LEGISLATIVE COUNCIL

Tuesday 23 February 1988

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

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

TOWN ACRE 86 OFFICE DEVELOPMENT

The PRESIDENT laid on the table the following report by the Parliamentary Standing Committee on Public Works, together with minutes of evidence:

Town Acre 86 Office Development (Tenancy Fitout).

QUESTION ON NOTICE

The PRESIDENT: I direct that the written answer to Question on Notice 130, as detailed in the schedule which I table, be distributed and printed in *Hansard*.

PUBLIC HOSPITAL WAITING LISTS

130. **The Hon. M.B. CAMERON** (on notice) asked the Minister of Health:

1. Will the Minister indicate the waiting lists for each of South Australia's public hospitals as at 14 August 1986, which was the date given by the Minister when providing a total of 6 286 people awaiting elective surgery?

2. *(a)* Can the Minister provide waiting list figures—as at 14 August 1986—for each of the following procedures—general surgery, ophthalmology, neurosurgery, orthopaedic, ENT, urology, gynaecology, vascular, plastic, thoracic, craniofacial, and other unclassified procedures, both as a total and broken down, hospital by hospital, for Flinders Medical Centre, Royal Adelaide, Adelaide Children's, Queen Elizabeth, Queen Victoria, Lyell McEwin and Modbury hospitals?

(b) Can the Minister provide comparative figures for 14 August 1987?

3. Can the Minister indicate the length of time that people have waited to receive treatment for each of the above procedures at each of the aforementioned hospitals, as at 14 August 1986, and by way of comparison on 14 August 1987?

4. How many people are currently waiting for endoscopic procedures of any type at each of the major teaching hospitals in South Australia?

5. Of those people waiting for endoscopic procedures, how many are awaiting a diagnostic procedure as distinct from a routine review process?

6. What is the waiting list at each of the aforementioned hospitals for any such diagnostic procedure?

7. What is the waiting period for any of the diagnostic procedures at the above hospitals?

8. What was the waiting time for such procedures 12 months ago?

The Hon. J.R. CORNWALL: The replies are as follows:

1. The nearest survey date to 14 August 1986 was 16 July 1986 and these figures are attached (Table 1). Data for the Queen Victoria Hospital, which was not surveyed, is not available.

2. *(a)* See above.

(b) Comparative data is provided by 20 July 1987 survey booking list figures.

3. Information on waiting times by specialty and hospital are contained in the survey details for July 1986 and July 1987. See attached (Tables 2 and 3).

4. to 7. Endoscopies are not included in booking list figures collated by the South Australian Health Commission except for cystoscopy. Cystoscopy (not including review cystoscopy) was chosen as an indicator procedure.

Hospitals have provided data on upper intestinal endoscopy (one of the more common procedures), as a guide to waiting time for endoscopies. From this information the following table has been prepared:

	Upper Intestinal Endoscopy		Review Cystoscopy
Hospital	No. on the list period Nov. 87	General waiting period Nov. 87	No. on the list as at 20 July 1987
RAH	81	2 weeks	261
FMC	33*	2 weeks	110
QEH	60*	1 week	95
Modbury	17	3 weeks	15
Lyell McEwin .	0	1 week	24
ACH	0	3 weeks	—

* This number includes the review endoscopies.

This information indicates that people generally wait two weeks for an upper intestinal endoscopy unless the patient delays the procedure due to social circumstances. It should be emphasised that any urgent cases are treated as such and do not wait. At some hospitals such as the Lyell McEwin Health Service the waiting time is merely that required to arrange a convenient time for the patient. Hospitals have stated that the waiting time was the same 12 months ago. It should be noted that differentiating between review endoscopies and endoscopies requires more detailed investigation and therefore review procedures are included in the figures provided by some hospitals.

TABLE 1
BOOKING LISTS IN MAJOR METROPOLITAN RECOGNISED HOSPITALS
BY SPECIALTY: JULY 1986 AND 1987

Designated Area	FMC		RAH		TQEH		LMC		MOD		TOTAL		ACH
	1986 July	1987 July	1986 July	1987 July	1986 July	1987 July	1986 July	1987 July	1986 July	1987 July	1986 July	1987 July	1987 July
General Surgery	229	217	188	250	91	115	93	102	125	121	726	805	137
Ophthalmology	96	78	417	411	102	65	4	—	—	—	619	554	35
Neurosurgery	18	1	17	13	5	6	—	—	—	—	40	20	4
Orthopaedic	146	239*	476	555	302	334	99	72	72	99	1 095	1 299	68
ENT	342	219	383	322	323	305	437	249	1	—	1 486	1 095	321
Urology	193	222	59	121	336	384	49	58	77	65	714	850	19
Gynaecology	176	176	26	33	32	41	130	239	65	84	429	573	—
Vascular	77	95	74	109	50	46	—	—	—	—	201	250	—
Plastic	209	221	269	280	88	117	—	—	7	19	573	637	77
Thoracic	5	3	158	92	3	3	—	—	—	1	166	99	—
Craniofacial	—	—	6	9	—	—	—	—	—	—	6	9	42**
Other/Not known	—	—	—	—	—	—	—	—	—	1	—	1	—
TOTAL	1 491	1 471*	2 073	2 195	1 332	1 416	812	720	347	390	6 055	6 192	703

* Includes 124 records at July 1987 from a source not previously accessed.
** Some on this booking list are overseas patients awaiting admission.

TABLE 2
BOOKING LISTS IN MAJOR METROPOLITAN RECOGNISED HOSPITALS
WAITING TIME BY SPECIALTY: JULY 1986
(time in months)

Designated Area	FMC				RAH				TQEH				LMC				MOD				Total
	0-6	6-12	>12	Tot.	0-6	6-12	>12	Tot.	0-6	6-12	>12	Tot.	0-6	6-12	>12	Tot.	0-6	6-12	>12	Tot.	
General Surgery	151	31	44	226	143	30	15	188	84	7	0	91	89	3	0	92	101	15	5	121	718
Ophthalmology	75	13	0	88	254	122	41	417	52	32	18	102	4	0	0	4	—	—	—	—	611
Neurosurgery	14	0	0	14	17	0	0	17	5	0	0	5	—	—	—	—	—	—	—	—	36
Orthopaedic	107	25	12	144	373	64	39	476	226	37	34	297	77	4	0	81	62	7	2	71	1 069
ENT	129	111	99	339	164	121	98	383	129	94	95	318	177	124	38	339	1	0	0	1	1 380
Urology	110	49	33	192	53	2	4	59	105	103	127	335	43	1	0	44	63	12	2	77	707
Gynaecology	166	2	1	169	25	1	0	26	32	0	0	32	129	1	0	130	58	5	2	65	422
Vascular	64	5	6	75	41	21	12	74	37	10	3	50	—	—	—	—	—	—	—	—	199
Plastic	80	70	58	208	104	58	107	269	53	28	7	88	—	—	—	—	2	2	3	7	572
Thoracic	5	0	0	5	67	9	10	86	3	0	0	3	—	—	—	—	—	—	—	—	94
Craniofacial	—	—	—	—	6	0	0	6	—	—	—	—	—	—	—	—	—	—	—	—	6
Other/Not known	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
TOTAL	901	306	253	1 460	1 247	428	326	2 001	726	311	284	1 321	519	133	38	690	287	41	14	342	5 814*

* Figures on this table may not agree with the total numbers on other tables because the date put on the list was unavailable for some cases.

TABLE 3
BOOKING LISTS IN MAJOR METROPOLITAN RECOGNISED HOSPITALS
WAITING TIME BY SPECIALTY: JULY 1987
(time in months)

Designated Area	FMC				RAH				TQEH				LMC				MOD				Total
	0-6	6-12	>12	Tot.	0-6	6-12	>12	Tot.	0-6	6-12	>12	Tot.	0-6	6-12	>12	Tot.	0-6	6-12	>12	Tot.	
General Surgery	174	24	14	212	204	38	7	249	105	5	4	114	102	0	0	102	72	19	19	110	787
Ophthalmology	72	2	1	75	223	107	81	411	56	4	5	65	—	—	—	—	—	—	—	—	551
Neurosurgery	1	0	0	1	13	0	0	13	5	1	0	6	—	—	—	—	—	—	—	—	20
Orthopaedic	133	25	25	183	380	120	55	555	260	42	31	333	61	8	0	69	84	10	0	94	1 234
ENT	83	65	68	216	144	61	117	322	186	65	48	299	203	38	8	249	—	—	—	—	1 086
Urology	78	53	90	221	94	15	12	121	84	106	193	383	55	1	0	56	50	7	7	64	845
Gynaecology	159	9	0	168	31	2	0	33	41	0	0	41	224	6	1	231	67	4	5	76	549
Vascular	54	7	34	95	80	7	22	109	32	9	5	46	—	—	—	—	—	—	—	—	250
Plastic	62	51	108	221	115	43	122	280	57	12	46	115	—	—	—	—	6	2	11	19	635
Thoracic	3	0	0	3	66	4	2	72	3	0	0	3	—	—	—	—	1	0	—	1	79
Craniofacial	—	—	—	—	9	0	0	9	—	—	—	—	—	—	—	—	—	—	—	—	9
Other/Not known	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
TOTAL	819	236	340	1 395	1 359	397	418	2 174	829	244	332	1 405	645	53	9	707	280	42	42	364	6 045*

* Figures on this table may not agree with the total numbers on other tables because the date put on the list was unavailable for some cases.

PAPERS TABLED

The following papers were laid on the table:

By the Minister of Health, on behalf of the Attorney-General (Hon. C.J. Sumner)—

Pursuant to Statute—

Rules of Court—Supreme Court—Supreme Court Act, 1935—Costs.

By the Minister of Health, on behalf of the Minister of Consumer Affairs (Hon. C.J. Sumner)—

Pursuant to Statute—

Land Agents, Brokers and Valuers Act, 1973—Regulations—Trust Accounts.

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

Pursuant to Statute—

Planning Act, 1982—Crown Development Report—Wholesale fruit and vegetable market at Pooraka.

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

Pursuant to Statute—
Corporation By-laws—
Port Adelaide—No. 1—Permits and Penalties
Lacepede—
No. 4—Bees
No. 5—Dogs
No. 6—Caravans and Tents
No. 7—Foreshore
No. 8—Repeal of By-laws

QUESTIONS

HEALTH AND SOCIAL WELFARE COUNCILS

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister of Health a question on the subject of health and social welfare councils.

Leave granted.

The Hon. DIANA LAIDLAW: At the opening of this session of Parliament on 6 August, the Governor's speech outlining the Government's program for the forthcoming year noted:

> My Government's combination of the health and community welfare portfolios will be highlighted by the establishment of four health and social welfare councils in a pilot scheme.

According to various green papers that have been issued by the Minister over the past year, these councils are to be a mechanism for local communities to be involved in health and welfare decision making, policy formulation and planning.

Notwithstanding the firm commitment in the Governor's speech to the establishment of these councils, subsequent green papers released by the Minister have highlighted that the Health Commission and the DCW are in the throes of developing yet another strategy paper, which this time will be entitled 'A Major Community Discussion Paper on Strategies for Strengthening Community Involvement in Health and Welfare Decision-making'. Apparently, one of the strategies it will canvass is the health and social welfare council program. This raises some doubts about the status and future program for the establishment of health and social welfare councils in this State.

That fact was reinforced in the past week when I was informed that the Government now had second thoughts about its undertaking to Parliament in August of last year and, therefore, I ask the Minister: is it correct that the Government plans to back down on its commitment as outlined in the Governor's speech to establish four pilot health and social welfare councils? Is it the Government's intention now to establish one such council and is it questionable whether that will take place during this financial year?

The Hon. J.R. CORNWALL: No.

SPENCER GULF

The Hon. M.J. ELLIOTT: I seek leave to make a short explanation before asking the Minister of Health a question about heavy metals in Spencer Gulf.

Leave granted.

The Hon. M.J. ELLIOTT: The question of heavy metals has been raised from time to time in this place and I know that it is one in which the Minister of Health has a deep and abiding interest. He took very strong measures in relation to lead in Port Pirie. Some five months ago I asked a question about cadmium in sheep meat that still has not been answered.

It has been brought to my attention that some studies have been done at the top end of Spencer Gulf in relation to heavy metals, particularly cadmium, arsenic, zinc and lead which have emanated predominantly from the smelter in Port Pirie, although relatively minor traces have come from the power and steel works.

The CSIRO released a report entitled 'The Effects of Heavy Metals on Aquatic Life'. That study found contamination in the gulf, sometimes to quite high levels, by those four heavy metals, over an area of about 600 square kilometres. The report made the point that most of the contamination that occurred in the early days was airborne contamination coming from the smoke stack. Much of that contamination has been alleviated, although significant amounts still enter by way of liquid waste from the plant.

The report further found that there had been definite ecological effects, but I want the Minister to address himself to the fact that the report was a little deficient on health aspects, in particular relating to those species that do not move around very much, such as weedy whiting, leather jackets and snapper, and how safe they would or would not be for consumers. The report noted that razor fish, which some people consider to be a delicacy, were safe if one agrees with the accepted levels for oysters, which have a very high limit.

A proposal existed for the smelters to put in a settlement pond. Precipitation techniques are quite cheap, compared to the smoke stack it put up not long ago. Is the Minister aware of any work done, at least on the health aspects, in relation to various species that may be eaten by the locals? Many migratory fish are not a problem but more the ones that do not move around. If there are problems, will the Minister consider intervening in an attempt to hurry up the smelters in reducing the quantity of liquid effluent waste coming out.

The Hon. J.R. CORNWALL: No, I am not aware of any specific work done. Obviously, this is an intersectoral question in that it crosses several portfolios, including that of environment and planning. However, I will certainly make inquiries. As the Hon. Mr Elliott observed, I have an abiding concern about the ill effects of heavy metals. If any need exists for my intervention as the Health Minister, which I suspect is unlikely, I will certainly take whatever action is appropriate.

GOVERNMENT POLICIES

The Hon. M.B. CAMERON: I seek leave to make a brief explanation before asking the Attorney-General a question on Government policies.

Leave granted.

The Hon. M.B. CAMERON: Late last week the Left wing of the unions and of the Labor Party issued a press release, which I believe was very frank and one with which certainly many people within the community would agree.

The Hon. T.G. Roberts: Did you have any input into it?

The Hon. M.B. CAMERON: I really did not need to. I will read out parts of the press release as follows:

> The union frustration with the ALP in this direction has bubbled to the surface at a meeting of the Left wing unions today. Mick Tumbers, Trevor Smith, and Len Hatch, speaking on behalf of the meeting, stated that concern bordering on hostility had been the clear feeling at the meeting. This sentiment was particularly directed towards the apparent abandonment by the Parliamentary Labor Party of key elements of the policies of the Party.
>
> Many rank and file members of the Party, and affiliated unions, like to believe that policies formulated within the Party will be translated into legislation by the politicians elected by us. More and more we see that this is not the case. Increasingly, the burden of so-called economic restructuring is being shouldered by the ordinary people of Australia—by workers, the young, those reliant on the social infrastructure, the unemployed, women, and migrants.

The union movement is quickly tiring of this, as are our members. Those of us in regular contact with the work force are well aware of the growing resentment on the part of our members, and this will continue in the absence of Government reappraisal and remedy. We believe that many of these feelings are shared by many others in the electorate.

That is a very frank assessment of the situation, and the results in the Adelaide by-election would confirm that. What action will the Attorney-General take to ensure that the burden of so-called economic restructuring will not be continually borne by the ordinary people—the workers, the young, people using the social infrastructure, the unemployed, and migrants? What action will the State Government take to ensure that policies formulated within the Party are translated into legislation by the Parliamentary Party, given the resounding defeat the ALP suffered in the recent Adelaide by-election, and the ensuing comments made by the Premier that his Government could not afford to lose touch with the people who had elected it?

The Hon. C.J. SUMNER: It may well be that certain unions issued a press release indicating some union frustration with ALP policy. I can assure members that union frustration with ALP policy would pale into insignificance when compared to union frustration at Liberal Party policies and attitudes.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: That would be well known to anyone who took even a cursory interest in the last Federal election, when Mr Howard promised to chop $11 billion from the public sector. How that would have helped the working people or Australians generally is beyond me. Indeed, one would expect the left wing and the Labor Party as a whole to be critical of an approach—that is, the approach of the Liberals—that would have resulted in about $11 billion being cut from public expenditure at the Federal level. That figure was used by Mr Howard when he promised his so-called tax cut package. We know what the Howard approach to the economy is: to have massive unemployment in order to reduce demand within the Australian economy, and thereby reduce imports.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: Honourable members know that that is the policy of the Liberal Party as well as I do. There is a good precedent in the United Kingdom, where the rate of unemployment is 13 per cent. What the Labor Party and the Hawke Government have done since election, particularly in job creation, deserves the commendation of everyone in Australia. As a result of the policies adopted by the Hawke Government, there has been significant job growth—

Members interjecting:

The PRESIDENT: Order! I warn the Hon. Mr Davis. When I rise to my feet and call for order, all members should cease interjecting immediately. The question from the Hon. Mr Cameron was heard without interjection. I ask for the same courtesy for the reply.

The Hon. C.J. SUMNER: Thank you, Madam President. They are the policies that would be adopted by the Liberal Party. Clearly the cut of $11 billion in public sector expenditure advocated by the Liberals at the last election would lead immediately to a significant increase in unemployment in this State and country. That would be the policy: to try to overcome the problems of Australia's balance of trade by depressing the economy through unemployment, by reducing imports and by unemployment putting pressure on the keeping down of wages. The Hawke Government has approached the matter in a different way, which hitherto has been rightly accepted by the Australian people. The Hawke Government's coherent wages policy ensures that the balance of trade position can be brought under control over a period. The Liberal's approach is completely different; it would produce unemployment, which would have the effect that I have outlined. The alternative is to maintain employment growth, which the Hawke Government has done, by a wages policy which ensures that problems with the balance of payments and Australia's international debt are overcome in that way.

I have no doubt that, when faced with the two policies of absolute devastation of the public sector and massive unemployment under the Liberals, which would have been an inevitable result of the Howard policies of withdrawing $11 billion from the public sector—and that was the Liberals' policy—the whole of the Labor Party Left wing, Centre Left and Right wing would support the policies of the Hawke Government. There is no alternative when we look at Howard's policies as espoused at the last election and the Hawke approach to economic management.

Clearly, anyone who is looking at any equity in the means of dealing with the Australian economy would accept that the wages policy, which has maintained a reasonable level of employment in this country through the accord, is preferable to the alternative, which is to slash public spending and thereby increase unemployment. That is quite clearly what the Liberals would do. The tragedy is that, to the present time, they have not had the opportunity to put that into effect; if they had that opportunity, people would realise within a very short time that the Liberals' policies were much more inequitable in terms of dealing with Australia's economic problems than are those espoused by the Labor Party. So I believe that the Hawke Government in the past five years has done an exceptionally good job.

The Hon. R.I. Lucas: And is in touch with the people!

The Hon. C.J. SUMNER: And it is in touch with the people. It has done a good job in bringing the Australian economy back on course, given the external shocks it has faced, which were no fault of the Government. The Hawke Government was left with a $9 billion budget deficit, as members know.

Members interjecting:

The Hon. C.J. SUMNER: Was it or wasn't it? You cannot answer that.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: Members have not read any of the financial commentaries then.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: Members can read any of the newspapers they like as well as every financial commentary. There is no question that the Hawke Government was left with a budget deficit of $9 billion.

The Hon. Peter Dunn interjecting:

The Hon. C.J. SUMNER: It is correct; it was $9 billion. It occurred as a result of action taken by Mr Howard as Treasurer and Mr Fraser as Prime Minister to buy their way—to buy the 1983 election. Members opposite know that as well as I do. It is no point in their yelling at me across the Chamber or deceiving themselves. The fact is that that was the legacy that was left to the Hawke Government by the Fraser/Howard combination. That deficit has now been wiped out and for the first time for many, many years it looks as if there will be a budget surplus in this country as a result of the policies adopted by the Hawke Government. That is the sort of shambles that was left to the Hawke Government.

The Hawke Government was also left with massive decreases in employment and large increases in unemployment prior to its election, and that situation has been stabilised. The situation has been improved and there has been significant job growth in Australia during the five years of the Hawke Government. That Government has gone about it in a structured, organised way—with a coherent wages policy in agreement with the trade union movement. As I said, the alternative was economic mayhem where unemployment would have been deliberately visited upon the Australian people in order to overcome the problems that I have outlined. Of course, that was not the track that the Hawke Government followed, and I believe that the approach it has adopted is correct; indeed, it has the support of the Labor movement as a whole.

The burden of restructuring ought to fall on the whole community; that is clear. I believe that, on the whole, the burden has fallen on the whole community because of the policies that have been adopted by the Hawke Government and because of the way in which it has gone about economic restructuring.

Regarding the question of the policies being translated into action, I do not know about the Minister of Health. However, I am sure that if one goes through his platform as it was in December 1982 one will probably find that most of the platform, including election promises and commitments, has been implemented.

An honourable member: And a lot more besides.

The Hon. C.J. SUMNER: Yes.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: Certainly, if one goes through the platform in my areas of responsibility, one sees that the great majority of those platform points have been met and implemented. If one goes through the policy speeches, it will be seen that the great majority of commitments have been met in legislation or through administration. In fact, I am proud of the efforts that have been made by the State Government in putting into effect the commitments made through the State platform of the ALP and through the policies as announced at election time. The fact is that any objective analysis of those policies as announced, and whether they have been translated into action, will show that the record is very good indeed, and, I think that is recognised within the Labor movement as a whole.

The Hon. M.B. CAMERON: As a supplementary question, is the Attorney-General proud of the fact that South Australia's unemployment rate of 8.7 per cent is above the Australian level of 7.9 per cent? Is he also proud of the fact that 57 900 South Australians were unemployed in January 1988—2 800 more than in the same month of 1987?

The Hon. C.J. SUMNER: With reference to South Australia's unemployment rate—

Members interjecting:

The Hon. C.J. SUMNER: Yes, we have, on the whole. There is no question about that—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: There is no question that the people of South Australia recognise that the Labor Government of this State has done a good job. They certainly recognised it at the last election and, if the polls are any indication, they still recognise it as far as the State Government is concerned. The honourable member knows full well that the unemployment rate in South Australia goes in cycles—up and down. It is not the worst in Australia at present.

The Hon. M.B. Cameron: It is.

The Hon. C.J. SUMNER: I ask members in the Chamber: is it?

Honourable members: No.

The Hon. C.J. SUMNER: Of course it's not. The Hon. Mr Cameron doesn't know what he is talking about. The Hon. Mr Griffin looks ashamed because he studies the figures, too. He knows that Mr Cameron is wrong when he says that the unemployment rate in South Australia is the worst of the Australian States.

An honourable member: The mainland States.

The Hon. C.J. SUMNER: It is not. Queensland is worse, and Tasmania is the worst. Therefore, there is no point in making stupid—

Members interjecting:

The Hon. C.J. SUMNER: If the Hon. Mr Cameron is going to be a credible Leader of the Opposition, he should get his facts straight. As the honourable member knows, generally there has been significant employment growth throughout Australia as a result of the policies of the Hawke Government. South Australia has long-term structural problems which it has had for many years and which the Government is attempting to overcome. I am not sure if the honourable member wants me to give him a lecture again about the sorts of initiatives that have been taken to try to ensure that the South Australian economy is diversified in a way that overcomes the problems of the peaks and troughs that have traditionally occurred in the South Australian economy. It has been well documented on previous occasions and has been a phenomenon for many years that, if there is a downturn in economic activity nationally or internationally, it affects South Australia in a more serious manner than it does other States of Australia because of the nature of our economy.

The policies of the Bannon Government have been designed to put in place changes to the economy which over time (of course, it will not happen immediately) will lead to a diversification and thereby a removal of those factors which lead to South Australia suffering more in times of economic downturn. If members want me to repeat the sorts of initiatives that have been taken, then I will do so. However, in passing, one might mention the submarine project, Technology Park and the emphasis on tourism infrastructure and the like.

NATIONAL YEAR OF PRODUCTIVITY

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Attorney-General a question about a national year of productivity.

Leave granted.

The Hon. L.H. DAVIS: In late 1986 and early 1987 I suggested that the bicentennial year of 1988 should be declared a national year of productivity. I wrote to all State Premiers and the Prime Minister seeking their support for this idea. The suggestion received the support of the Governments of Tasmania, the Northern Territory, Western Australia and South Australia, and qualified support from New South Wales. Indeed, the Premier, Mr Bannon, in his letter dated 4 April 1987, said:

> A national year of productivity seems to be worthy of consideration but would require Federal Government support and would need the support of national bodies, such as the CAI Business Council and the ACTU.

Unfortunately, the Federal Government was lukewarm. The Prime Minister's response came from Barry Cohen, as the Minister assisting the Prime Minister for the bicentenary. Mr Cohen, who has since left that position, stated 'that working together was part of the bicentenary theme of living

together'—thus, implying that there really was not any need for any particular emphasis on productivity.

The Australian Productivity Council, though, was excited by the idea and supported it. However, it was obvious it was too late for 1988 and, on reflection, this year is too crowded with bicentenary activities and events. However, I have recently spoken again to the Australian Productivity Council, which is now privatised and headquartered in Melbourne, and it is keen on the idea, as are key employer groups, including the Chamber of Commerce and Industry.

In recent years the collapse of the Australian dollar and the soaring foreign debt have emphasised that the Australian economy is in desperate straits. One of the prerequisites for reversing our precarious economic position is through increasing productivity and producing high quality products for the world market, and demonstrating a capacity to produce a regular supply of those products. The economic success of the Japanese has centred on productivity, quality control and continued research.

I would hope that the State Government would again support the proposition of a national year of productivity, which would unite Australians through an education program in schools and in the public and private sectors, involving both employers and employees. I would also hope that this would receive bipartisan support from major political parties, employer groups and unions, because without increased productivity our standard of living will continue to slide, our foreign debt will continue to escalate and employment growth will continue to be stunted. My question to the Attorney, as Leader of the Government is: will the State Government take up with the Federal Government the possibility of declaring 1989 or some other year in the near future a national year of productivity?

The Hon. C.J. SUMNER: I do not know what correspondence the honourable member had with the Premier. As the honourable member would know, significant initiatives have been taken by the Hawke Government through the accord, in particular, to increase the productivity of Australia as a whole. Indeed, some of the major policies that the Federal Government introduced with the deregulation of the financial system and floating the dollar were the first steps in getting a more productive Australian community. The industry policies of Senator Button were aimed towards getting a more productive Australian community.

It might be worth noting again that the Fraser-Howard group would not grasp those nettles. In the seven years they were in Government they did not do a damned thing to make the Australian economy more productive. One of the greatest frauds of all time is the Leader of the Opposition, Mr Howard, who was Treasurer during a good part of the Fraser years, but who could not bite the bullet on floating the Australian dollar, on the deregulation of the financial system or on industry restructuring and the lowering of tariffs. All those things have been done by the Hawke Government, and have all done somewhat more to improve the productivity of the Australian community than the Hon. Mr Davis's proposal for a year of productivity.

One can add to those three things the accord, the 4 per cent wage claim and the trade-offs that are necessary in order to get that—increased productivity, changed work practices, and the like. It is an impressive record of trying to get what is necessary—and agreed by everyone to be necessary—namely, a more productive Australian work force. The Hawke Government ought to be proud of those initiatives. Obviously, more has to be done, but those policies are proceeding. As I have said, I do not know what correspondence the honourable member has had with the Premier, but I am happy to refer his question to the Premier to see whether he has anything further to say on the matter.

BHP/BELL GROUP DEAL

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Attorney-General a question about the BHP/Bell Group deal.

Leave granted.

The Hon. K.T. GRIFFIN: Press reports indicate that the National Companies and Securities Commission has informed the Federal and State Governments that part of the $2.6 billion buy-back agreement between BHP and the Bell Group could be illegal since it involves BHP in the buying back of its own shares, in breach of section 129 of the Companies Code. Those reports also indicate that the National Companies and Securities Commission has a QC's opinion confirming that view. According to reports, the Chairman of the National Companies and Securities Commission has sought advice, to be received by today, as to how this is to be handled, because the BHP shareholders meet on Thursday to consider the package. It is obvious from the reports that the matter is one of considerable concern and must be sorted out as a matter of urgency. My questions to the Attorney-General are:

1. What is the South Australian Attorney-General's and the Government's view of this matter?

2. Will the Attorney-General be proposing action or no action? If action is proposed, what will be the nature of that action?

3. What are the reasons for the Attorney-General's position in either case?

The Hon. C.J. SUMNER: I am not in a position to provide the honourable member with any information on the South Australian Attorney's position in relation to this matter. The matter is one that at the operational level is being handled by the NCSC. Mr Bosch, Chairman of the NCSC, has advised members of the ministerial council of the present situation in respect of the BHP/Bell Group deal, and I anticipate that the NCSC will soon make its views known. In fact, I understand that Mr Bosch will be making a statement about the matter this evening. As the matter has not yet been made public, I do not think that it would be appropriate for me to comment before that occurs.

On the general question of buy-backs, at the last ministerial council meeting, through me the South Australian Government expressed support in principle for buy-back proposals and it sought that further work should be done on the topic with a view to a draft Bill being prepared, based on the Companies and Securities Law Review Committee's paper on buy-backs, for exposure to and comment from the general public and the business community. As it turned out, the decision last December of the ministerial council was not to endorse in principle a procedure for companies to buy back their own shares but, rather, to ask the NCSC to do further work on the topic and, in particular, to undertake further work on the question of means of achieving capital reduction. That is the position from a policy point of view.

The question of the company's purchasing its own shares is again on the agenda for discussion at the next ministerial council meeting when the council will have to decide whether to accept in principle that a company should be permitted to purchase its shares and, if it accepts that in principle, presumably it would then have to instruct that some legislation be prepared which regulated those buy-backs.

The other alternative is for the ministerial council to say that the existing law (which on the face of it prohibits buy-

backs) should be maintained. That is the position in relation to policy. While that policy discussion has proceeded, there has been a number of examples of companies entering into arrangements to buy back their shares in one form or another, of which the BHP/Bell Group deal is one example. When these issues are concluded one way or the other, obviously that will need to be fed into the policy discussions that will occur in March, but I am not in a position to indicate the view of the NCSC on this matter. I believe that the NCSC will make its view known by a statement from the Chairman this evening.

The Hon. K.T. GRIFFIN: As a supplementary question: notwithstanding that, in the view of the Attorney-General this is a matter for the NCSC at its operational level, and in view of the fact that the Chairman of the NCSC has requested advice from Ministers, is the Attorney-General of the view that the ministerial council will give advice or a direction to the NCSC in relation to this matter?

The Hon. C.J. SUMNER: As I understand the position, the NCSC is not seeking a formal direction from the ministerial council, but it has sought comments from the Ministers if they feel that the direction that the NCSC is taking on this matter is not acceptable to them. It remains a matter for the NCSC, subject to the ministerial council's direction. It would always be possible for the ministerial council to direct the NCSC but, because the matter is still at the confidential stage, I cannot say whether it will do so in this situation. Basically, I think that the ministerial council will take the view that it is a matter for the NCSC to determine on the best advice available to it. As the honourable member knows, the NCSC has as full-time members a Chairman, who is a former business person; a lawyer, who is a former Corporate Affairs Commissioner from South Australia; and a former stockbroker from Melbourne. It also has a number of part-time members from the private sector, including Mr Don Laidlaw, who is well known to members in this Chamber.

The NCSC will have that pool of expertise upon which to call when making its decision in this matter. I am sure that it will obtain the best possible advice before making a final decision. As I said, it has not sought a formal direction from the ministerial council, but it has advised all Ministers of the situation, thus providing them with the opportunity to comment. Because of the current confidential nature of the discussions, I am not prepared to indicate the view of the South Australian Government. In due course the Chairman of the NCSC will make a statement about the matter.

BAREBOAT CHARTERS

The Hon. R.J. RITSON: Can the Minister of Tourism, representing the Minister of Marine, say whether a sailing vessel of 10 metres or more in length, which is operated commercially as Bareboat Charters, is required to be submitted for survey and whether it is lawful or unlawful to operate such a vessel in that manner commercially without its having been surveyed? In view of the fact that it is a simple 'Yes' or 'No' answer, would the Minister undertake to answer it within three weeks?

The Hon. BARBARA WIESE: I shall be happy to seek the information from my colleague in another place and to bring back a reply at the earliest possible opportunity, but I cannot guarantee that it will be within three weeks.

HEALTH AND SOCIAL WELFARE COUNCILS

The Hon. DIANA LAIDLAW: My question is directed to the Minister of Community Welfare and it relates to health and community welfare councils. Further to the Minister's 'No' response to my earlier questions, will he confirm in which four regions health and social welfare councils will be established during this financial year? Does he believe that there is a contradiction between his answer to me earlier today and the forthcoming strategy paper which will discuss options for community involvement in health and welfare decision making, one of those options being the proposal for health and social welfare council programs?

The Hon. J.R. CORNWALL: The Hon. Ms Laidlaw is obviously on a fishing expedition, and I have no intention of helping her. I will play neither the fish nor the bait. Provision was made in the 1987-88 budget for the establishment of the first three or four district health and welfare councils. That money is identified in the budget, is available, and those councils will be established before the end of this financial year. As to where they will be established, I do not have a firm proposal before me, but obviously and sensibly they will be established in the first instance in areas where they are most likely to succeed. They will be established in the first instance in areas where there is at this time the greatest public interest.

The Hon. Ms Laidlaw should not confuse that in her speculative way with the general proposals and discussion taking place concerning the development of a rimary health care policy. She does not at this stage understand. If she wants a briefing, I would be very happy to arrange one for her.

The Hon. Diana Laidlaw interjecting:

The Hon. J.R. CORNWALL: You are insinuating yourself on the gathering next Monday night—you are not above doing that. Having carried on quite disgracefully and having in this Chamber denigrated my officers on the whole matter of child protection, now having moved to the extreme right wing with Dr Ritson and having been quite abusive, she now wants to insinuate herself on a reception and a talk being given by a visiting American expert who is being brought here by our joint Child Protection Unit.

The Hon. Diana Laidlaw: I was invited.

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: The honourable member, in the most destructive way—

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order! Interjections will cease, and the Minister will address the Chair.

The Hon. J.R. CORNWALL: Tomorrow we will read in the *News* that a political storm erupted in the Legislative Council yesterday, when the President asked the Minister to address the Chair.

Members interjecting:

The Hon. J.R. CORNWALL: Didn't you read the funny one the other day about the political storm that erupted when the Hon. Mr Elliott asked a question? It was the most extraordinary piece of reporting that I have ever read, although it disappeared without trace after the first edition.

The Hon. M.B. Cameron: No wonder we won in Adelaide. You epitomise all the problems of your Party—arrogance. You have not changed over the years.

The Hon. J.R. Cornwall interjecting:

The Hon. M.B. CAMERON: On a point of order, the Minister of Health just called the Hon. Ms Laidlaw 'a malicious stupid woman'. I ask that he withdraw and apologise.

The Hon. J.R. CORNWALL: I said 'person'—I was not sexist in any way. Since the Hon. Mr Cameron wants it on the record, I said that Ms Laidlaw has become a stupid malicious person. She used to be a likeable silly person.

The PRESIDENT: Will the Minister withdraw?

The Hon. J.R. CORNWALL: I certainly withdraw without equivocation, and apologise.

WARD BOUNDARIES

The Hon. J.C. IRWIN: I seek leave to make a brief explanation before asking the Minister of Local Government a question on ward boundaries.

Leave granted.

The Hon. J.C. IRWIN: On 10 February this year I asked the Minister of Local Government a question regarding Tatiara council ward boundaries and on an arrangement being wrongly gazetted by the Local Government Department. The Minister said that she would take up the matter and bring back a response as soon as possible—whatever that means. I noted in my local paper that action had been taken to rectify the problem. Is the Minister now able to give information to the Council on what action has been taken to ensure that this sort of embarrassment does not occur again?

The Hon. BARBARA WIESE: It is possible for me to give an update on the matter. It was indeed the case that the submission as put to the Local Government Advisory Commission sometime last year was contrary to one of the provisions of the Local Government Act with respect to the number of councillors that it wished to be represented in a particular ward in the periodical review submission that it put to the commission. It was a matter not picked up by members of the Local Government Advisory Commission in considering the matter or, indeed, by the officers of the Department of Local Government assisting the commission in its work. That is certainly a matter of some regret, since the commission is very knowledgeable about provisions of the Act to which it is responsible.

It is not possible for me to explain why that happened, but I regret it. I understand that since that time the commission has sought an opinion from Crown Law that indicates that the easiest way to overcome the problem would be for the council to submit a new proposal so that a new ward structure can be established and put into operation as quickly as possible. Therefore, the council will be advised that that is the most appropriate course of action and I hope that the matter can be rectified without any further undue delay.

PERSONAL EXPLANATION: MINISTER'S REMARKS

The Hon. DIANA LAIDLAW: I seek leave to make a personal explanation.

Leave granted.

The Hon. DIANA LAIDLAW: I do not necessarily wish to stoop to the level of the Minister in this matter, nor give him credibility for his earlier reflection on me, but it is important to put on the record that the invitation, to which the Minister was clearly referring, was from the Children's Services Office inviting me, because of my long standing interest and commitment in child care and that office—

The Hon. M.B. Cameron interjecting:

The Hon. DIANA LAIDLAW: I did not ask for the invitation—it came to me addressed 'Dear Ms Laidlaw'. Because I accepted that the Children's Services Office was not only well aware of my long standing interest but also was keen for me to attend the meeting, I readily accepted the invitation and in fact cancelled another appointment to do so. I will be very pleased to attend.

OPTICIANS ACT AMENDMENT BILL (No. 2)

The Hon. J.R. CORNWALL (Minister of Health) brought up the report of the select committee, together with minutes of proceedings and evidence.

Report received. Ordered that report be printed.

OPTICIANS ACT AMENDMENT BILL

The Hon. J.R. CORNWALL (Minister of Health) obtained leave and introduced a Bill for an Act to amend the Opticians Act 1920. Read a first time.

The Hon. J.R. CORNWALL: I move:

That this Bill be now read a second time.

This Bill is the result of recommendations of the select committee which unanimously agreed that a new Bill implementing its recommendations should be introduced. It is now widely recognised that the current provisions of the Opticians Act, which was first enacted in 1920, do not reflect contemporary arrangements in the optical industry and the Act is in need of major revision.

During the decades since the passing of the original Act, significant advances have occurred in the application of technology to the industry as well as the education and training of optometrists and other persons involved in the prescribing and dispensing of optical appliances. Compared with their predecessors, today's practitioners within the industry possess higher education and skill levels. Also the structure of the industry has undergone marked change. Whilst the traditional solo practitioner is still present, the optometrical industry of today features large corporate bodies controlling significant shares of the market and utilising sophisticated retailing techniques.

For at least a decade, Governments and successive Ministers of Health have been approached by various representative groups, as well as the Board of Optical Registration, seeking changes to the Opticians Act. The areas where amendment has been sought to reflect current optometrical practice include an increase in penalties, use of a restricted group of drugs by optometrists, prohibition on the sale of ready-made spectacles by unregistered persons, and reviewing the necessity for optical dispensers to be supervised in the dispensing of spectacles on prescription supplied by ophthalmologists or optometrists.

More than 80 per cent of South Australians over the age of 45 require spectacles to assist the reading capacity of their eyes and about 5 per cent of South Australians regrettably are affected by a range of serious eye diseases including glaucoma and diabetic-related retinopathy. Eye health care services in South Australia were found by the select committee to be of a standard which can be favourably compared with standards of service provided in other States of Australia and overseas countries.

It is therefore accepted that any adjustments to the current arrangements must be aimed at supporting positive developments which are of benefit to both the optical health care industry and that part of the South Australian community served by the industry.

Having regard to all of the information provided to the committee and an assessment of all of the issues, it is acknowledged that, whilst some deregulation of the industry

is required, such deregulation should be applied prudently to mitigate against a lessening of standards or causing detrimental effects upon the economics of the industry without concomitant benefits to consumers. Specifically, changes to the legislation should be aimed at achieving the following beneficial outcomes:

enhancement of eye health care service standards;
improved quality assurance in spectacle dispensing;
an increase in competitive opportunities for optical appliance retailers and expanded consumer choice;
improvements in the technical knowledge and training of optical dispensers;
clarification of the objectives of the Opticians Act regarding the use of drugs and optical dispensing, and improving surveillance of the industry;
enhancing relationships between ophthalmologists and optometrists; and
improving the opportunities for the early detection and treatment of eye disease and reducing the risks of infections associated with the use of contact lenses.

The select committee concluded that these aims can be achieved by the introduction of new legislation. The Bill before the Council contains the following new provisions:

The Act is retitled the 'Optometrists Act'.

The Board of Optical Registration is restructured to provide for the appointment of a legal practitioner and one other person who is neither a registered optometrist nor a legal practitioner who has been selected by the Minister to represent the interests of persons receiving optical care.

The definition of optometry is revised to permit the prescription of appropriate persons to measure the powers of vision for health screening purposes.

A certified optometrist shall not treat a disorder of the eye by surgery or a laser or by drugs.

Any impediment previously contained in the Opticians Act is removed to allow optometrists to be classified by the Controlled Substances Act as 'Prescribed Persons'. This will enable them to use a restricted range of generic topical ocular pharmaceuticals recommended by the Controlled Substances Advisory Council. The authorised ocular drugs should include topical anaesthetics, myotics and mydriatics but exclude any drugs which have a primarily cycloplegic effect.

Children under 8 years of age cannot be examined by an optometrist for the purpose of detecting disease or providing an optical appliance including spectacles and contact lenses unless the child's vision problem has been assessed by an ophthalmologist in the 12 months prior to the patient presenting to the optometrist.

The prescribing, dispensing and fitting of contact lenses will continue to be only by an ophthalmologist or an optometrist. All other persons, including optical dispensers or optical mechanics, will continue to be prevented from involvement in these activities.

Provision is made for optical dispensers to be registered under the Act so that they can operate without the supervision of an optometrist.

To be eligible for registration as optical dispensers applicants must satisfy certain conditions for registration, including a course prescribed by regulation involving about 120 hours instruction.

That persons to be eligible for registration as optical dispensers should satisfy certain conditions for registration.

A six member Optical Dispensers Registration Committee is established for the purpose of assessing and approving applications for registration.

Optical dispensers will not be permitted to dispense contact lenses; such dispensing to be only within the role of the professional prescriber.

The proposed Optical Dispensers Registration Committee is empowered to inquire into the misconduct of optical dispensers, and to take disciplinary action including reprimand, caution, removal of the dispensers name from the Register of Licensed Optical Dispensers or suspension of the dispenser's licence for a specified period.

Registered optical dispensers are restrained in their advertising to the same ethical levels which apply to optometrists.

The sale of ready-made single vision spectacles is permitted subject to a warning notice being attached to every pair and being made available to the purchaser at the time of sale. Failure to supply such a warning notice will be subJect to a maximum penalty of $5 000.

Ready-made single vision spectacles may not be sold for use by children 8 years of age.

In South Australia a range of terminology has been adopted to describe persons who are employed in the optical industry, including opthalmologists, optometrists, optical dispensers and optical mechanics. At times, the roles of each of these professions can marginally overlap.

The ophthalmologist is a member of the medical profession. This person is a qualified medical practitioner who has specialised in the diseases, disorders, and surgery of the ocular region. Direct access by a patient to an ophthalmologist is possible, but in most cases the patient is referred by a general practitioner or optometrist.

Optometrists obtain their Bachelor of Science degree following a full-time university course of four years. They have special expertise regarding lenses and their applications. When an examination reveals that spectacles or contact lenses are needed, optometrists will usually supply them as part of a total service for which they accept responsibility. While not being medical practitioners, optometrists' training enables them to recognise eye conditions requiring referral to an ophthalmologist.

An optical dispenser's role includes the interpreting of optical prescriptions and dealing with patients. The dispenser must understand the purpose of the elements of the prescriptions and the various forms that the lenses ordered may take. Dispensers possess knowledge of the types and uses of the various single vision and multi-focal lenses. An optical dispenser is not qualified by law to test sight or prescribe treatment for difficulties of vision.

The principal work of the optical mechanic is to make lenses and assemble spectacles to specifications given to him by an ophthalmologist or optometrist and an optical dispenser. An optical mechanic also is not qualified by law to test sight or prescribe treatment for defects of vision. It is appropriate to draw particular attention to the following topics contained within the provisions of the Bill.

It is considered that the Opticians Act should be retitled the 'Optometrists Act' to more appropriately reflect the role of optometrists in modern South Australia. The term 'optician' means 'maker of optical instruments, especially spectacles', whereas the term 'optometrist' describes a person who is a 'sight tester'. Since the passing of the original Act, the training of optometrists has expanded considerably to include the detection and diagnosis of disease and the term which means 'sight tester' more adequately reflects the higher order or more professional component of the role of the optometrist today. 'The maker of optical instruments' more appropriately reflects the skills and current role of optical mechanics.

In addition to the retitling of the Act to reflect modern optometrical practice, it is considered that the Board of Optical Registration should be restructured. The current Act provides for the establishment of a Board of Optical Registration which consists of five persons appointed by the Governor. The Act requires that the five persons appointed are nominated as follows:

- Two certified opticians and one legally qualified medical practitioner who are all nominated by the Minister.
- One certified optician and one legally qualified medical practitioner who shall be nominated by certified opticians.

Examination of the composition of this Board of Optical Registration indicated that its operations would be enhanced if its membership was revised to provide for the appointment of a person who is a legal practitioner and one other person who is neither a registered optometrist nor a legal practitioner who has been selected by the Minister to represent the interests of consumers of optical care. This additional representation on the professional board mirrors similar arrangements which now apply in the Dentists Act and the Medical Practitioners Act.

The select committee report considers that optometrists should be permitted to use topical anaesthetics and a limited range of diagnostic drugs which have the capacity to dilate or contract the pupil of the eye. Whilst the committee supports marginal relaxation of the control over the use of ocular drugs, it was also of the view that the use of any drugs for therapeutic purposes continue to be restricted to the medical profession. Optometrists practising in South Australia obtain a Bachelor of Science degree in optometry. It is a four-year university level course available in Brisbane, Sydney and Melbourne. In addition to covering optics, the course provides some coverage of diseases and the use of ocular drugs.

Optometrists accept a defined responsibility in terms of recognition and detection of eye disease. The most important conditions in terms of loss of vision are in the back of the eye. They are the most difficult to treat, and the earlier these conditions are detected the more hopeful is the treatment. Whilst vision loss can occur as a result of diabetes and glaucoma, once that vision is lost it is usually difficult if not impossible to retrieve. However, before vision is lost significant damage has usually occurred to the retina. This damage can be detected by the screening of the eye and, if it is detected, vision loss can be prevented at that early stage. The only way to see the back of the eye is through the pupil. When a light is shone into the pupil, it contracts and makes it more difficult to examine the interior of the eye. Optometrists are experienced in looking through small pupils. However, there are major advantages in making the pupil larger with the use of pharmaceuticals in order to be able to see more, particularly at the periphery of the retina. Well-trained optometrists can recognise abnormalities and can question if certain criteria are not met during their examinations of the eye.

Expert evidence presented to the committee has indicated that the risks involved with the use of topical anaesthetics, myotics and mydriatics are minimal, and the benefits to the patient by enabling early detection of disease are considerable. Although some alarming complications have occurred following the use of mydriatics (that is, substances which dilate the pupil) evidence was that such sequelae were rare.

The committee was satisfied that, on balance, it is in the public interest for optometrists to be permitted to use a restricted range of diagnostic drugs, in particular, topical anaesthetics, myotics and mydriatics. However, the committee strongly held the view that optometrists should not be authorised to use any ocular drugs which have a primarily cycloplegic effect (that is, to relax the muscles controlling the lens). The select committee and particularly Mr Bruce, who was a distinguished member of that select committee, understood all that perfectly. All members, including me, were on a sharp learning curve. The select committee also supports the continued prohibition on optometrists from supplying or prescribing drugs for treatment. Provision has been made within the Bill to remove any impediment from optometrists being allowed to use drugs recommended by the Controlled Substances Advisory Council, which is established under the provisions of the Controlled Substances Act.

Submissions to the committee clearly indicated that, with children under eight years of age, what may initially be perceived as eyesight difficulties might be arising from dyslexia, specific learning difficulties or a range of other organic causes. Therefore, the priority for children should be for them to be examined by an ophthalmologist who can have regard to all the other systems of the body which might be impacting on the difficulties. The select committee considered that children under eight years of age should not be examined by an optometrist for the purpose of detecting disease or providing an optical appliance including spectacles and contact lenses unless the child's vision problem has been assessed by an ophthalmologist in the 12 months prior to the patient presenting to the optometrist.

The select committee has concluded that the prohibition of the sale of ready-made reading spectacles is not warranted at present. Ready-made spectacles are mass produced single vision reading spectacles. Since late December 1986 single vision ready-made reading spectacles have become readily available for sale to the public from pharmacies and have been widely advertised on local television stations. These spectacles are available on a self-selection basis and are produced in a range of lens strengths.

Expert advice has been received that ready-made single vision reading spectacles do not cause further damage to the wearer's eyesight and, further, that no special skills are required in their dispensing, particularly where the purchaser already possesses a pair of prescription spectacles and has some idea of the lens magnification power required. Therefore, to prohibit their sale is difficult to justify.

Whilst accepting this position, it is acknowledged that the major problem with the availability of the ready-made spectacles arises when a person chooses to purchase a pair as their first reading spectacles and they have not been screened by an ophthalmologist or an optometrist, particularly as some of the major eye diseases are symptomless and early detection provides improved opportunities for beneficial treatment. Therefore, the Bill provides for the sale of ready-made single vision spectacles provided that an appropriate warning notice is attached to every pair at the time of sale and that the warning notice emphasises, first, that deterioration of eyesight can be caused by ageing and eye disease which can be symptomless in the early stages and, secondly, that it is advisable to have eyes regularly examined by an ophthalmologist or optometrist.

A related matter which has been considered was whether the volume of sales of ready-made spectacles has the potential to affect the viability of optometrical and dispensing practice in this State. On the information provided, the current sales volume is insufficient to cause concern. Further, a high percentage of these spectacles are being purchased as a spare pair and not as an alternative to prescription spectacles. Nevertheless, if the sales volume of these appli-

ances continues to expand to a point where it is seriously detrimental to the viability of professional practices, then restrictions on the sale of these appliances may need to be considered to preserve quality assurance.

The select committee supports the view that provision should be made under the new Act for optical dispensers to be registered. At present, the Opticians Act precludes a company or business from dispensing prescriptions for glasses unless every shop or place of business is carried on under the actual supervision and management of a certified optician.

For many years, the strict letter of the law has not been observed and there appears to have been no resultant harm to consumers. Dispensing organisations have approached successive Governments seeking to have the present legislation changed to enable optical dispensers to dispense ophthalmologists' and optometrists' prescriptions without the supervision requirement. It has been submitted that the consumer would benefit from deregulation of dispensing through competition. Countervailing arguments claim that the *status quo* should be maintained in the interests of quality of eye and vision care.

There is benefit in having a skilled person dispensing prescriptions for spectacles. It assists in ensuring a good quality product and that the optical appliance dispensed is in accord with the prescription and is manufactured to suit the patient's facial features and lifestyle. Registration of persons involved in dispensing could provide the client with a legitimate redress in those cases where a problem arose through the dispensing.

On balance, it is therefore proposed that it would be in the interests of South Australians for provision to be made for optical dispensers to be registered so that they can work without the supervision of an optometrist and that provision for this be made by amendment to the Opticians Act. Concurrent with such registration of this category of optical health care worker under the Opticians Act, it is intended that they be also constrained in advertising to the same ethical standards imposed by that legislation upon optometrists.

Licensing would work towards ensuring good quality workmanship and service. To achieve these ends, it is necessary to settle upon a standard of qualifications to be possessed by persons involved in optical dispensing who are not ophthalmologists or optometrists. The New South Wales Department of Technical and Further Education and the Guild of Dispensing Opticians both offer two year part-time courses of training in optical dispensing.

The Guild of Dispensing Opticians of Australia has indicated that it wishes to withdraw from the provision of training in optical dispensing, and has been in consultation with TAFE colleges in New South Wales, Victoria, South Australia and Western Australia with a view to transferring the training to those colleges. As a result, the New South Wales Department of Technical and Further Education has agreed to provide the course on both a day release and correspondence basis. The correspondence course will require attendance at a TAFE college for a set period of practical instruction. It is anticipated that the prescribed course will be of approximately 120 hours duration.

The South Australian Panorama College of TAFE and its Western Australian counterpart have both indicated their preparedness to provide support for students who enter the New South Wales Department of Technical and Further Education correspondence course. This support will include provision of practical training and examination supervision.

It is anticipated that all the persons who are currently employed as optical dispensers in South Australia under the supervision of optometrists may not have undertaken a course of study in optical dispensing but have obtained thorough on-the-job training over a number of years. The select committee therefore considered that it would be appropriate to provide an opportunity for these people to be considered for registration provided they could satisfy the Optical Dispensers Registration Committee that they were resident in South Australia, were of good standing and had gained their livelihood from optical dispensing in South Australia for a minimum of two years in the preceding three years prior to application. Such applications will only be permitted for a period of one year from the date of bringing into force this legislation which enables the registration of optical dispensers.

Specific provision is also made for persons employed and training as optical dispensers under supervision to receive limited registration as students in training. Most of the complications which occur with patients who are prescribed contact lenses arise from inadequate after-care and inadequate instructions to the patient. This difficulty is well accepted and is reflected in the medical benefits schedule. Item 186 of the schedule includes an allowance for the prescriber to fit a lens and provides for after-care visits. The optical dispenser's training is focused upon spectacles and not contact lenses, and it would be against the public interest to allow optical dispensers to be involved with the fitting and dispensing of such lenses.

The Government believes that this accommodates the views raised by the select committee and feels that it could accept the recommendations from that report. I seek leave to have the explanations of the clauses inserted in *Hansard* without my reading them.

Leave granted.

Explanation of Clauses

Clauses 1 and 2 are formal.

Clause 3 substitutes a new long title to reflect the new material included in the principal Act by the Bill.

Clause 4 changes the short title of the Act.

Clause 5 repeals the section setting out the arrangement of the principal Act.

Clause 6 makes amendments to the definition section of the principal Act.

Clause 7 replaces the heading to Part II of the principal Act.

Clause 8 replaces Division I of the principal Act with two new Divisions.

Clause 9 amends section 16 of the principal Act. Paragraph *(a)* includes optical dispensers in the board's power to suspend practitioners. The other changes are consequential.

Clause 10 makes a similar change to section 16a and increases the penalty in line with other Acts regulating professional activities.

Clause 11 makes a consequential change.

Clause 12 inserts new section 17a. The section provides that action taken by the board against an optical dispenser must be taken by the Optical Dispensers Registration Committee on behalf of the board.

Clause 13 substitutes a new heading for Part III of the principal Act.

Clause 14 amends section 20 of the principal Act. Paragraph *(a)* of section 20 is struck out. This provision is transitional and is now redundant. Paragraphs *(c)*, *(d)* and *(e)* remove the concept of 'good character' and paragraph *(f)* substitutes the concept of 'fit and proper person'. This

is the terminology used in recent professional registration Acts.

Clause 15 replaces sections 22 to 25 with new sections. New section 21 provides for registration of optical dispensers. Subsection (2) requires the Optical Dispensers Registration Committee to consider and determine applications on behalf of the board. Section 22 provides for limited registration.

Clause 16 replaces sections 26 to 31 with new sections. New section 26 restricts the lawful practice of optometry. Section 27 requires every place at which optometry is practised to be under the management of an optometrist or, where the only branch of optometry that is carried on at that place is dispensing of prescriptions, by an optical dispenser or an optometrist.

Clause 17 substitutes new Part IV of the principal Act. This part deals with registers kept under the principal Act.

Clause 18 makes a consequential change and increases the penalty under section 35.

Clause 19 removes section 36 and inserts a new section recognising the right to sell ready made glasses.

Clause 20 repeals section 37 of the principal Act.

Clause 21 makes a consequential change.

Clause 22 replaces subsection (5) of section 45.

Clause 23 increases the maximum penalty that can be prescribed by regulation.

Clause 24 repeals the first schedule.

Clause 25 inserts a new clause in the regulation making powers set out in the fourth schedule.

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

ELECTORAL ACT AMENDMENT BILL (No. 2)

In Committee.

(Continued from 18 February. Page 2865.)

Clause 14—'Manner of voting.'

The Hon. K.T. GRIFFIN: This clause deals with an additional ground upon which a person may apply for, and receive, a declaration vote. The additional ground is that a person must be working in his or her employment throughout the hours of polling and could not reasonably be expected to be absent from work for the purpose of voting.

I know that this issue was raised in the House of Assembly and it ought to be clarified in this House. The issue relates to the way in which the provision will be construed. Does it mean that the person will be working during all the hours of polling and in those circumstances will not be able to get away from work? Will that person be eligible? It could be construed as working from 8 a.m. until 6 p.m. and that it cannot be reasonably expected that the person be absent from work for the purposes of voting, although it does not take into account the period of a lunch break, which might be a time when the person can get out to vote. Will the Attorney give some indication of what he understands to be the substance of this provision and how it will be applied?

The Hon. C.J. SUMNER: It has been drafted to cover the situation as outlined by the honourable member. So, it would apply to a person who is involved with employment throughout the hours of polling, that is, 8 a.m. until 6 p.m., and who cannot get away from work to vote.

The Hon. R.I. LUCAS: Given that there are powers under the parent Act to prescribe other reasons for applying for a declaration vote, what is the reason for this provision? Has there been a great demand for this to be a separate condition?

The Hon. C.J. SUMNER: It is true that it could have been prescribed as a reason, but the Electoral Commissioner believed that the matter was sufficiently important to recommend that it be included in the legislation as, apparently, reasonably often an excuse in this regard is given for not voting.

The Hon. R.I. LUCAS: I want to pursue the matter that the Hon. Trevor Griffin raised and the answer given by the Attorney, relating to voters speaking to Party officials and saying, for example, that they will be working from 10 until 5 o'clock, or something like that—not through all the hours of polling, 8 o'clock until 6 o'clock, but close to it—and that they ought to be entitled to a declaration vote. Will the Electoral Commissioner instruct his staff that those people should not be issued with declaration votes, with the Party officials thus following those instructions as well?

The Hon. C.J. SUMNER: In those circumstances voters will be told that they cannot get a declaration vote.

The Hon. K.T. GRIFFIN: That is a different interpretation from that given in the House of Assembly, where the Hon. G.J. Crafter in response to a question asked by the member for Mitcham (Mr Baker) said:

> A form of words has been looked at fairly carefully, and the interpretation that will be placed on it will be a practical one and not the strict and narrow interpretation that the honourable member suggests.

So, there is a difference here, and I think that the interpretation of this should be clearly expressed. Personally, I have no difficulty with the interpretation given by the Attorney-General, but the official view of this provision should be on the record.

The Hon. C.J. SUMNER: This relates to people having the opportunity to vote without going to the polling booth; obviously, if they come along with an application, they will not be put in a torture room to find out whether they are going to start work at, say, a quarter past eight and finish at a quarter to six. It will be up to the individual to make the declaration in terms of the legislation. However, the intention is that if a person is able to vote on the day then that person ought to do so. So, if a person lives at Childers Street, North Adelaide and works at O'Connell Street from 8.30 a.m. until 6.30 p.m. that person will be told that they ought to vote between 8 and 8.30 a.m., as they have the opportunity to do so. As I say, it is an application which has to be made by the elector. Electors will not be grilled about the precise circumstances, but will have to make a declaration in terms of the legislation. The intention is that if they are not able to vote because they are working those hours they are entitled to a declaration; if they are able to vote they ought to exercise their vote in the normal way.

The Hon. R.I. LUCAS: Whilst I agree that it is up to the individual voter to make that declaration, nevertheless, given the interpretation—and certainly I agree with it—if in any recount or scrutiny of votes a Party official could establish that a person had been issued with a declaration vote and yet had been required to work from only 10 o'clock to 5 o'clock (which could be substantiated with a declaration from the employer), even at that stage the vote could be disallowed on the basis that the declaration had been incorrectly issued by the Electoral Commission staff.

The Hon. C.J. SUMNER: I am not sure that it would invalidate the vote. The person may well be prosecuted for making a false declaration in those circumstances.

The Hon. R.I. Lucas: But the vote would remain, would it?

The Hon. C.J. SUMNER: I am not sure. The honourable member has put that question on notice, and I will need to

give some consideration to it. There would be nothing wrong with the vote except that the person would have made a declaration to get a vote not made in the normal way that one casts one's votes. I will take on notice the question whether that would invalidate the vote and give the honourable member a reply.

The Hon. R.I. LUCAS: I appreciate that. I point out that if they knew that it would not invalidate a vote Party officials could well engage themselves in a rounding up of declaration votes on that basis. I guess it would depend on what penalty might apply to someone who falsely claimed a declaration vote and whether that was pursued. However, I will await the Attorney's response on this matter.

The Hon. C.J. SUMNER: I make the point that it is not related only to this section that we now seek to insert in the Act. That point applies to all the other reasons for obtaining a declaration vote and, if a voter declares that they meet the criteria for a declaration vote, when in fact they do not, whether that gives rise to a challenge to the vote itself. It also raises the problem of business people especially who anticipate being away on the election day. Should plans change at the last minute, or if a person intends to travel on holiday on that day, fills out their declaration vote and then finds that their mother is sick or the children are getting the flu and they cannot go, presumably in those circumstances the vote should not be invalidated. I will give the matter further consideration and let the honourable member have a reply.

Clause passed.

Clause 15—'Issue of declaration voting papers by post.'

The Hon. R.I. LUCAS: First, would the Attorney-General indicate whether any major administrative inconvenience was created by the old provision which we debated at length during 1985? I do not have any strong objections to the amendments that are sought but, secondly, can the Electoral Commissioner, through the Attorney-General, give a guarantee that, if applications are to be delivered right on the death knock of 5 p.m. on the Thursday, the turnaround can be achieved by 6 p.m., that is, one hour after that?

The Hon. C.J. SUMNER: Essentially, this is a bureaucratic amendment. It is not a matter relating to my policy or that of the Government. I am advised that, if applications are received up until 9 p.m., there is no way that the voter can then get the ballot-paper in time to vote. The post would be closed. I am not familiar with how Australia Post works, or the precise times of clearance to ensure that ballot-papers can be delivered the next day but, if they are all processed by 6 p.m., I am assured that, in the normal course of post, they would all be delivered on the Friday.

The Commissioner informs me that, if the existing provision is retained, he will have electoral staff processing declarations and dispatching ballot-papers which he knows will not arrive in time for the voters to exercise their vote by way of declaration vote on the Friday or Saturday morning.

The Hon. R.I. Lucas: If the application is received by 5 p.m., the Electoral Commissioner can turn it around by 6 p.m.?

The Hon. C.J. SUMNER: One would assume that to be the case, unless there is some quirk. Perhaps masses will arrive at a particular location all at once, but during the last election the Commissioner's experience was that there was no problem in processing the votes that arrived at 5 p.m. and posting by 6 p.m. I am not sure whether 5 p.m., 6 p.m. or 7 p.m. is the appropriate time: it depends on Australia Post. As I recall the previous debate, we talked about maximising the opportunities for people to exercise their declaration vote. That is something with which I agree. As far as the Government is concerned, it is not a matter of policy: essentially, it is a bureaucratic problem. It does not particularly bother me if electoral staff have to work until 9 p.m., provided that something flows from it. There is not much point in having them working until 9 p.m. if the work from 7 p.m. until 9 p.m. is pointless because of the postal system. I am not sure whether 5 p.m. is the best time, or whether it could be some later time. I could make an inquiry of the Electoral Commissioner to establish what is the absolute last moment that the application can be posted and one can still be assured of delivery the next day. I suppose it depends on whether it is a delivery to the country or to the city.

I imagine that there could be a later cut-off time for city delivery as opposed to country delivery, but I am not aware of the precise postal times. That seems to be the only issue. The time should be such that it fits in at the last possible moment that it is practicable to get the ballot-papers posted by the Electoral Commissioner so as to arrive at the elector's address before they have to exercise the declaration vote by post.

The Hon. R.I. LUCAS: I have no problems with the 5 p.m. closure for the receipt of the application. The only question I raise with the Electoral Commissioner is the 6 p.m. closure for postage, because I know that in the suburbs Australia Post has made a half promise that, if an item is posted by 6.30 p.m. within South Australia, there will be delivery next day. My understanding is that a year ago the Central GPO had an 8.30 p.m. closing time and I presume it is still that time, but it is certainly later than the suburban closure of 6.30 p.m. I agree with the general principle about which the Attorney-General speaks and that is that all we should talk about is trying to maximise people's chances of receiving the voting papers back on the Friday. If we do not do that, it is a waste of time. There is no difference. The only question I raised about 6 p.m. is that I understand that there would still be same day delivery from suburban post boxes.

The Hon. C.J. SUMNER: There are 60 issuing points for declaration votes by post, 47 returning officers, 13 Commonwealth electorate head offices, and the head offices of the State and Federal Electoral Commissioners. So, we have city and country issuing points. The Electoral Commissioner advises me that the collections by Australia Post from mail boxes commence at 6 p.m. and extend to about 9 p.m., depending on the location. The central office would be perhaps 9 p.m. We have to try to find a common last moment, as there is no point having some people being able to post at 8 p.m., knowing that a good number will not get there, when we know that, if we post by 6 p.m., they will all get there. We have to establishing a rule applicable throughout the State, irrespective of whether the post box is in the metropolitan area or the country, and that is why it has come back to 6 p.m.

I have the same policy traditions as the honourable member, namely, to maximise the opportunity for people to vote with the declaration by post, but I am advised that to go past 6 o'clock will mean that some papers will not reach the elector in time to vote. Obviously, if applications are not accepted after 5 p.m., they can still vote personally on the day and they will know at 5 o'clock on the Thursday that their postal vote has been rejected. If they do not receive the papers back on the Friday, they can still vote on the Saturday in the normal way.

Clause passed.

Clause 16—'Times and places for polling.'

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

Page 5, line 40—

After *'(a)'* insert *'(i)'*.

After line 45—insert new subparagraph as follows:

and

(ii) if it is apparent that the newspapers referred to in subparagraph (i) will not be widely available in the relevant subdivision before the day previously fixed for polling—

—by the Electoral Commissioner publishing a further notice advising electors of the alteration in a local newspaper that will circulate in that subdivision before that day;

or

if there is no such newspaper—by the Electoral Commissioner taking such steps as are reasonably practicable to notify electors in the particular subdivision of the alteration.

This clause deals with mobile polling booths and the notification of the times and places for polling at such a booth. In particular there is now to be provision for a change in the time of voting at a mobile polling booth. Under the Bill, that change must be notified in the newspaper circulating generally throughout the State no later than the date previously fixed for polling at a particular place. In exceptional circumstances the presiding officer is to take such steps as are reasonably practicable to notify electors in the subdivision of the alteration.

I have some reservations about a change in the times or places of polling at a mobile polling booth, but recognise that in circumstances such as a flood, bushfire, or some other disaster, it may be necessary to make an alteration to the time and place for polling at a mobile polling booth. In those circumstances I have no difficulty with the notification in a newspaper circulating generally throughout the State, but perhaps in some areas where mobile polling booths are used the newspaper will not arrive in time. There may be a local newspaper and I want to see the local newspaper used in circumstances where the State-wide newspaper is not likely to be widely available in the relevant subdivision for the day previously fixed for polling. If there is no local newspaper, the Electoral Commissioner should take actions that are reasonably practicable to notify electors in the subdivision of the alteration.

In moving the amendments, I ask the Attorney-General to identify whether there are any other sorts of circumstances than those to which I have just referred where the Electoral Commissioner would envisage an alteration to the times and places for polling at a mobile polling booth.

The Hon. I. GILFILLAN: The amendment appeals to the Democrats and I indicate our support for it.

The Hon. C.J. SUMNER: The amendment is acceptable to the Government. The changing of times and places for the mobile booth will only occur in very exceptional circumstances. For example, at the last election a time and place was advertised at Pipalyatjara but, as a result of some deaths in that community by way of road accidents, a large group from that community had gone to Calca, and the Assistant Returning Officer, without any reference to the Electoral Commissioner, as he was several hundred kilometres away, took the vote at Calca instead of, as previously advertised, at Pipalyatjara because all the people had shifted.

Amendment carried; clause as amended passed.

Clause 17—'Declaration vote, how made.'

The Hon. K.T. GRIFFIN: This clause seeks to amend section 82 of the principal Act and deals with the making of a declaration vote. Subsection (2) *(d)* (ii) provides for the envelope with the declaration vote in it to be lodged with the returning officer for the appropriate district before the close of the poll on polling day or sent by post so as to reach the returning officer before the expiration of seven days from the close of poll.

I understand what the Attorney-General said in his second reading speech in respect of this clause that, because of the poor postal service these days, it is quite likely that a declaration vote deposited in a post box or at a post office after the close of business on a Friday night or on a Saturday is unlikely to bear the postmark before the time of the close of polls on Saturday. That is a problem, and I am not sure what other way can be found to deal with it.

I am equally concerned about the prospect of declaration votes being delivered rather than posted after the close of polls and within seven days after the time, because no evidence will establish that the declaration vote was actually made before the close of the poll. I circulated an amendment, which I do not intend to move and which sought to try to close the door after the horse had bolted, to provide for a penalty of $2 000 or imprisonment for six months or both upon a person who made a declaration vote after the close of poll on polling day or when acting as an authorised witness—

The Hon. C.J. Sumner: Why aren't you going on with it?

The Hon. K.T. GRIFFIN: I am not sure that it is really satisfactory in dealing with the potential for abuse, but I am open to persuasion.

The Hon. C.J. Sumner: We were going to be friendly about it.

The Hon. K.T. GRIFFIN: Were you? We can talk about it. The amendments that I circulated provided a penalty upon a person who made a declaration vote after the close of the poll on polling day or, acting as an authorised witness to a declaration vote, falsely certified that the declaration vote was made before the close of poll on polling day, or delivered or posted to a returning officer an envelope containing a declaration vote knowing that the vote was made after the close of poll on polling day. To some extent it would have helped the situation, and I am open to persuasion that I should continue with it but, having thought about that amendment, it seemed that it really did not come to grips with the whole problem; that is, how can it be proved that the vote was made before the close of poll?

On the one hand there is a problem with the postmark. Even if the vote were made before the close of poll and posted, it would not be postmarked prior to the close of poll. That has the potential to disenfranchise certain people. On the other hand, there is the very real prospect of abuse where somebody may have applied for a declaration vote, had not made it prior to the close of poll and some time within seven days decided, 'Well, I had better do it to save myself being fined' or 'The poll is so close, I had better get my vote in.' That is the difficulty I see; that there is a dilemma on the one hand between some voters who voted according to the provisions of the Act prior to the close of poll but the postmark was not stamped on the envelope prior to the close of poll; and on the other hand the potential for abuse. On balance, after further consideration, I came down in favour of merely maintaining the *status quo.* Unless I am persuaded otherwise, that is where I will leave it. I have decided to oppose this clause, and if that is not successful, I will reconsider the position.

The Hon. R.I. LUCAS: The shadow Attorney-General is always more reasoned and moderate than I, but I strongly oppose this clause. The Attorney-General, the Hon. Mr Gilfillan and other members will remember the debate on this legislation in 1985.

The Hon. C.J. Sumner: We agreed to it.

The Hon. R.I. LUCAS: Who is 'we'?

The Hon. C.J. Sumner: The Parliament.

The Hon. R.I. LUCAS: Agreed to what?

The Hon. C.J. Sumner: The present Act.

The Hon. R.I. LUCAS: But we had a great debate about this particular matter.

The Hon. C.J. Sumner: You are not going to rehash it?

The Hon. R.I. LUCAS: I am not rehashing it; I will refresh the Attorney-General's memory. In 1985, we had a long debate about this particular matter, and the same arguments were presented by the Electoral Commissioner through the Attorney-General. However, in the end, the decision taken by the Parliament and supported by the Hon. Mr Gilfillan and the Attorney-General was to support an amendment that I moved not to allow the potential for abuse that would be allowed if an amendment such as this were supported.

As the Hon. Mr Griffin has outlined, if the Committee allowed this particular change, what could occur is that persons could wait after the close of polling and for a period of seven days after the close of polling and, with an accomplice, friend, or relative who is prepared to act with that person, complete a vote in the knowledge of what might have occurred on polling day. The Attorney-General is on record as accepting the amendment moved by me when this provision was debated in 1985. There is no record of the Hon. Mr Gilfillan actually having spoken but, given his approach during that debate, he spoke when there was disagreement between the major Parties or if he had a different view, which he put succinctly on behalf of the Democrats.

There was no dissent by any member, and the Attorney-General, the shadow Attorney-General, and me are all on the record, having debated this, and the Government accepted that particular proposition in 1985. If that was the case in 1985 and the Attorney supported that position then, I cannot accept his change of heart. The argument remains the same; there is no new evidence. We all acknowledged in 1985 that there was a problem concerning people who posted votes on a Friday, for example, and I imagine that that is a decreasing number because not too many people believe that Australia Post delivers on Friday night and Saturday.

The proposition was accepted that we needed to prevent the potential for abuse and the possibility of persons voting after the close of polling and for up to seven days after the close of polling for a particular election or electorate. Therefore, I strongly oppose the Government's proposition in this Bill and I would be interested to hear the Attorney's response as to why his position is now opposite to the position he put in this Council in 1985 in relation to this matter.

The Hon. C.J. SUMNER: There is something of a dilemma. The postmark proposition, which applied before the enactment of the 1985 Act, was one way of determining whether a postal declaration vote will be admitted, but we know that there were problems with that method. Often the postmark could not be read and further there was a problem in that people had to post their vote in time to get a postmark on a Friday, because on a Saturday, except perhaps at the central or major Australia Post offices, no-one would be working.

People would post their ballot papers on a Saturday expecting the envelope to be postmarked prior to the close of polling but, in fact, the envelope was not stamped until later on the Saturday or on the Sunday. Therefore it was agreed, I believe by the Parliament as a whole, that the postmark system of determining whether or not a vote should be admitted was not satisfactory. Having made that decision, we had to find an alternative method, and it was decided that the vote should be in the hands of the returning officer within seven days from the close of the poll.

Our amendment provides that the vote can be delivered or sent by post, but it must arrive within that time. Delivery is just another way of ensuring that the declaration postal vote arrives within that time. The Government intended to accept the amendment foreshadowed by the Hon. Mr Griffin, because it views it as a serious matter if voters and authorised witnesses, after the close of polling, attempt to, in effect, falsify a declaration vote.

The Hon. R.I. LUCAS: The Attorney, in indicating that this foreshadowed change is just another method, completely misunderstands the difference. One aspect in relation to postage and delivery within seven days after the close of poll is the objective determination as to whether that vote was lodged prior to the close of poll. Two years ago this Council and the Attorney accepted that the problem of personal delivery of a declaration vote as opposed to postage, which could be independently and objectively measured, was that personal delivery could occur at any time within the seven days after polling.

Indeed, the vote could be completed at any time after the polling day to which the vote related. Therefore, votes might not be lodged prior to the close of polling on polling day, but might be completed after the possible result of the election became known through the media on the Saturday, Sunday, or Monday. People could lodge votes after polling day. In marginal seats, such as the seat of Adelaide, a few votes here or there could well be the difference between either political Party winning the seat. There is the potential for abuse. I refer the Attorney to *Hansard* of 8 May 1985. I moved an amendment and the Attorney in response on behalf of the Government said:

> I am willing to accept the amendment.

The Hon. I. Gilfillan interjecting:

The Hon. R.I. LUCAS: He said a lot of other things before that, but I will not go into that. There was a long debate and the Attorney referred to problems both here and there and the potential for abuse. He said:

> I understand what honourable members are concerned about—that people may have their vote during the following week knowing the result of the election, but of course they would have to have had a ballot paper in any event in order to do that. Presumably . . . [it] would not be very great.

There is considerable other debate, which I will not repeat, but the Attorney's final position on behalf of the Government in relation to the amendment I moved was:

> I am willing to accept the amendment.

This provision in the Bill embraces that debate. The Attorney's present position is completely contrary to the position that the Attorney put down in 1985 in the interests of electoral fairness. Given that the Government has introduced this Bill, I urge the Hon. Mr Gilfillan, in the interests of electoral fairness, to maintain the position that pertained in 1985.

The Hon. I. GILFILLAN: I am grateful to the Hon. Rob Lucas for raising this matter again. It seems on reflection that there are problems with this option, and I do not believe that the amendment, although positive, canvassed by the Hon. Trevor Griffin, which, on reflection, he decided not to move, would do any more than shut the stable door. It is difficult to establish declaration votes that have been deliberately falsified, and it would be difficult to prove an offence. It seems to me that there would be a much stronger argument for removing the option of delivery in that circumstance.

Although a postmark may be illegible and a minority of votes may be indeterminate, certainly those postmarked after the election would give a fair indication of those who had posted votes after the day. It seems to me that we are leaving a loophole for the possibility of a contrived distortion of the poll. I share the concerns expressed by the Hon. Rob Lucas.

The Hon. C.J. SUMNER: The only way to go about it then is to say that all ballot-papers must be with the returning officer by 6 o'clock on the Saturday, fullstop.

An honourable member interjecting:

The Hon. C.J. SUMNER: What do you mean 'the status quo'?

An honourable member interjecting:

The Hon. C.J. SUMNER: In the Act? The problem with that is that it creates the anomaly, that a person can go to the returning officer on, say, the Monday with his vote and the returning officer says, 'No, I cannot receive that vote because it is a declaration vote.'

The Hon. R.I. Lucas: You can lodge it on the Saturday.

The Hon. C.J. SUMNER: The problem is getting to the anomaly. A voter can go to the returning officer before 6 o'clock on the Saturday and say, 'Here is my declaration vote which has been done according to Hoyle.' The vote was prepared and authorised correctly; it was a proper declaration; and the voter could go to the returning officer on the Monday and say, 'Here is my declaration vote, which is a proper vote, done in accordance with the law.' Now, the returning officer must say, 'No, I cannot accept that.' The voter can then go to the post office and post that vote and, if it arrives by 6 o'clock on the following Saturday, it is a valid vote. The Electoral Commissioner is saying that an anomaly is created by receiving votes that are posted up until 6 o'clock seven days after the poll but not receiving votes that are delivered. That makes a farce of the situation. Frankly, I think that the best—

The Hon. K.T. Griffin: What you are saying is that the postmark is irrelevant.

The Hon. C.J. SUMNER: It is under this—

The Hon. K.T. Griffin: In the circumstances that you are indicating.

The Hon. C.J. SUMNER: Well, the postmark is irrelevant. We took out the postmark as being a relevant factor when we passed the 1985 Bill because of all the problems of postmarks—overseas votes, interstate votes—

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: Under the current Act if it arrives by 6 p.m. on day seven—that is, the Saturday following polling day—the declaration vote which is sent by post enters the count.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: I don't know about that. What I am saying is that that is what we agreed to in 1985.

An honourable member: It wasn't what I agree to.

The Hon. C.J. SUMNER: I do not know what you agreed to, but that is what the Act says; so one has to assume that you agreed to it.

The Hon. I. Gilfillan: The majority agreed to it.

The Hon. C.J. SUMNER: The majority agreed to it, yes. I do not recall what the voting was on that issue.

The Hon. R.I. Lucas: You are saying that the Electoral Commissioner did accept, at the last election, votes that were clearly postmarked after the day of the election.

The Hon. C.J. SUMNER: That is what we agreed to in the 1985 Act when we took out the requirement relating to postmarks. Postmarks now play no role.

The Hon. C.J. SUMNER: Once we accept that postmarks are a problem, chaotic and unfair, as the Commonwealth accepts through its exhaustive select committee procedure, and as we accepted when we picked up in the 1985 debate a number of the Commonwealth proposals to bring them into line with the State (although we did not accept all of them, as I recall), this—

The Hon. R.I. Lucas: Was it a part of the Act, or was it an administrative instruction?

The Hon. C.J. SUMNER: It used to be part of the Act; the postmark determined the validity of the vote, that is, if it was postmarked before the close of polling, which was then 8 p.m. on the Saturday. The problem was that that was somewhat confusing and arbitary for the electors who posted that vote on the Saturday but, because Australia Post was not working on Saturday night, it would not get postmarked until Sunday night.

In those circumstances their vote was invalid or, if the postmark was unreadable, there would be a blue about whether the vote was posted in time. We are trying to do away with the postmark as determining the time for admission of a vote to the count. We were saying that the operative time should be the receipt of the posted ballot-paper by the returning officers, and that time was fixed as being 6 o'clock, seven days after polling day. We made that decision in 1985.

The Hon. K.T. Griffin: We are rethinking it.

The Hon. C.J. SUMNER: I can see that you are thinking. But, if one accepts that postmarks are not appropriate, one must find some more appropriate way. I thought that the Council had accepted the policy which did away with postmarks. If one accepts that the completion of all the formalities by 6 o'clock on polling day is necessary, with the arrival of other votes by 6 o'clock on the following Saturday being a precondition for their being included in the count, then whether they arrive by post or are delivered is somewhat irrelevant, provided that—

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: That is the point that we are putting—provided that the formalities have all been concluded by 6 o'clock on the Saturday. In order for there to be a problem, both the voter and the authorised witness will have to commit an offence, under the Electoral Act, to put in the votes—

The Hon. I. Gilfillan: How difficult would it be to prove it?

The Hon. C.J. SUMNER: I don't know; how do you prove anything? There are a lot of ways. But, of course, they will have to have the ballot-papers as well. People will be unable to get ballot-papers after 6 o'clock on the day. This relates only to people who have received ballot-papers by post and who have not voted by 6 o'clock on the Saturday. So, it is a fairly small group. Having received their ballot-papers, if they have not voted by 6 o'clock on election day, in order for them to be guilty of an offence, or for there to be a problem, they would have to fill in those ballot-papers and get an authorised witness to comply with the breach of the law, in filling out and sending ballot-papers after 6 o'clock on Saturday. One cannot create new ballot-papers.

The Hon. I. Gilfillan: That is really an immaterial obstruction.

The Hon. C.J. SUMNER: But we are not talking about people printing ballot-papers or the Electoral Commissioner sending out ballot-papers after 6 o'clock; they have to have been received by the voter and, with the provision that we have just made, which brings back the time by which the votes are sent by post to 6 o'clock on the Thursday, everyone should have their votes in on the Friday and therefore be able to comply. It is really a question of how many people would not comply and therefore, deliberately decide, after the ballot is closed, to defraud the electoral system.

When one weighs it up, it is probably not a great problem compared with the potential disfranchisement of people by the old system of using the postmark as the time of determining the admissibility or otherwise of the vote. I think the Hon. Mr Griffin has been through all this and has come

to the conclusion that he will not oppose the proposition put by the Government. Having thought it through again myself, I think that the Government's proposition is a tenable one. But, I think it would be assisted by the penalty clause, which makes it quite clear to both the elector and the authorised witness that authorising a declaration vote after 6 o'clock on polling day is a serious offence which does bring about the potential for imprisonment.

The Hon. L.H. DAVIS: I do not seek to prolong the debate, but quite clearly there is a dilemma between using the postmark and allowing the vote after the time for voting has passed. One can understand the difficulties of using a postmark, given, as the Attorney-General has explained, that Australia Post is closed on Saturday. Indeed, in the event of a strike there could be a problem with the postmark system if one used Australia Post on the Friday or even two or three days preceding the election. On the other hand, there is the difficulty that we are now canvassing about admitting into the count votes that had actually been cast after the polls had closed. Is the Attorney-General aware of any other Western country where votes are allowed to be cast after the poll has formally closed?

The Hon. C.J. SUMNER: They are not allowed to be cast. That is not right.

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: No, it is not permitted in this Act, either. If one casts a declaration vote after the close of poll one would be (and particularly on the Hon. Mr Griffin's amendment) guilty of an offence, which could bring a term of imprisonment. I understand that this is the situation that the Commonwealth has now accepted. I do not know whether it was accepted by all the Parties—but they seem to be able to reach some agreement on these matters in the Commonwealth Parliament through their select committee process. I can see the problem, but the other problem is the potential disfranchisement of a good number of voters because, having posted their vote on the Saturday fully expecting that to be okay, they find that it has been thrown out because it did not bear a postmark before 6 p.m. on Saturday. We are talking about a potentially small number of people; one must have the ballot-paper sent to one in the first place and then presumably that person has to have overlooked voting on the Saturday, spot that the election result is close on the Sunday—

The Hon. L.H. Davis: That is the point I am making; the person is in fact voting after the poll has closed.

The Hon. C.J. SUMNER: Yes, and one would be committing an offence by doing that. If the Hon. Mr Griffin's amendment goes in, one would be committing a very serious offence by doing it if it were proved, I think the courts would take a pretty dim view of it.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: I am not sure that it could not be proved. There are many instances where one could say 'You wouldn't prove it.' I suppose that, if the person got together with an authorised witness—just the two of them—and decided to do it, it would be difficult to prove. But, often these situations occur when there are other people around. If an election is close, people talk about it. A person could say, for example, 'I have my vote here.' This could said be down at the pub or among friends, or possibly even in a family context: it is not the sort of situation where one would necessarily expect people to be very quiet about it. If one were out to deliberately defraud the system, then I guess one could do it. However, it seems to me that the capacity for deliberate fraud in this situation is not really very great.

The Hon. R.I. LUCAS: Having heard that debate, I must confess that I did not appreciate that the Electoral Commissioner would accept votes that were postmarked after polling day. But, going back through the 1985 debate, I have now picked up the amendment that was made. Indeed, the position that we put down was as I indicated. We also sought to include a position in relation to postmarking. I imagine that the Government's Bill must have removed it and we unsuccessfully sought to put it back in. Accepting those potential problems, my position still remains the same.

I think we overlooked the fact that a person who has a declaration vote and who posts it on a Friday is really living in a fool's world. A decreasing number of people would believe that a post office will process those declaration votes on a Friday night or on a Saturday. The option remains for those persons who get a late declaration vote either to deliver it personally or to have a friend or relative deliver it to any of the 700 or 800 polling booths that are open throughout South Australia on polling day from 8 a.m. until 6 p.m. In relation to other declaration voters who want to post their votes, as long as they do it other than on the Friday prior to or on the Saturday of polling day, they previously would have been covered by other amendments: their votes would be accepted as valid; they would be postmarked, and they would arrive within seven days of polling day.

We should not accept an extension of what I see as being a possible abuse of the electoral system. We are being told that people who act secretly, privately and illegally can still complete declaration votes after polling day, post them and possibly still have them counted in the election. I do not accept that we as a Parliament should support that proposition and we did not put that position in 1985, either, when we debated the subject of postmarking. However, while I accept that that is a problem in the Act (and I do not support it), I do not believe that we should support a proposition that extends that abuse on the basis of equity. I suppose that the Attorney-General's argument can best be summarised on the grounds of equity: if they can abuse the system through postage, equally they should be able to abuse the system—

The Hon. C.J. Sumner: No.

The Hon. R.I. LUCAS: You used an equity argument—personal delivery. I do not believe that we should extend it. My position remains as it was in 1985: we should tighten up the Act to cover potential abuse of the sort that has just been outlined to us relating to people who complete a ballot paper afterwards, who post it and have it arrive seven days after polling day. However, given the fact that we cannot go back on it (and I suppose that the Hon. Mr Griffin will now debate it), I believe that we should oppose the extension of the abuse.

While I still do not believe that the proposed amendment by the Hon. Mr Griffin will be able to prove anything in most cases, and I would be very surprised if we see a case go before the courts, nevertheless, given that even if we successfully oppose this amendment, in the existing Act there still remains the potential to abuse and perhaps the amendment foreshadowed by the Hon. Mr Griffin may scare off one or two people. On that basis, in addition to trying to oppose this extension in the Bill, perhaps we should support the amendment.

The Hon. I. GILFILLAN: I understood that the franking of the actual date was significant. I apologise for that ignorance, but I think that view was shared by other members. As it is now not relevant, the scene changes and, unless we review the whole matter—

The Hon. R.I. Lucas: Would you support it if we did?

The Hon. I. GILFILLAN: I think that it would be worth serious consideration. I am quite persuaded that the extent to which the electoral system can be abused is minimal. I think that probably there are reasonable grounds to say that, within the current parameters, we should insert 'being delivered or posted'. I am ambivalent about making it an offence with a horrendous penalty attached to it because, frankly, if people deliberately tried to do it, they would lie their way out of any possibility of prosecution. The numbers will be so small that the potential to abuse the system is virtually non-existent. In summary, it would be better to leave the Bill unamended.

The Hon. C.J. SUMNER: I thank the Hon. Mr Gilfillan for his support and I agree with him that the capacity for electoral fraud is no different with the Government's amendment in this Bill from what it was following the new Act of 1985 but, because I am so reasonable, and because some quick research by the Electoral Commissioner and Mr Kleinig have indicated the position that I have put to the Committee previously, namely, that the Commonwealth adopt this proposal, may not be correct—

The Hon. I. Gilfillan: You misled the Committee.

The Hon. C.J. SUMNER: You can move motions of no-confidence and take up time tomorrow. I am now clarifying the position. The Electoral Commissioner is not sure whether or not that section relating to postmarking was inserted following the 1984 election. I think the matter needs to be further researched. The Electoral Commissioner should contact the Commonwealth to establish its practice, what the problems are with it and whether they have been addressed by the select committees that have looked at this matter at the Commonwealth level. Perhaps then we can deal with the matter *de novo*.

I appreciate the comments made by the Hon. Mr Gilfillan. I hope that I am not pulling the rug from under him, but the Hon. Mr Griffin did a bit of rug pulling a little earlier by not moving an amendment that I would have accepted. I think that we are all in the situation of having shifted ground somewhat, but that is all to the good. I suppose it indicates, believe it or not, that the Committee system of Parliament can work. I suggest that we pass the clause and then go through the rest of the Bill. I will then recommit it and it can be dealt with tomorrow.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Yes, if we can deal with this Bill and three others, we can return to this Bill tomorrow or the next day.

The Hon. K.T. GRIFFIN: I am happy with that. Some more research needs to be done on the matter. I was under the misapprehension that we still placed some emphasis on the postmark, but I was wrong. I had not carefully examined the matter, but I recollect that in 1985 I tried to get postmarks recognised. One part of the double was accepted, but the other not. That is the reference in the Electoral Commissioner's report on the 1985 election to the fact that this provision—section 82—was amended, but a consequential amendment leaves it open as to when the declaration vote is posted. The area needs to be examined carefully, and I am happy to proceed on the basis that the Attorney-General has outlined and on the basis that when the matter is recommitted it may be necessary to put in some penal provision which deals adequately with the uncertainties of the present provision. I am happy to accept passing it now with it being recommitted possibly on the next day of sitting.

Clause passed.

Clause 18—'Compulsory voting.'

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

Page 6, lines 27 to 31—Leave out paragraph *(b)*.

This provision deals with section 85 of the principal Act and allows the prosecution of an offence of failing to vote in an election or failing to return a notice to the Electoral Commissioner to be commenced at any time within 12 months of polling day. In the Electoral Commissioner's report on the 1985 election, he expressed concern about ensuring that there was a six-month period. The Bill actually seeks to give 12 months. If paragraph *(b)* is deleted, it seems that the *status quo* remains, that is, that the provisions of the Justices Act requiring proceedings to be issued within six months of the offence having been committed prevails. The removal of *(b)*, in accordance with my amendment, would maintain that position.

The Hon. C.J. SUMNER: The Government opposes the amendment. Twelve months is considered desirable in the circumstances to allow the Electoral Commissioner sufficient time to deal with non-voters. Obviously it takes some time to send out notices requiring explanation for not voting and then deciding whether the explanations are satisfactory before exercising discretion to prosecute. If individuals fail to excuse themselves properly and fail to pay the expiation fee which, of course, is the next step, it is more economical to serve summonses by post, and the Justices Act amendment that we will be dealing with shortly extends the period from four months to six months. There ought to be at least that time to serve the summonses by post, given that the normal situation is six months under the Justices Act for prosecution and four months for service by post. We are seeking to increase to 12 months the time for prosecution and to six months the time for service by post.

It is inserted out of an abundance of caution to enable the matters to be adequately processed by the Electoral Commissioner, given that following the election there has to be a check of the roll to ascertain who failed to vote, a notice sent to the electors asking for an explanation on why they did not vote, a notice giving the option to expiate the offence and, in the case of the expiation fee not being payable, proceedings by post will follow or, if that is not possible, by ordinary summons. In the light of the steps that must be taken following an election, the 12 months period was proposed.

The Hon. I. GILFILLAN: The Democrats oppose the amendment.

Amendment negatived.

The Hon. R.I. LUCAS: Paragraph *(c)* of the proposition before us relates to the reverse onus of proof in that it states that a certificate signed by an officer certifying that a notice was posted to an elector will be accepted in the absence of proof to the contrary as proof of three things, the third being that it was received by the elector on the date on which it would, in the ordinary course of post, have reached the address to which it was posted. I do not know whether it is a normal provision in legislation when serving notice on people.

I hope that it will be interpreted reasonably as it is a tough provision to have an electoral officer signing a notice stating that he has sent a notice to an elector and then, amongst a range of things, it is assumed, in the absence of proof to the contrary, that it was received by the elector on a day on which it would, in the ordinary course of post, have reached the address to which it was posted. Knowing Australia Post, I think that is a tough provision for electors. If it is a normal provision, I express concern and hope that it would be interpreted reasonably in any proceedings if the Electoral Commissioner follows through on prosecutions.

The Hon. C.J. SUMNER: Provision exists under other Acts for service of a summons by post and it is a normal

provision inserted where one is going to deal with a service of proceedings by post. There is no other way of doing it.

The Hon. R.I. Lucas: If you post me a notice and I do not receive it, how do I prove that I did not receive it?

The Hon. C.J. SUMNER: Come to court and say that you did not.

The Hon. R.I. Lucas: How do you prove it?

The Hon. C.J. SUMNER: By your own evidence. You swear that you didn't receive it.

The Hon. K.T. Griffin: It applies to proceedings where the defendant has a right to appear.

The Hon. C.J. SUMNER: Here we are talking not about the summons but about the certificate for the sending of a notice.

The Hon. R.I. Lucas: If I swear in a court that I did not receive it, that is sufficient?

The Hon. C.J. SUMNER: Unless the judge thinks that you are telling a lie, after having been cross-examined. If the judge accepts that you are a credible witness and are swearing to a certain situation on oath, that would be sufficient to reverse the onus. That applies in courts every day of the week. As the Hon. Mr Burdett would know, people prove things by swearing on oath that certain things have happened. It is then up to the judge to decide whether what that person is saying on oath is credible and that the person is not telling untruths. A similar provision appears in the Statutes Amendment (Courts) Act 1985, dealing with the service of summonses by post. So it does appear in a similar form in other statutes.

Clause passed.

Clause 19 passed.

Clause 20—'Recount.'

The Hon. R.I. LUCAS: This clause seeks to make it mandatory for a district returning officer, before the declaration of the result of an election, to have a recount. The existing section provides the option, that is, the district returning officer may if he thinks fit, and shall if so directed by the Electoral Commissioner, recount the ballot-papers. What does the Electoral Commissioner have in mind? Will this be a full recount to be carried out on a Sunday? The recount presently done on Sunday is basically a check of the parcels and a quick whip through of the votes as opposed to what members know as a full recount. I understand section 97 to apply to a full recount in the event of a very close election, such as that for the electorate of Adelaide at the last State election, where the Electoral Commissioner, together with the DRO, may order a full recount at which scrutineers and electoral officers go through every vote and check each vote singly for formality and check the allocation of preferences, etc. At present, the recount on Sunday is a quick check, usually carried out in the DRO's backyard, office or home. In the event of a close election, a candidate might send along a scrutineer. It is not a full check for formality and informality. A recount may be ordered during the following week, and that would be a full check. What is envisaged in relation to this clause and how does it vary from the existing position?

The Hon. C.J. SUMNER: At present the recheck is, in effect, a recount in those seats where the election is close. Where the election is not close, the recheck does not always involve taking out from the bundles each individual vote and recounting them. It involves checking through generally that the votes are in the right bundle; it is a quick count. This provision formalises the situation and places a legislative obligation on all district returning officers before the declaration is made to go through a formal recount of every vote, usually on a Sunday.

The Hon. R.I. Lucas: Will extra staff be brought in to do that or will the DRO do it on Sunday by himself?

The Hon. C.J. SUMNER: The district returning officer will have to determine the additional staff that he or she will need to carry that out. It makes a formal requirement that a recount occur in every seat.

The Hon. R.I. LUCAS: If a formal recount of every seat is to commence on Sunday, that will be the only recount, and the only recourse after that is to the Court of Disputed Returns. At present, as the Electoral Commissioner knows, a quick recheck is done on Sunday. By Monday or Tuesday, Parties might request the Electoral Commissioner to order a recount. The legislation does not contain any provision for candidates to petition the Electoral Commissioner but I recall many a Party and a candidate asking the Electoral Commissioner for a recount, and the Electoral Commissioner has generally complied. I take it that, with this provision, the recount will all be done by the Sunday and the issue will be resolved by Monday morning and there will be no option for a recount through the following week as occurred with the seat of Adelaide, for example, when the recount took over four or five days at the DRO's office in the Hills. The only recourse after that would be a challenge in the Court of Disputed Returns.

The Hon. C.J. SUMNER: No, that is not correct. There can be as many recounts as requested. There can be 100 or 50 but the stage is reached at which it is pointless in going on with recounts.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: It is not at the discretion of the district returning officer to have this recount. Once the Bill is passed, there will have to be an obligatory recount of every House of Assembly seat. After that, it will depend on the district—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: There will have to be one recount of the ballot-papers in every seat. After that it will depend.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: The provision is still contained in the—

The Hon. R.I. Lucas: Existing subsection (2) gives the Electoral Commissioner the discretion to order a recount. This clause removes that provision and makes it mandatory for the DRO to do it. Where does the Electoral Commissioner have the power to order an extra recount? I would have thought that if he wanted that discretion, it would be left in the legislation as part of subsection (2).

The Hon. C.J. SUMNER: It is a legal debate. Parliamentary Counsel says that it is not necessary.

The Hon. R.I. Lucas: Why was it there before?

The Hon. C.J. SUMNER: That is a good point; I do not know. I agree with the Hon. Mr Lucas that it should be clear.

The Hon. R.I. Lucas: It is not of great moment, but I think it should be left in at the discretion of the Electoral Commissioner.

The Hon. C.J. SUMNER: It is likely that the Electoral Commissioner would have the power to order a recount in any case. As that was what the legislation provided previously, it probably ought to be retained. We will do that. The policy position is this: there must be an obligatory recount of any marginal House of Assembly seat; following that, there must be a recount either as the returning officer requests or the Electoral Commissioner directs. I presume that at some point they would call an end to recounts. If the election was close, there would be scrutineers there from beginning to end and there might be a formal recount, as

provided for under the legislation, and then perhaps another one or two recounts carried out by the returning officer or directed by the Electoral Commissioner. At that point, presumably, people are agreed on the result and, if they are not, they go to the Court of Disputed Returns.

The Hon. R.I. LUCAS: I am happy to accept that, if the Attorney will consider an amendment. Section 97 (4) of the Act provides:

> The officer conducting a re-count may, and at the request of any scrutineer shall, reserve any ballot paper for the decision of the Electoral Commissioner.

Under the old system we understood the Sunday check to be a recheck as opposed to a recount: I accept that, technically, there is no difference. If questions were asked by the scrutineers on the Sunday, the district returning officer said, 'It will be resolved in the recount later.' Basically, that was how the situation was handled.

However, the new system provides for an obligatory recount on a Sunday in every district. In close seats, scrutineers can challenge votes, and this may occur all over South Australia. The Electoral Commissioner has many abilities, but one of them is not to be in 47 places at once. More particularly, a dozen seats may be very close at the next State election. Do delegation powers come into play? What do the Electoral Commissioner and the Attorney envisage if scrutineers challenge the vote at a dozen places throughout the State on a Sunday given that section 97 (4) provides that the district returning officer will reserve those ballot-papers to be dealt with by the Electoral Commissioner? Will powers be delegated? What is envisaged in relation to this comprehensive recount on a Sunday?

The Hon. C.J. SUMNER: As a matter of practice, the Electoral Commissioner will not be required to deal with challenged votes in 47 electorates; scrutineers are not present in 47 electorates; and there are not 47 marginal seats.

The Hon. R.I. Lucas: There may be a dozen, though.

The Hon. C.J. SUMNER: Well, there may be a dozen. The Electoral Commissioner works on the Sunday following polling day. The legislation does not provide that the decisions must be made instantly; votes may be reserved for the decision of the Electoral Commissioner.

The Hon. I. Gilfillan: Does he arrive by helicopter?

The Hon. C.J. SUMNER: The Government could engage a helicopter for these purposes so that someone could flit around the State. It is more likely, however, that the Electoral Commissioner would drive his car.

The Hon. K.T. Griffin: But not necessarily on the one day.

The Hon. C.J. SUMNER: No, that is right; he would do what he could on the Sunday.

The Hon. R.I. Lucas: But he intends to do it himself, as the Act provides?

The Hon. C.J. SUMNER: Or his deputy, who has the authority.

The Hon. R.I. LUCAS: If the two of them are operating we must ensure consistency. Under the present system the advantage has always been that, where a vote is challenged, the Electoral Commissioner is the god; he reserves final judgment and says, 'I will accept that' or 'I won't accept that.' Generally, only one or two recounts take place at the one time. In fact, I cannot remember more than one being undertaken at the one time, although the Electoral Commissioner may recall that situation.

If 47 recounts are being undertaken at the one time with perhaps a dozen marginal seats being challenged by scrutineers, it will be very important, if we cannot have the Electoral Commissioner applying a consistent set of principles (and I know that it is impossible to lay down, because every judgment that the Electoral Commissioner makes is individual), that the Electoral Commissioner will be the Deputy Electoral Commissioner.

The Hon. C.J. SUMNER: The honourable member is boxing shadows, or creating problems where there are none. At present under the Act if there are six marginal seats in a close election the Electoral Commissioner faces the same problem. The Electoral Commissioner recollects that a similar problem occurred in 1985, and it was overcome by centralising the count for the marginal seats at the one place so that the Electoral Commissioner could attend. The fact that there is a recount is not much different to the present situation. Under the present recheck system, there is a scrutiny of the votes on a Sunday.

We are now providing for a formal recount. Presumably in the safe seats the Parties will not have scrutineers; they will not be concerned to challenge votes, and we will come back to the situation that operates at present. If there are six marginal seats where votes are close, and there must be a recount, the Electoral Commissioner must be in a position to determine, in case of reservation of votes, the validity or otherwise of the votes. If on a Saturday night it looks as if the election is very close, that there are six seats in which a recount will be important, and if scrutineers are thick on the floor, the Electoral Commissioner may decide to centralise the vote, or he may decide to travel.

Clause passed.

Clause 21 passed.

Clause 22—'Other offences relating to ballot-papers, etc.'

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

Page 7, line 44—Leave out '$500' and insert '$200'.

Clause 22 imposes a maximum penalty of $500 on a person to whom a ballot-paper is issued at a polling booth for the purpose of voting at the booth and who removes the ballot-paper from the booth. I think that a penalty of $500 is a bit tough and I propose the sum of $200, but I am not going to lose a lot of sleep over it. It seems to me that it is not a matter that should attract a maximum penalty of $500.

The Hon. C.J. SUMNER: That is accepted. I would like to point out for the benefit of members that my researchers have found that section 33 of the Acts Interpretation Act deals with service by post and contains the deeming proof of service provisions which are similar to the provisions included in this Bill.

Amendment carried; clause as amended passed.

Clause 23—'Prohibition of canvassing near polling booths.'

The Hon. I. GILFILLAN: I move:

Page 8, lines 1 to 3—Leave out paragraph *(a)* and substitute:

(a) by striking out from subsection (1) '6 metres' and substituting '500 metres';.

Members will recall the substantial and powerful debate that took place on an earlier amendment which is linked to this matter in relation to how-to-vote cards. I do not intend to make an issue of it, but I do intend to proceed to move my amendment. However, it is not my intention to call for a division if I am unlucky enough to lose this time around. I am a bit uneasy about the clause in its original state.

It seems to me, having done many hours in polling booths, that the occasional situations where reduction of the six metre limit would apply are not frequent enough or substantial enough for a presiding officer to have this power. I think it is transgressed enough as it is, it does prove to be a bother and, at least, that six metre limit is some haven for voters who have to run the gauntlet as I described earlier, and are harassed by people handing out how-to-vote cards. My amendment extends the distance from six metres to 500 metres so as to remove that obnoxious practice of

thrusting how-to-vote cards onto voters as they approach the polling booth.

The Hon. K.T. GRIFFIN: Consistent with the Opposition's position on the earlier amendment, I indicate that we will not support this amendment. We believe that it is an important ingredient of election polling day that candidates and their supporters have an opportunity to hand out how-to-vote cards near a polling booth. Whilst the Hon. Mr Gilfillan suggests that some voters feel that they are harassed, are many others also feel that they are assisted by having how-to-vote cards available on polling day.

Having stood in polling booths, I can say from my own experience that there are people who have already made up their mind and wish to take only one of the cards offered from a variety of helpers at the gate; there are others who have not made up their mind and they are happy to take all; and there are others who take all of them on the basis that they do not want to be discourteous to anyone or otherwise give any hint of the way they will vote.

But I think it is an important ingredient of campaigning and providing a service to the majority of electors. I do not believe that the sort of limitation that the honourable member is proposing here will assist, and it may well contribute to other congestion at a greater distance from the polling booths on all the roads that lead to those polling booths.

Regarding the matter of the discretion in the presiding officer, I must confess that I gave some consideration as to whether or not there should be that discretion. On balance, I came down in favour of the discretion, because on some occasions it is difficult to define the entrance to the polling booth—whether it is the gate to the school yard or the gate to the school hall, or some other place. The flexibility that is proposed in the amendment will, I think, facilitate the task not only of the presiding officer but also of those who are handing out how-to-vote cards. So, on balance, I am prepared to indicate support for the discretion in the presiding officer.

The Hon. C.J. SUMNER: The Government agrees with the Hon. Mr Griffin.

Amendment negatived.

The Hon. R.I. LUCAS: I refer to proposed new subsection (3) of section 125, which provides:

> The reference in subsection (1) to a polling booth that is open for polling extends to—
>
> *(a)* a declared institution at which votes are being taken by an electoral visitor...

On my reading, this therefore means that all the restrictions that we would understand apply to a polling booth between 8 a.m. and 6 p.m. on a Saturday polling day will apply to a declared institution at which votes are being taken by an electoral visitor. So, when the electoral visitor is at the institution to take the votes the institution is treated as a polling booth, and all the offences, such as canvassing for votes, soliciting votes, and inducing electors not to vote for a particular candidate, etc., would apply. My question relates to the offence provided in section 125(1)*(e)*, which involves exhibiting a notice or sign relating to an election. Having had some experience in declared institutions at the last election, we know that in relation to political Parties:

> ...a person shall not counsel or procure two or more inmates of a declared institution to make application by post for the issue of declaration voting papers.

But a number of political candidates and political Parties do circulate their election material to inmates or patients of declared institutions. The candidate might have been endorsed some time prior to the election and it might just be material which talks about the candidate, the candidate's philosophy and the Party's policy, and so on; or it might even be a poster or something like that. Many a patient or resident of a declared institution that I have visited has had his or her favourite candidate's leaflet, poster or notice sitting beside the bed, when I or others have visited.

When the electoral visitor visits a declared institution, a vote is generally taken in one of two ways. For those who are particularly incapacitated, the electoral visitor goes from room to room, visits each room and takes the vote from the patient in their beds. For those who are sufficiently able to get up and about, the electoral visitor will station himself or herself in an office or a room which is provided by the declared institution, and the people involved then make their way to that room.

In relation to either possibility, I think questions must be asked about the prohibition provision of canvassing near polling booths. Certainly, in relation to going into a room and taking a vote, I think that this change will quite probably mean that offences will be committed in relation to the exhibiting of notices, signs, leaflets, and election material by those patients in their particular room, or wherever it was.

Even for those who are able to get up and about and go to an office, this provision provides that a polling booth 'extends to a declared institution at which votes are being taken...'. It does not stipulate 'that particular part of a declared institution at which votes are being taken'. I think that such a provision would at least cater for the second argument—that is, that clearly, the office where the votes are taken should be treated as a polling booth where there should not be, for example, posters of a Liberal Party or Labor Party candidate. We would accept that arrangement, but this Bill does not actually provide for that. I read the Bill to say that this provision would apply to anywhere in a declared institution, and not necessarily within the part of the declared institution in which votes are being taken.

As I have said, that applies only to the second option. The other common occurrence for those who are not well enough to get out of their beds—and there are many of them in declared institutions—is that the electoral visitor, flanked by a Liberal or Labor scrutineer, generally in relation to a marginal seat, will go from bed to bed and from room to room collecting electoral visitor votes. I would suggest to the Attorney that, given that we are coming back to look at a couple of other provisions, if he agrees with the questions that I have raised, we really ought to have a closer look at this provision as well. I think that—if he agrees with that interpretation—it is really going a bit too far. Whilst I would concede the need for some tightening up, we ought not put people in a position where they would be guilty of offences of which they are not even aware and for which they should not be guilty.

The Hon. K.T. GRIFFIN: The Hon. Mr Lucas made a good point, because the blanket application of section 125 to a declared institution at which votes are being taken by an electoral visitor does bring into play all the provisions of section 125(1), creating certain electoral offences. But the other aspect, to which I think the honourable member has not referred, is that, for example, the Royal Adelaide Hospital is declared as a declared institution, and certain consequences flow from that. I would presume that the declaration of that institution would apply to the whole of the grounds of the Royal Adelaide Hospital at North Terrace, Adelaide.

As I understand it, the declaration is made not in relation to a particular part of the institution but in relation to the whole of that institution—so that the boundary is North Terrace, Frome Street, the Botanic Gardens and the northern boundary. So, one is then prohibited, by virtue of the application of section 125, to that declared institution where

electoral visitor votes are being taken, and one is prevented from advertising or canvassing within six metres of that institution.

There may be some answer to this which I have not picked up in my reading of the Act, but it seems to me that if the provisions are extended to that declared institution there would be a massive area where all sorts of electoral activity was prevented whilst the electoral visitor was on the grounds taking votes. Of course, there might be people around the institution who do not know that the electoral visitor is in fact taking those votes. So, we need to be alerted to the fact that this may create a lot of unintended consequences in the way in which it is applied to those declared institutions.

The Hon. C.J. SUMNER: The policy is to apply to the institutions where polling booths are set up (as is the case with some of them) the same provisions as apply to normal polling booths.

The Hon. K.T. Griffin: That's not what the amendment does, is it?

The Hon. R.I. LUCAS: I think that we have all agreed that it is the policy. It is just a question of whether the amendment achieves that and goes a little further.

The Hon. C.J. SUMNER: We will have another look at it.

Clause passed.

Title passed.

Bill recommitted.

CONSTITUTION ACT AMENDMENT BILL (No. 3)

(Second reading debate adjourned on 16 February. Page 2756.)

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Repeal of section 12.'

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

Page 1, line 15—Leave out 'is repealed' and insert 'is amended—

(a) by striking out from paragraph *(a)* "he is entitled to vote at an election" and substituting "the person is an elector";

and

(b) by striking out paragraph *(c)* and the word "and" immediately preceding that paragraph.'

The Bill seeks to repeal section 12 of the Constitution Act. That section deals with the qualifications of a person to be elected as a member of the Legislative Council. I agree that some aspects of section 12 can effectively be repealed, but I believe that others ought to remain in the Constitution Act. During the second reading debate I made the point that qualifications of members of the Legislative Council and the House of Assembly should be retained in the Constitution Act. Although purists may believe that appearance in only one Act (the Electoral Act) is sufficient, nevertheless, as the Constitution is an important document which determines our constitutional framework, it is important for people who read it to be able to see from that document what the qualifications of members should be, and also later, the qualifications of electors.

We must remember that the Constitution Act also deals with aspects of disqualification of members of Parliament and, therefore, both the qualifications to be members and the grounds for disqualification of members ought to be included in the Act. That question is very much an issue. Obviously, the Bill is before us on the basis that all this material appears in the Electoral Act and that is sufficient. I say that the provisions should be in the Constitution Act. If we subsequently remove them from the Electoral Act, that is fine. No harm is done if they are in both Acts, but at least the qualifications ought to be in the Constitution Act. To that extent I have moved my amendment to clause 3, which seeks to retain section 12, but with some amendments.

The Hon. C.J. SUMNER: The Government opposes the amendment. Really, this is nothing more than a tidying up exercise: it does not deal with the policies involved. If the honourable member's amendments are carried, the same provisions will appear in two different Acts. It was considered that, now we have an Electoral Act covering these issues, for convenience they should be in the one Act.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: As it dealt with qualifications to vote and other electoral matters, it was considered that they would appropriately be contained in the Electoral Act. All we are doing is tidying up this aspect of the law by ensuring that what are admitted to be the qualifications to be members of the Legislative Council and the others that the honourable member will move later are contained in the one Act and are not duplicated in the Electoral Act and the Constitution Act.

The Hon. I. GILFILLAN: We oppose the amendment.

The Hon. K.T. GRIFFIN: Although, as the Attorney-General said, he regards it as a matter of tidying up, I still think it is important for these matters to be in the Constitution Act. I regard the vote on this amendment as being a test for the purposes of the other amendments I propose to move to other clauses.

The Committee divided on the amendment:

Ayes (9)—The Hons. J.C. Burdett, M.B. Cameron, Peter Dunn, K.T. Griffin (teller), C.M. Hill, J.C. Irwin, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Noes (10)—The Hons. G.L. Bruce, J.R. Cornwall, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Carolyn Pickles, T.G. Roberts, C.J. Sumner (teller), G. Weatherill, and Barbara Wiese.

Pair—Aye—The Hon. L.H. Davis. No—The Hon. T. Crothers.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

The Hon. M.J. ELLIOTT: On a point of order, Ms President, the present state of the sirens is such that I did not realise a division was being held. It was only by sheer chance that I came in here. A problem exists, and I hope it will be addressed in some way.

The CHAIRPERSON: I have realised for some time there is a problem. Contact has been made with the appropriate people who are arriving first thing tomorrow morning to fix it. I regret that it may mean inconvenience for the rest of today's sittings, should the bells need to be rung, but I hope that members will understand that it is not possible to have them fixed before tomorrow morning.

Clause 4—'Repeal of section 20.'

The Hon. K.T. GRIFFIN: This clause repeals section 20 of the Constitution Act dealing with qualifications for electors. We oppose the clause but, if the numbers are against me on the voices, I will not divide.

The Hon. I. GILFILLAN: The Democrats support the clause.

Clause passed.

Clause 5—'Repeal of section 29.'

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

Page 1, line 17—Leave out 'is repealed' and insert 'is amended by striking out "person qualified and entitled to be registered as any" '.

This clause seeks to repeal section 29 of the Act dealing with qualifications to be members of the House of Assembly. For the reasons I have indicated on clause 3, it is important to retain the section, but with the amendment.

The Hon. I. GILFILLAN: We oppose the amendment.

Amendment negatived; clause passed.

Clause 6—'Repeal of section 33.'

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

Page 1, line 18—Leave out 'is repealed' and insert 'is amended by striking out paragraphs *(b)* and *(c)* of subsection (1) and substituting the following paragraphs:

(b) (i) is an Australian citizen;

or

(ii) is a person who by virtue of his or her status as a British subject was, at some time within the period of three months commencing on 26 October 1983, enrolled under the Electoral Act 1929, as an Assembly elector or enrolled on an electoral roll maintained under a law of the Commonwealth or a Territory of the Commonwealth;

and

(c) has his or her principal place of residence in the subdivision and has lived at that place of residence for a continuous period of at least one month immediately preceding the date of the claim for enrolment.'

This clause seeks to amend section 33 of the Constitution Act dealing with qualifications of electors for the House of Assembly. It needs some amendment to bring it in line with the provisions of the Electoral Act. It is important for it to be in the Constitution Act.

The Hon. I. GILFILLAN: The Democrats oppose the amendment.

Amendment negatived; clause passed.

Title passed.

Bill reported without amendment. Committee's report adopted.

ACTS INTERPRETATION ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.

(Continued from 16 February. Page 2747.)

The Hon. C.J. SUMNER (Attorney-General): I thank members for their support for the Bill. The Hon. Mr Griffin asked about the definition of 'British subject'. The definition of 'British subject' in the Australian electoral law—both State and Federal—is now fixed. The amendment to section 29 provides for qualifications for entitlement to be enrolled, and that entitlement is made uniform with the Federal law. This was the subject of considerable debate, but it was considered that British subjects should not have the automatic right to enrol and vote whereas other migrants do not have the same automatic right. The qualification for future enrolment was deemed to be Australian citizenship, and a grandfather clause provided for those British subjects who were enrolled prior to 26 October 1983 to enable them to remain enrolled to vote. In other words, those who were enrolled as British subjects but not Australian citizens were provided for under a grandfather clause which enabled them to continue to vote. That is the effect of the amendment.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Repeal of ss. 33b and 33c.'

The Hon. K.T. GRIFFIN: I want to pursue with the Attorney-General the definition of 'British subject', because the Bill repeals that definition in the Acts Interpretation Act. The term 'British subject' will still be referred to in the Electoral Act, although there is no definition in that Act as to what a British subject is, even for the limited purposes referred to in that Act. How is 'British subject' now defined if the definition in the Acts Interpretation Act is repealed?

The Hon. C.J. SUMNER: Under Australian law, the status of British subjects no longer has any relevance except for the purposes of electoral law, which refers to those persons who were British subjects but not Australian citizens and who were enrolled to vote prior to 26 October 1983. People were given three months from 26 October 1983 to enrol to vote.

The Hon. K.T. Griffin: On any State roll or the Commonwealth roll.

The Hon. C.J. SUMNER: Each State would have to pick up this provision but an agreement was entered into by State and Commonwealth Ministers of all political persuasions that, because a person was a British subject, it should not automatically qualify that person to vote in Australian elections; people must now be Australian citizens, except for those who were placed on the roll by or within three months of 26 October 1983. That gave an opportunity for British subjects who were not on the roll as at that date to be placed on the roll in the ensuing three months. A great majority of them were already on the roll.

The Hon. C.M. Hill: Those who were not Australian citizens?

The Hon. C.J. SUMNER: Yes, because they obtained their entitlement to vote by virtue of their British citizenship. That was considered to be unfair because migrants from non-British countries had to qualify for Australian citizenship and become Australian citizens before they could vote, but British citizens were entitled to vote automatically. Reciprocal arrangements with respect to voting in the United Kingdom do not exist. Within Australia, the principle was that all migrants should be treated on an equal basis no matter where they came from. Australian citizenship became the criterion for voting. Therefore, the concept of 'British subject' is now not relevant except in relation to those people who were British subjects prior to three months from 26 October 1983 and were placed on the electoral roll. Presumably they are already on the electoral roll.

The Hon. K.T. Griffin: Here or interstate?

The Hon. C.J. SUMNER: Yes, here or interstate. In a sense, that is the end of the matter. They declared themselves to be British subjects on the roll at that time and now—

The Hon. K.T. Griffin: You don't think that it matters that there is no definition?

The Hon. C.J. SUMNER: My advice is that it does not matter. The Federal Act sets down British subjects who were entitled to enrol and to vote.

The Hon. K.T. Griffin: It doesn't define 'British subject'. That is the only question. Is it necessary to have a definition of 'British subject' for the purposes of the Electoral Act in the limited circumstances—

The Hon. C.J. SUMNER: It is not defined in the Commonwealth Electoral Act, so I assume that a definition of 'British subject' is picked up in the legislation which cut out special privileges for British subjects in Australian law. It has no relevance at this point; it is not a live concept in Australian law. Those people who declared themselves to be British citizens, whatever that meant at the time, prior to three months after 26 October 1983 are now on the roll and are entitled to vote, as a result of their British citizenship.

The Hon. C.M. Hill: And they can stand for Parliament.

The Hon. C.J. SUMNER: Yes, they can stand for Parliament.

The Hon. C.M. Hill: Even though they are not Australian citizens?

The Hon. C.J. SUMNER: No, they cannot stand nationally, nor can they here. That is the dispute involving Senator Wood.

The Hon. C.M. Hill: They could in this State. Have you changed that?

The Hon. C.J. SUMNER: I think we changed that. In any event, on my advice, it is not an issue of great concern.

The Hon. K.T. GRIFFIN: I take it that if the question ever arises there will be some sympathetic consideration to bringing back a definition. I am concerned that no-one is disfranchised who was a British subject, who was on the roll in the three month period—any roll, anywhere in Australia—and who may seek to transfer enrolment to South Australia. I am concerned that people are not disadvantaged. However, if the assurance is that there will be no disadvantage and that it is no longer necessary, I am quite happy to accept that assurance.

Clause passed.

Title passed.

Bill reported without amendment. Committee's report adopted.

[*Sitting suspended from 6.12 to 7.45 p.m.*]

ABORIGINAL HERITAGE BILL

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

The Hon. M.J. ELLIOTT: I move:

Page 2, line 20—Leave out 'Minister' and insert 'Committee'.

This is one of a number of similar amendments that I will be moving. I believe that it is necessary to first look in some depth at the philosophy behind the amendment. It seeks to pass the powers vested in the Minister under this Bill to a committee.

Perhaps I should begin by covering some ground that I have covered in a question that I asked of the Attorney-General last week about land ownership. There is a growing legal opinion that Australia was, indeed, not *terra nullius* at the time that white people arrived in Australia; indeed, no sensible person could dare say that it was. It is quite clear that when South Australia, in particular, was settled, certain obligations were placed upon the Colonisation Commission. I would like to repeat some of the issues I raised last week. In a plan that was submitted to the Colonial Office, the following was stated:

> The Colonisation Commissioner for South Australia shall appoint an officer to be called the Protector of the Aborigines. This officer shall be resident in the province... The Colonial Commissioner, after having completed the survey of any portion of the public land shall, before declaring the same open to sale, give notice to the Protector of Aborigines whose duty it will be to ascertain whether the lands thus surveyed or any portion of them are in the occupation or enjoyment of natives.
>
> If the Protector finds those lands uninhabited or not in the occupation or enjoyment of the native race the Colonial Commissioner shall declare such lands open to public sale... Should the natives occupying or enjoying any lands comprised within the surveys as directed by the Colonial Commissioner not surrender their right to such land by voluntary sale then in that case it will be the duty of the Protector of Aborigines to secure to the natives full and undisturbed occupation or enjoyment of those lands and afford them legal redress against depredation and trespasses.

It is quite interesting that there was to be a Protector of Aborigines, and he had very clear obligations. I think that one other quote from that article that I gave last week is also significant, and I refer to the reference to the letters patent for South Australia, as follows:

> Nothing in these letters patent contained shall affect or be construed to affect the rights of any Aboriginal natives of the said province to the actual occupation or enjoyment in their persons or in the persons of their descendants of any lands now actually occupied or enjoyed by such natives.

There is no doubt that much of the land which is now currently held by Europeans—including the mortgage on the block of land that I am paying off with Westpac at the moment—has, in fact, been taken illegally. Most certainly the area where my land is, and most of the Adelaide Plains, was not *terra nullius* at the time of the arrival of the First Fleet to South Australia.

The Hon. J.R. CORNWALL: On a point of order, Madam Chair: I am listening to the Hon. Mr Elliott's learned dissertation with great interest, but I am having extreme difficulty relating it to the clause which is before the Committee.

The CHAIRPERSON: The honourable member's amendment does relate to leaving out the word 'Minister' and inserting 'Committee', and I presume that he is giving the background as to why he wants a committee involved instead of the Minister. Nevertheless, I hope that the honourable member can soon come to the point.

The Hon. J.R. CORNWALL: With great deferential respect, I fail to see why the dissertation on land tenure or otherwise has anything to do with whether or not the Committee should have executive powers. I am really not able to link up the two points, but maybe the Hon. Mr Elliott can help me.

The Hon. M.J. ELLIOTT: I can guarantee that the whole lot is entirely relevant—if the Minister has the capacity to sit down and to listen for a change to other points of view. I contend that it will be highly relevant as I proceed. I think the most important point about what occurred 150 years ago—and that is not all that many generations ago—is that a European person, the protector of the natives, the protector of the Aborigines, was given a very clear obligation, namely, to ensure that land was not sold unless that land was not occupied or in the enjoyment of the Aboriginal people. That is not dissimilar to what the Minister is going to be asked to do in this Bill. Here, we have one person, a European, who will be the sole determiner of Aboriginal heritage. That is one of the most obscene things that has been before this Parliament. It is like putting the Pope in charge of Islam or, if you like, the Ayatollah in charge of Christianity. What right does a European have to determine what is or what is not Aboriginal heritage? It is also worth drawing to the Minister's attention the Labor Party policy on Aboriginal affairs. In fact, I shall quote from the Labor Party platform from 1985, which surely is the platform on which the present Government is basing its policy. Under 'Aboriginal Affairs' it states:

> Basic policy.
>
> 1.1 Labor believes that Aboriginal people have the basic right to determine their lives and future.
>
> 1.2 Labor supports policies aimed at developing self-management of services and programs by Aboriginal communities.

That is exactly what I am setting about doing with my series of amendments to this Bill. With Aboriginal heritage, I believe that what is significant for Aboriginal people should be determined by them. I do not believe that such a determination should be made by what will almost certainly be a European Minister. I think that I need to reiterate the details in relation to the structure that I am proposing for the committee. The committee would be a relatively small body but would be elected from a much larger group, a council. The council would have delegates from all the Aboriginal communities of South Australia. I point out to the Minister, who, I believe, has already said that such a concept is unworkable, that to say that a council is unworkable is to be critical of Gerry Hand, the Federal Minister

for Aboriginal Affairs, who has put out a document entitled 'Foundations for the future'. They are setting up Aboriginal councils, in a fashion that is very similar to what I am proposing in my amendments.

The Hon. J.R. Cornwall: I am opposed to that, too.

The Hon. M.J. ELLIOTT: The Minister would be, too, because Gerry Hand has rolled him on quite a few things of late, but Gerry Hand understands Aboriginal people a damned sight better than does the Minister. We know what has happened with the AHO just lately.

The Hon. J.R. Cornwall interjecting:

The Hon. M.J. ELLIOTT: You do, too. My learning curve has certainly picked up that, whenever the Minister starts using a term such as 'parsimonious', he is getting into a nasty little mood and going on the defensive. In simple terms, my amendment is saying that Aboriginal people shall determine what is or is not their heritage and what is or is not significant to them.

Some concern has been expressed that this committee will be stacked with city blacks. Well, if one looks at the way that I propose the council itself to be structured, plainly, such an idea is ludicrous. I also suggest that one would expect the committee to delegate its powers back to traditional owners in exactly the way that the Minister has said that he would delegate the powers. However, the Bill does not guarantee that those powers will be delegated.

I think it is worth noting the reactions to the proposal of various Aboriginal groups. I have been in communication with them throughout South Australia, and by far the majority of Aboriginal groups are in support of the concept of both the council and the committee which I am proposing in this amendment. With the proponderance of Aboriginal people, the only difference of opinion relates to what will happen if the amendment is not accepted. No doubt has been expressed by the Pitjantjatjara people, who have been generally supportive of the Government's Bill: there is no doubt in their minds that they prefer the amendments that I am putting forward. They prefer them particularly because they recognise that the Bill, particularly as the Government has proposed to amend it, looks after the people in the Pitjantjatjara and Maralinga lands extremely well. But it does almost nothing for the Aborigines in the rest of the State. This Bill is an absolute sham for the greater majority.

In meetings that I have had with the Aboriginal people outside of the North-West area, the proponderance of reaction has involved uncontained anger. They are extremely angry that over the past 150 years they have lost their land. In fact, someone whom I spoke to today said that they knew they would not get their land back. What really hurts now is that the Government still presumes that it can take their culture and control that as well. I can understand that anger. I encourage members to look very seriously at this matter and to ask themselves whether or not they really do believe that it is Aboriginal people who should have control over their heritage or whether it should be the Minister, sitting in his office with his coterie of advisers and his stooge committee, the members of which are appointed entirely by himself with no election being made from the Aboriginal communities themselves.

The Hon. J.R. CORNWALL: In responding to those remarks, some of which were gratuitous to the point of being insulting, I will try to be brief. First, as the Hon. Mr Elliott saw fit to raise my relationship with the Federal Minister for Aboriginal Affairs, I am grateful that, unlike Mr Elliott, Gerry Hand is on a very fast learning curve. Well meaning white people like Mr Elliott have two options, the first of which is to learn quickly and the second is to get out of the road. He tells us that consultation is a wonderful thing. He may well be aware that quite recently literally scores of Aboriginal people met in Sydney or Canberra to discuss Aboriginal health. NAIHO made a bid (unsuccessfully, I understand) to take over the meeting, but the whole meeting, which was a very expensive exercise, finished as a complete shambles. Presumably, the Hon. Mr Elliott wants something unworkable like that to be enshrined here. I will repeat what I said during the second reading debate, because it is directly relevant to the amendment before the Committee:

> 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—

and I will do that very shortly—

> 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 amendment is on file and the Hon. Mr Elliott knows it, but he chooses, in his own gratuitous and half-smart way, to ignore it. I went on to say at the time (and, again, he has completely ignored this):

> 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.

They will have complete control over their heritage sites. I further said:

> 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.

I will repeat that—

> by requiring the Minister to accept the views of traditional owners in this regard.

I continued as follows:

> 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.

So much for the second point. The third point is that Mr Elliott is trying to give this committee executive powers, and that is at odds with the spirit and intent of the Bill. That is not the intention of the Bill, and nor is it the wish of the majority of Aboriginal people who have been consulted over a very long time on the preparation of this legislation. Indeed, the executive power of the committee was contained in the proposals which came before the Council and which were introduced by the Liberal Government in 1981, and I think through to 1982. At that time the proposal that the committee should have executive power and would be involved directly in administration was rejected by communities at large.

What is currently before the Committee is a widely representative committee to advise and to work in conjunction with Aboriginal communities. Whether they be formally constituted in white man's law through the land rights

legislation, whether they be comprised in the traditional way, or whether it be a combination of both, they will be able to be represented on this committee, which will advise the Minister. Let me repeat that, in day-to-day matters, the Minister will be required to do what the committee advises. I do not think that one can get a better workable situation than that. People of goodwill have been working on it for a very long time.

There will always be those people who want absolute power. I have said publicly on many occasions that a small number of people do the Aboriginal cause no good, and Mr Elliott tends to align himself with them from time to time. However, by and large, of the 16 000 or 17 000 Aboriginal people or people who claim Aboriginal origin in this State, the overwhelming support is for a workable committee which can advise on traditional Aboriginal matters of importance with regard to heritage and a committee on whose advice the Minister will be required to act.

The Hon. L.H. DAVIS: The Opposition rejects the amendment proposed by the Australian Democrats. We do not believe that the committee should be vested with executive power in this and other sections of the Act. We accept that the Minister should have responsibility, although it is a matter of degree as to the area and extent of delegation to the committee of Aborigines in dealing with this very important matter of heritage. I stress that the Opposition is most concerned about the passage of this legislation.

The Opposition supports legislation which deals with Aboriginal heritage and I again stress that point. We have said consistently in this and another place that we have grave reservations about the contents of this Bill. We accept that it is a very difficult area to legislate for, but we continue to have grave reservations. We are particularly concerned about the amendments which have been placed on file by the Australian Democrats and which we believe are quite impractical.

Having said that, I now turn to the all important definition clause of this Bill, which is clause 3. One of the difficulties is the definition of Aboriginal heritage sites. One of my colleagues in another place received a letter from the Association of Consulting Surveyors about Aboriginal heritage sites. I will briefly read that letter, because we accept that 'Aboriginal site' as defined in clause 3 means an area of land that is of significance according to Aboriginal tradition or that is of significance to Aboriginal archaeology, anthropology or history. There is also a similar definition for 'Aboriginal objects'. In particular, the definition of 'Aboriginal heritage sites' and the interpretation and lining up of those boundaries is something which concerns the Association of Consulting Surveyors, which states in its letter:

> The lack of adequate definition of the boundaries of heritage and sacred sites has in the past been a major obstruction to the exploration, and development occurring in their vicinity and to their ultimate protection. Sites have been destroyed due to persons being unaware of their location or of their significance. There have also been instances of obstruction to the mining industry by the presentation of vague definitions of heritage sites.

It further states that:

> . . . it was deeply concerned at the problems which would arise because boundaries are not defined in a form in which they can be rightly defined at a later date and it took the view that it could offer answers to both parties (the Aboriginal people and the mining industry) so that the problem would not arise in the future.
>
> We became aware that bodies set up to protect sacred and heritage sites were having difficulty in establishing the nearness of sites to exploration activities when presented with documentation and maps by mining companies for assessment and comments. The situation can occur where the same site can be shown on a mining plan in one position and recorded in the heritage archives on their plans in another position. Land surveyors by virtue of their professional activity come in contact with sites of significance to Aboriginal communities and because of this they understand the need for the classification and definition of those areas.

The association further states:

> By means of modern and available technology, consulting surveyors could physically mark and reference the corners of heritage sites so that they could be identified on the ground. The co-ordinates of these corners could be stored in a heritage data base for easy access when such information is required. These co-ordinates could be used for the compilation of maps or plans and aid in the comparison of data when assessing exploration activity proposals. It must be noted that the marks placed at the corners of heritage sites can be as obvious as is appropriate. In some instances large perma-pine posts could be used or alternatively short star-droppers with tags.

I will not comment on that. In conclusion, it states:

> ACSA believes that the activities of the Aboriginal people, the anthropologists and archaeologists would be aided by the provision of accurate site location information. The plans would avoid confusion as to the whereabouts of sites and would provide a common reference system to suit all who need to use such information.

I raise the matter with the Minister in good faith because, obviously, if this Bill comes into legislative force, as seems likely, there will be the practical problem of addressing and defining Aboriginal sites. To what extent is the Minister confident that the definition of 'Aboriginal site' can be properly policed with the measures the Government has in mind? Will he advise the Committee on how the Government intends to approach this important matter of Aboriginal sites as addressed by the Association of Consulting Surveyors?

The Hon. J.R. CORNWALL: I will repeat the undertaking of the Minister in the House of Assembly. The information which becomes available, whether by survey, tradition or whatever, will be computerised. Already we have in operation a system which, once the legislation is proclaimed, will be in common use between the Aboriginal Heritage Branch, the Museum and mining companies. The Aboriginal Heritage Branch within the Department of Environment and Planning is confident that the system will satisfy the requirements of the Act. In defining such we will be dealing with cadastra for which there is a global system that has to be broken down to very much smaller areas and to a different scale.

Systems are already in operation as a subset of that cadastra and agreed between the mining companies, the Aboriginal Heritage Branch and the museum, so that any private consultants who may be employed by a group of traditional owners will be able to adopt the same system. So, in terms of definition, recording and the way in which traditional owners have kept records for many thousands of years, linking up with the traditional methods of survey used within the European civilisation, in combining them it seems that we will have a system, in conjunction with the Museum, the mining companies and in cooperation with private consultants, that will enable us to put in place a quite workable scenario.

The Hon. M.J. ELLIOTT: I will not spend much time addressing the comments of the Opposition, because at this stage they are so baseless, so transparent and lacking in substance that it is absolutely frightening. The Opposition has made comments in this place, as has the shadow Minister for Environment and Planning on television, about what a terrible Bill it is and how paternalistic it is. Yet, faced with the concept of having either the European Minister or Aboriginal people making the decisions, they said that the committee was a terrible thing. Nowhere was one argument put forward as to why it was such a terrible thing. We have not heard in the second reading debate, nor are we likely to hear now, what the Opposition would have

done differently. It is easy to say that it is a terrible Bill and that it is paternalistic. Where is the substance behind it or the thought?

Why, when I was trying to get meetings with you people to talk about the amendments and the Bill, could I not get them? You did not want to take a position on anything. You wanted to hide behind a select committee. If you think the committee will not work, I want to hear why it will not work. The support has been there. I have a facsimile sent from the Pitjantjatjara Council, representing the people in the North-West, and it states:

> I confirm support of Anangu Pitjantjatjara to your proposed amendments to Aboriginal Heritage Bill. However, AP's main concern is that Bill is passed (with the Government's amendments to sections 20 and 45) as soon as possible.

It supports the Bill and with the Government's amendments, but also supports the amendments which set up the committee. From the Maralinga Tjarutja people I received the following correspondence:

> Although we are not in a position to comment on the amendments without seeing them, the concept of an elected committee rather than an appointed committee seems to be better.

It is signed by Archie Barton. I have a host of letters from other Aboriginal communities—even people in the traditional areas—giving basic support for the concept of an elected committee. We are being told of feedback from the country that people are saying that the Bill as it is is terrific. The people in the north-west are saying, 'The Bill is not too bad, and we want it; we haven't got anything at the moment'. They are not saying it could not be improved. I have had enough of this stuff and nonsense that we are getting at the moment.

The Minister has talked about the committee being at odds with the spirit of the Bill. What is the spirit of the Bill? Is the spirit of the Bill to give control of Aboriginal heritage to the Aboriginal people, to look after Aboriginal heritage or to put up a facade of waffle? What does the Minister mean when he says that it is at odds with the spirit of the Bill? I have heard it so often about so many Bills, but have never heard anything behind it. The question at the very essence of the Bill is how it will work if I am not successful with my amendments.

I refer to the meaning of the word 'traditional owner'. Before we come to vote on my amendments, it is important that the understanding of what is a traditional owner is clearly put on the record in this place.

It has probably been the biggest single cause of concern. The reports I am getting from the Northern Territory indicate that there has been a very narrow interpretation of a traditional owner and it is that interpretation which is causing grave concern among the people from non-traditional areas. Although these people are not living out in the bush, they do have traditional and spiritual obligations. They consider themselves to be traditional. It is not clear under this definition which Aboriginal people will be traditional owners and which will not and I ask the Minister to address that question before we come to vote on this amendment.

The Hon. J.R. CORNWALL: Can I further clarify the remarks that I made about—

The Hon. Peter Dunn interjecting:

The Hon. J.R. CORNWALL: I know you would be interested in this because you have taken an intelligent interest in the Bill. I presume you are not going to lecture us, like the Hon. Mr Elliott. I have described in detail how sites can be recorded in cooperation and conjunction with traditional owners. I want to make the point further that, where traditional owners do not wish to identify sites or have them recorded, that will be very much their prerogative; they will have the option of either having them recorded or keeping them as secret and sacred sites.

The Hon. PETER DUNN: I am disappointed at the Hon. Mike Elliott's attitude and the approach that he has taken towards the Opposition.

The Hon. M.J. Elliott interjecting:

The Hon. PETER DUNN: I am becoming more convinced by the moment that a select committee should have been the method by which we could have—

The Hon. M.J. Elliott: You didn't want the crayfish one, either.

The Hon. PETER DUNN: A crayfish select committee—that is news to me. Once again it shows the confusion that the Democrats have at times and I think they are confused about this Bill. It is unfortunate that the Hon. Mike Elliott does not understand the Westminster system. Someone in this Parliament must be responsible for the decisions. I admit that a committee can advise the Minister, but he must be ultimately responsible for any decisions and someone has to take the flak when something goes wrong. That is why the Minister is there: he is big enough and strong enough to stand up and put his point of view, as he has demonstrated year after year in this Parliament, and I believe that is why he is here. I believe very strongly that is why he is here and whether he is the Minister or whether somebody else is the Minister, it is their responsibility.

The committee can give all the advice it can, but the Minister must make the ultimate decision. Therefore, if one understands the Westminster system at all, one cannot have a Bill whereby a committee derives power from this Parliament, yet the Minister is not responsible. That is totally ridiculous because someone must be responsible in the long run, and that is the Minister. That is what he is paid for and what he has to do.

I would like to have a little say later on regarding the identification of sites. In clause 3 we are talking about the Minister being the person who makes sure that the archives are properly kept. I ask the Minister: what will happen to the records that are kept in the ANZ Bank at Ceduna for the Maralinga Tjarutja people?

The Hon. J.R. CORNWALL: They will not be disturbed under this legislation, which will not supplant the Maralinga land rights legislation; they will stay where they are. While I am on my feet, may I also say that the Hon. Mr Elliott wanted to know what the Government believed, from discussions with Aboriginal people, was meant by the term 'traditional owners'. Let me make very clear that Aboriginal people know who are the traditional owners of areas.

That belief is well entrenched and it is expected that disputes will be very rare. In the event that there is a dispute between Aboriginal people and traditional owners, the Minister will be the final arbitrator in final consultation with the traditional owners, the relevant Aboriginal organisations and the committee. However, the advice that we have received is that these matters are very well defined among traditional owners and disputes will be quite rare.

The Hon. M.J. ELLIOTT: I think that many Aboriginal people would like to know whether or not their spiritual links will be taken into account should they be city dwellers. For instance, some Aboriginal people who live in Adelaide have traditional links; in fact, some have elder status within their own group, whose area may not be in Adelaide. I want to know whether or not their traditional status will be recognised. Many city dwellers will say that they are as traditional as the Aboriginal people living in the north-west. I need to know whether or not there will be any form of differentiation. How will it be decided whether or not a person is a traditional owner? What will be the test?

The Hon. J.R. CORNWALL: If the Hon. Mr Elliott cares to look at the definition of 'Aboriginal tradition' in the Bill, he will see that it provides:

'Aboriginal tradition' means traditions, observances, customs or beliefs of the people who inhabited Australia before European colonisation and includes traditions, observances, customs and beliefs that have evolved or developed from that tradition since European colonisation.

The advice that we have been given is that Aboriginal traditions continue to evolve and develop; that is clearly recognised in the legislation. The other thing that is important to recognise is that for 40 000 years the Aboriginal people in this country had probably the best developed system of abstract management—which was a very sophisticated thing—that the world has ever known. Anybody who has studied the history and culture of Aboriginal people will realise that that abstract management continues, although in an evolutionary sort of way. One of the enormous frustrations that impatient Europeans such as myself find in negotiating with Aboriginal people is that culturally and traditionally they do business in a very different way. One cannot go to the north-west in a twin engine Cessna and dash in to do business with the local community in a matter of an hour or two.

The Hon. M.B. Cameron interjecting:

The Hon. J.R. CORNWALL: You can, but you get the answers which they think you want. If you really want to know what the local communities are thinking then it is a much more time consuming process.

The Hon. M.J. Elliott interjecting:

The Hon. J.R. CORNWALL: Do you need treatment or medication, to which the answer may also be yes. Stop being so silly; be a little bit responsible and behave yourself, as you should as a member of this Council. You and your colleague Mr Gilfillan continually tell us that you are generously paid, and you should act accordingly. As I was saying before I was rudely and inappropriately interrupted by the Hon. Mr Elliott, who is in very strange form tonight—

The CHAIRPERSON: No speaker need take any notice of any interjection.

The Hon. J.R. CORNWALL: I know, but he is taking advantage of the fact that I have been working extraordinarily long and hard hours.

The Hon. C.M. Hill: You've been provoked.

The Hon. J.R. CORNWALL: I am being provoked and unnecessarily so. It is adding nothing to the debate; in fact it is detracting from it. I was trying to explain—and Mr Davis and his colleagues and my back bench were listening in rapt attention to the idea of Aboriginal tradition and the way in which it continues to evolve.

The Government is attempting to write that into the legislation on a line of best fit. Whether one talks about land rights, Aboriginal heritage or, as we may later, enshrining traditional Aboriginal self-management and the concept of tribal councils into white man's European legislation, it is difficult to take an abstract system of management—as I said, probably the most perfect system of abstract management that the world has seen—and write it into a traditional and contemporary piece of European legislation. To the exent that that is possible, this Bill achieves it.

The Hon. L.H. DAVIS: I accept the observations that the Minister has just made, and it is relevant to note the complexity of the Pitjantjatjara legislation which was introduced by the Dunstan Government, which was examined at length by the Parliament of the time, and which subsequently passed into law in a changed form by the Tonkin Government in the early 1980s. As the Minister said, they were matters in the abstract and matters of great complexity which had to be translated into legislative form.

It gives me no pleasure to berate the Australian Democrats publicly for the very juvenile way in which they have approached this most serious matter. The Liberal Party has consistently said that it supports the legislation and that it is legislation of great complexity. It has had serious reservations about the legislation and it suggested that the best way of overcoming the difficulties and unease which it has about certain aspects of the legislation is to refer it to a select committee to give the various Aboriginal communities of this State along with others such as anthropologists and archaeologists associated with the South Australian Museum and the universities a chance to make an input. But we have had that debate and we lost it, because the Australian Democrats did not want to participate in a select committee. Because of that decision, we are here now.

The Liberal Party accepts that, but I am quite appalled to hear the Australian Democrats put on their God-like cape, stride out of their telephone box with their wobble board and say that they have all the answers, that they know everything. In recent months we have seen so many examples of the Australian Democrats with their wobble board that it does not bear repeating. I suspect that, when another matter comes before us shortly, we will see yet another example of it. For the Hon. Mike Elliott to suddenly become the expert in South Australia on what is on all sides a very difficult, delicate and complex matter is something that does not bear thinking about. I reject his patronising, sneering manner in this debate. The Liberal Party has done its homework, it has treated this debate seriously throughout, and I resent entirely the inference that Mr Elliott has put into *Hansard* that the Liberal Party really does not give a damn about this debate. That is simply not true.

The Hon. I. GILFILLAN: Madam Chair—

An honourable member interjecting:

The Hon. I. GILFILLAN: No. I am very interested in this debate in my own right having taken part in land rights debates in this place and having spent a night in the sandhills of Maralinga. For one who admires the abstract management of Aborigines, the Minister should recoginise that, if there is great respect for that, there is an opportunity to express it in a positive legislative form given my colleague's amendment.

The anger—I assume it is anger—that the shadow Minister for the Arts (Hon. Legh Davis) put on in his reaction to our criticism of the Liberals' stand on this matter ought perhaps be used with a little more significance than in just a temporary debate. If he is angry at having been belittled, he might put himself in the shoes of the Aborigines in the way that they have felt since we have been on this continent. I do not feel particularly ashamed about our being just two in this place. Minorities in Australia are still entitled to be heard and given the right to determine, as far as they can, their proper role in our community, and that is the key to the amendments moved by my colleague, Mike Elliott. He has made as much effort as anyone could to get from the people who will be most affected by this legislation understanding of what they want.

This is a typical example of why Aborigines are angry at our bicentenary celebrations—because we are paternalistically saying that they do not understand the Westminster system, they do not understand how other forms of management work, not abstract management but crisp hands-on, let's do the accounting, let's measure the dollars in the till type management. We belittle them as a culture because they do not conform to what we think society should be and how it should work.

This is a case where we could make a substantial and meaningful overture to a culture that has been in this State

for 40 000 years and to the people, whose religious and spiritual inheritance, this Bill purports to protect, by entrusting them to make the decisions and to control it. The analogy is not far different from having a Minister look after the artefacts of the main line religions in this State. Perhaps there should be a Minister to control what should happen in the Anglican, Roman Catholic, Uniting and other churches. There is very good reason to look at the spirit and intention of the amendments far more profoundly than has been the case in the debate that I have heard this evening. It is not just a matter of political debating by the political Parties represented in this Chamber. It is a chance for us as a Parliament to show a genuine sense of response and trust to the people to whom we are now paying lip service.

Between 20 and 30 years ago we did not even pay lip service because they did not exist—they were non-people. But we have broken down some of those barriers and a lot of credit must go to this Labor Government, previous Labor Governments and the Tonkin Government for cutting new ground and breaking down barriers of misunderstanding. There has been a lot of progress, and credit should go to them; but why stall now? This is the real crunch: we have gone through the barrier with land rights which would not have been conceivable 30 years ago and now, when there is a chance to show a further dimension of trust and responsibility in the people that this Bill supposedly will look after, the major Parties—the Government and the Opposition—are backing away from it as if it were on fire. That is to be regretted deeply and I resent the way in which the debate has turned into a personal attack on Mike Elliott. I have seen how diligently he has striven to produce the best amendments, and they should be treated on their merits.

Members interjecting:

The CHAIRPERSON: Order! The Hon. Mr Elliott.

The Hon. M.J. ELLIOTT: I am grateful for my colleague who has come into this debate with a cooler head than I. I started very angrily, in part because I was talking with many very angry people and I picked up a lot of that anger. Mr Gilfillan has succinctly put some of the important points that should be taken on board.

The Hon. Mr Dunn made reference to the Westminster system. I am deeply aware of the need for ministerial responsibility and if he was aware of the package of amendments that I moved, he would know that one clause allows for a ministerial veto which, in essence, gives the Minister final power. Structured in the way it is, it would be used very carefully and sparingly and only when, quite clearly, there have been abuses by Aboriginal groups, which I do not for a moment think there would be. The Westminster protection of ministerial responsibility would be there by way of that veto, so I really think that the honourable member was wrong on that point.

I return to the points made by the Hon. Mr Davis and the Minister. Neither of them has, as yet, defined what the real problems are with the committee—certainly the Hon. Mr Davis has not done that. I issued a challenge previously. The honourable member said that the Bill was terrible, certainly, the shadow Minister in another place has said that the Bill was very paternalistic, and I wonder how they will stop the Bill from being paternalistic if, indeed, they are not to give the power back to the Aboriginal people. I ask them to respond, because that is the essence of this amendment and many other amendments: it is about returning power to the Aborigines. That is the only way that the Bill will not be paternalistic, and I issue a challenge to members to answer that.

I return to the remarks of the Minister in this place; I ask him what he meant when he said that the committee was against the spirit of the Bill. I thought that it was about Aboriginal heritage and its importance to Aboriginal people.

The Hon. M.B. CAMERON: A fresh face is always good in a debate, I guess.

The CHAIRPERSON: We have a long way to go.

The Hon. M.B. CAMERON: Yes, I realise that and I will not keep the Council very long. However, I must say that I am rather disturbed that we are now heading towards making decisions on the run in what is a very serious matter. I support very strongly the point made by the Hon. Mr Davis and perhaps in future debates on serious matters the Hon. Mr Elliott could keep in mind that one characteristic of this legislative Chamber is that we never shy away from seeking out the full facts. It does not matter what the subject is, very rarely do we deny the opportunity for select committees and on a very serious matter like this perhaps that was the most opportune and the best direction to take.

I believe that it is a great pity that the Hon. Mr Elliott has obviously done a lot of homework; has obviously rung a lot of people and has come forward with some conclusions the background to which we have no real knowledge. I also believe it is a great pity that he did not give us, as a Chamber, the opportunity of having a select committee into this matter. Aboriginal people do not make a decision overnight, they do not make a decision as a result of a phone call; they far prefer to have propositions put in front of them, to then have the opportunity to discuss matters with their communities and to then come forward with a reasoned arguments. I know that, because I am one of those offenders that the Minister talks about who go up into those areas (along with the Hon. Mr Dunn and others), fly in and spend a couple of hours there and fly out again. We really do not learn all about the problems of the communities and how they think.

The Hon. J.R. Cornwall: You take in a reporter and a photographer so you can tell horror stories.

The Hon. M.B. CAMERON: I am sure the Minister does the same thing. Yes, I am sure he does. He does not bother to go up there, that is half the problem. If he went up there he would know a bit more about it. If the Minister wants to argue on that basis in this matter, I am perfectly willing to do that. I suggest he should have gone up there; perhaps he would have learnt a little about Aboriginal health if he had.

I believe it is most unfortunate that we will make decisions based on almost total non-communication, because communication in the way that Aboriginal people understand it is certainly not based on phone calls, and it is certainly not based on debate in this Chamber. After their waiting all these years for Aboriginal heritage legislation to become a fact, it is a pity that we are to rush the legislation through. I point out again to the Hon. Mr Elliott that we gave him and his Party an opportunity to have a very careful look at the whole situation. We may well have come out of a select committee with an answer to the problem, but I do not believe that the Hon. Mr Elliott has the answer. I cannot accept his amendment at this stage. I believe it is most unfortunate that we have not given the matter very serious consideration through a select committee because, apart from anything else, the committee that the honourable member wants set up, as I understand it, would be almost unworkable.

However, there are many other problems that should have been looked at. It might be that in the end we decide that the direction the honourable member wants to follow is correct. We certainly cannot do that on the basis of information before us at the moment, provided by the honourable members. Perhaps the honourable member should think

about that when matters like this of a very serious nature come up and perhaps he should also consider supporting select committees. I am afraid that I think that the honourable member is attempting to turn this debate into a political stunt, because he has not allowed proper consideration of the matter, as should have occurred in this Chamber.

The Hon. M.J. ELLIOTT: Well, if things have to keep on going on the record, then indeed they will. This Bill has certainly been in the pot for, I guess, five years: 13 months ago the draft Bill was circulated. I sought to obtain a copy of that Bill and immediately started talking to people. It is a great pity that the Liberal Party did not do the same thing. The Bill that we are now debating must have been introduced some five months ago, and the amendments have been on file for some 3½ months. It is not as though things have been tearing through in a great rush. When I have sought to have discussions with people about this, on the Opposition side, for a start, there has been point blank refusal.

The Hon. L.H. Davis: That is not true.

The Hon. M.J. ELLIOTT: Yes, it is. At least in relation to the Government, I can say that the Minister's advisers have spent some hours with me, and I have been very grateful for the time that they gave; they were good in that regard. In fact, the Government's amendments emanated from those discussions, and they go a long way to improving things. In relation to the Opposition wishing to put things on the record, we must make clear that this legislation has not been undertaken in a tearing hurry. I am not at all happy with where it has got to now—not in its present state. The state of confusion that some people are in cannot be because the Bill was brought in only yesterday and is being debated today, because it simply has not been like that at all. Once again, there has been a refusal to say why it is considered that the committee would be unworkable. Neither the Opposition nor the Government has given any reason for that.

The Committee divided on the amendment:

Ayes (2)—The Hons M.J. Elliott (teller) and I. Gilfillan.

Noes (18)—The Hons G.L. Bruce, J.C. Burdett, M.B. Cameron, J.R. Cornwall (teller), T. Crothers, L.H. Davis, H.P.K. Dunn, M.S. Feleppa, K.T. Griffin, C.M. Hill, J.C. Irwin, Diana Laidlaw, R.I. Lucas, Carolyn Pickles, T.G. Roberts, C.J. Sumner, G. Weatherill, and Barbara Wiese.

Majority of 16 for the Noes.

Amendment thus negatived.

The CHAIRPERSON: The debate on the previous amendment ranged far and wide, but I took it as being debate on many important principles that might arise with other amendments. I suggest that from now on the debate on amendments be strictly relevant to the amendment that is before the Committee, and I propose to enforce the relevant part of Standing Orders with greater assiduousness in that regard. I note that there is another amendment to clause 3 on file from the Hon. Mr Elliott. Is this a consequential amendment? I realise that a number of the honourable member's amendments that are on file will be consequential on or related to the amendment that has just been lost, and I presume that he will not move those.

The Hon. M.J. ELLIOTT: I intend to put just a couple of amendments; I certainly will not go through the whole range. But there is still a role that the council can play. Accordingly, I move:

Page 2, after line 23—Insert the following definition:

'the Council' means the Aboriginal Heritage Council established under Part II:.

This amendment is not entirely consequential on the previous amendment, although it is related to it. I believe that a role still could be played by an Aboriginal council which is made up of delegates from all Aboriginal communities. It would be a very healthy thing for us to have a body which comprised representatives of all Aboriginal communities who could come together to talk about matters that relate to Aboriginal heritage. I do not believe that we would have perhaps come to this unsatisfactory state of affairs that now exists if Aboriginal people from different parts of South Australia had had an opportunity to sit down and talk to each other. It is most unfortunate now that we see the people from the Pitjantjatjara lands somewhat at odds with some of the people from the southern part of the State.

I suggest that it would be a very healthy thing to have a body such as this council, which would bring people together to talk about matters that related to Aboriginal heritage. For that reason, I will persist with my amendment which creates the council.

The Hon. PETER DUNN: The Opposition does not support this amendment for the reasons that we enunciated before. I ask the Democrats: who was depicted on the front and third page of the *Advertiser* as standing on North Terrace saying that the Bill was not acceptable?

The Hon. M.J. ELLIOTT: I did not hear any argument against the establishment of the council. I suggest that you did not put arguments about the formation of the council, nor have you addressed the general concept. What arguments do you put against the formation of an Aboriginal council on heritage matters?

The Hon. PETER DUNN: The reason is that it is rather impractical to do it. I do not think that the Hon. Mike Elliott understands where these people come from. Has he ever been to Pipalatjara, Mount Davies, Wardang Island, Meningie, Narrung or, for that matter, to the South-East? He wants to get around a bit. He should go to Amata, Fregon, Mimili or any of those other places. The Hon. Mr Elliott talks about getting them together as a council and they cannot do it all in one, two, three, or for that matter 10 meetings. The practicalities of it are impossible.

The Hon. M.J. ELLIOTT: While we are on the concept of the council, I also ask the Minister for his response. As I said, under the Aboriginal and Torres Strait Islander Commission the Federal Minister for Aboriginal Affairs, Gerry Hand, proposes to set up a zone council to cover all South Australia, and it will have representatives elected from six regional councils within South Australia; so, really it proposes to set up a similar sort of thing to that which I propose in this Bill. What makes this so impractical when the Federal Minister for Aboriginal Affairs (who is also a member of the Labor Party) thinks the concept of such a State-wide council is highly practical?

The Hon. J.R. CORNWALL: The Federal Government proposes a commission with 28 regions, three of which will be in South Australia.

The Hon. M.J. Elliott: Five.

The Hon. J.R. CORNWALL: Three, and they will be quite unrepresentative. There certainly will not be any suggestion of one vote one value. I think that the Federal Minister is on the wrong track. I have acknowledged that publicly and I repeat it. I do not believe that the commission will be workable, and I think that evidence is already emerging that would support that statement. I do not believe that we should go down that track.

In the event that you want genuine community control, you do not try to do it by setting up three regions in a State or a State council. If you want to do it in European legislation, you set up structures which are culturally sensitive, which are relevant and which are small enough to be workable. You certainly will not do it by establishing some sort

of a State council. That is a typically insensitive European response. It is the sort of response one would expect from people who do not understand.

Amendment negatived; clause passed.

Clause 4 passed.

Clause 5—'Functions of the Minister.'

The Hon. L.H. DAVIS: This clause sets out the functions of the Minister. One of the four functions specified is that the Minister would 'conduct, direct or assist research into the Aboriginal heritage'. Certainly, there is a wide overlap between the interpretation clause, clause 5, and following clauses. Perhaps it is appropriate to raise with the Minister the matter of the resources involved in establishing Aboriginal objects, Aboriginal sites and conducting research. Does the Government have any idea of the additional resources that it intends to employ if and when this Bill becomes law?

The Hon. J.R. CORNWALL: The resources of the Aboriginal Heritage Branch will be made available to the traditional owners. Some resources exist already in the Aboriginal Heritage Branch and that has been the case for some time. As I understand it, it is not intended that the branch will be significantly expanded but, rather, when the resources of the Aboriginal Heritage Branch are not able to cope on a short or medium term basis with particular demands, consultants will be employed. I am not able to supply figures at this time as to the exact resource implications of that in any particular budget. However, the resources of the branch are there, they will be available and consultants will be used from time to time as required.

The Hon. L.H. DAVIS: Is the Minister in a position to say whether increased resources will be made available to ensure that this Act is workable?

The Hon. J.R. CORNWALL: I cannot give an undertaking on behalf of the Government with regard to any specific initiatives that might be in the 1988-89 Budget, but quite clearly, these days no legislation is introduced unless the resource implications are considered by Cabinet. In general terms, I am able to give an undertaking that resources will be found to the extent necessary to make the legislation workable. This is not the 1970s: we do not legislate because it seems like a good idea at the time. These days, no legislation that has resource implications is approved by Cabinet or Caucus without those resource implications, at least in general terms, being fairly clearly defined. We realise that there are general resource implications here and that the resources that will be made available will at least be such—and I give this undertaking—as to make the legislation workable and practicable, because that is what this Government is about. There is no point coming here and passing legislation, but then not proclaiming it because the resources are not there.

The Hon. L.H. DAVIS: I accept the point that the Minister makes that these are difficult times when it comes to financial resources but it is a matter of regret that in many instances where there are far reaching legislative changes, such as the Aboriginal Heritage Bill now before us, which will quite clearly involve an increase in resources, no reference whatsoever is made to it in the second reading. I ask the Minister to request the Government to consider that, with Bills of this nature, at least some reference be made to the Government's expectation of resources required for the measure to be put into proper effect. I know that a Government may well be nervous of that and see it as being a political disavantage, but not only should there be family impact statements in matters of community welfare and other related issues, but also it is not inappropriate to look at resource impact statements (for want of a better phrase) to deal with legislation such as this.

I refer to clause 5 and the matter of research. In areas involving the Anangu Pitjantjatjara, it is quite clear that they will be of great benefit and assistance in conducting research and in establishing records, sites and objects. However, if that matter is not already in hand, it will be much more difficult in areas where Aborigines no longer live. Some considerable research and effort will be required. As far as I can see, much of the work involved in that research will be undertaken by anthropologists and archaeologists in South Australia, more often than not based in the Museum. That will require resources and a redirection of time from those people. In regard to clause 5 (1) *(c)*, does the Minister anticipate, in areas which are covered by land rights legislation, that the Museum will be a prime focus in conducting important research into Aboriginal heritage, as envisaged in this clause?

The Hon. J.R. CORNWALL: A number of points need to be made. First, the Aboriginal Heritage Unit itself is a substantial resource employing 12 people full time, including two archaeologists, one anthropologist, one historian, and one surveyor among others. We should not underestimate the significant capacity of the unit itself. Secondly, the unit, and through the unit the Aboriginal people, have access to the considerable resources of the Museum and to some of the resources of the Adelaide University. Already in place are significant human resources, skills and knowledge which will be harnessed.

It is also important to recognise that, within the lands themselves, Anangu Pitjantjatjara would not want the Minister to initiate or conduct research. Anangu Pitjantjatjara would not welcome that unless it initiated it. Secondly, traditional owners generally around the State will be in a position to dictate where research is undertaken. For a member of Cabinet, representing the Minister for Environment and Planning in this place, to stand up and give clear undertakings about specific programs would be to act in the arrogant way of which we are supposed to be guilty. We are a sensitive Government and will do nothing in these areas unless requested to do so by the traditional owners themselves. In summary, we have a significant resource in the Aboriginal Heritage Unit which, in turn, has access to other significant resources both physical and intellectual, and research will not be initiated by the Minister directly but will be conducted, directed or assisted at the request of the traditional owners.

Clause passed.

Clause 6—'Delegation.'

The Hon. J.R. CORNWALL: I move:

Page 4—

After line 9 insert subclause as follows:

'(1a) The Minister must, at the request of the traditional owners of an Aboriginal site or object, delegate the Minister's powers under sections 21, 23, 29 and 35 to the traditional owners of the site or object.'

After line 20 insert subclause as follows:

'(2a) The Minister must not revoke a delegation under subsection (1a) without the consent of the traditional owners.'

This clause concerns delegation to traditional owners. The Government has continually made the point that the Bill is designed to give, by delegation, traditional owners the mechanism to enable them to protect their heritage. The amendment formalised that position in relation to those functions of the legislation which will always, at the request of the traditional owners, be delegated. I made that point in the second reading explanation earlier this evening and I repeat that, at the request of the traditional owners, those functions of the legislation would always be delegated.

If we look at the flow-on from that, namely, clauses 21, 23, 29 and 35, we find that clause 21 is the authority to excavate for the purpose of uncovering an Aboriginal site

or object; clause 23 is the authority to damage or disturb sites or objects; clause 29 is the authority to sell or dispose of an object; and clause 35, under division V relating to the protection of traditions, is the authority to divulge information contrary to Aboriginal traditions. Subclause (2a), which is within the same amendment to clause 6, states that the Minister must not revoke a delegation under subclause (1a) without the consent of the traditional owners. That provides further strength to the amendment in (1a). Subclauses (1a) and (2a) are significant amendments in meeting the undertaking we have given for quite some time—certainly since the Bill came out of the other place—that we would delegate to traditional owners. I urge members to support the amendment.

The Hon. M.J. ELLIOTT: The Democrats support the amendment as it starts to address some of the problems that were very evident in the Bill as originally drafted. The terminology throughout the Bill was that the Minister may do a number of things. Certainly Aboriginal people who had been involved in the consultation process had been advised in that process that certain powers would be delegated to them, but the Bill did not ensure that such delegation would occur.

This amendment ensures that the Minister has an obligation to delegate these powers to a traditional owner, so it is moving in the direction that the Democrats were keen this Bill should take. I am glad that the Government has done so because we were concerned. The concern I raised when we were debating clause 3 was in relation to the sorts of interpretations that would be applied to 'traditional owner' because, as I said, the interpretation of 'traditional owner' in the Northern Territory was starting to cause very real problems. If 'traditional owner' is taken in a very wide sense, this amendment will considerably improve the Bill, although it does not remove some of my reservations about it.

Amendments carried.

The Hon. M.J. ELLIOTT: I have the following amendment on file:

Page 4, after line 20—Insert new subclause as follows:

(3) In any proceedings a document apparently signed by the Minister and certifying a matter relating to the delegation of a power or function by the Minister under this Act constitutes, in the absence of proof to the contrary, proof of the matter certified.

It is to tidy up what constitutes a delegation. The Minister might find it acceptable.

The Hon. J.R. CORNWALL: It is redundant. As anyone who read the Bill would know, it is already included in clause 43.

The Hon. M.J. ELLIOTT: I will not proceed with that amendment.

Clause as amended passed.

Clause 7—'Aboriginal Heritage Committee.'

The Hon. J.R. CORNWALL: I move:

Page 4, lines 22 and 23—Leave out these lines and insert:

The committee consists of Aboriginal persons appointed, as far as is practicable, from all parts of the State by the Minister to represent the interests of Aboriginal people throughout the State in the protection.

During the debate on this Bill in another place the Opposition argued that it would be inappropriate for the Aboriginal Heritage Committee to determine the importance of sites and objects and I agree. As the Government has said, the object of the committee was essentially to give initial advice on State-wide heritage issues, while traditional owners would dictate what should happen to sites and objects. I think there is widespread agreement on this issue.

The Hon. Mr Elliott is concerned about the flexibility provided in the legislation regarding the membership of the advisory committee and may further attempt to insert amendments in this regard because he is concerned that a future government—and one might imagine that we could apply those remarks to the present Government—might appoint inappropriate people to the committee.

The Government accepts that the committee will have to be representative of a broad range of Aboriginal interests if it is to provide advice which reflects in any way the interests of traditional owners and communities throughout the State. I have consistently accepted that principle as a Minister and I have consistently espoused it during the debate this evening. However, if I might reiterate what was said in another place by the Minister for Environment and Planning, when one examines the history of this legislation it is clear that any Minister will be sadly mistaken if he or she thinks that simply consulting with the committee, however it might be structured, will satisfy Aboriginal people in South Australia.

Nevertheless, the Government moves this amendment to indicate that representatives on the committee will be selected from throughout the State to represent different regions of the State. To the extent that it is possible within legislation the committee will be highly representative and will offer useful advice to the Minister of the day, not only from time to time but on an ongoing and consistent basis.

The Hon. M.J. ELLIOTT: The Democrats support this amendment because, once again, it is moving in the direction that we want to achieve. It is probably only about a quarter of the way there, but it begins to give a guarantee that there will be broad representation across the State rather than relying upon goodwill from time to time. For that reason we support the amendment.

The Hon. L.H. DAVIS: The Opposition views the proposed amendment as an improvement on the existing clause and therefore supports it. We recognise the peculiar difficulty in this clause of being dogmatic about a number of Aborigines to represent interests throughout South Australia. Nevertheless, I am interested in asking the Minister whether he has any idea of the general number of people that he expects to be on that committee.

The Hon. J.R. CORNWALL: It is difficult to put an exact figure, but to a considerable extent the committee will follow tribal groupings and will probably comprise between 11 and 14 individuals.

Amendment carried; clause as amended passed.

Clause 8—'Functions of the committee.'

The Hon. M.J. ELLIOTT: The amendments on file to this clause are all consequential on others that have been defeated so I will not pursue them.

The Hon. L.H. DAVIS: This clause gives the committee quite far reaching powers in the sense that not only does it have specific duties of inquiry at the request of the Minister but also it has the power to initiate inquiries in the areas specified. It is difficult to be too dogmatic on this point but, because its members will come from many parts of the State, one presumes that there could not be too many meetings of the committee. It will require some back-up or assistance because it will represent various Aboriginal groups and communities around South Australia. Does the Minister see the committee as one that will meet often or is the Government unsure about how important the committee is? There seems to have been varying responses to that question about the importance of the committee. In another place it was suggested that the committee's role would be somewhat limited.

The Hon. J.R. CORNWALL: The committee will be serviced by the Aboriginal Heritage Branch, and will meet as often as is necessary and, initially, that could be quite

frequently. It would be reasonable to expect that, after the first year or two, it would probably be more likely to meet on a quarterly basis but, if it needs to meet every three weeks in the initial stages, it will. It is important to remember that this committee will act as a sounding board and will receive its instructions virtually from the traditional owners. As such, I come back to the point that it is not like the body originally proposed by the Hon. Mr Elliott; it is an advisory committee. Under this legislation, the traditional owners will be paramount but, in a sense, the advisory committee is a conduit between the traditional owners, the Aboriginal Heritage Branch and the Minister and Government of the day.

To the extent that it is possible, as I said before, to interpret into European law the decision-making processes of traditional Aboriginal culture, this represents an intelligent attempt. No one can be absolutely sure that it is as close to perfect as is possible, but there is a very considerable spirit of goodwill and we have come about as close as possible to a workable situation, taking on board the very marked differences between the two cultures—one an acquisitive, goal oriented and competitive society and the other a sharing and caring society in which the competition—sometimes destructive competition—that one sees in European culture is completely foreign.

The Hon. M.J. ELLIOTT: The inquiry of the Hon. Mr Davis is worth noting. This committee has a simple advisory role and is in danger of being a toothless tiger. It is all very well for the Minister to say that we must respect Aboriginal culture and set up a committee that fits those needs. By using such an excuse, there is a danger that, given that the Bill may be with us for 20 years, despite the fact that a Minister might administer the Act extremely well, another Minister might set up a committee of yes men, yes women and Uncle Toms who do and say what they think is wanted. As such, this advisory body could be next to useless.

The Hon. J.R. CORNWALL: I make the point that such are the vagaries of democracy. I do not think that any Government or any Parliament has been able to legislate in perpetuity or to give an absolute guarantee that at some time, whether in the next decade, the next century or the next millenium, there will not be some villains in this place who might try to act against the best interests not only of the Aboriginal people but of the people of South Australia at large. We are reasonably intelligent adults in this place and this is an intelligent, competent and caring Government and to the extent that this can be reflected in legislation in the late 1980s that is really what the Bill is all about. I am unable to give a guarantee as to what might happen in the year 2 000 and beyond and, human nature being what it is, it is probably most unlikely that I will be involved in the decision-making process at that time. To the extent that we can apply good sense and a civilised, caring and compassionate approach to Aboriginal heritage in the late 1980s, particularly in this bicentenary year, the Bill goes as close as it is reasonable for an imperfect society to achieve.

Clause passed.

Clause 9—'Central and local archives.'

The Hon. M.J. ELLIOTT: It is my expectation that most entries will be made in the archives very rapidly, so some concerns about the setting up of the archives should be settled quickly. My greatest concern is the future possibility—and I do worry about the future—of removal of entries and I ask the Minister to address his mind to subclause (3), which states:

> The Minister must not remove an entry from the Register of Aboriginal Sites and Objects unless the Minister determines that the site or object to which the entry relates is not an Aboriginal site or object.

Should a Minister decide that an object on the register is not an Aboriginal site or object, what sort of powers will traditional owners have or what role can they play in contesting the removal by the Minister of a site or object?

The Hon. J.R. CORNWALL: At the risk of being guilty of tedious repetition, I refer again to my second reading reply in which I stated:

> The traditional owners will determine whether or not a site or object is of significance to Aboriginal tradition.

Obviously the Minister would not take any action unless he had consulted with the traditional owners and had taken their advice. It would not be, I suggest, within the Minister's competence to make up his or her mind in splendid isolation and to be able to determine, without taking that advice from the traditional owners that the site or object to which the entry relates is not an Aboriginal site or object. Therefore, the answer lies in commonsense.

The Hon. M.J. ELLIOTT: I was really asking the Minister whether there is any provison in the Bill which I might have missed and which allows some recourse or right of appeal for traditional owners if they feel that there has been a wrong committed, or are we relying entirely on the Minister's commonsense in that matter?

The Hon. J.R. CORNWALL: Mr Elliott may care to look ahead to the amendment that I have on file to clause 13, page 7, after line 25 which refers specifically to consultation with traditional owners and states that the Minister must accept the views of the traditional owners whether a site or object is of significance to Aboriginal tradition. That is one amendment we propose to meet the honourable member's concerns, which we accept as being valid.

Clause passed.

Clauses 10 to 12 passed.

Clause 13—'Consultation on determinations, authorisations and regulations.'

The Hon. J.R. CORNWALL: I move:

Page 7 after line 25—Insert subclause as follows:

> (1a) When determining whether an area of land is an Aboriginal site or an object is an Aboriginal object, the Minister must accept the views of the traditional owners of the land or object on the question of whether the land or object is of significance according to Aboriginal tradition.

I referred to this amendment just a few moments ago. The Government has given a commitment that traditional owners will determine what is of significance according to Aboriginal tradition. This amendment formalises that commitment.

The Hon. M.J. ELLIOTT: Now that my memory has been refreshed that is another of the amendments that emerged after talks with Government advisers. I am certainly glad to see the amendment put forward. There was a real concern that Aboriginal people must be consulted and their views must be heeded. This amendment addresses that concern as the Minister is now obliged to accept the Aborigines' views, indeed, he has no choice. I do not intend to proceed with my amendment as the Minister's amendment takes into account my concerns.

Amendment carried; clause as amended passed.

Clause 14 passed.

Clause 15—'Inspectors.'

The Hon. J.R. CORNWALL: I move:

Page 7, after line 39—Insert subclause as follows:

> (3) the traditional owners of an Aboriginal site or object may inform the Minister, by notice in writing, that they object to an inspector named in the notice exercising powers under this Act in relation to the site or object, and, in that event, the inspector must not exercise those powers in relation to the site or object.

This amendment will allow traditional owners to veto the authority of inspectors who have been appointed to service an extensive area. It is a further protection and I commend it to the Committee.

The Hon. L.H. DAVIS: This clause is designed to enable the provisions of the Act to be properly policed and the Opposition accepts the need to give the Minister power to appoint suitable persons to be inspectors under the provisions of the Act.

Can the Minister indicate the Government's intention in this matter? Who will be appointed as inspectors? Will they be existing personnel, say, from the National Parks and Wildlife Service, no doubt, and other people who perhaps already have existing positions? Will an additional expense be incurred in the appointment of inspectors, and to what extent does the Government foresee a problem in actually making appointments to cover all the relevant areas?

The Hon. J.R. CORNWALL: They will be existing National Parks and Wildlife Service rangers and inspectors, both Aboriginal and non-Aboriginal, but inspectors will also be appointed from Aboriginal communities by the traditional owners. I understand that they will act in an honorary capacity, at least in the first instance. But there will be a combination of both.

The Hon. M.J. ELLIOTT: The Democrats will support the amendment. It is obviously important that, in relation to sites and objects, we do not have inspectors who are not acceptable to the traditional owners, and this amendment overcomes that concern.

Amendment carried; clause as amended passed.

Clauses 16 to 18 passed.

Clause 19—'The fund.'

The Hon. L.H. DAVIS: This clause establishes the South Australian Aboriginal Heritage Fund, and the Minister can apply moneys from the fund to acquire lands, objects or records, under the Act, making grants or loans to persons or organisations undertaking research. Certainly, they are very worthwhile objectives. Is the Minister able to say how much money in this fund it is anticipated will accrue from the Commonwealth? What expectation does the Government have about the size of the amount of funds that will come from the State Government, appropriated by Parliament, for the South Australian Aboriginal Heritage Fund? Also, does the Government have any view as to the possibility of attracting money from sources other than the State and Federal Governments for the purposes of building up the size of the South Australian Aboriginal Heritage Fund?

The Hon. J.R. CORNWALL: Currently a proportion of the heritage fund is designated for Aboriginal heritage. My recollection is that in the 1987-88 estimates it was $90 000; I would not want to be held to that on pain of losing my job, but it was of that order. There was no specific hypothecation to this fund. There is nothing in the Bill which designates a specific source of income from the State Treasury, and that is not at all unusual. In fact, it is unusual to hypothecate. We are proceeding to do that soon, as I am sure the honourable member has read, in the Bill accompanying the Tobacco Products Control Amendment Bill, namely, the Tobacco Franchise Bill. However, it would be unusual, and there is no hypothecation in this case.

It is not possible, therefore, to give a specific indication, in February 1988, as to what the quantum of money might be from either the Commonwealth or the State. However, I go back to the point that I made earlier, that the Aboriginal Heritage Branch itself is a very significant resource, both in terms of human resources and intellectual and physical capacity. So, one would not think that there would be any difficulty in the first instance in quite rapidly getting this legislation functional.

Clause passed.

Clause 20—'Discovery of sites, objects or remains.'

The Hon. J.R. CORNWALL: I move:

Page 10, lines 5 and 6—Leave out subclause (2) and insert new subclause as follows:

(2) This section does not apply to the traditional owner of the site or object or to an employee or agent of the traditional owner.

The employee of the traditional owners is not required to notify discoveries. This is an additional safeguard. The employee of traditional owners, in our view, should not be expected to report discoveries, and this amendment will protect that and enshrine that situation in legislation.

The Hon. M.J. ELLIOTT: Without this amendment we would have been in the rather ludicrous position that, where Aboriginal people had freehold, for instance up in the North-West, they would have been required to report sites and objects on their own land. Quite clearly, that was not the intention of the clause as a whole and, of course, the amendment was necessary.

Amendment carried.

The Hon. PETER DUNN: I move:

Page 10, after line 6—Insert new subclause as follows:

(2a) It is a defence to a charge of an offence against this section if it is proved that the defendant did not know and had no reason to believe that the site, object or remains to which the charge relates was an Aboriginal site or object or were Aboriginal remains.'

This amendment provides a defence provision. Tonight we have heard the Minister explain at some length the complexity of the heritage of Aboriginal people, and I agree with the Minister. I think it is a complex matter. We do not understand it fully, and he has admitted that in this Chamber. However, it appears that this will not apply to anybody else in the community who innocently causes destruction of, or quite unwittingly does something to, an Aboriginal heritage item, whether an object, site, area or tradition.

A person might quite unwittingly destroy or damage something or let someone else know about it. I think that it would be a pity if the Bill was passed without this defence clause in it. None of us understand totally the Aboriginal situation as regards heritage. The proposed new subclause is quite clear and, also, this could involve retrospectivity. At present, if a person has destroyed something the Bill implies that very severe charges can be laid against him. The charge for defacing some Aboriginal heritage, remains, site or object is, for a body corporate, $50 000 and for an individual a fine of $10 000 applies. They are severe penalties indeed.

If someone innocently caused an object to be damaged and they were totally unaware of the action that they were taking, the penalties would be very severe. I suggest that this amendment is a sensible inclusion. As far as I can see, it removes nothing from the Bill and it just inserts a very necessary clause which will protect the innocent.

The Hon. T.G. ROBERTS: I oppose the amendment on the basis that we are trying to introduce a Bill which will develop people's understanding of Aboriginal culture and heritage. I think a part of that concept involves educating the broader population. For a long time Aboriginal people have had to interpret our laws and to work within them. I am sure that many Aborigines have been confused by an order at night from a policeman saying, 'Cease loitering' and that they did not know the meaning of that statement. They have certainly had to familiarise themselves with the legislation and the laws of the land, otherwise they are prosecuted. We are now at a stage where white society has to familiarise itself with Aboriginal culture and some of the things that Aborigines hold near and dear in terms of their

own traditional society. Hopefully, it will be part of the education process.

I certainly would not like to see mining companies using ignorance of the law to bring in their drilling rigs, etc., and saying, 'Really, we did not know that it was an Aboriginal heritage site.' I know that the people the Hon. Peter Dunn is trying to protect are campers, people travelling through or people who innocently go on to traditional sites and inadvertently cause some damage but, if an amendment like this is introduced, it would enable all those people who would like to do so to use ignorance of the law as a defence and to escape the penalties that are included in the Bill. I think that every person in society should begin to acknowledge that the Aboriginal Heritage Bill will introduce methods by which those sites can be protected and, hopefully, people will familiarise themselves with the provisions so that they are not innocently caught.

The Hon. J.R. CORNWALL: The Hon. Mr Roberts put that argument very well. I have very little to add. The decision to drop the defence provisions was taken by the Government at the request of Aborigines. I have been trying to develop this theme all night through the Committee stage: in this legislation we are trying to cope with traditional Aboriginal ways, laws and customs within contemporary European legislation in this Parliament. There is no doubt that, if one took the strict legal advice and asked for Parliamentry Counsel to draft a Bill which was elegant and adequate within the traditions of British Law, a defence provision or provisions would be entirely supportable. However, this was a political decision taken by the Government at the request of Aborigines and it was done with due regard to Aboriginal law. I believe in that sense that it is entirely supportable and I seek the endorsement of the Committee for my remarks.

The Hon. M.J. ELLIOTT: At one stage I did entertain the thought of moving an amendment to insert such defence clauses but, on balance, and for similar reasons to those that have been enunciated by the Government, I decided that I would not proceed with them. In the case of a person who has innocently been involved, in setting penalties the law courts tend to take such circumstances into account, anyway. The reality is that a person who has innocently been involved is not really likely to be penalised. My real fear is that I have heard of cases where people have dug up skeletons, and I am afraid that they have been aware of what they were doing. It is very difficult. If a person comes across some bones and says, 'I did not know what sort of bones they were', the obligation is on the prosecution to prove that that person knew that they were human bones and, in all probability, they knew that they were Aboriginal bones. Really, that makes it very difficult for the court, but I know of at least one case where a person deliberately and knowingly dug up a skeleton in the hills of the Coorong. I think that this defence clause would enable that person to escape penalty when that should not occur.

The Hon. PETER DUNN: I thank the Minister for his comments on this matter. However, I do not think that in its present form the legislation is very good. What happens if one Aboriginal group goes into another Aboriginal group's area and unwittingly does the same thing? Are you saying that, because they are a body corporate, or because they are an individual they will be fined $50 000 or $10 000 respectively? Tonight we have heard several arguments about whether the people in the North agree with the people in the Midlands around Port Augusta, or whether they agree with the people in the Murray area or in the South-East. If that provision is contained in the Bill and if these people come into the area, then they could breach the Act. If that were the case, they are liable for that penalty. The amendment does not deal with people who knowingly deface objects. However, commonsense dictates that there should not be a defence clause. I understand that the Trespass Act provides that, if a person unwittingly and unknowingly trespasses, in the eyes of the law that is a defence. For the reasons I have outlined, I believe that this Bill should include that proviso.

The Hon. L.H. DAVIS: As far as the Opposition is 43cerned, the defence clauses moved by way of amendment by my colleague, the Hon. Peter Dunn, for this clause and subsequent clauses are important matters. Perhaps in particular it is pertinent to clause 23, but I take it that my colleague will use this clause as a test. In relation to clause 23, one can imagine a situation where a person has damaged, disturbed or interfered with an Aboriginal site or damaged an Aboriginal object and is subject to a fine. That person would be particularly gruntled when he did not know and had no reason to believe that the site, object or remains was an Aboriginal site or object. Can the Minister give an absolute assurance that, in the absence of defence clauses as proposed by my colleague for clause 20 and subsequent clauses, a person in that position would not be prosecuted? If he cannot point to any provision of the Act or give any public assurance on that matter, then I believe that he should give serious consideration to these amendments.

The Hon. M.J. ELLIOTT: The Hon. Legh Davis should be aware of clause 45 in the Bill: the only person who can initiate a prosecution is the Minister. I will take issue with that later. I would have found the defence clauses more acceptable if the structure was not in that way. The Minister will not initiate a prosecution unless he has reasonable grounds to believe that that person was acting knowingly. We must look at it in a wider context. I am critical of the Bill in that the Aboriginal people themselves, having seen one of the items desecrated, are not in a position to initiate prosecution. To argue about defence clauses when the only person who can initiate prosecution is the Minister, is a needless worry.

The Hon. J.C. BURDETT: I support the amendment and point out what most members of the Committee would already know, namely, that this kind of defence is commonly provided in Acts. It is frequently provided that it is a defence to a charge to prove that the defendant did not know and could not, by the exercise of reasonable diligence, have known or had no reason to believe that the situation in question was the case. Obviously, it is grossly unjust that a person who did not know and had no reason to believe and could not by the exercise of reasonable diligence have known that it was an Aboriginal site, could be punished in this way. That is all that the Hon. Mr Dunn is seeking to do. He should be able to raise an offence, because he would have to establish the defence that he did not know and had no reason to believe. He would have to do that on the balance of probabilities.

It is particularly important, in a case like this, because in many cases one could not possibly know that the site was one to which the Act related. In many cases one would not have the slightest idea. The objection that the Hon. Mr Roberts took earlier was in relation to mining companies. He said that he had some sympathy with the Hon. Mr Dunn in regard to tourists, campers, motorists and so on, but did not think that mining companies ought to be able to drill. They could not do that, as it is not practicable in that it would be illegal for them to drill unless they made some sort of claim, at which time the matters would be raised. Persons to whom the defence would be available would be people to whom the Hon. Mr Dunn referred,

namely, tourists, campers, motorists or persons passing through who might have no real practical way of knowing that it was an Aboriginal site to which the Act relates. It is a very reasonable and sensible amendment and provides a defence which is common and which, as a matter of natural justice, ought to be provided. I therefore support it.

The Hon. J.R. CORNWALL: I have been trying to explain to the Committee all night that we are attempting to enshrine in this legislation the traditional Aboriginal ways. Although the Hon. Mr Dunn travels this country arguably more than any other member of the Parliament, unfortunately he does not seem to appreciate what we are trying to achieve. He asks what would happen if one group of Aboriginal people came on to an area that traditionally was an area occupied by and a heritage area for another group of Aboriginal people. The advice that I received was excellent, namely, that they would not be game. That is the traditional way, and it is as simple as that.

With regard to tourists who may be travelling on Aboriginal lands, the simple advice would be to be careful. Again, it was a political decision made at the request of the Aboriginal people and an attempt to show sensitivity and to write into the legislation traditional Aboriginal ways. Further, if members of the Committee care to look forward to the amendments I have on file to clause 45, page 17, they will note that they provide amongst other things:

> *(c)* in relation to an Aboriginal site, object or remains located on or partly on the lands vested in the Aboriginal Lands Trust pursuant to the Aboriginal Lands Trust Act 1966 must not be commenced except—
>
> (i) by a person authorised by the Minister with the approval of the Aboriginal Lands Trust;
>
> or
>
> (ii) by the Aboriginal Lands Trust or a person authorised by the trust.

In other words, proceedings under the amendment, if it is accepted, cannot proceed unless authorised by a person authorised by the Minister with the approval of the Anangu Pitjantjatjaraku on the Pitjantjatjara lands, of the Maralinga Tjarutja or a person authorised by the Maralinga Tjarutja if that alleged offence occurs on those two areas dedicated under the land rights legislation, or of the Lands Trust or in relation to any other Aboriginal site, object or remains in the State—in other words, if they are not in Lands Trust lands they are not in Pitjantjatjara or Maralinga lands—proceedings must not be commenced except by a person authorised by the Minister. The Minister in this case is acting on the advice of the traditional owners through the advisory committee.

It is a very sincere and intelligent attempt to bring the two cultures together. I can appreciate that it is not something that a conservative lawyer such as the Hon. Mr Burdett, steeped in the tradition of British law, natural justice and other fine aspects, can cope with readily. I can also understand Parliamentary Counsel shuddering a little and not finding this Bill elegant in the way of the traditional parliamentary drafting. But it is a sincere and intelligent attempt to write into European legislation traditional Aboriginal ways. If we take into account the amendment to clause 45 that I have on file, members will see that we have put together, as far as is practicable, workable legislation that tries to take account of both cultures.

The Hon. PETER DUNN: I put the Minister in the position where he has damaged an object about which he knows nothing. That is the only time that this provision would come into being—if one is innocent. If one is the slightest bit guilty, there is every right for the Minister through his officers to set the wheels in action to have those people punished.

We must look carefully at the Bill. It is a very secretive and collective Bill which does not identify anything. We put these objects into a register, we put them away so that the public cannot see them and we do not advertise the fact that there are objects here or sites there. I have been to sites in the north—I do not know whether they are sacred or not—where Aborigines have worked and lived in the past. I must say that they do not look terribly significant to me, but I am not an Aborigine and would not know. The mere fact that because I was there in the past and admit it now means I am liable to a fine of $10 000 under this Bill. I think it does contain that sort of retrospectivity.

This is different to many other Bills, because of that built in secretiveness. I find it hard to come to terms with the fact that, despite the defence of quite innocently not knowing what you were doing, you are guilty. You might be innocent and might not have had any idea of what you were doing and yet you are guilty because somebody says that you desecrated an object, site, place, remains or story. A further amendment relates to divulging information contravening Aboriginal tradition. I might tell someone of what I saw as a unique place and quite innocently say, 'There is a lovely place out there 80 miles north of the Maralinga test site and if you are travelling through that area go and have a look at it.' Under this Bill I could be liable for a fine of $10 000.

I do not think that is fair or reasonable, because I do not know whether the site 80 miles north of Maralinga is significant. I have seen it: there is a ring of stones there, there are no trees and it is unique. I find it difficult to justify the fact that because I have done that, in all innocence, I should be fined $10 000. I find that difficult to come to grips with. The Minister talked about amalgamating the English and Aboriginal laws. If we are to do that, this is one very minor defence and it is only a defence if you are innocent.

The Hon. J.R. CORNWALL: It is obvious that the spirit and intention of this legislation is to prevent malicious damage. As I understand it, if you are travelling in the north or north-west of the State, it is possible that you may be traversing areas of Aboriginal heritage significance every 10 or 15 minutes. However, it is really drawing a long bow to suggest that, if Mr Dunn was travelling in that country with one or two of his parliamentary colleagues or members of his family, as a *bona fide* traveller, and if he happened to thump a dead mulga out of the ground with the bull bar of his Range Rover, lit a small fire and camped in a dry creek bed and behaved himself—

The Hon. Peter Dunn interjecting:

The Hon. J.R. CORNWALL: I think you would knock a dead mulga out of the ground very well with your AP5 Valiant. But in the event that he was acting sensibly and responsibly, the chances that he would be prosecuted under what is proposed in this Bill are so remote as to be barely worthy of consideration. However, if he acted in a way which was malicious or if he moved in heavy machinery without checking with the traditional owners and caused substantial damage, he would deserve to be fined $10 000 and I for one would make no apology for it. But if he acts in a reasonable way, he has nothing to fear from this legislation, as I understand it from talking to people who understand Aboriginal law and the way these things work.

Amendment negatived; clause as amended passed.

Clauses 21 and 22 passed.

Clause 23—'Damage, etc., to sites, objects or remains.'

The Hon. PETER DUNN: As the Opposition was not supported in relation to the defence clause, clause 20, there is no need for me to proceed with amendments to clauses 23, 28, 29 and 35. They are all consequential.

Clause passed.

Clause 24 passed.

Clause 25—'Directions by inspector restricting access to sites, objects or remains.'

The Hon. M.J. ELLIOTT: I move:

Page 13, line 7—Leave out 'urgent action' and insert 'it'.

I felt the necessity for the inspector to define the urgent action was not necessary and that, where an inspector was satisfied that it was necessary for protection or preservation, he should carry out those actions.

The Hon. J.R. CORNWALL: The contention is that the inspector is in the field and has come upon this situation and therefore urgent action is required. The Government believes that the amendment is unnecessary. If other circumstances prevail, other than an inspector or an authorised person finding this situation in the field, that is a different proposition. By the very nature of the fact that the authorised person would be in the field and something is happening which is detrimental to an Aboriginal heritage item, it is urgent action that is required. We cannot accept the amendment, much as we would like to accept something from Mr Elliott because, as I said, once his adrenalin settled down his contribution has been constructive and intelligent. We would prefer not to accept his amendment.

Amendment negatived; clause passed.

Clauses 26 to 28 passed.

Clause 29—'Control of sale of and other dealings with objects.'

The Hon. M.J. ELLIOTT: This is another clause which provides that the Minister will make a determination, in this case on the removal of Aboriginal objects from the State. Clause 13 dealt with my concern that traditional owners be consulted, but I am not sure whether that clause is relevant to this clause, so, in case I missed it, I ask whether any clause requires the Minister to ensure that any traditional owners are aware of such a move and are in a position to say 'No' to that if necessary.

The Hon. J.R. CORNWALL: If members cast their mind back to the amendment that I moved to clause 6, which now seems so long ago, I made the point that that would delegate to a number of subsequent clauses: 21, 23, 29 and 35. So, it is delegated under that amendment.

Clause passed.

Clause 30 passed.

Clause 31—'Acquisition of objects and records.'

The Hon. L.H. DAVIS: This relates to the Minister's power to acquire an Aboriginal object or record by purchase. Quite clearly, this will require valuation and that may well involve expense. Presumably it will place demands on the few people in South Australia and, occasionally, interstate who are capable of making a valuation of what may well be an important Aboriginal object or record. This may well involve the Aboriginal Heritage Unit, although one would imagine that archaeologists and anthropologists are not in the business of placing values on Aboriginal objects or records. As I am sure the Minister is aware, it is a very specialised area. Has the Government contemplated what action it will take when it comes to the business of making acquisitions under this clause? Other clauses are pertinent in discussing the valuation of Aboriginal objects or records.

The Hon. J.R. CORNWALL: There are two sources of money. The Commonwealth has funds available, as I understand, to acquire Aboriginal objects. Once the Aboriginal Heritage Fund has built up to a reasonable extent, it could be used for this purpose. The Land and Valuation Court will be involved in valuation and the Government expects that, in turn, it will use experts, in most instances, from the Museum. It would be unusual to have to seek that expertise interstate. It may be that an extraordinary situation will arise but, in the overwhelming number of instances where a valuation is required, expertise is available within South Australia, albeit that the Government concedes that it is a very specialised area.

The Hon. L.H. DAVIS: I do not want to debate the point at length, but I do see a very real difficulty given that under Commonwealth tax incentive schemes very few people in South Australia are regarded as of sufficient standard to value Aboriginal artefacts. Only recently the South Australian Museum had to bring a valuer over from Melbourne to value an Aboriginal artefact. There has been a significant growth in transactions in Aboriginal objects and artefacts, and a necessary expense will be incurred. I do not debate the merits of the clause; I am just looking at the practicality of its operation.

The Hon. J.R. CORNWALL: The honourable member's point is well made and taken.

Clause passed.

Clauses 32 to 34 passed.

Clause 35—'Divulging information contrary to Aboriginal tradition.'

The Hon. L.H. DAVIS: This clause seeks to limit any person divulging information relating to an Aboriginal site, object, remains or Aboriginal tradition. Quite clearly some Aboriginal communities no longer reside in their traditional areas. It may also be that there are no longer any Aboriginal groups in existence that would have a relationship with a particular area as regards sites, objects, remains or traditions. Therefore, the question arises that, in a case in which no Aboriginal group pertains to a particular site, object or remains, it would no longer be an offence under the provisions of this clause. Is that the case?

The Hon. J.R. CORNWALL: That is a circular argument, but basically the answer is that that would be the case.

Clause passed.

Clause 36—'Access to land by Aboriginal people.'

The Hon. M.J. ELLIOTT: I am not sure whether one of the amendments has picked this up but a concern I have under this clause is that the Minister may authorise persons to enter any land for the purpose of gaining access to an Aboriginal site. How does this clause stand if it conflicts with the powers in relation to the Anangu Pitjantjatjaraku lands or Maralinga Tjarutja lands where the Aboriginal people have control over the people who enter? This Bill empowers the Minister to authorise access to the land. Does it conflict with the other provisions?

The Hon. J.R. CORNWALL: My advice is that it does not.

Clause passed.

Clauses 37 to 44 passed.

Clause 45—'Commencement of prosecutions.'

The Hon. J.R. CORNWALL: I move:

Page 17, lines 16 and 17—Leave out subclause (1) and insert new subclause as follows:

(1) A prosecution for an offence against this Act—

(a) in relation to an Aboriginal site, object or remains located on or partly on the lands vested in Maralinga Tjarutja pursuant to the Maralinga Tjarutja Lands Rights Act 1984 must not be commenced except—

(i) by a person authorised by the Minister with the approval of Maralinga Tjarutja;

or

(ii) by Maralinga Tjarutja or a person authorised by Maralinga Tjarutja;

(b) in relation to an Aboriginal site, object or remains located on or partly on the lands vested in Anangu Pitjantjatjara pursuant to the Pitjantjatjara Lands Rights Act 1981 must not be commenced except—

(i) by a person authorised by the Minister with the approval of Anangu Pitjantjatjara;

or

(ii) by Anangu Pitjantjatjara or a person authorised by Anangu Pitjantjatjara;

(c) in relation to an Aboriginal site, object or remains located on or partly on the lands vested in the Aboriginal Lands Trust pursuant to the Aboriginal Lands Trust Act 1966 must not be commenced except—

(i) by a person authorised by the Minister with the approval of the Aboriginal Lands Trust;

or

(ii) by the Aboriginal Lands Trust or a person authorised by the Trust;

(d) in relation to any other Aboriginal site, object or remains must not be commenced except by a person authorised by the Minister.

I am sure members will recall that it was stated during the second reading debate that the provision of only the Minister authorising the commencement of proceedings in relation to an offence was included to emphasise the importance of the function. It is not inconceivable that some future unsympathetic or disinterested Minister could, without this requirement, rely on some third party to instigate and bear the cost of prosecutions, particularly where the outcome is not clear. However, the Anangu Pitjantjatjara and Maralinga Tjaruta have indicated that they would like to be able to complement and reinforce their land rights Act, or Acts, by being empowered to commence proceedings under this Act.

The Government moves this amendment in the knowledge that, subject to Anangu Pitjantjara and Maralinga Tjaruta land rights legislation, these communities already have freehold title to their lands and exercise tight control over the entry and movement of people and companies within them. Similarly, land held subject to the Aboriginal Lands Trust Act of 1966 only allows right of entry prospecting, exploration and mining subject to the Mining Acts of 1971 and the Petroleum Act of 1940 with the approval of the Governor and subject to any conditions the Governor may impose. I urge members to support the amendment.

The Hon. M.J. ELLIOTT: Once again, this amendment has started to pick up some of my concerns and moved part of the way in the direction that I would have liked. It is true, as the Minister said, that if these powers were delegated solely to traditional owners, if they did not have the financial resources then they would not have the capacity to initiate a prosecution. However, I believe that it is equally true that traditional owners outside the Anangu Pitjantjatjara and Maralinga Tjarutja, and now the lands trust as well, really do not have an option to initiate an action; they rely entirely on the goodwill of the Minister. Perhaps some of those people—the very people who are arguing; the most disfranchised in the cultural and heritage sense, by this Bill; the people who have the greatest complaint about the Bill generally—see, in this legislation, that in spite of everything else in the Bill, and whatever other protections are offered, when it comes to the point of prosecution, do not have the capacity to initiate prosecution, and I believe that most of them are not particularly happy about that.

I am glad that at least there has been some concession to some of the Aboriginal people, but I suggest that we are probably looking at less than 15 per cent of the Aboriginal population of South Australia being capable of initiating prosecutions.

Amendment carried.

The Hon. J.R. CORNWALL: I move:

Page 17, lines 22 to 25—Leave out subclause (3) and insert the following subclauses:

(3) The traditional owners of an Aboriginal site or object may request the Minister to authorise a person to commence a prosecution for an offence against this Act in relation to that site or object and the Minister must give proper consideration to such a request.

(4) In any proceedings for an offence against this Act—

(a) a document apparently signed by the Minister authorising the commencement of the proceedings by a particular person constitutes, in the absence of proof to the contrary, proof of the authorisation;

(b) a document apparently executed by Maralinga Tjarutja, Anangu Pitjantjatjara or the Aboriginal Lands Trust authorising or approving the commencement of the proceedings by a particular person constitutes, in the absence of proof to the contrary, proof of the authorisation.

This refers to the traditional owners requesting a commencement of a prosecution. The Government is not prepared at this time to extend the provision to other areas of the State, but moves this amendment to require the Minister to consider a request by traditional owners for the commencement of proceedings in relation to an offence under the Act against his or her site or object.

Amendment carried; clause as amended passed.

Clause 46 passed.

Schedules and title passed.

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

That this Bill be now read a third time.

The Hon. M.J. ELLIOTT: This Bill has occupied a great deal of my time over the past 12 months, and in its original form, as the Government first brought it into this Parliament, there was no way known that I could ever have contemplated supporting it. The Bill, as originally introduced, gave all powers solely to the Minister and gave the Aboriginal people no say at all. During the Committee stage I attempted to introduce a series of amendments which would have empowered Aboriginal people in a very real way, by the setting up of both a council and a committee, to administer the Act, giving the Minister the final veto so that, I suppose, the safety valve which we know would have been demanded was still there. But, nevertheless, the operation of the legislation would have been entirely in Aboriginal hands—indeed, as it should be, because it is entirely about Aboriginal heritage and relates in no important way to anything else.

The lobbying that I received on this matter in great part echoed the very concerns that I have raised and in fact supported the answers that I was offering by way of my amendments. However, during negotiation the Government refused outright to accept those amendments that I was offering and I, likewise, refused to accept the Bill as it was, I suppose that the amendments that then emerged moved at least part way along the way I wanted to go. A considerable number of Aboriginal people have said to me very clearly that in the absence of the amendments that I was proposing they wanted the Bill defeated. I gave that very serious consideration. However, one must face reality, and the realities are that the Liberal Party, with the mining companies nibbling away at their left ear, really were not going to support anything stronger than the legislation as proposed. When we turned to the Government, it also had similar problems, as Mr conservative Bannon worries increasingly about the same groups of people. We have already seen what happened in relation to the National Parks and Wildlife Act that was before this place not all that long ago.

I recognise that there is no real chance at all that either the Labor Party or the Liberal Party will move further in the direction of full self-determination for Aboriginal people. It is with that recognition that I had to make a decision whether or not we accepted the Bill which had shortcomings—and serious shortcomings—but which nevertheless still had some useful elements in it. It does at least give some real powers to traditional people and, I guess, the real test of this Bill will come once it is in operation, and I refer to

how seriously the traditional people are treated and whether or not they get all the powers in the way that the Government says that they will.

I shall watch this with a great deal of interest, and there is absolutely no doubt at all that the Aboriginal people themselves will be waiting to see whether or not this Bill turns out to be a totally toothless tiger and inappropriate for the Aboriginal people, particularly outside the Anangu Pitjantjatjara lands and the Maralinga lands. It was only in the recognition that this Parliament was not likely in the foreseeable future—and I mean for some years—to accept something which moved even further in the direction that the Aboriginal people wanted that I was willing, but rather reluctantly, to support this Bill at the third reading.

Bill read a third time and passed.

FAMILY RELATIONSHIPS ACT AMENDMENT BILL

(Second reading debate adjourned on 16 February. Page 2765.)

Bill read a second time.

In Committee.

Clauses 1 to 5 passed.

Clause 6—'Insertion of new Part.'

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

Page 2, line 27—After 'respect of, a' insert 'surrogacy contract or a'.

This clause deals with surrogacy which is dealt with in more detail than in the Reproductive Technology Bill. Subject to this Bill's passing, I am happy for reference to surrogacy to be deleted from the Reproductive Technology Bill. We will consider this matter at the completion of consideration of this Bill. My proposed amendment seeks to provide that, where a person gives any valuable consideration under or in respect of a surrogacy contract as well as a procuration contract, the amount or value of that consideration may be recovered from the person to whom the consideration was given.

At the moment the Bill allows the recovery of any valuable consideration paid under a procuration contract, which is a contract under which a person agrees to negotiate, arrange or obtain the benefit of a surrogacy contract on behalf of another, or under which a person agrees to introduce prospective parties to a surrogacy contract. There is no quarrel with the proposal in the Bill to allow for the recovery of consideration paid under a procuration contract. The area which is subject to some debate and perhaps to different points of view is whether any consideration paid under a surrogacy contract, which is illegal and void, should be recoverable. If a surrogacy contract is illegal and void as being contrary to public policy, which is generally the position at common law and is similarly provided for in this clause, no action can be taken to recover any consideration paid under the surrogacy contract.

Similarly, the question of the custody of the child is a matter for the courts rather than for agreement between the parties. I know that there are differing points of view on this issue, but I think it is reasonable to provide by statute for consideration paid to be recoverable, notwithstanding that the surrogacy contract is illegal and void, and leaving the question of rights of custody and access to a child born as a result of any pregnancy under a surrogacy arrangement to the courts in South Australia.

The Hon. C.J. SUMNER: The Government opposes this amendment and believes that the general provisions of the common law should apply to the results of a surrogacy contract being declared illegal and void. At the present time the common law provides for contracts to be declared void where they are contrary to public policy, for whatever reasons—because they involve committing an act that is illegal or whatever. As the Hon. Mr Griffin has pointed out, it is probable that now a surrogacy contract would be held to be void because it is contrary to public policy. That is now enshrined in the Bill before us, which outlaws surrogacy by providing that a surrogacy contract is illegal and void.

The question is whether, following the declaration of the surrogacy contract being void, the common law situation should apply in terms of the consequences for the parties, or whether the proposition put by the honourable member should apply. In these circumstances the common law provides that the loss lies where it falls so, if consideration has passed and money has been paid, the contract is void and the person who has paid the money cannot sue for its return. On the other hand, if the money has not passed hands, then the person who has not received the money cannot sue for it. That is the general position that applies with respect to contracts that are void because of illegality.

In this case, the Hon. Mr Griffin wants to create an exception to that by providing that, in the case of a surrogacy contract, as with a procuration contract where it has been agreed an exception should apply, any valuable consideration paid under the surrogacy contract can be recovered by the person who makes that payment. As I said, the Government opposes that and believes that the common law position should continue to apply.

One effect of what the honourable member proposes would be that a couple who wanted somebody to have a child for them would, whatever happened, be able to recover any money that they had paid either to a person who was to arrange the deal or to the person who was to bear the child; that is, they would be able to recover the money from the person to whom they paid the money pursuant to a procuration contract or from the person who bore the child pursuant to the surrogacy contract. Such a result would seem to do little to prevent couples paying others to have a child for them. The knowledge that their money would be lost to them if they did pay it surely would be more of a deterrent to entering into these contracts.

I also pointed out, I think by way of interjection during the Hon. Mr Griffin's second reading contribution, that we could have a situation where the woman who had been paid to have the child pursuant to a surrogacy contract could end up having the child, not wanting to keep it because that was her original intention, and therefore passing the child to the people who had paid for it and the people who had paid for it could also keep the money. In other words, they would not pay any money across to the person who had the child. That is an unfair result. I do not think the honourable member's proposition provides any greater deterrent to entering into these sort of contracts and the best solution is to leave the matter to the general rules of common law.

The Hon. I. GILFILLAN: The Democrats oppose the amendment.

The Hon. K.T. GRIFFIN: I said that it was a matter of debate as to what the proper course would be. With the surrogacy contract there will be inequities, whichever way we go. I do not subscribe to the view that allowing the loss to be borne by the parties as it falls is necessarily the best way of resolving the issue. On the basis of the indication by the Hon. Mr Gilfillan, if I do not succeed with my amendment on the voices, I will not divide.

Amendment negatived; clause passed.

Title passed.

Bill read a third time and passed.

REPRODUCTIVE TECHNOLOGY BILL

Consideration in Committee of the House of Assembly's amendments:

No. 1. Clause 10, page 4, after line 28—Insert new paragraph as follows:

(ca) to promote research into the causes of human infertility (and, in doing so, to attempt to ensure that adequate attention is given to research into the causes of both female and male infertility);.

No. 2. Clause 18, page 9, lines 23 to 27—Leave out the Clause.

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

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

The first amendment provides an additional function for the Reproductive Technology Council, that additional function being to promote research into the causes of human infertility and in so doing to ensure that adequate attention is given to research into the causes of both male and female infertility. The Government has no objection to that being added as a function of the Reproductive Technology Council.

The second amendment deleted the clauses relating to the prohibition on surrogacy contracts with which we have now dealt and passed as part of the Family Relationships Act. That being the case, no need exists for surrogacy to be dealt with in the Reproductive Technology Act. Accordingly, accepting that amendment made by the House of Assembly will delete the surrogacy clauses from the Bill.

The Hon. M.B. CAMERON: The Opposition supports both amendments.

Motion carried.

CORONERS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from from 18 February. Page 2866.)

The Hon. K.T. GRIFFIN: The Opposition is prepared to support the Bill. It seeks to include in the Coroners Act a mandatory requirement to conduct an inquest into the cause and circumstances of a death that occurs while the person is in lawful custody. A provision exists in the Coroners Act to allow the Coroner to conduct an inquest into a death which occurs while in lawful custody, but that is a matter which under the 1981 amendments to the Coroners Act is a discretionary provision. The Bill seeks to make it mandatory.

One can understand in the current climate of the Royal Commission into Aboriginal Deaths in Custody the desire to ensure that State legislation is in order and beyond criticism so that, when the royal commission reports, there can be no reflection on the state of the law in South Australia in respect of Aboriginal persons who have died in lawful custody.

The second reading speech is somewhat misleading. It correctly makes the point that it was mandatory under the old Prisons Act for an inquest to be conducted into a death occurring in a prison but, whilst it is correct to say that the Correctional Services Act 1982 repealed the Prisons Act and did not maintain the mandatory requirement, largely, I should say, because it was to some extent translated into the Coroners Act, the Correctional Services Act 1982 was not proclaimed to come into effect until 19 August 1985.

So, some three years after the Correctional Services Act was passed by Parliament it was then brought into operation and there were amendments to that Act in 1983, 1984 and 1985 where the opportunity was available to amend that provision in the Correctional Services Act 1982. Also, I should say that the Coroners Act was amended also on several occasions during that period. Notwithstanding that, I can say that the Opposition supports the general principle of the Bill. It is important to ensure that the chronology of events relating to the present Correctional Services Act is on the public record. I support the second reading.

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

ADJOURNMENT

At 11.7 p.m. the Council adjourned until Wednesday 24 February at 2.15 p.m.