that there could be some satisfactory development of plead- ing in the local court without making it unduly complicated but in an attempt to limit the parameters of a case and assist in costs.

The Law Society also makes the point that the fee struc- ture does not properly reflect the court of limited jurisdiction is quite inadequate, if it is to be applied also to those cases up to $20,000. I would agree with that. I think one of the reasons that the local court of limited jurisdiction is in this area where greater levels of responsibility are required, the costs which may be awarded against a party or recovered from a client should reflect adequately the value of the work which is done.

Of course, it should be remembered that, without the system of pre-trial conferences, and even on the present scale, that, if it is true that there is a case to answer in the local court of limited jurisdiction rather than going to a pre-trial conference, as it would in the District Court, the costs to the litigant will be higher in the Local Court than in the District Court. So, some attention needs to be given to pre-trial conference procedures and developing those in the local court of limited jurisdiction; some attention needs to be given to pleadings; and some attention needs to be given to the question of an adequate costs scale.

The Law Society draws attention to the fact that in New South Wales magistrates have jurisdiction up to $40,000 and District Court judges have jurisdiction up to $200,000. In this State, of course, District Court judges have very much wider jurisdiction than that. In Victoria, magistrates have jurisdiction up to $20,000 in personal injury claims but only up to $5,000 in personal injury claims. In Queensland, magistrates have jurisdiction up to $10,000 and District Court judges have jurisdiction up to $40,000. So, in New South Wales magistrates will be given a fairly significant increase in jurisdiction in which way ahead of what has occurred in other States. I think it is in that context that, but it does reflect a significant change across Australia which is, in fact, occurring.

So, there are some reservations about the increases, but the Opposition has taken the view that, if there are adequate rights of appeal (and that is what I have referred to) and if attention can be given to the matters to which I have referred to ensure that every opportunity is taken to bring pressure to bear on the parties to settle matters, we should support this increase. I would like to know from the Attorney-General whether the Government is minded any initiatives with respect to any of those matters to which I have referred.

The Hon. TREVOR CROthers secured the adjourn- ment of the debate.

ABORIGINAL HERITAGE BILL

Referred to the House of Assembly and read a first time.

The Hon. J.R. COrNWAII (Minister of Health): I move: That this Bill be now read a second time.

I think it is in the interest of the community that the House have a second reading explanation inserted in Hansard without my reading it.

Leaves granted.

Explanation of Bill

The aim of this Bill is to provide for the effective pro- tection of Aboriginal heritage in South Australia. Protection of heritage is currently afforded under the Aboriginal and Historic Relics Preservation Act 1965. This legislation is now outdated and its European relies component has been superseded by the South Austra- lian Heritage Act 1978.

The Bill proposes amendments to the Act to ensure that the heritage protection legislation is considered essential. In particular, the 1965 Act does not give adequate protection to all sites of significance to Ab- original heritage. It is given no protection at all to sites of signif- icance to Aboriginal people which are natural features of the landscape (whether under the legislation or as a reserve); nor does it allow sufficient input by Aboriginal people.

In the 1965 Act, the Aboriginal Heritage Act, was as- sented to by Parliament. It was not proclaimed, however, largely because of concerns people had expressed in the As- sessions. When the Labor party assumed office in late 1982 it brought with it a commitment to prepare and introduce a new Act to protect sites of significance to Aboriginal people. That of passed in 1979. To this, an extensive program of consultation with Aboriginal communities around South Australia has been undertaken. Consultation has taken place with a range of Government and non-governmental interests in mining, pastoral and Aboriginal admin- istration fields.

Definition of Sites and Objects

The Bill provides blanket protection to all sites and objects of significance to Aboriginal heritage, but offSets this by providing for ministerial exemptions in certain areas where certain activities are justified. The alternative approach to this is to provide strong but selective protection to particu- larly important sites or objects that are significantly at threat. Alternatively, this latter (selective) approach is all but impractical because of the huge number of sites and objects throughout the State. It would be immensely expensive and time consuming to try to identify, document and register (for protective purposes) and objects. Significant sites and objects would undoubtedly be destroyed or damaged through the course of this exercise, simply because they had not, up to that point, been identified and regis- tered. The provision of blanket protection to all sites and objects of significance avoids difficulties and allows the Government to assume that all sites and objects warrant ongoing protection. Regulations will be provided to facilitate protection for particular sites, regions, or classes of sites or objects. Where these are excluded from the definitions of Aboriginal heritage, there is no provision for the purposes of the Bill.

Archives and Records Act

Prior knowledge on Aboriginal heritage will be stored in central archives and records which will contain records of sites and objects determined by the Minister to be of archaeological value and to undertake excavation in legal proceedings the Minister's determination will be taken as final.

Aboriginal Tradition

A proportion of information relating to Aboriginal heri- tage is saved on the understanding that it would be contrary to Aboriginal tradition. As it is an offence under the Bill to divulge information about any Aboriginal site or object under section 11 it is contrary to Aboriginal tradition. Furthermore, access to information contained in the archives and on the Register will generally be subject to the approval of traditional owners.

Consultation

Advice on the significance of sites and objects and how these are protected will be provided to the Minister by Aboriginal people. The Bill establishes the Aboriginal Affairs Consultation Advisory Council to provide the Minister with the opportunity to ensure that the interests of Aboriginal people are protected. The Bill provides for the appointment of the Council and its powers and duties.

The Bill makes provision for the protection of heritage sites, objects or areas of cultural significance. The Bill provides a framework for the protection of heritage sites, objects or areas of cultural significance. The Bill provides for the protection of heritage sites, objects or areas of cultural significance. The Bill provides for the protection of heritage sites, objects or areas of cultural significance. The Bill provides for the protection of heritage sites, objects or areas of cultural significance.
obstacles, customs and beliefs that have evolved or developed from that tradition since European colonisation.

Land subject to a mining tenement is brought within the meaning of private land, of which a tenement is intended to be included under the holder of the mining tenement. The measure provides that in certain circumstances such persons must be notified in writing.

A 'traditional owner' of an Aboriginal site or object is defined as a person who has, or holds in accordance with Aboriginal tradition, social, economic or spiritual affiliations with, and responsibilities for, the site or object.

Clause 4 provides that the Crown is bound by the measure.

Part II of the measure deals with the administration of the measure. The Minister, in consultation with the Minister; the establishment of an Aboriginal Heritage Committee; the knowledge of inspectors; the manner in which the Minister is to make determinations and give authorisations under the measure; the appointment of inspectors and their powers; and the administration of a South Australian Aboriginal heritage fund.

Clause 5 lists the functions of the Minister under the measure. These include: to take measures for the protection and preservation of Aboriginal sites, objects and remains; to conduct, direct or assist searches for Aboriginal sites or objects; and to conduct, direct or assist research into the Aboriginal heritage. The Minister is required to consider relevant recommendations of the Aboriginal Heritage Committee. (established under clause 7).

Clause 6 enables the Minister to delegate powers under the measure to inspectors, to authorise the concurrence and management of proceedings for an offence.

Clause 7 establishes the Aboriginal Heritage Committee. The Minister is to appoint Aboriginal persons to the committee to represent the interests of Aboriginal persons in the determination of the Aboriginal Heritage. The number of persons appointed to the committee will be equal to the number of Aboriginal persons on the application. The Minister must, as far as is possible, appoint equal members of men and women to the committee.

Clause 8 lists the functions of the Aboriginal Heritage Committee. The committee is an advisory committee to the Minister. It can advise on its own initiative or at the request of the Minister, on the matters referred to the central archives on the Aboriginal heritage (set up under clause 9). Measures that apply to the protection and preservation of Aboriginal sites, objects and remains; the appointment of inspectors; and any other matter related to the administration or operation of the measure, and protection and preservation of the Aboriginal heritage.

Clause 9 provides that the Minister must keep central archives of information relating to the Aboriginal heritage. Part of the central archives is to be known as the 'Register of Aboriginal Sites, Objects and Remains'. Each entry in this part is to be limited to descriptions of sites and objects determined by the Minister to be Aboriginal sites or objects.

The clause also provides that the Minister may assist Aboriginal organisations to establish local archives of information relating to the Aboriginal heritage.

Clause 10 provides for the confidentiality of the central and local archives. The approval of traditional owners, or, in the case of the Aboriginal Heritage Commit- tee (in the case of the central archives) or the organisation keeping the archives (in the case of local archives) must be obtained before any information from an Aboriginal site or object is made available from the archives. The traditional owners, or the relevant organisation keeping local archives may stipulate conditions on which the infor-

which the inspector is to be restricted the powers of an inspector, the Minister may appoint an inspector to give directions for the protection and preservation of a particular Aboriginal site or object.

Clause 16 requires the Minister to provide a person appointed an inspector with a certificate of appointment. The certificate must include a statement of the personal relationship of the person to the site or object upon which the inspector is to be restricted the powers of an inspector in relation to whom the inspector has exercised or intends to exercise powers.

The certificate sets out the powers of inspectors. These include enter to land to inspect an Aboriginal site or object on or near the site or object; to give directions to an Aboriginal site or object; to enter to land to inspect an Aboriginal site or object; and power to seize and retain an Aboriginal object where the inspector has reason to suspect that it is an Aboriginal site or object. The certificate also provides that in relation to anything that affords evidence of an offence committed by another person the inspector is to be restricted the powers of an inspector in relation to anything that affords evidence of an offence committed by another person, the inspector is to be restricted the powers of an inspector. The inspector is to be given instructions aimed at averting harm to the site or object to any person visiting the site or in the immediate vicinity of the site or object.

Clause 18 provides for offences with respect to hindering or obstructing inspectors or falling to comply with a require- ment or instruction given by inspectors. The maximum penalty provided is a $2,000 fine or imprisonment for three months.

Clause 19 provides that the Minister must establish the South Australian Aboriginal Heritage Fund. The fund is to be used for the purposes of this measure. The Inspector or the Treasurer may, subject to the approval of the Minister for the purposes of this measure. The Inspector or the Treasurer may, subject to the approval of the Minister, in exercising power under this measure, make regulations in respect of the protection and preservation of the Aboriginal heritage.

Clause 20 requires any owner or occupier of private land, or an employee of such an owner or occupier, who destroys an Aboriginal site, object or remains on land that is to be reported to the discovery of the Minister. The maximum penalty for failure to report so report is, in the case of a body corporate, a fine of $50,000 and, in any other case, a fine of $10,000 or imprisonment for six months. The Minister must determine whether to make any entry the directions. If the Minister determines not to make an entry the directions must be revoked.

Clause 21 empowers the Minister to give directions to reduce the number of the measure in the general public interest, and to make provision for the protection and preservation of the Aboriginal heritage.

Clause 22 empowers the Minister to authorise a person to enter land, search for any Aboriginal site, object or remains and to excavate the land. If any objects or remains are taken into the Minister's possession for the purpose of protecting and preserving them. The authorising person must, before giving the occupier of the site or object or remains any notice to the owner and occupier (if any) of the land. The Minister may require to make good any damage caused to the land. An officer of the Minister may enter a site or object or remains with a maximum penalty of a $2,000 fine or imprisonment for six months.
Minister must observe the requirements of the regulations in determining whether to give such an authorisation. The maximum penalty provided for the offence is, in the case of a body corporate, a fine of $50,000 and, in any other case, a fine of $10,000 or imprisonment for six months.

Clause 30 empowers the Minister to compulsorily acquire land for the purposes of protecting or preserving an Aboriginal site, object or remains.

Clause 31 empowers the Minister to purchase or to compulsorily acquire an Aboriginal object or record. An Aboriginal record is defined in the interpretation provision as a record of information that must, in accordance with Aboriginal tradition, be kept secret from a person or group of persons. A record is in turn widely defined. If a price cannot be agreed the Land and Valuation Court must value the object.

Clause 32 empowers the Minister to require a person who has the possession of an Aboriginal object or record or an object or record that the Minister has reason to believe may be an Aboriginal object or record to surrender the object or record for the purpose of determining whether it is an Aboriginal object or record, examination and entry in the central or local archives, consideration of acquisition of the object or record or research related to the object. The object or record may be kept for a maximum of three months.

Failure to comply with a requirement to surrender an object or record is an offence for which the maximum penalty is a fine of $2,000 or imprisonment for three months.

Clause 33 provides that if an owner of an Aboriginal object is found guilty of an offence in relation to that object, the court may order that the object be forfeited to the Crown.

Clause 34 enables the Minister to place land or an Aboriginal object or record that has been acquired or come into the possession of the Minister (other than by surrender of the object or record under clause 32) in the custody of an Aboriginal person or organisation, or to otherwise deal with the land, object or record, subject to such conditions as the Minister determines.

Clause 35 makes it an offence to divulge, contrary to Aboriginal tradition, information about any Aboriginal site, object or remains or about Aboriginal tradition, without the authorisation of the Minister. The maximum penalty provided is a fine of $10,000 or imprisonment for six months.

Clause 36 empowers the Minister to authorise an Aboriginal person or group of Aboriginal persons to enter any land (including private land) for the purpose of gaining access to any Aboriginal site, object or remains. The owner and occupier (if any) of the land must be given a reasonable opportunity to make representations on whether and on what conditions the authorisation should be given. An offence of hindering or obstructing a person acting pursuant to such an authorisation is provided, with a maximum penalty of a fine of $2,000 or imprisonment for three months.

Clause 37 states that nothing in the measure prevents Aboriginal people from doing anything in relation to any Aboriginal site, object or remains, in accordance with Aboriginal tradition.

Part V of the measure contains miscellaneous provisions. Clause 38 makes it an offence to damage or interfere with a sign erected pursuant to the measure. The maximum penalty provided is a fine of $1,000.

Clause 39 provides for service of notice or documents required or authorised to be given under the measure to be personal or by post.

Clause 40 provides immunity from liability for persons engaged in the administration or enforcement of the measure. A liability that would lie against such a person lies instead against the Crown.

Clause 41 provides that where an employee or agent acting in the course of his or her employment or agency is guilty of an offence, the employer or principal is also guilty of an offence.

Clause 42 provides that where a body corporate is guilty of an offence, each member of the governing body is also guilty of an offence.

Clause 43 provides that only the traditional owners may question the validity of an act or determination of the Minister where the Minister has failed to consult or obtain the permission of those owners as required by the measure.

Clause 44 is an evidentiary provision.

Clause 45 provides that offences against the measure are summary offences.

Clause 46 provides that proceedings for an offence against the measure can only be commenced on the authorisation of the Minister. If the Minister so authorises, a prosecution may be commenced at a time later than six months after the date on which the offence is alleged to have been committed.

Clause 48 gives the Governor general regulation-making power and enables regulations to prescribe penalties not exceeding $2,000 for contravention of or non-compliance with a regulation.


The amendments to the Mining Act 1971 require the Minister responsible for that Act to consider the effect on Aboriginal sites or objects before issuing a mining tenement.

The amendments to the Planning Act 1982 require applications for planning authorisations in respect of developments of a prescribed kind or in a prescribed area to be referred by the planning authority to the Minister responsible for the administration of this measure. The planning authorisation must not be granted until the planning authority has had regard to any representations of the Minister. If the planning authority is a council, the planning authorisation may only be granted with the concurrence of the Planning Commission. The commission is required, in turn, to have regard to any representations of the Minister.

The amendment to the South Australian Heritage Act 1978 enables the Minister responsible for the administration of this measure to enter into heritage agreements with owners of land on which an Aboriginal site or object or Aboriginal remains are situated.

Schedule 3 consists of a transitional provision. It provides that where an area was a prohibited area or historic reserve under the Aboriginal and Historic Relics Preservation Act 1965; immediately before the commencement of the measure, directions may be given under clause 24 in relation to that area without the need to comply with the consultation procedures set out in subclause (3) of that clause.

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

**ADJOURNMENT**

At 9.30 p.m. the Council adjourned until Wednesday 4 November at 2.15 p.m.