this Bill, the Hon. Trevor Crothers might want to do some more research and make some contribution to the debate when the matter comes on again. In order to deal with this matter expeditiously, I am happy to support the second reading.

The Hon. C.J. SUMNER: I thank the honourable member for his contribution and the Opposition for its support of the Bill. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

ABORIGINAL HERITAGE BILL

Adjourned debate on second reading.
(Continued from 11 February. Page 2682.)

The Hon. J.R. CORNWALL (Minister of Health): At this stage, at the conclusion of the second reading debate, which has been held over through the Christmas adjournment, a number of important points should be made for the consideration of the Council before we move into Committee. The proposed Aboriginal Heritage Act, as provided for by this Bill, will give traditional owners of Aboriginal heritage a mechanism to enable them to protect their heritage from the actions of modern European society. I know of no legislation that has ever come before this Parliament that has had a longer gestation period. In fact, the original legislation was passed in 1978 and, of course, was never proclaimed because of deficiencies found in it shortly after it was passed. It has literally taken almost 10 years to get around again to having legislation at the point of being passed by this Parliament to give genuine protection to genuine Aboriginal heritage from the ravages and actions of the modern European-based society.

Subject to the legislation, it will be illegal without approval to damage any site or object of significance to Aboriginal heritage. The main threat to Aboriginal heritage comes from European-based society, and it is therefore appropriate and necessary that this mechanism be part of European-based legislative systems and that a Government Minister be bound to ensure that the objectives of the legislation are met. To that extent we try to move the two cultures to a meeting point. The Government is on record—and has been on record on many occasions both inside and outside the Parliament—as stating that it is intended that day-to-day administration of the Act will, as far as is practicable, be delegated to traditional owners or local Aboriginal organisations acting on behalf of the traditional owners to ensure that Aboriginal heritage is protected by its owners.

However, I acknowledge that some concern has been expressed that this Government's commitment, given in good faith, may not be matched at some future time by a Government of a different political persuasion. I therefore propose on behalf of the Government to move an amendment in Committee to formalise the commitment by requiring that the Minister delegate those functions to traditional owners that would always, at the request of the traditional owners, be delegated. That is an additional safeguard that will be proposed in Committee.

The legislation will complement the existing Anangu Pitjantjatjara and Maralinga Tjarutja Land Rights Acts. Delegated authority under this legislation—the Maralinga Tjarutja and Anangu Pitjantjatjara people—will have complete control over their heritage sites. Similar delegations will be given to other traditional owners or local Aboriginal organisations acting on behalf of traditional owners. The traditional owners will determine whether or not a site or object is of significance to Aboriginal tradition.

I propose to move a further amendment to emphasise this point by requiring the Minister to accept the views of traditional owners in this regard. For the benefit of the Hon. Mr Elliott, I repeat that it will 'require' the Minister. It is not asked that he simply have due regard or anything else, but require him or her to accept the views of the traditional owners in this regard. The Aboriginal Heritage Branch of the Department of Environment and Planning and the South Australian Museum will coordinate advice on the scientific or historical significance of sites and objects. It is a feature of this legislation—quite unlike the previous legislation passed by Parliament but never proclaimed and also quite unlike the amendments drafted by the Opposition when in Government for that brief interregnum in 1981 and 1982—that traditional owners of Aboriginal heritage will be able to gain appropriate authority. This major issue was raised during extensive consultations the Government held with Aborigines and other interested parties regarding the development of the legislation.

In rounding up the second reading debate, I refer to the consultation process, which seems to have attracted comment both in this and the other place and outside the Parliament in the wider community. Far from lacking consultation, it may well have been justified criticism that it has taken so long to bring a Bill before Parliament. In a sense it has taken a decade for successive Governments to get around to bringing before this Parliament workable and acceptable legislation. However, in defence of that, I point out that it is a complex issue and understandably the consultation has been ongoing, in our case for more than five years; in fact, from the time the Labor Government regained office in November 1982.

It was clear to the incoming Government at that time that Aboriginal people did not like the 1979 legislation or the 1981 or 1982 amendments proposed by the Opposition when in Government. Early discussions took place to determine what was required in new legislation, followed up by discussions early last year on a draft Bill. The Bill before us results from that final round of consultation. It has been consultation almost to the point of exhaustion—it has gone on for a very long time.

The Opposition proposal, which at one stage might have been briefly supported by the Democrats, to establish a select committee would only add another round of consultation, in which time Aboriginal heritage in this State would continue to be totally inadequately protected. Alternatively, if the Bill needs fine tuning, let that be determined in light of experience after its implementation. No-one is able to say with any piece of legislation, let alone what is relatively pioneering legislation which tries to bring the two cultures together at a meeting point, that it will be perfect. Nevertheless, it certainly is as good as human minds can reasonably make it at this time. I suggest that we get on with the business of passing it.

In light of experience, if it does need to be amended significantly it would be sensible for me to bring it back. To hold it up at this point, after 10 years of consultation, is really quite foolish, to say the least. I certainly refute the notion that Aborigines do not want the legislation. In fact, very strong support for the legislation has been received from representatives or spokespersons for a very large number of organisations including: Anangu Pitjantjatjara; Koonibba Aboriginal Community Council; Maralinga Tjarutja; Marree Arabanna Peoples; Nepabunna Community Council; Port Lincon Aboriginal Organisation; and the Point McLeay community. I dare say that these communities responded to reports that the Opposition and Democrats may combine (and these were the reports we were receiving towards the end of last year) to block the legislation or defer it for many months, if not years, by referral to a select committee. Let me now comment on some of the more specific issues raised in the course of the debate.

Much has been said about the power of the Minister with regard to this legislation and I have made clear that as far as practicable its administration will be delegated to traditional owners—that is at the heart of the Bill. However, there is one area in the Bill, as it is currently before the Council, where the Minister's authority may not be delegated and I refer to the authority to commence proceedings for an offence against the Act (clause 6 (1) and clause 45 (1)). This requirement was included in the Bill to emphasise the importance of the function. It is not inconceivable that some future unsympathetic or disinterested Minister could, without this requirement, rely on a third party to instigate

and bear the cost of prosecutions—particularly where the outcome is not clear.

However, since the Bill was introduced into the Council, and following receipt of a letter of support for the legislation from Anangu Pitjantjatjara, further discussions have been held with Anangu Pitjantjatjara and Maralinga Tjarutja regarding this provision. It should be pointed out that subject to the Pitjantjatjara Land Rights Act 1981, and the Maralinga Tjarutja Land Rights Act 1984, both communities have freehold title to their lands and exercise tight control over the entry and movement of people and companies within them. Anangu Pitjantjatjara and Maralinga Tjarutja would like the ability to complement and reinforce their land rights legislation by being empowered to commence proceedings for an offence under this Act. The Government is happy to move an amendment to the Bill to give this effect, and that amendment is already on file.

Much has been said about the Aboriginal Heritage Committee set up under this legislation. The committee will be established as a purely advisory group in relation to Statewide Aboriginal heritage interests. It will not be delegated executive authority in relation to sites and objects. As I stated in my opening remarks, such authority will be given to traditional owners. Traditional owners made clear during the consultation process that they do not want this committee to have executive powers in relation to their sites. The Government respects this view and no such power will be given to the committee, with the possible exception of parts of the State where no traditional owners or local identifiable Aboriginal organisations exist.

The amendments forshadowed by the Hon. Mr Elliott—that was on 25 November I believe, so long ago it tends to be lost in the mists of time—totally disregard the wishes of traditional owners and proposed to give the committee an executive role. It is the Government's view that traditional owners should have the major role in this legislation and therefore the amendments will not be supported by the Government.

Members interjecting:

The Hon. J.R. CORNWALL: Yes, but at the end of the day you take note of the overwhelming majority view. That is the way we normally do business. The usual system of detailing terms and conditions for the committee was included in an early draft of the Bill—it was excluded to provide greater flexibility in establishing the most appropriate form of advisory committee.

It is expected that the committee will have about nine or 11 members but this may change from time to time depending on an issue requiring debate. That degree of flexibility in traditional Aboriginal abstract management is something that we must be at pains to try to enshrine, to the extent that that is possible, in the legislation. It is quite conceivable that additional members may be appointed from time to time to consider a specific issue and equally conceivable that others may be relieved of their responsibilities for particular issues. An example of this might be discussions relating to women's sites or men's sites where it is contrary to Aboriginal laws for members of the opposite sex to be present to discuss the issue (something that I know, Ms President, that you and other women members of this Parliament know quite a bit about). However, I expect that the committee may elect to consider the structure and function as one of its early tasks.

The Government will not support a proposal from the Democrats to establish a 100 to 200 member Aboriginal council, with representatives from all Aboriginal communities, to elect membership to the committee. That is simply not workable. It is a typical woolly Democratic idea; only those who construct windmills in the Democrat tradition could come up with something as quixotic as that proposal. This would be an extraordinarily expensive and complex way of establishing what is simply an advisory group. However, it would serve the Government no purpose to have an unrepresentative advisory body and it has given a commitment that traditional owners will be consulted and asked to nominate people to serve on the committee. I also intend to move an amendment on behalf of the Government which will ensure that the committee members come from and represent all parts of the State.

With respect to the arbitration process, Aboriginal people know who are traditional owners of areas, and it is expected that disputes will be rare. However, if there is a dispute as to who is the traditional owner of a site, the Minister is the final arbiter, having consulted traditional owners, relevant Aboriginal organisations and the advisory committee. The Minister may elect to make a decision on the basis of the advice received or may consider establishing a third party (perhaps with judicial skills) to assist in the arbitration process.

With respect to the appeal system, consideration has also been given to establishing an appeal system regarding decisions made subject to the legislation—for example, if a traditional owner or developer is dissatisfied with a ruling under clause 23 regarding authorisations to damage a site. Again, it is expected that most decisions will be made by traditional owners and that the Minister will represent only the final appeal authority.

With regard to the register, there has been some criticism of the concept of a register to record the existence of sites and objects of significance to Aboriginal heritage. It is true that some Aboriginal people such as Anangu Pitjantjatjara, prefer to aviod the use of the register system, and their wishes will be respected. Maralinga Tjarutja, on the other hand, want to record their sites so that the information will not be lost. Traditional owners must be consulted prior to information being recorded on the register. We must not forget that this legislation aims to protect Aboriginal heritage from a European dominated society. I keep returning to that point: it is designed to the extent possible to have the two cultures meet at least administratively. The object of the register is to assist in preventing damage to sites. If sites are not recorded, there is that risk that damage may occur through lack of knowledge. Some Aboriginal people may prefer to take this risk, particularly in relation to sacred or secret sites.

With regard to establishing a link with the Planning Act, consequential amendments to the Planning Act 1980 are included with this Bill to facilitate a link with the planning system to ensure that a development does not inadvertently damage a known site or a site in an area where one might be expected to occur. Regulations under the Planning Act will prescribe areas or activities that must be referred to the Minister responsible for Aboriginal heritage for a determination. For example, it may be considered desirable that all new subdivision proposals or all development proposals in a particular hundred (in which an Aboriginal site is known to occur) be submitted to the Minister. An alternative process of adopting a register of sites and objects—as for the Heritage Act—is not desirable in view of the potential vandalism and/or access to secret or sacred information.

I refer now to compensation. As under the Heritage Act no person is entitled to compensation for damage to Aboriginal heritage items, landholders are not entitled to be compensated for any restriction in current use of land. However, landowners may enter into a heritage agreement regarding the ongoing management of a site. Financial

assistance could be provided from the Aboriginal Heritage Fund for such purposes as fencing and the relocation of watering points. Compulsory acquisition will be used only as a last resort. Valuations of objects will be established by the Valuer-General and any dispute on valuations will be carried out by the Land and Valuation Court.

The removal of an Aboriginal object from the State was also canvassed during the debate. The Hon. Legh Davis is correct in assuming that an Aboriginal object may not be transferred interstate without approval even if it originated from another State. However, in giving approval, the Minister must comply with regulations under the Act.

Returning to the consultation process, and particularly with reference to consultation with the mining industry, I can give an assurance that mining companies have been consulted on the legislation and that where possible their views have been taken into account. One of their major concerns has been time delays in gaining determinations regarding sites. The Bill in fact includes time periods for certain actions that have been negotiated with the Department of Mines and Energy. In any event, it is expected that mining companies such as Santos will continue to maintain the very good relationship that they currently enjoy with Aboriginal people generally.

Some reference has been made in the media (and I believe in this place) to the thoughts of the Aboriginal heritage working party with regard to the Bill. While this group is entitled to its view, it does not represent traditional owners. It is constituted of city based Aborigines, some of whom come from interstate, and includes some non-Aboriginal people. There are no traditional people on the committee, and therefore it cannot speak for them. The group was formed about nine months ago, based at Underdale Campus. Nonetheless, the comments of the working party have been noted and in some cases resulted in changes to the draft Bill.

The Museum has been mentioned and, of course, it has a role. The Museum will continue to play a major role in research and curatorial functions in relation to Aboriginal Heritage, as will the Aboriginal Heritage Branch. There is no need to refer to them in the Bill. The Museum supports the initiative.

I refer again briefly to the 1979 legislation and to the amending Bills of 1981 and 1982. Essentially that legislation, which the Liberal Party in government supported in the draft amendment Bill of 1982, emphasised the establishment of a committee and did not require consultation with traditional owners. The committee was not all Aboriginal. The consultation process with Aboriginal people demonstrated that as such that legislation was not acceptable—the 1987 legislation has attended to these concerns by requiring consultation with traditional owners, by including an all Aboriginal committee, and by restricting the authority of the committee to an advisory role. Other changes have also been made.

With regard to site delineation, out of hundreds sites will be located by reference to coordinates on the Australian national mapping grid which gives a location to the nearest metre. Alternatively, in the settled regions, location of a site would be relocated to cadastral detail. Methodology used will be dependent on available technology.

The member for Murray-Mallee in another place stated that the 1979 legislation allowed a six week notification period to allow a landholder to make representation regarding access or activity restriction at a site. He suggested that this Bill does not allow representation to be made. In fact, I point out (and I think that this is an important point) that the Bill allows a period of eight weeks for notification. Members may refer to that specifically in section 24 (3).

A number of other matters have been canvassed in both Houses, including buffer zones and private object collections, but I do not think that I need to go into those areas in my response; nor do I think I need to refer at any length to the definition of 'Aboriginal tradition'. This definition has been criticised by one or two members of the Opposition during the debate, but it has been specifically framed in this way to allow for Aboriginal tradition to continue to evolve. We do know, of course, that Aboriginal traditions are continuing to evolve—we are very happy to say that it is not only historical or something which has been frozen at some particular point in time.

I think that that covers a very large number of the points that were raised in the course of debate in both Houses. There has been more than adequate time for members not only to consider this legislation but also to consult with the interested parties, including farmers and stockowners. I do not believe, and certainly the Government does not believe—and the overwhelming majority of members of the Aboriginal community do not believe—that there is any need to take this Bill to a select committee; nor do they think there is any point in doing so.

We believe that the issues which have been seriously raised during debate in both Chambers have been adequately addressed in the amendments that I have on file, and I urge members of the Committee to support the legislation and at last, after 10 long and weary years, support its expeditious passage through this Chamber.

Bill read a second time.

The Hon. L.H. DAVIS: I move:

That this Bill be referred to a select committee; that the committee consist of six members; that the quorum of members necessary to be present at all meetings of the committee be fixed at four members; and that Standing Order 389 be so far suspended as to enable the Chairman of the committee to have a deliberative vote only.

The Minister is quite right in saying that Aboriginal heritage legislation has been in train for a decade and that now is the time to pass it. I submit that the very fact that in a 17 page Bill we have three pages of Government amendments and six pages of Australian Democrat amendments is in itself clear evidence of the fact that there is still some way to go before this legislation is in a fit and proper form. It is important legislation. The Opposition wants to make quite clear that it has support for the concept embodied in this legislation; it simply cannot support the legislation as it now stands.

The Opposition has been consistent both in the Legislative Council and in another place in its stance on the need for a select committee. Notwithstanding the Minister's submission, there is no question that there are Aboriginal communities who believe that consultation has not been full and adequate. There is also no question that there is still widespread disagreement between important Aboriginal groups in various parts of South Australia with respect to this legislation. It certainly might be said that such disagreement is inevitable, given the varying interests of those Aboriginal groups and the complexity of the legislation now before us. However, the Opposition believes that a select committee is the best possible vehicle to enable this legislation to be examined, refined and then passed in a much improved form. We are anxious to keep this Bill alive.

The Opposition accepts that, as the numbers now appear, the move for a select committee is almost certainly doomed, but we are concerned that despite Government and Democrat amendments there are major issues which still have not been properly addressed. Many concerns have been

expressed to us by various groups: mining, Aboriginal and pastoral groups, to name just a few. For example, the shadow Minister of Environment and Planning in another place (Hon. Jennifer Cashmore) received a letter from Dennis Slee, the Assistant General Secretary of the United Farmers and Stockowners of South Australia, who expressed major concern at the absence of a defence clause which would assist an individual, group or company should a declared site or object be unwittingly damaged.

A number of concerns were expressed also by the UF&S in relation to the lack of incentive in the legislation which would encourage landholders to cooperate on the reservation of significant sites or objects. They saw the legislation as regressive in this area and considered that the model of cooperation which perhaps could be said to exist in the native vegetation management legislation was not present in this legislation.

Certainly, widespread concern has been expressed by Aboriginal people on matters such as the Aboriginal ownership of cultural heritage not being properly recognised; the very complete power of the Minister in this legislation; the great concern of lack of consultation with various Aboriginal groups; and, of course, the register. We believe that the amendments on file from both the Democrats and the Government will not address those areas. We cannot just cobble together an Act with amendments which attempt to overcome the deficiencies that have been pointed out, quite properly, in this and another place, and by various interested groups.

Quite frankly, the Opposition is disappointed that the Government has not got its act together, given that it has been a decade in bringing this legislation into the House. Three pages of amendments show how defective this Bill is, and there are still some matters, as I think the Minister will admit, about which many people have concerns. We believe that a select committee, as has been shown on many occasions in this House, is most certainly the best way of going.

The Hon. J.R. Cornwall interjecting:

The Hon. L.H. DAVIS: The Minister argues that, because there are many select committees in the Legislative Council, it is a good reason why there should not be a select committee. That is a very thin excuse, a very weak excuse, from the Minister. I am sure that, with the goodwill of all Parties, it would be possible in the long break that we have after we rise in early April to tackle this important Bill.

The Hon. J.R. Cornwall interjecting:

The Hon. L.H. DAVIS: The Minister is being flippant about this, and I regret that. The Opposition regards this as important legislation. We have not been flippant about it at any stage. We certainly urge the Minister to reconsider his attitude on the idea of a select committee which, we believe, is the best way of ensuring that such important legislation is put into the proper form.

The Hon. M.J. ELLIOTT: The Democrats will not support the move for a select committee. I saw an early draft of this Bill about 12 months ago; it is not something that has suddenly sprung out of nowhere. It was advertised widely. It was not sent to me: I had to pursue it, but the thing was advertised. I saw an early draft and, in fact, made a lengthy submission on that early draft. I must admit that many of the problems that I saw at the time remain in the Bill which is now before us.

I agree with the comments that the Liberals have made, and I will take those comments on face value at this time, namely, that the Bill is extremely paternalistic. It certainly is. I cannot believe that anyone can seriously suggest that a European Minister is capable of fully understanding the Aboriginal culture to such an extent that he can make the decisions as to what is or is not significant in relation to Aboriginal heritage. It is one of the most elitist, paternalistic and conservative things that I have seen in a long time. But then, of course, the Labor Government is becoming increasingly conservative and no longer a truly progressive Government.

I think the Bill is a fairly simple one to understand. That is one of the reasons why I will not support the move for a select committee. What the Bill sets out to do is not complex. The amendments of both the Government and the Democrats are not complex. Many of them are consequential amendments. The important questions that have to be asked of individual members are philosophical ones. Members have to make a decision whether or not they think it is the Minister or the Aboriginal people who should control Aboriginal heritage. That is a simple question, and on the basis of the answer to it they will make a decision as to how to react to both the Bill and the various amendments.

I do not see the need to go to a select committee to work that out. I would have thought that the Liberal Party would have a fairly good ear with the Aboriginal community. A lot of the traditional people live in Liberal-held areas, and indeed I would have expected that the members in those areas would have been talking to those people. They should have been talking to them for a long time past and have had things in the right context to come to the right decision, without the need for a select committee.

I have been involved in correspondence and meetings with groups involved in both the city and the country areas. They are making their views quite plain. It is easy to divide the Aboriginal community into four groups. There is a very large group from the traditional areas in the North-West who are saying that the Bill is deficient, that they would like the amendments proposed by the Democrats but that if all else fails they would like the Bill to go though. They certainly do not want the Bill rejected. They probably represent the largest group of traditional Aborigines in the fuller sense of the word. There is another very large group of Aboriginal people who are saying that the Bill is paternalistic, that it is elitist, and that the Democrat amendments need to be accepted but that if not the Bill should be thrown out. A reluctance that I might have about that attitude is that I am not sure that the Government would attempt to get it right later on.

Two other smaller groups are involved. One of them, with a box number in the Adelaide Hills, I think is representative of no more than about 23 Aborigines. That group is saying that it is a terrible Bill and that it should be thrown out. The other small group which has been lobbying me I suspect is led by the people who have been promised a position on the committee that the Minister will be appointing later on. But I think the first two groups are by far the largest and most representative.

I must question what the Minister has said about consultation processes. Certainly, meetings have been held with Aboriginal people throughout South Australia, but consultation can mean many things. If one talks to people and listens to their views and then goes away and does exactly what one intended to do anyway, is that consultation? It can be said that they have been consulted but have their views been taken into account? How fully have the implications of the wording of this Bill been explained? To say that the Minister 'may' do something is quite a different thing from saying that the Minister 'must'. What has happened with many of the people, particularly in the country

communities is that, on faith, they have been told that the Government will do certain things, that it will delegate certain powers to them, and that everything will be fine. However, in fact, the Bill does not guarantee those sorts of things. I think the consultation process referred to has been misleading. The Aboriginal people in some of those country areas have been very trusting but have been led up the garden path.

In conclusion, I reiterate that I believe that what this Bill is all about is very simple: do Aboriginal people have control of their own heritage or do they not? Does the Minister have control or does he not, or do we do nothing at all? As I have said, the amendments are consequential: they rely on which of the three philosophical positions one takes. The call for a select committee is totally unjustified. I tried to talk to the Liberal Party some months ago about this Bill at which time members of the Liberal Party seemed to be very busy and did not want to do so.

The Hon. Peter Dunn interjecting:

The Hon. M.J. ELLIOTT: I attempted to talk to the shadow Minister on a couple of occasions, and with people in this place as well, and, unfortunately, made no progress at all. I am willing to do it again, but by the same token I am not willing to see this Bill delayed. It must go through this session. I think it is absolutely untenable that the Aboriginal people have waited so long for a Bill which guarantees their heritage.

The Hon. PETER DUNN: That was an interesting contribution made on behalf of the Democrats, as in the past they have been the ones who have said that they like plenty of consultation.

The Hon. M.J. Elliott: We have had it.

The Hon. PETER DUNN: Yes, the honourable member may have had it, but I assure him—

The Hon. M.J. Elliott: It is you fellows who haven't done your homework.

The Hon. PETER DUNN: That is patently untrue. I made the comment during my second reading speech that I thought that the Bill should go to a select committee, for several reasons. First, because I think the arguments are very much underground in this debate. I do not think the public really knows very much about the Bill. It may be that a number of people do not want some things to be exposed. However, people will never learn about Aboriginal artefacts, tradition and history if these things are not made public. In this bicentennial year I would have thought that it would be a very wise thing to do.

A Bill was introduced 10 years ago but was not proclaimed as it was considered to be unacceptable. As the Hon. Mike Elliott himself said, the people in three of the four groups that he has spoken to do not agree with the Bill. That indicates that there is a problem. I do not think it is as simple as what either of the Democrats are thinking. It has taken 10 years to this stage to try to get it right, but the Bill is not yet complete. As we have heard, amendments are foreshadowed and there are still amendments to be put on file.

The Hon. M.J. Elliott: Even right now sacred sites are being destroyed; it is happening right now and there are several important ones.

The Hon. PETER DUNN: I would have thought that with that sort of information the honourable member should go to the authorities.

The Hon. M.J. Elliott: They do not have the power to do anything about it.

The Hon. PETER DUNN: That is total rubbish and the honourable member knows it.

The Hon. M.J. Elliott: Several sites of the Tjilbruke dreaming are under threat right now.

The Hon. PETER DUNN: It is a rather weak argument to say that at the moment sites are under threat, when there was a Bill that could have been brought in. The Democrat amendment is very significant. Under the present Westminister parliamentary system the amendments put up by the Democrats just do not fit at all. The Minister must be responsible. Someone has to be responsible for this legislation.

The Hon. M.J. Elliott: The Minister has power of veto in this case.

The Hon. PETER DUNN: The Minister must be responsible and that is the line that must be followed, although we still need to consult with a few more people. I must say that some of the groups to whom I have spoken do not agree. I know that the numbers are not quite there, but there are significant groups and surely their views should be taken into account.

I guess that the Democrats do not want to sit on it because there are a number of select committees under way and they feel they would be left out. However, they do not have to be on this select committee. The numbers can be found from within the Council. I think that it would be sensible to have a select committee look at this matter over the long winter break. This is our bicentennial year; it is the year when we are placing a lot of emphasis on the Aborigines, the indigenous people of this country—and rightly so. We cannot make a mess of this and simply put it through.

The Minister said that we can modify it later, but we know of the problems involved in modifying things. It would be a slow process to proclaim the Bill, bring it back in, mess around with it and proclaim it again. It would be quicker to have a select committee and fix it in the first instance. Let us be honest: will eight months make that much difference? We are talking about only some seven or eight months at the most. I would have thought that a select committee would be a sensible way to go about this matter and would ensure that all the evidence from all the parties involved is collected. There are many parties concerned with this. I would think that that is a sensible way to get a consensus. We want to help in this matter just as much as anyone else and we are not opposing the Bill in that sense. However, we want to get it right in the first instance.

The Hon. J.R. CORNWALL: The Government opposes the appointment of a select committee. As I have said, the matter has been under consideration now for a decade. It has been literally under the microscope for a period of 12 months and over that period very little legislation has been subjected to more careful scrutiny than this legislation. It has not been the subject of widespread public controversy, of page 1 newspaper debates or of television exposes. I submit that that has been because the consultation process has been a structured, a sensitive and an intelligent one. I reject the parsimony of Mr Davis; I reject the sanctimony of Mr Elliott; and I was not too sure what to make of the contribution of the Hon. Mr Dunn.

The Hon. L.H. Davis: Commonsense.

The Hon. J.R. CORNWALL: Well, common may be, but sense, I am not sure. We already have six select committees of the Upper House. Less the President, there are 21 members. As she points out in the Party room, if absolutely necessary the President Ms Levy is available to contribute her very impressive commonsense and intelligence to the select committee process, but each select committee has six members. Currently, there are six select committees on the following topics: the Adoption Bill; the Opticians Act

Amendment Bill; on energy needs in South Australia, which has continued for God only knows how long (and I believe that he is the only one who does, because it seems to have been for ever); on the effectiveness and efficiency of the operations of the South Australian Timber Corporation; on availability of housing for low income groups in South Australia; on the Aboriginal health organisation; and sundry other related matters too numerous to mention. All those select committees are currently laboriously going about their business, and the emphasis is on 'laboriously', because members have great enthusiasm—

The Hon. L.H. Davis: You're really into open government, aren't you?

The Hon. J.R. CORNWALL: I really am into open government and I always have been. What you ask, I will answer, but the fact is that the select committee process is being overused in this Chamber to the extent where it is in very real danger of being brought into disrepute. The Select Committee into Aboriginal Health is a classic case in point. It was set up as a direct political response, not in the traditional way that we have an all Party approach to matters requiring sensible solutions or to disputes requiring amicable resolution but, rather, it was set up in a spirit of combat. It was initiated by the Opposition (and so many of these select committees have been initiated either by the Democrats or by the Opposition, in some cases, at least at the outset, with purely political motives) in a very combative atmosphere.

I think that that really runs the risk of bringing the select committee process into disrepute. The Select Committee on Aboriginal Health is an illustration of what happens when this is done with a rush of blood to the head. That committee was set up before Christmas. I believe that it has met very briefly on three occasions and that it will hear its first witnesses just before the end of February, so three months after its establishment it will hear its first witnesses. It will then wander at large over an indeterminate period. It will meet when members might be in the State and available during a relatively long winter recess, and it will meet intermittently, as will these other select committees, if indeed some of them meet at all.

How often does the Select Committee on Energy Needs in South Australia meet? It is purely a political vehicle. It was set up by the Democrats specifically to be a political vehicle, and that is very sad. I regret to say (and I say that with some passion) that it tends to bring the very good select committee processes of the Upper House into disrepute. I submit that this proposed select committee is merely a political device to get a Liberal Opposition, which cannot make up its collective mind, or which cannot satisfy some of its vested interests, off the hook. Quite frankly, the time is well past when we need to have more submissions and when we need to reinvent the wheel. This matter has been around for a very long time. The consultation has gone on to the point of exhaustion.

The Hon. Mr Elliott looks quite puckered out by the whole business. He does not look a particularly good colour and he looks a bit peaked. I suspect that it is because of the exhausting consultations that he has had with Aboriginal communities around the State. From the Government's point of view, and represented on our own behalf and from time to time by some extremely competent officers from the Aboriginal Heritage Branch of the Department of Environment and Planning, we have been able to be very sensitive and sensible in taking into account all the disparate views of Aboriginal people living in the traditional lifestyle and those living in urban communities.

I do not believe that this matter should be held up any longer. We ought to dismiss the idea of a select committee forthwith and summarily. If the Opposition needs a little more time to confer with Mr Elliott and with officers from the Department of Environment and Planning, then I think I could be generous and say that I would be prepared to adjourn the Committee stage to next Tuesday, but I think that even that tends to try the patience. We are now in the second week of the autumn session. It is imperative that this legislation goes through in this session, as the Hon. Mr Elliott has quite rightly said. On balance, I think that we have the very best legislation that we could introduce at this time. If experience proves that there are one or two deficiencies, I hope that we can rely on the goodwill of this Chamber and of the other place to amend that expeditiously. At this stage there is no point in going to a select committee which would labour on for anything up to 12 months and which would defer the moment of decision for a further 12 months. At the end of that time, a select committee cannot really achieve any significant improvement in the proposed legislation.

The Hon. I. GILFILLAN: I would like to rebut some of the reflections made by the Minister about the Select Committee on South Australia's Energy Needs. If he had consulted with any members of that committee he would have found that it has met on an extraordinary number of occasions. It has done a lot of work and it has already submitted two interim reports. It is on the brink of providing the third interim report and I suggest that it is unfortunate that the Minister should cast a reflection on a select committee which, speaking as the Chairman, has comprised a lot of long-serving members of this Council who have put in a lot of work. I feel it is important to make that statement so that their reputation as members of that committee can be protected.

Members interjecting:

The Hon. I. GILFILLAN: I am particularly accurate. The committee has occasionally had a change of personnel; the Hon. Brian Chatterton was a member, but that select committee has made a very constructive contribution to the South Australian energy debate and I expect that it will continue to do so, thanks to the independence and the hard work of the members. We are only marginally and infinitesimally influenced by political factors. As an independent group of this Chamber and doing our best for South Australia, we take our roles very seriously and I think that in due course Parliament will be proud of the work of the Select Committee on South Australia's Energy Needs.

The Hon. L.H. DAVIS: Nothing that the Minister has said has changed my resolve that a select committee of the Council is the best means by which to address this imperfect legislation. The fact that there are 17 pages of legislation and nine pages of amendments is testimony to that imperfection. I have no question in my mind that the Bill could be much improved by full consultation with all interested parties—the various Aboriginal groups (admittedly with their disparate interests around the State), the pastoral groups, mining interests and other interested parties—in what is most important legislation. The fact that we have waited 10 years to address such legislation, given that our Aboriginal heritage legislation was initially introduced in the late 1970s, would suggest very strongly to me that a few more months making sure that we get it right is very little time. I urge the Democrats to recant on their public position, to see the wisdom of the select committee and to support this motion.

The Council divided on the motion:

Ayes (8)—The Hons M.B. Cameron, L.H. Davis (teller), Peter Dunn, K.T. Griffin, C.M. Hill, J.C. Irwin, R.I. Lucas, and R.J. Ritson.

Noes (9)—The Hons G.L. Bruce, J.R. Cornwall (teller), M.J. Elliott, M.S. Feleppa, I. Gilfillan, Carolyn Pickles, T.G. Roberts, C.J. Sumner, and Barbara Wiese.

Pairs—Ayes—The Hons J.C. Burdett and Diana Laidlaw. Noes—The Hons T. Crothers and G. Weatherill.

Majority of 1 for the Noes.

Motion thus negatived.

FAMILY RELATIONSHIPS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 11 February. Page 2691.)

The Hon. K.T. GRIFFIN: The Opposition supports the Bill, which does a number of things. First, it deals with the sunset clause on section 10a of the principal Act. Section 10a was inserted into the Family Relationships Act in 1984 to deal with the status of children born as a result of IVF or AID procedures. A fertilisation procedure was defined in that section as artificial insemination or the procedure of fertilising an ovum outside the body and transferring the fertilised ovum into the uterus. The original sunset clause was for 31 December 1986, from memory. That was extended to 31 December 1988 because the Select Committee into Artificial Insemination by Donor, *In Vitro* Fertilisation and Embryo Transfers Procedures and Related Matters in South Australia was still meeting. In 1984 there was considerable debate about the way in which the status of children born as a result of fertilisation procedures was to be recognised.

There was no difficulty with children born to a man and woman who were married because the law provided a means by which their relationship could be identified. It was clear that if the woman bore the child as a result of AID or IVF procedures then that woman was the mother, regardless of the contributor of the ovum, and the person who was her lawful husband was deemed to be the father, regardless of whether or not he contributed the semen.

The difficulty arose in relation to a child born to a woman who was unmarried or where the husband did not consent to the procedure. The Government came up with a proposal that a man and a woman who were living as man and wife on a genuine domestic basis should, in those circumstances where the male had consented, be regarded as the legal mother and the legal father of any child born to the woman as a result of these procedures.

This situation was more likely to occur in relation to artificial insemination by donor which did not require the intervention of medical assistance. With respect to IVF, there were no unmarried couples to whom the procedure had been made available at the time of the consideration of the Bill in 1984 and, as far as I am aware, there is still no unmarried couple participating in that program. Therefore, the status of any child born to such a couple is hypothetical at the present time, yet it was regarded as important by the Government that in the event that a child was born to an unmarried couple as a result of the IVF procedure the status should be clear.

The difficulty with the description of an unmarried couple living together as husband and wife on a genuine domestic basis was the lack of clarity which prevailed in that description. That was one of the reasons why the select committee was established to look at some alternative means by which the status of a child could be defined and determined. As the select committee met and considered the evidence no other alternative became available, so the select committee recommended that the repeal of the sunset clause would be sufficient to ensure that the status of many children was adequately determined.

Several members of the select committee, including my colleague the Hon. Dr Ritson and me, were concerned about the drafting of section 10a. I suppose that what did play a part in our attitude in 1984, although it was not the principle determinant of our attitude towards the Bill at that time, was the description of married woman, or wife, including a woman who was living with a man as his wife on a genuine domestic basis, and husband has a correlative meaning.

The concern expressed by members of the community is that that description in a statute passed by Parliament appears to put a married couple on a similar plane or with a status similar to an unmarried couple living together as man and wife on a genuine domestic basis. With the benefit of hindsight, the better course of action would have been to undertake some redrafting of section 10a to ensure that that feeling was not engendered in the community so that it was clear that there were two different statuses of relationship being dealt with.

However, that would be to turn back the clock and, somewhat reluctantly, I indicate that the conclusion that I have reached is that it would be a significant job to repeal section 10a and replace it with something which was more precise and less offensive to some members of the community and to me and some of my colleagues. So in that context, recognising that it is the status of the children involved and it is important as much as possible that children born as a result of these procedures do know who their lawful mother and lawful father may be, the Opposition is prepared to support the removal of the sunset clause.

The Bill also seeks to extend the definition of 'fertilisation procedure' to include the gamete intra fallopian transfer technique of ovum transfer. Again, that proposal is supported by the Opposition. The Bill also seeks to outlaw surrogacy. The *in vitro* fertilisation select committee (to use an abbreviated description) made recommendations on this matter. It was rather a brief reference to surrogacy, but it was a unanimous recommendation, and I will read the two paragraphs of the report which are relevant to indicate clearly what conclusion the select committee reached. The report states:

> The select committee is opposed to surrogacy. A woman who gives birth to a child is legally its mother. The mother can relinquish the child for adoption but cannot under existing adoption arrangements specify to whom the child might go. Contracts which seek to achieve this end should be unenforceable.
>
> The select committee believes that any person who organises a surrogacy contract for fee or reward should be guilty of an offence. Any fee paid to a person who organises a surrogacy contract should be recoverable by those who paid the fee.

In fact, the Bill picks up that recommendation, but in one respect it goes further and in another respect it does not pick up what I believe to be an ingredient of the consideration of this issue by the select committee.

The Bill provides that surrogacy contracts are illegal and void, that a person who has paid another to negotiate or arrange the benefit of a surrogacy contract may recover the money paid, and that advertising of a willingness to enter into a surrogacy contract or seeking another to enter into a surrogacy contract or indicating a willingness to negotiate a contract on behalf of another commits an offence for which a maximum penalty of $4000 fine or 12 months imprisonment applies. The aspect of advertising is not a matter which the select committee specifically addressed in its report, but certainly there was discussion about that issue,

especially in the light of international experience and cases which had particularly arisen in the United States of America and in the United Kingdom.

The Bill does not deal with the question of the money paid by a person as consideration for a surrogacy contract, and it does not provide that the money is recoverable. Although the reference in the select committee report to which I have referred is not as clear on this issue as it probably could be, my recollection of the discussion in the select committee and the intention behind the recommendation is that where money is paid as consideration for a surrogacy contract and if the contract is void as against public policy then equally the money paid should be refunded. At common law, if a contract is void, no consideration paid can be recovered. I hold the view that if money is paid as consideration for a surrogacy contract then although the contract is void and therefore unenforceable no party should benefit from the contract and therefore the consideration paid should be refundable to the party to whom it has been paid.

The Hon. C.J. Sumner: So they give back both the money and the child?

The Hon. K.T. GRIFFIN: No, they do not—they do not get the child.

The Hon. C.J. Sumner: The mother hands back the child, because she didn't want the child.

The Hon. K.T. GRIFFIN: No—the child is the child of the mother.

The Hon. C.J. Sumner: The mother doesn't want the child—she entered into an agreement. She gives the child back and they keep the money.

The Hon. K.T. GRIFFIN: The point is that you cannot trade in the child. The question of the status of the child under our law at present must be determined by persons other than the mother and other than the couple who wish to have that child: it must be determined under either the existing adoption law, or whatever adoption law replaces the current law. So it is not a matter of the couple who may have entered into the contract getting both the child and the money—it is a matter of the adoption law determining who should have custody of the child. I suppose the mother may decide to deliver up the child for adoption, or it may be that the custody of the child is handed to the couple or to some other party—quite obviously that is one issue which needs to be addressed.

However, equally, the mother may indicate that she is no longer bound by the surrogacy contract because it is void and unenforceable and she keeps both the child and the money. It may be that there is some alternative solution to this so that there is equity in the resolution of the advantages and disadvantages which each of the parties might suffer as a result of the contract being unenforceable. I am prepared to listen to some alternative, but it seems to me that it is appropriate, certainly in circumstances where the couple do not get the child, that the money is refundable and then the adoption and guardianship law takes its course with respect to the custody and guardianship of the child.

Perhaps that is an option. I put up the proposition that the moneys paid ought to be refundable on the basis that at law the child is the child of the mother, and it is not the couple who have any say about where the child will ultimately end up. As I say, I am happy to consider other alternatives but I think that it is an important issue which the Bill has not yet addressed and which I think ought to be addressed in trying to find an adequate resolution to the conflicts which arise in the surrogacy context, where it is, in effect, a commercial arrangement.

We cannot hope to provide in the law for those surrogacy contracts where there is no monetary or similar consideration. If there is an arrangement within a family, while the adoption and custody laws will apply to the child one cannot as a matter of legislation deal with that particular surrogacy contract. So, we are aiming only at commercial surrogacy contracts—commercial procuration contracts—and it is in that context that I think something needs to be done with respect to any consideration.

We are talking in overseas terms of $10 000 and $20 000 and, while one can understand the desperation of a childless couple in seeking a surrogacy arrangement and paying over the money in the context of that desperation, one can on the other hand also understand that some women may want to make themselves available for the purpose of producing a child and earning the money—for whatever reason—although that is, I think, more difficult to appreciate in general terms, while in specific terms it may be understandable.

One can also understand where a mother, in those circumstances, giving birth to a child, desires no longer to continue with the surrogacy arrangement and indicates that, because that the contract is unenforceable at law, having had the child, she is not prepared to refund the consideration. I just think that somewhere along the line we must get some equity into it and it may be that there is some alternative proposal which the Attorney-General can come up with, and I am prepared to give consideration to it. Apart from that matter, the Opposition supports the second reading of this Bill.

The Hon. R.J. RITSON: I support the second reading of this Bill, and I appreciate that what the Government is doing, in effect, is by and large to implement the recommendations of the select committee, those recommendations having been placed in the Reproductive Technology Bill, but only with respect to pregnancies that were artificially aided. We now have the same general thrust in this Bill in a way which will supersede the provisions of the Reproductive Technology Bill and which will deal with the question of surrogacy in all pregnancies, whether naturally or artificially embarked upon.

I note in passing that in the definition clause there is an amendment to the principal Act to modify the definition of 'fertilisation procedure'. It is a different definition from that which appears in the Reproductive Technology Bill—and quite rightly so, because in the Reproductive Technology Bill we are dealing with artificial assistance in general, whether or not it uses donated material, which is dealt with in that other Bill for quite different reasons. In this Bill, of course, we are specifically looking at the situation where the birth parents and nurturing parents are not the genetic parents, the purpose being to make clear what the legal parentage is.

This does pick up some aspects of the gamete interfallopian transfer technique, but only where there is some element of donated material and leaves alone the situation where the genetic material is the product of both parents or both partners to the marriage or to the couple. I support that change. It is a sensible extension of the previous Bill.

I just want to say a few words for the benefit of *Hansard* readers—both of them—about the word 'surrogacy', because it has been used with two quite distinct meanings. In biological terms, particularly veterinary terms, it has been used to refer to the mother animal which gestates a completely donated embryo. The mother animal then keeps that embryo, and the word 'surrogacy' really means non-genetic mother in that case. However, here the essence of the word 'sur-

rogacy' as we mean it in relation to this Bill is the relinquishing agreement, whether or not there is donated genetic material. It is necessary to have this sort of legislation, because we have seen in other countries some rather bitter litigation when things have not gone as people had anticipated.

The biggest problems with surrogacy are human emotional problems. People can make an intellectual decision with that higher part of the brain which deals with intellect, superego, morals and the ought-to-do-this type of feeling, but much deeper in the mind there are instincts which may be suppressed but which may arise to override the intellect. This certainly occurs when a woman gives birth to a child. She may have believed, quite rationally, that there would be no difficulty in relinquishing the child. However, these deeper instincts arise and, in many of these overseas surrogacy agreements, the problem has been refusal of the surrogate mother to relinquish the child.

The other problem arises when the persons who had ordered the child, as it were, declined to accept it because it was not what they wanted. In some cases it may be that logically they believed that they would accept either sex but, when the child is offered them, instinctive preferences for a sex other than that of the child surface, and the persons involved change their minds; or indeed there may have been a genetic defect in the child and quite suddenly, for the first time, the people seeking to so-called purchase the child suddenly realise that they did not want a child with a cleft lip and palate.

As the Hon. Mr Griffin said, one cannot legislate to prevent private agreements amongst people to arrange for the pregnancy and birth of a child and for a friend to have custody of that child as if that person were the parent. I guess that that will go on to a certain extent, but we need to prevent some of the distressing and unhappy litigation that has occurred in other countries and prevent, in particular, the transatlantic trade which has occurred, where agencies in the United Kingdom have advertised surrogacy services and people from North America have crossed to England to take advantage of those services.

I support the Hon. Mr Griffin's questioning of the absence in this Bill of a clear provision that money paid in respect of a surrogacy agreement should be recoverable. The Attorney-General said, 'What if the surrogate hands over the child and then has to give the money back?' That is a point, although most of the disputes are not of that order but are of the nature of a mother refusing to relinquish because of maternal instinct or of the the prospective recipients of the child refusing to receive the child for the sorts of reasons that I have just given.

There is one important point that I would ask the Attorney to consider, namely, if it was quite clear that, regardless of whether the child was retained or handed over, the money was recoverable, that would be a general deterrent to any commercial agency to set up or advertise a business, because such an agency would know that in every case the person in a position to pay the money could simply take the money back afterwards. That may not seem fair to the Attorney-General: his interjection seemed to indicate to me that he thought it would be a bit unfair if the surrogate mother handed over the child and then had to give the money back.

However, I think that matters of policy in law making are important, and it would seem to be a good policy to provide that no agency could ever profit from this—that in every case if the person undertaking to pay the money could ask to get the money back the agency would have no real reason for existing. So, I ask the Attorney to consider the general deterrence value of the rights of recovery as proposed by the Hon. Mr Griffin and to perhaps address that matter in Committee. Having said that, I indicate that I support the second reading and I look forward to the Attorney's reply on the point that I have raised.

The Hon. C.J. SUMNER (Attorney-General): I thank honourable members for their support of the Bill. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

STRATA TITLES BILL

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

TRADE STANDARDS ACT AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

The first purpose of this Bill is to amend the Trade Standards Act 1979 to allow for interim bans on dangerous and potentially dangerous goods and to allow for product recall systems for dangerous goods based on Part V Division 1A of the Trade Practices Act of the Commonwealth.

Under the Trade Practices Act the Minister responsible for the Act can:

(a) Publish a warning about potentially dangerous goods (that is, before they are banned) or a statement that the goods are being investigated to see whether they are dangerous;

(b) impose safety standards on goods;

(c) place a ban on goods which may be dangerous, for up to 18 months (called 'interim bans'). If at the end of that time there is no safety standard prescribed for the goods the Minister can impose a permanent ban on the goods.

Where the Minister publishes a statement that goods are being investigated and the goods are not later banned or recalled, the Minister is required to publish the results of the investigation and what action he or she proposes to take.

Further, before goods are banned or recalled the Minister is required to publish a draft of the proposed banning or recall notice. Interested parties then have 10 days with which to notify the Trade Practices Commission that they wish a conference to be held and if they do so a conference must be held within 14 days of the notification. This process can be overidden if the Minister certifies that there is imminent danger to the public; in which case the banning or recall notice has immediate effect. Even in this case however, that is, after the ban or recall has come into effect, the Minister is still required to arrange for a conference subject to the same procedures.

Under the Trade Standards Act the Minister can only publish a warning about goods that have been banned or for which there is a safety standard in force. The Governor in Executive Council can also permanently ban goods and impose safety standards on goods. The Governor cannot specify in a banning order that it will expire on a specific

date or that it remains in force for a specified period of time although he can vary or revoke an order once made.

Clearly, permanent bans are not always appropriate. If a product can be made safe by taking certain steps, such as adding a warning label or clearer instructions, then there can be no point in continuing to prohibit the sale of the goods.

The power to impose interim bans on goods was not inserted in the Act when it was introduced because of financial consequences to retailers and manufacturers who may suffer considerable loss if it were later found that in fact the goods were safe (for example, the fault lay in the consumer's use of them) and an interim ban were then lifted. Provisions to compensate suppliers in these circumstances were considered too complex and it was decided that banning was a serious step that should only be taken as a last resort and after it had been established that the goods were dangerous or potentially dangerous. Most other States in Australia, however, have specific provisions in their equivalent legislation to impose interim bans, as does the Commonwealth under the Trade Practices Act. Both the Commonwealth Government and these State Governments have used these powers regularly for a number of years now. The Bill amends the South Australian Trade Standards Act to include specific provisions for interim bans to bring the legislation into line with the Trade Practices Act.

The Bill alters the procedure for imposing bans. The current Act requires that the declaration of dangerous goods must be made by Executive Council, with advice through the Minister from the Trade Standards Advisory Council. In order to ensure the quickest response to advice, the Bill provides that the Minister of Consumer Affairs should have power to act directly on the recommendations of Council. This would bring the Act into line with the Trade Practices Act and with most other States' laws. A power to ban goods temporarily would allow the Minister to withdraw goods until their safety could be verified or until any necessary modifications were made. By granting the power to the Minister, this would allow him to act immediately upon notice of a danger or potential danger, to withdraw goods from sale until the gravity of any risk could be established.

The Trade Practices Act provisions already apply in South Australia in relation to corporations. This proposal would fill the gap in protection provided to consumers, by applying similar provisions to other suppliers and manufacturers. Currently, South Australia is the only State without specific interim banning provisions while Queensland has no legislation in this field at all.

The Bill proposes that the conference procedures in the Trade Practices Act be mirrored in the case of recall procedures but not in the case of either interim or permanent bans. Bans would generally only be imposed on the recommendations of Council and on products that presented an undue risk of injury or to health. Council has both consumer and industry interests represented on it and already undertakes investigation and consultation before a ban is recommended. The whole notion of a ban is that it is a tool that can be used quickly and it would make the power useless if a conference had to be held before a ban could be imposed.

There is no provision in South Australia to require the recall of dangerous products by manufacturers or retailers. The Trade Practices Act enables the Commonwealth Minister to order either voluntary or compulsory recall of hazardous products. It also sets out the procedure that is to be followed. The procedure involves considerable consultation with industry before a recall order is made.

Further, the Standing Committee of Consumer Affairs Ministers has agreed that, wherever possible, uniform legislation will be enacted in relation to trade practices and consumer protection. That commitment has already led to the passage of the Fair Trading Act, which mirrors Part V Divison 1 of the Trade Practices Act. This Bill proposes that the product recall provisions in Part V Division 1A of the Commonwealth Act be enacted in the Trade Standards Act to promote further uniformity between Commonwealth and State legislation. It is understood that New South Wales, Victoria and Western Australia intend to introduce provisions uniform with those of the Commonwealth in the near future.

The Bill also contains some housekeeping amendments. It brings services within the scope of Parts III and IV of the Act. Experience has shown that it is necessary to ensure that suitable safety standards govern the installation of certain goods or substances. For instance, urea formaldehyde foam insulation must be applied correctly to avoid the risk of emitting excessive amounts of formaldehyde gas.

Similarly, in Part IV it would be pointless to introduce a quality standard on rust-proofing treatment for cars if the Standards Association of Australia's standard on the methods of application was not prescribed at the same time. The effectiveness of the treatment depends as much on the method of application as on the actual inhibitor used.

Clause 1 is formal.

Clause 2 provides for the commencement of the measure.

Clause 3 repeals section 3 of the principal Act.

Clause 4 inserts new definitions of 'dangerous goods', 'dangerous services' and 'premises'.

Clause 5 expands the membership of the council to six.

Clause 6 amends section 13 of the principal Act so that the functions of the Trade Standards Advisory Council will include advising the Minister in relation to the declaration of services as dangerous services.

Clause 7 amends section 14 of the Act to provide that officers must be public servants.

Clause 8 revamps parts of section 15 of the principal Act. Subsection (1) is to be substituted with an up-to-date provision relating to the inspection of premises and vehicles.

Clause 9 will enable a Minister, under section 16 of the principal Act, to require a person to furnish specified information for the purpose of determining whether or not any services should be declared to be dangerous services.

Clause 10 provides for a new section 18 relating to the cost of examining, analysing and testing goods or services that are found to be dangerous or that are found not to apply to an applicable safety standard.

Clause 11 provides for a new section 22. The principal change is to provide that it will be an offence to supply a service that does not comply with, or contravenes, an applicable safety standard.

Clause 12 provides for a new section 23. In particular, the new provision will allow the Governor to set safety standards in relation to the supply of services. Furthermore, safety standards will be able to prescribe precautions that should be taken in relation to the supply of particular kinds of goods or services and prohibit the supply of particular kinds of goods unless instructions are supplied, or adequate instructions are given, in relation to their installation, alteration or use.

Clause 13 provides for a new section 24. It will be an offence for a person in the course of a trade or business to manufacture or supply dangerous goods. Furthermore, it will be an offence for a person in the course of a trade or business to supply dangerous services.

Clause 14 provides for a new section 25. Under the present section 25, the Governor is empowered, by proclamation, to declare specified goods, or classes of goods, to be dangerous goods. It is proposed that the Minister now be able to act by notice in the *Gazette*. The provision will also now relate to the declaration of services to be dangerous services.

Clause 15 provides for the enactment of a new section 26, and a new section 26a. Section 26 presently allows a person to recover a refund from a supplier who supplied him or her with dangerous goods or goods that do not comply with an applicable safety standard. The person is also entitled to recover reasonable expenses incurred in returning the goods and, if the person has received the goods from another person to whom he or she supplied the goods, expenses that he or she incurred on the return of the goods to him or her. New subclause (1) will also allow the person to recover compensation for any damage suffered in consequence of the use of the goods. New subclause (2) allows a person to whom dangerous services, or services that do not comply with an applicable safety standard, are supplied, to recover from the supplier compensation for any damage suffered in consequence of the supply of the services and any amount paid for the services. New section 26a allows the Minister to place a temporary ban on the manufacture or supply of goods that may be dangerous, or on the supply of services that may be dangerous. The ban can initially be for a period of up to three months. The Minister may, on the recommendation of the council, extend the period of the ban for another period (but the total period of the ban cannot exceed six months). It will be an offence to manufacture or supply goods, or supply services, in the course of a trade or business, while the ban is in force.

Clause 16 enacts a new section 27 of the principal Act and will allow the Minister to warn the public against risks, or potential risks, associated with goods and services that do not comply with an applicable safety standard or have been supplied in contravention of a safety standard, dangerous goods or services, or goods or services that are subject to a temporary ban.

Clause 17 inserts a new Part IIIA to the principal Act, relating to defect notices. The Minister will be able to issue a defect notice in relation to goods supplied in the course of trade or commerce that are dangerous goods, do not comply with an applicable safety standard or are such as may cause injury, if it appears to the Minister that insufficient action has been taken to avert danger to those to whom the goods have been supplied. A supplier may be required to recall the goods, make certain disclosures to the public in relation to the goods, or inform the public that the supplier will either repair the goods, replace the goods, or refund any amount paid for the goods. Before the Minister publishes a defect notice, the Minister must publish a draft notice in the *Gazette* and invite suppliers to request the council to hold a conference in relation to the proposed publication of the notice. All interested parties will be able to attend a conference and the parties to a conference will be allowed reasonable access to information on the basis of which the defect notice is proposed and a reasonable opportunity to make representations in relation to the matter. A supplier may voluntarily undertake to recall goods. The liability of an insurer who insures a supplier against risk of loss related to defective goods supplied by the supplier is not affected by the fact that the supplier gives to the council, the Minister, or any other official functionary information relating to those goods.

Clause 18 enacts new provisions relating to quality standards. The Part will apply in relation to goods and services. It will be an offence to manufacture or supply goods that do not comply with an applicable quality standard, or to supply services that do not comply with an applicable quality standard. The Minister will be able to warn the public that particular goods or services do not comply with an applicable quality standard.

Clause 19 provides for a new section 44 that will generally give a person who suffers loss through a failure of a manufacturer or supplier to comply with a provision of this Act the right to recover compensation for the loss. The compensation will be recoverable in the same way as damages in tort. A court that convicts a manufacturer or supplier of an offence will still be able to make orders in relation to the payment of compensation. New section 44a specifically ensures that the remedies provided by the Act are not mutually exclusive.

The Hon. K.T. GRIFFIN secured the adjournment of the debate.

ADJOURNMENT

At 9.40 p.m. the Council adjourned until Wednesday 17 February at 2.15 p.m.