LEGISLATIVE COUNCIL

Tuesday 21 July 1981

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

MINISTERIAL STATEMENT: MURDER CASE

The Hon. K. T. GRIFFIN (Attorney-General): I seek leave to make a statement and intimate that I will, at the appropriate time, move for an extension of Question Time if leave is granted.

Leave granted.

The Hon. K. T. GRIFFIN: There has been considerable public and media comment generated since Friday on the subject of the woman who has been convicted of murdering her husband with an axe, and sentenced to life imprisonment. It has created a highly charged atmosphere in which a number of matters have not been known, have not been disclosed or have been overlooked.

Generally, there has been a great deal of misunderstanding as to what a Government is or is not able to do in these sorts of circumstances. Accordingly, it is appropriate, in the public interest, to outline the whole position with a view to clarifying these matters.

Last Thursday afternoon, the woman, whose name has been suppressed by a court order, was convicted of murder. The jury was unanimous (as required by the Juries Act in a case of murder) in its verdict after a trial which lasted three days. The crime occurred on Thursday 2 April 1981, and the committal proceedings commenced on Tuesday 2 June. She was remanded in custody for one week after she committed the offence until bail was granted. Bail was not opposed during the course of the trial. Her costs are being met by Government through the Legal Services Commission.

The woman was convicted of murder, a crime which is generally regarded as the most serious crime that can be committed in our society. The mandatory punishment provided by the law for this crime is a sentence of life imprisonment. The court has no alternative. However, there are a number of courses of action available to a person who is convicted of a crime.

The normal course would be for the accused person and her lawyers to appeal to the Court of Criminal Appeal which comprises three judges from the South Australian Supreme Court. Such an appeal would be made by the defendant where she had any complaint with the conduct of the trial.

The Court of Criminal Appeal can do one of three things. It can dismiss the appeal (thus upholding the conviction), it can allow the appeal and substitute a conviction for

The man concerned had a mark on his stomach. This manslaughter in appropriate cases (in which case the maximum penalty is life imprisonment) or it can quash the conviction and order a retrial. The merits of any appeal and the course to be followed are matters for the court to decide. Therefore, it is not appropriate to speculate on what the court would do.

If an appeal to the Court of Criminal Appeal is unsuccessful, the defendant can take the case to the High Court or the Privy Council. If this is unsuccessful there are then two courses open. The most usual course is to apply to the Parole Board for parole. In considering the question of parole, the Parole Board takes into account all the facts, even relevant facts which may not have been admissible as evidence at the trial, as well as matters such as the record and background of the woman concerned.

The alternative is a most unusual course where the Governor in Council would grant a pardon. In the form which has received considerable attention in the last few days, the pardon would wipe out the conviction, providing a complete exoneration from the consequences of the crime. I cannot believe that any reasonable person is really sponsoring that course.

A pardon in any form should be considered only where appeals have been exhausted and no other remedy exists to right an injustice or a miscarriage of justice. The preferred course, even in the most exceptional cases, is to require the pursuit of remedies through the appeals procedures. It should be recognised that these procedures have been developed over a long period of time, are well tried and proven and are directed specifically to ensure that convicted persons have every opportunity to establish and protect their rights.

In the period pending an appeal, the defendant can apply for bail. It is most uncommon for persons who have been convicted of murder to be granted bail, but in this instance I have instructed the Crown not to oppose a bail application when it is made. This instruction reflects what the Government perceives as community desire for compassion to be demonstrated. The Government is concerned for her personally in her present difficulties.

The question of bail, however, remains firmly in the hands of the defence lawyers. When they apply, the Crown will not oppose it. The decision on whether the woman is granted bail rests with the judge who hears the application. And, while the Crown would not oppose bail, it should be made clear that this in no way could alter the Crown's arguments on the appeal. It must be remembered that a person applying for bail after conviction is in a quite different situation from that of a person charged with a crime but not yet convicted.

The woman is currently in the Women's Rehabilitation Centre, at Northfield, where she is comfortable and is being given support, with compassion, by the authorities, prison chaplain and others. She is in a single unit, and is being well cared for with reasonable access to family and friends. Since Friday she has been able to receive visitors.

One of the principal matters which has been the subject of comment in this case is the law relating to provocation. It is the impact of provocation that can, in appropriate cases, reduce what would otherwise be murder to manslaughter. It is a somewhat complex area of the law, and undoubtedly will be one of the matters discussed before the Court of Criminal Appeal. Nevertheless, the rules that govern the application are very well developed in the context of all those rules which govern the way members of society react towards and treat each other.

People must be restrained from killing or seriously injuring others, but the effectiveness of this restraint is jeopardised if the law fails to allow for the fact that almost anyone can at some stage be provoked beyond endurance, or may need to react with force in self-defence.

Provocation is any unlawful act or series of acts of a kind which would deprive an ordinary person of self-control, and which in fact did deprive the defendant of self-control, and as a result the defendant acts under their immediate influence before he or she has time to recover himself or herself.

If the evidence given in a case contains some evidence that may amount to provocation, that is, some evidence fit for the consideration of the jury, then the issue of provocation must be left to the jury. Whether in any case there is evidence fit for the consideration of a jury on a particular matter is a question of law for the trial judge.

It is not appropriate in this Council to endeavour to identify and explain the number of separate elements which must be present to make out a *prima facie* case of

provocation. Suffice to say that I have instituted a review of the law of provocation. Any appeal will necessarily be an important ingredient in this review. Any review must necessarily take cognizance of the serious consequences for society if there are not strict rules that prevent a person from taking the law into his or her own hands unless there are exceptional circumstances such as provocation or self-defence to justify a violent response in the heat of the moment.

No-one is suggesting, I hope, that the rules governing persons' behaviour should be relaxed to such an extent that anyone who may be subject to extreme personal pressure (and this does not have to be only domestic pressure) can commit a crime like murder with society's apparent approval that it was justified.

I and the Government share the public's strong sympathy for this woman in her personal ordeal. It is this ordeal that has focused attention on women and children in situations of domestic violence. It is in this context that the Government has been working on ways of dealing with such problems and giving support to women and children involved in these situations.

A committee to examine domestic violence, chaired by the Women's Adviser to the Premier, Ms Rosemary Wighton, and responsible to the Premier, is almost ready to report to the Premier on that subject with recommendations as to how to deal with it and provide further support to persons in these situations. My own officers are examining the ways by which peace complaint procedures may be significantly strengthened to effectively protect persons under threat of violence or intimidation. Generally, the peace complaint procedure has been quite inadequate. In the near future, I expect to be able to make recommendations to Cabinet for changes to the law in this respect.

Recently, a conference was convened by the Premier with me, as Attorney-General, the Chief Secretary and various involved persons to identify matters relating to rape and violence upon which the Government should take action. That conference identified a number of areas, principally affecting the victims (predominantly women), where action possibly should be taken. These are being actively examined. These are a few of the significant actions which are already under way within the Government. They are all matters which I perceive to be directly or indirectly of concern to many people responding publicly to the circumstances of the woman convicted of murder.

I turn now to several matters raised publicly upon which, reluctantly, I must comment. Those matters relate to the involvement of the authorities in 1975 and of the police on the day before the murder. There is no evidence to suggest that inquiries were not made adequately as a result of complaints by the two runaway daughters in 1975. The information is that those two daughters were given every support by the Department for Community Welfare; whilst the other members of the family refused help and support. It is important to note that, when interviewed by police in 1975, other members of the family, including the woman, had denied the allegations of sexual abuse which were made by the two daughters. It is clear that not since 1975-76 and up until the murder had any member of the family sought the assistance of any of the authorities to deal with family problems.

Information from the police is even more perplexing. Extensive inquiries were made by the police at the time as a result of allegations by two daughters of the deceased. The material which led to the conclusion by the police and the Crown Prosecutor at the time that there was insufficient evidence on which to lay a charge of incest is best summarised by reference to a paragraph in the police report in May 1976, as follows:

> Despite the additional inquiries we still have the same situation, (two daughters) telling a story about the wrongdoings of their father with them, and the other members of the family, including two girls with whom he is alleged to have committed the same acts, saying that their father is a good man, and has never touched them. Despite quite rigorous questioning, neither (the wife) or the other children could be swayed from the stories they had told about their family leader.

The report also indicates that 'the police found deficiencies in the credibilities of the girls' statements'. Notwithstanding extensive questioning and other inquiries there was no other action that police could take. In the absence of assistance from other members of the family, what more could they do?

The other matter which deserves comment is the allegation that the police were alerted to the possibility of the murder occurring before the event. I am informed that the police received a telephone call making allegations that a member of the family was at risk. The police immediately (on 1 April) called at the home of the deceased to investigate. He was asleep; the police woke him and discussed the possibility of him being under threat. However, he dismissed any possibility of this occurring and scoffed at the allegation saying that it was 'an April fool's joke'. In the light of this, the police could do no more. They could not have even searched the home without reasonable grounds. To have done so would undoubtedly have raised questions of police exceeding their powers.

I repeat what I said at the beginning of this Ministerial statement, that this case is a sad and complex one. One feels deep sympathy for a woman in the circumstances which have been reported. Compassion should be and is being shown. Undoubtedly, this case will still take a considerable period of time before appeals are completed. In that time, though, the public should come to grips with the longer-term issues facing society which this case raises. They are vital issues, the discussion of which in a balanced and reasonable way is to be encouraged. It can only be to the benefit of every member of society if these sorts of issues are periodically raised for examination and changes made in the law if such careful examination indicates a need for such change.

PAPERS TABLED

The following papers were laid on the table:

By the Minister of Local Government (Hon. C. M. Hill)—

Pursuant to Statute—

Crown Lands Act, 1929-1980—Regulations—Fees.
Pastoral Act, 1936-1980—Regulations—Fees.
Geographical Names Board of South Australia—Report, 1979-1980.
South Australian Teacher Housing Authority—Report, 1979-1980.

By The Minister of Community Welfare (Hon. J. C. Burdett)—

Pursuant to Statute—

Metropolitan Milk Supply Act, 1946-1980—Regulations—Milk Price.

OVERSEAS STUDY TOUR

The Hon. D. H. LAIDLAW brought up the report on his recent overseas study tour on the development of tourism in the Provinces of Canada and in Ireland.

QUESTIONS

MURDER CASE

The Hon. N. K. FOSTER: I seek leave to make a brief statement before asking the Attorney-General a question about a letter that I directed to his office last Friday morning.

Leave granted.

The Hon. N. K. FOSTER: It is difficult to even imagine or fictionalise a case of greater provocation than that so horrifyingly presented to the court. How a judge in conscience and possibly at law can deny the jury's presence in the court while a contest of provocation proceeded seems to deny a jury (by its exclusion) the right to recommend mercy.

The Hon. K. T. GRIFFIN: On a point of order, Mr President, the matter being raised is a reflection on a Supreme Court judge, which is contrary to Standing Orders.

The Hon. N. K. Foster: He ought to be brought before the Bar of this Council.

The PRESIDENT: Order! I am aware of the provisions of Standing Order 193. I point out to the Hon. Mr Foster that any such inference whatsoever will of course cease his question. I ask him to proceed.

The Hon. N. K. FOSTER: I thank you for your ruling, Mr President, bearing in mind the attitude that I and other members of the community have adopted in respect of the matter to which the Attorney-General has seen fit to refer. I have not at this stage referred to any judge by name. I most certainly will if given the opportunity—

The PRESIDENT: Order! I would like to inform the honourable member that he must not even refer to courts of law. I point this out and ask the honourable member to proceed.

The Hon. N. K. FOSTER: I do not wish at this stage to contest Standing Order 193 to which you, Mr President, have referred. However, I indicate that the judge, in excluding the jury from the court, denied the jury the opportunity of recommending mercy in this particular case. That is the point that I made to the Attorney-General on Friday morning.

The Hon. K. T. GRIFFIN: I rise on a point of order, Mr President, but this time on a different point. Any reflection on the way in which the trial was conducted is a matter of *sub judice*. It is out of order to raise this matter in this Council.

The PRESIDENT: Without concurring that it is *sub judice*, I uphold the point of order inasmuch as the honourable member is, in my opinion, reflecting on the court.

The Hon. N. K. FOSTER: With respect, Mr President, I know that this is a rather emotional matter, but you did say that at this point you were not ruling on whether or not this matter was *sub judice*. However, if you do so rule, I intend to contest that on the basis of several precedents and rulings already given, including papers that have been delivered by a number of Presiding Officers in the House of Commons and State Parliaments in this country, as well as the Federal Parliament.

However, Sir, I do not want to come to that particular stage until I have exhausted your very good, capable, and expert knowledge in respect of Standing Order 193. If I may be offered the opportunity to read aloud so that I can take on board what I see to be the purport of that Standing Order, it states:

> The use of objectionable or offensive words shall be considered highly disorderly;

I have not so used any offensive or disorderly words. I quote the Standing Order further, as follows:

> and no injurious reflections shall be permitted upon the Governor—

I have not done that. I hold the present Governor in extremely high esteem. I further quote the Standing Order, as follows:

> or of the Parliament of this State or of the Commonwealth—

I have made no disparaging remarks against the Commonwealth, even Malcolm Fraser, or against your good self, as President of this Council.

The PRESIDENT: Order! No-one has ruled against the honourable member at this time.

The Hon. N. K. FOSTER: You are going to rule against me, though.

The PRESIDENT: Well, you apparently are hopeful.

The Hon. N. K. FOSTER: I am merely testing the goodwill of this Council.

The PRESIDENT: If you proceed with your explanation, we will interpret it as we see fit.

The Hon. N. K. FOSTER: Well may it be. That is not as serious as the other matters involved. I take courage from your remarks and thank you for them, Mr President. The Standing Order continues:

> nor upon any of the judges of the courts of law—

I plead guilty to the lastmentioned, because I do take strong objection to one judge, Sangster, who I think ought to be brought before the Bar of the Council to explain.

The Hon. K. T. GRIFFIN: I take a point of order—

The PRESIDENT: Then, I must ask the Hon. Mr Foster to resume his seat and proceed no further.

The Hon. N. K. FOSTER: I now want to deal with another case in the court.

The Hon. R. J. Ritson: Question!

The PRESIDENT: That question is finished. I have asked the honourable member to resume his seat and not proceed further. The Hon. Mr Sumner.

The Hon. C. J. SUMNER: My question is directed to the Attorney-General, on the subject of the Ministerial statement he has just made to the Council. First, have the inquiries that the Government ordered into the actions of the police and Department for Community Welfare officers involved in this matter now been completed? Secondly, is the Government satisfied with the actions of the Government departments involved? Thirdly, does the Government believe that further guidelines are now necessary for police and Department for Community Welfare officers in dealing with situations involving domestic violence?

The Hon. K. T. GRIFFIN: Perhaps I could take the last question first. I did refer in the Ministerial statement to a committee, chaired by the Women's Adviser to the Premier, that is directed specifically to questions of violence. I understand that that committee is almost ready to present its final report to the Premier and, undoubtedly, it will give some attention to guidelines for police officers and others in the area of relationships with persons who are the victims of domestic violence. I think, in the light of that, that it is premature for me to indicate positively that there needs to be any change but, when that report is presented to the Premier, that matter will certainly receive attention.

Regarding the first question, in the short time available a great deal of information has come to the Government from departments in respect of inquiries made in 1975 and 1976. It would seem to me, on the material that I have seen, that every assistance was given at the particular time, that there had been proper attention to the complaints that were made, and that the decision that was taken not to proceed further was a reasonable and proper one in all the circumstances. I see no reason to express any dissatisfaction with the departmental responses, so far as those responses have been made to me or other Ministers.

It is of course possible that in the course of completing the inquiries other information may be raised, but on the material that I have seen so far it would be most unlikely to affect the matters on which I have reported in the Ministerial statement.

STATE TAXES

The Hon. M. B. DAWKINS: I direct my question to the Leader of the Opposition in regard to State charges. Would the Leader be prepared to indicate to the Council the policy of his Party, and therefore of any future Labor Government, on the reintroduction or non-reintroduction of State taxes such as succession duties, estate duty or gift duty?

The Hon. C. J. SUMNER: May I thank the Hon. Mr Dawkins for his question. It has been some time since I have been in the position to answer a question, but I must confess that I accept the opportunity with alacrity. Surely the Hon. Mr Dawkins is aware that he is really giving me the opportunity to get some practice, because he knows that before very long I will be sitting opposite and will be accustomed to answering these questions every day of the week.

Members interjecting:

The PRESIDENT: Order!

The Hon. C. J. SUMNER: I believe that he asked whether I was prepared to give a statement about Labor Party policy on a particular issue, and my answer is 'No'.

The Hon. M. B. DAWKINS: I wish to ask a supplementary question, in view of the Leader's reply. Is he aware that the Leader of the Opposition in another place gave a categorical assurance to a large gathering of members of United Farmers and Stockowners at their annual State conference today that in no way would any future Labor Government led by him or of which he was a member seek to reintroduce succession, estate or gift duty? Does the honourable member agree with that statement, and does he support the statement made by the Leader in another place?

The Hon. C. J. SUMNER: I do not want to dispute what the honourable member has said about what the Leader of the Opposition in another place has stated elsewhere today. I think that I should look at the text of the statement. I would be happy tomorrow to bring back a report on that matter for the honourable member. The question that he asked was not specifically that question. He asked whether I was prepared to make a statement on the matter, and my answer was 'No, I am not prepared to make that statement.' That answer still applies but, as the honourable member has been good enough to ask me the question, I am certainly prepared to consult with the Leader of the Opposition in another place and bring down a report for the Council tomorrow.

MURDER CASE

The Hon. ANNE LEVY: I seek leave to make a brief statement before asking the Attorney-General a question about the defence of provocation.

Leave granted.

The Hon. ANNE LEVY: In making his Ministerial statement today, the Attorney-General said that he had called for a report into the law of provocation.

The Hon. K. T. Griffin: A review.

The Hon. ANNE LEVY: In making such a review, I hope that account will be taken of reviews of the same law which have been recently made in New South Wales and which would no doubt be available through the office of the Attorney-General in that State. I would ask specifically, in making this review, whether the Attorney-General will consider amending the law relating to the defence of provocation so that, if the defence in a murder trial wishes to raise the issue of provocation, the arguments can be put directly to the jury without the judge first deciding whether the legal technicalities have been fulfilled, so that the jury will be in a position to decide whether or not provocation has occurred and we will no longer have a situation where in some cases the issue of provocation is never even mentioned to the jury, although the defence wishes to raise it as an issue in the case. Furthermore, if as a result of a review of the law relating to provocation the Attorney believes that legislation to amend the law is required, either along the lines I have suggested or along any other lines, could he give the Council a commitment that any amending legislation will be brought forward at the earliest possible opportunity as a matter of urgency so that we do not have a repetition of the last few days?

The Hon. K. T. GRIFFIN: I am not sure what relevance the last few sentences have. Certainly, if there is any amending legislation it is a matter that will be brought before the Council in due course. I think it would be presumptuous for me to say at this stage that there will be or will not be legislation, because quite clearly any review will need to take into account the New South Wales report, decisions of courts in South Australia and other places, and any reports on the law of provocation in other common law countries. As I indicated in the Ministerial statement, I would expect also any appeal in the matter that has been the subject of public comment in the last few days to be a relevant ingredient in that review. At this stage all I can say is that certainly we will take into account the review of the law in New South Wales as well as the impact of the law and any reports on the law of provocation in other States and overseas. If any legislation is required, it will be brought in in due course. However, no-one can presume what the result of the review will be.

The Hon. K. L. MILNE: I seek leave to make a brief explanation before asking the Attorney-General a question about Parole Board powers.

Leave granted.

The Hon. K. L. MILNE: I am not attempting to further embarrass or worry the Attorney-General, as I think he has had enough worry already. However, a day or two ago he was speaking on the ABC. I only heard part of what he was saying but I understood that he was referring to the case that we have just heard about in the Ministerial statement. It seemed that he was saying that the Parole Board had power to change the length of sentence to be served in a case like this or perhaps in other cases. It would seem strange that, if a court could go into detail in cases like this and make a decision, an organisation like the Parole Board could upset it or quash it altogether. Did the Attorney-General say something like that concerning Parole Board powers? If not, what did he say or what did he mean? Can the Parole Board decide to reduce or quash a penalty awarded by a court and, if so, would that matter be under

The Hon. K. T. GRIFFIN: The Parole Board has been with us for many years, and it has power to adjudicate on applications by prisoners for release on parole at any time during the period of imprisonment that they are serving. The courts presently have power to fix a non-parole period, but rarely has that power been used up to the present time. In the absence of any non-parole period, the Parole Board is able to consider all the facts surrounding a certain application: as I said in my Ministerial statement, the evidence that was given at the trial, the material that may not have been admissible at the trial, as well as a person's character and antecedents.

In the light of all that information, the Parole Board is then empowered to make a decision to release or not to release. One must recognise that the Parole Board has a somewhat different responsibility from that of the courts. In some respects, it is an Executive-type responsibility as opposed to a judicial-type function.

One of the emphases that it has to determine is the capacity of the person involved to be rehabilitated. The courts take this factor into account when determining sentences but it may need constant review once a person is in prison. I think, generally speaking, that the parole system works well. It is effective, and I see no reason to make any move to have that part of the law changed.

The Hon. G. L. BRUCE: It seems that the Attorney-General is saying that the Parole Board can usurp the power of the court, and that the Parole Board becomes the final arbiter in relation to the sentencing of the person who is going to gaol.

The Hon. K. T. GRIFFIN: Ultimately, in effect, that does occur. Although amendments to legislation that were passed in the previous session modify that position, they have not yet been proclaimed to come into effect. For example, the courts will be required in the majority of criminal cases to fix a non-parole period. For indeterminate sentences involving life imprisonment, the board presently has power to release a prisoner without reference to the Government of the day or the Governor in Council. Under the amendments relating to indeterminate sentences which were passed last session but which have not been proclaimed, the Parole Board makes a recommendation to the Government of the day, and that is put into effect by the Governor in Council.

I see no reason why the Parole Board should not have this difficult sort of responsibility. The role of the courts is to determine innocence or guilt. The role of the courts in circumstances where guilt has been determined is then to fix a penalty, which may vary from a bond or fine through to imprisonment. The court has that function, but one must remember that punishment and imprisonment are an ongoing thing and do not stop at the point when the sentence is recorded. If that was the case, people would rot in gaol for 30 or 40 years, and I do not think anyone in this Chamber or in the community would want that. It is important to have an effective review process during the period of a person's sentence of imprisonment, and I see no necessity for amending the law to take away that Executive responsibility.

The Hon. G. L. BRUCE: Surely the courts should be able to administer justice as well as law and order. It seems from what he is saying that the Attorney-General is relying on the Parole Board, not the courts, to give justice. Surely, justice cannot be done by the Parole Board only, and the courts must make a legal decision 'Yes' or 'No'. Surely, too, justice must come from the court's decision as well.

The Hon. K. T. GRIFFIN: Yes. It is the primary responsibility of the courts to administer the law and to see that justice is done. That occurs during the course of a trial, through the appeal procedures and then, finally, at the fixing of the sentence. At that point, the counsel for the defendant makes submissions as to the character and antecedents of the defendant. The Crown can in many cases also make submissions on the law and the penalty to be imposed, and the court must then determine, at that point and in the light of the character and antecedents as well as the nature of the offence, the appropriate penalty.

The penalty may not be imprisonment; it may be a bond. However, if it is imprisonment, it is at that point that the Parole Board has a continuing responsibility. It does not override the court's decision. It picks up from the point of sentencing the responsibility for monitoring the imprisonment of the person involved. The court cannot do that, because it does not have the continuing responsibility in respect of any person sentenced before it.

The Hon. N. K. FOSTER: I seek leave to make a statement before asking the Attorney-General a question regarding advice given to a jury and/or the exclusion of a jury.

Leave granted.

The Hon. N. K. FOSTER: I raised this matter earlier, when you, Sir, saw fit for some mysterious reason in relation to Standing Order 193 (I think it was suggested that I had been attacking judges, which I had not done) to rule it out of order. What the Attorney-General has said in reply to questions that have been asked seems to defend an attitude that is somewhat mystifying. Perhaps the Attorney-General was taking advantage of Standing Orders when drawing your attention, Sir, to the fact that I was not acting within the Standing Orders, a point of view that you, Sir, upheld.

I could (although I do not intend to do so) quote to the Council the first letter to the Editor in this morning's *Advertiser*. The writer of that letter, Mr G. C. Bickley of Elizabeth Downs, expresses a similar view to that expressed in this Council and to the Attorney-General in a letter that I wrote to him earlier. The Attorney-General, the public, the media and the Parliament would not have been expected to go beyond the media 'guidelines' in relation to this matter had the sentence not been one of the utmost severity and had some members of the jury not been in tears during the latter part of the proceedings. It would appear also that those responsible for such directions to the jury erred in respect of—

The Hon. K. T. GRIFFIN: I rise on a point of order. For the honourable member to suggest that the judge erred is—

The Hon. N. K. Foster: I didn't say that the judge erred.

The Hon. K. T. GRIFFIN: The honourable member said that those who were responsible erred, and that matter is *sub judice.*

The PRESIDENT: I take the point of order.

The Hon. N. K. FOSTER: Mr President, are you ruling it *sub judice?* The Attorney-General has said that it is *sub judice,* and I ask whether you are ruling that it is.

The PRESIDENT: I am not ruling it *sub judice.*

The Hon. N. K. Foster: I didn't think you would.

The PRESIDENT: I am requesting you not to comment on a ruling of the court.

The Hon. N. K. FOSTER: Mr President, you are virtually ruling it *sub judice* by hiding behind that particular Standing Order, and I say that with the utmost respect.

The PRESIDENT: Order! I do not know whether the honourable member is trying to pick an argument with me. I have made a ruling according to Standing Order 193, which is not hard to interpret, and I draw the honourable member's attention to it and ask him to phrase his question in such a way that it does not offend that Standing Order.

The Hon. N. K. FOSTER: I did not say that His Honour Mr Justice Sangster directed that the jury would no longer sit in the court. I said 'those responsible', and that may well be the Legislature.

The Hon. C. M. Hill interjecting:

The Hon. N. K. FOSTER: Never mind you, Hill, you sit on the floor and keep quiet.

The Hon. C. M. Hill: The point of order has been upheld.

The Hon. N. K. FOSTER: I know that; I am nowhere near it. It is not for the Hon. Mr Hill to advise the Chair. It is unfortunate if the matter is *sub judice,* because I have a lot of material that I could quote which more than indicates where the media is involved.

The PRESIDENT: Order! Does the honourable member wish to ask his question?

The Hon. N. K. FOSTER: Yes, Mr President, if you keep the Hon. Mr Hill in order. It seems that the media are given more power than is the Council in these matters, and that is not so in relation to the material I have referred to. I am precluded from referring to that material because there is a reluctance by anyone other than the Attorney-General to say that the matter is *sub judice,* and that is quite different from what occurred in another place this afternoon, as I understand it. If the Attorney-General has not got the courage of his convictions, that is a matter for him.

Does the Attorney consider that the exclusion of a jury, when provocation is being contested before the court, is proper in a capital offence? I believe it is not. If the system provides for such an occurrence, as has happened in some courts in South Australia, including the case heard last week (and clearly it did not occur in respect to a matter in which the Attorney-General, by his own hand, appealed against a sentence imposed by His Honour Mr Justice King), then the Attorney-General has his lines mixed up. Mr Justice King ruled on the basis of provocation.

Last year there was a case of murder by provocation involving a young soldier at Black Forest. Therefore, what can the Attorney-General tell this Council about whether the jury was excluded and what advice was proferred to the jury on that occasion. The Attorney-General is the keeper of the jury rolls in this State, not me. It is the Attorney-General's integrity I attack, not the judge's integrity. He sees fit to support the judge. That is a matter for the Attorney's own conscience. I am not so much concerned about the imbalance of members of this Council, on either side, but I fail as a member of Parliament elected to this Council to see the difference between a person who was not allowed to continue his schooling beyond the age of 13 and the cases I have enunciated in relation to appeals by the Crown and the Attorney-General, and I refer to the sentencing of a person at Port Broughton, the Black Forest murder and this case now before the court. I ask the Attorney-General to have some courage. As Attorney-General, he has the right on one hand, under the legislation, to almost direct a judge of a South Australian court to reconsider a sentence that a judge has administered. In relation to the case in question, which is now before Parliament and has been before the public for the last four days, he has not got any courage, other than to assume a false protective role for some of the senior people involved in the case.

The Hon. K. T. GRIFFIN: I rise on a point of order. I take exception to the reflections which the honourable member has made upon me and the Judiciary.

The Hon. N. K. FOSTER: I do not withdraw any of the reflections made upon the honourable member, because they are not reflections under Standing Orders.

The PRESIDENT: Order! The honourable member will ask his question now or resume his seat.

The Hon. N. K. FOSTER: I think the Attorney-General reflected upon me when he said that I have reflected upon him.

The PRESIDENT: Order!

The Hon. N. K. FOSTER: Will the Attorney-General give positive and proper consideration, in the interests of the public, to legislating that, where capital charges are involved, a judge of the court shall not have the right at law to exclude a jury when matters of extreme and violent provocation are argued before a court? Secondly, will the Attorney-General introduce legislation during the present session to effect such a change? Thirdly, will the Attorney-General, through his office, ensure that Parliament is afforded the opportunity of perusing the transcript of the last two days of the trial? Finally, what differences are there between that transcript and the notes that His Honour Mr Justice Sangster will provide to the court of appeal?

The Hon. K. T. GRIFFIN: The honourable member's last question is out of order and I refuse to answer it. In relation to the other questions, I have already indicated in answer to the Hon. Miss Levy that questions of legislation depend on the outcome of any review. Accordingly, I will give no undertaking.

The Hon. N. K. FOSTER: I desire to ask a supplementary question.

The PRESIDENT: Let it be a supplementary question and not an explanation such as we have just heard.

The Hon. N. K. FOSTER: I have received leave of the Council, Mr President. My supplementary question is not to the Attorney-General, because that would be a waste of time. Mr President, I ask on what grounds you ruled that part of a question that I directed to the Attorney-General was out of order. Was your ruling based on a suggestion by the Attorney-General, because I made no reflection on anyone?

The PRESIDENT: I will think about that.

The Hon. N. K. FOSTER: Mr President, how long will you take to think about it?

The PRESIDENT: Not very long at all. I will read your question and give you an answer.

ABERFOYLE PARK PRIMARY SCHOOL

The Hon. J. A. CARNIE: I seek leave to make a short explanation before asking the Minister of Local Government, representing the Minister of Education, a question about education.

Leave granted.

The Hon. J. A. CARNIE: Last Thursday when opening this session of Parliament, the Governor, in paragraph 10 of his Speech, referring to education, stated:

> A project worthy of special mention is the Aberfoyle Park Primary School which is due to open in February 1982. This new school, built as a single campus, is the result of a co-operative project involving the Education Department, the Catholic Church and the Uniting Church, and must therefore be seen as a highly commendable and unique project of national significance.

In view of the fact that three separate organisations are involved, what will be the administrative arrangements for this school? Will it be classed as a normal Education Department school, or a church school and, if the latter, which church? As it was described as a 'co-operative project', what was and is the degree of co-operation involved?

The Hon. C. M. HILL: I will obtain replies to those questions from the Minister of Education.

MURDER CASE

The Hon. ANNE LEVY: Did the Attorney-General personally agree that a charge of murder and not manslaughter should be laid in the axe death case? Was he advised by anyone to make that charge murder and not manslaughter? If so, by whom was he advised? Was he aware of all the facts of the case when he decided that the charge laid by the police should be one of murder and not manslaughter? If he was aware of all the facts, did he know of a suggestion that the defence might perhaps be prepared to plead guilty to a charge of manslaughter but not guilty to a charge of murder? Given all that, on what ground did he decide that the charge should be murder and not manslaughter?

The Hon. K. T. GRIFFIN: I have a complete aversion to plea bargaining, which generally brings a great deal of criticism upon those who may seek to practise it.

Fortunately, it is not a practice that is prevalent in South Australia and, as far as I am aware, it is not a practice that is prevalent in Australia, although it is certainly prevalent in the United States. The matter to which the honourable member refers is a matter about which I will need to check the docket. In general practice, informations are laid in the name of the Attorney-General but, because I have the utmost confidence in the Crown Prosecutors, I generally delegate the responsibility for laying those informations. It is only towards the end of a particular case that the Attorney-General would become directly involved in approving or disapproving recommendations, such as those which the honourable member has raised. I will need to check the docket on this matter. I believe it was treated no differently from any other case or any of the many other cases which pass through the Crown Prosecutor's office.

The Hon. ANNE LEVY: I desire to ask a supplementary question. With regard to this matter, the Attorney presumably accepts ultimate responsibility about whether the charge laid was one of murder or manslaughter, and I would be grateful for his reasons for choosing the former and not the latter in this case.

The Hon. K. T. GRIFFIN: As with all Ministers of the Crown, responsibility has to stop somewhere. I do not resile from acceptance of the responsibility for the acts of my officers in the Crown Law Office. They are responsible to me as a Minister of the Crown. In regard to their decisions and my involvement, I will need to check the precise detail. I do not have the docket with me. I will need to have inquiries made. I would presume that, in the light of the jury verdict, the decision to proceed with an information for murder was quite properly and understandably laid. I move:

That Standing Orders be so far suspended as to enable Question Time to continue until 3.30 p.m.

Motion carried.

HOSPITAL COMPUTERS

The Hon. J. R. CORNWALL: I seek leave to make a brief statement before asking the Minister of Community Welfare, representing the Minister of Health, a question about hospital computers.

Leave granted.

The Hon. J. R. CORNWALL: On 4 December last year the Minister of Health made an announcement in another place in response to a Dorothy Dixer question from the member for Newland (Dr Billard) concerning admissions, transfers and separations, about the so-called A.T.S. hospital computers. Mrs Adamson said, quite correctly, that the many benefits of an A.T.S. computer system include improved management of outpatient resources and bed utilisation. She said tenders had been called for a common patient information service.

Mrs Adamson further said the system would cover 2 000 beds and that the total cost would be between $180 000 and $260 000 per year. Two of the most important specifications were that the successful system should be capable of installation in South Australia in a short time and at a low cost. She said the cost estimates were realistic and there was 'absolutely no risk' of any previous problems recurring.

In fact, the lowest tender received by the commission that came anywhere near its specifications was $500 000 a year. The Minister, of course, did not make any public announcement about that. I did, and when I did make some comment on that publicly some four months later, the Minister said that the position was being 'rethought'. It is fascinating to examine the rethinking exercise. It was decided that the new computer operation should be confined to the Royal Adelaide Hospital and should not be extended to all the other teaching hospitals, as was originally indicated. Two firms—I.B.M. and Burroughs—were invited to design a satisfactory system.

In the meantime the Medical Superintendent of R.A.H., Dr Sue Britton, recommended that the computer system in use at Royal Prince Alfred Hospital in Sydney should be used. Upon that recommendation, no fewer than eight officers from the Health Commission's Automatic Data Processing Section were dispatched to Sydney at great expense to investigate this system.

Of course, there was one big problem: the Sydney system used neither a Burroughs nor an I.B.M. computer, although they were the firms asked by the commission to design a suitable system for R.A.H. However, undeterred by such fine detail, the Minister indicated she was happy to have either an I.B.M. or Burroughs computer, provided it was the same as the Prince Alfred system.

From that point on, the story developed into something of a circus. Members would all remember that after the Premiers' meeting late in April, Mr Tonkin announced that overseas trips for public servants would be cut out completely. This was to be one of the great exercises in cost cutting.

The Hon. K. T. Griffin interjecting:

The Hon. J. R. CORNWALL: I can accept what the Attorney says—that they were only to be taken in very special circumstances, but apparently this did not deter the Minister or the Health Commission. Dr Britton and Mr Ray Blight of the Management Services Division were dispatched to the United States to find a computer for the R.A.H.—not to buy a battleship or re-equip the Royal Australian Air Force—

The PRESIDENT: Incidentally, that has nothing to do with your explanation.

The Hon. J. R. CORNWALL: It has much to do with it, I assure you, Mr President, and if you bear with me—

The Hon. M. B. Cameron: Has it anything to do with the Flinders computer?

The Hon. J. R. CORNWALL: No, it has nothing to do with that computer.

Members interjecting:

The Hon. J. R. CORNWALL: When the Minister made the statement on 4 December she said that there was absolutely no chance at all that there would be any repetition of the sort of thing that went on with the Flinders/Modbury computer.

Members interjecting:

The Hon. J. R. CORNWALL: I am not talking about that. Mr Ray Blight, who comes from that disaster area, the Health Commission's Automatic Data Processing Section, was dispatched to the United States, not to buy an aircraft carrier or to re-equip the R.A.A.F. but to buy a computer to re-equip the Royal Adelaide Hospital. They are still touring overseas at very great expense in looking for a computer that may just suit the needs of the Royal Adelaide Hospital. They have been accompanied on this extensive and expensive safari by the Australian Manager of Burroughs. In the meantime, admissions, transfers and separations at the Royal Adelaide Hospital are still being done manually. They are almost being done by clerks with quills. The hospital is being prevented from putting its data processing in order because of gross mismanagement and ineptitude by the Health Commission and the Minister. The Parliamentary Public Accounts Committee must examine the hospital fiasco as a matter of the highest priority but in the meantime I ask the following questions:

When will an A.T.S. (admissions, transfers and separations) computer system be installed at the Royal Adelaide

Hospital? When will an A.T.S. computer system be installed at the Queen Elizabeth Hospital and Flinders Medical Centre? What was the total cost of sending officers to Sydney to study the Royal Prince Alfred Hospital system? What is the estimated or total actual cost of sending Dr Britton and Mr Blight to the United States? Who paid their expenses?

The Hon. J. C. BURDETT: I will refer the question to my colleague in another place and bring back a reply.

MURDER CASE

The Hon. C. J. SUMNER: I seek leave to make a brief explanation prior to directing a question to the Attorney-General on the subject of the recent murder case.

Leave granted.

The Hon. C. J. SUMNER: Today the Attorney announced that the Crown would not oppose bail for the woman convicted of the murder of her husband and sentenced to life imprisonment. This followed a suggestion I had made last Sunday that the Crown should support bail in the extraordinary circumstances of this case and pay the costs of the proceedings. I appreciate that the Government did, in part, adopt the suggestion I had made on behalf of the Opposition. Although my call was for support for bail, I understand that it has had the same result, namely, that the woman concerned has, in fact, been granted bail and will be released this afternoon. However, I would like the Attorney to indicate why he felt that the Government could not positively support the application for bail in this case.

The second aspect of the question is that I also said in my statement on Sunday that the Crown should undertake to pay the costs of the proceedings. The Attorney has dealt with that matter in his Ministerial statement and has said that, in fact, the Government is paying for the proceedings through the Legal Services Commission. While that may be true and while a paid employee of the commission may be handling the case, it may not be true if someone were briefed from outside the commission and it may be that the woman concerned may wish, in view of the importance of this case, to instruct senior counsel.

I understand the position to be that, if someone from outside the commission is instructed, the person who applies for legal aid may still be liable to pay some of the costs. In other words, aid is granted on the basis of a means test in normal circumstances, but I believe that in cases of such significance, if there is any chance that the woman may have to pay the cost of the appeal because senior counsel or people outside the commission are engaged, this is a matter that the Government ought to take up and it ought to give an undertaking that the cost will be met. If the cost is to be met, well and good, but I would like the Attorney to direct his attention to that matter. The second part of the question is: can the Attorney assure the Council that all the costs of the appeal by this woman will be met by the Government?

The Hon. K. T. GRIFFIN: All the aid through the Legal Services Commission is granted on a means test basis. I would see no difference in the attitude applying whether it was committal, trial, appeal, or some other course of action. The decision as to the counsel who should be retained to take any appeal is really a matter for the commission, which administers the legal aid system in South Australia. It has adequate funds available and, quite obviously, the fact that it has granted legal aid in the present instance is indicative of the commission's attitude to this case. I do not see that there is any need for me to intervene in any way in respect of the Legal Services Commission. I have no doubt that it will deal with the matter sympathetically.

The other part of the question was on the matter of bail. The Crown, through me, was instructed not to oppose bail. I believed that it was appropriate to give that instruction, because the decision ultimately rests with the court and the initiative must be taken by counsel for the defendant. It was not appropriate to go any further than that but, as the result has indicated, bail has been granted and, quite obviously, the attitude of the Crown in indicating no opposition to bail would have played a significant part in that decision.

TRANSPORT STRIKE

The Hon. J. E. DUNFORD: I wish to ask a question of the Minister of Community Welfare, representing the Minister of Industrial Affairs, on the matter of the transport workers' strike, and I seek leave to make a short statement prior to asking the question.

Leave granted.

The Hon. J. E. DUNFORD: I know that this afternoon the Council's time has been taken up on another matter but I appreciate the importance of the previous questions regarding the sentence imposed by the court on that poor unfortunate woman. That is a shocking example of our court system. The other thing that I see today as affecting Australia and its people is the transport workers' strike. Will the Minister of Community Welfare ask his colleague whether he will, in concert with his counterpart in the Federal Parliament, approach the Federal Arbitration Commission for the purpose of having the commission relax the indexation guidelines so that disputes such as the present Transport Workers Union dispute can be avoided in future?

The Hon. J. C. BURDETT: I will refer the question to my colleague and bring back a reply.

STANDING ORDER 14

The Hon. K. T. GRIFFIN (Attorney-General): I move:

That for this session Standing Order No. 14 be suspended.

In moving this motion, I indicate that there is a possibility that some Bills will be introduced during the course of the Address in Reply debate, and accordingly I take the precaution of moving the suspension of that Standing Order for that purpose.

The Hon. C. J. SUMNER (Leader of the Opposition): This issue was raised at the beginning of the last session of Parliament. I raised with the Attorney-General and the Government whether it was going to become the practice that Standing Order 14 be suspended. Standing Order 14 provides that the Address in Reply debate shall be completed before any legislation of a contested nature is introduced. I do not intend to oppose the motion. It may be that this is a convenient way of facilitating the Council's business. If that is the case then, as usual, I am prepared to cooperate. However, will the Attorney-General give the Council some indication, in view of the fact that he has moved the motion, of how far he anticipates any legislation or other business shall be proceeded with and perhaps also give the Council some indication of legislation that may require this motion?

The Hon. K. T. GRIFFIN: I am not in a position to give the Council details of legislation that will be introduced

during the course of the Address in Reply debate. Nevertheless, there will be some Bills which, in order to facilitate the business of the Council, should be introduced at an early opportunity. The progress of those Bills will, to a large extent, depend upon the progress of the Address in Reply debate. As on the last occasion, I would be as co-operative as possible to ensure that the Council is not disadvantaged by the need to deal with some of those Bills at an early stage. I think any difficulties members of the Council may have will certainly be accommodated within that framework.

Motion carried.

ADDRESS IN REPLY

The Hon. K. T. GRIFFIN (Attorney-General) brought up the following report of the committee appointed to prepare the draft Address in Reply to His Excellency the Governor's Speech:

1. We, the members of the Legislative Council, thank Your Excellency for the Speech with which you have been pleased to open Parliament.
2. We assure Your Excellency that we will give our best attention to all matters placed before us.
3. We earnestly join in Your Excellency's prayer for the Divine blessing on the proceedings of the session.

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

That the Address in Reply as read be adopted.

I thank His Excellency for opening this Parliament with the Speech that he made which has shown such an obvious increase in content in the past two years. I indicate to the Council and extend to the family of the late Sir Thomas Playford my sympathy on their loss. I had some personal friendship with the Hon. Sir Thomas Playford, as indeed most members of this Council had, because he made a point of getting to know people in the Parliament. I made my first public speech in his company in the township of Millicent. That was quite a feeling for a young person at that stage. I had not served in any public office.

The Hon. C. J. Sumner: Do you think you left him wondering why you made it?

The Hon. M. B. CAMERON: He did not say anything to me, which is probably just as well, as the Hon. Mr Sumner reflects. However, it was the beginning of the move to where I am now. Sir Thomas had a great sense of humour. I remember my father being prepared to approach the Government on the matter of a bowling green in our area and to ask the Government for a subsidy as a tourist facility. With most items of this nature, people think a subsidy as a tourist facility is warranted. My father wrote to Sir Thomas, who wrote back and asked him to prepare a case and said that he would listen to a deputation from the bowling club at Beachport. My father did that and prepared a case over about two months. I may say that it was a well prepared case and, finally, he was ushered into the office of Sir Thomas, who accepted the case from him, read it through and said, 'I have a few questions. My first question is, "How many bowling clubs are there in South Australia?" ' My father replied, 'I don't know.' Sir Thomas said, 'Well I soon would if I gave you any money', and that was the end of the case. He had such a sense of humour that he accepted it and then proceeded to discuss a wide variety of other subjects. He was a man who did not need many words to say 'No'. I believe that the people in South Australia who knew him even in latter days will miss him very much because he was always able to reduce a problem to a commonsense approach that people could understand.

I wish to say a few words about this Government at the halfway point. It is appropriate at this stage to consider whether the role of this Parliament has been in any way enhanced since the 1979 election. To do so, and to put this matter in its proper and complete perspective, it is relevant to consider the recent history of this Parliament, especially since the retirement of the late Sir Thomas Playford.

Many of the tributes paid in recent weeks to the British Commonwealth's longest serving Government Leader have referred to his ability to conduct public affairs in a manner which ensured that South Australia experienced very little in the way of bitter or divisive political debate. Sir Thomas carried that ability into this Parliament, as honourable members at the time commented.

I refer, for example, to a speech made in the Address in Reply debate on 28 June 1967 by the Hon. Mr DeGaris, in which he stated that during the Playford years there had been a mutual understanding and trust between members of both Parties which did not exist to the same extent in any other Parliament in Australia.

Mr DeGaris attributed this largely to the standard of leadership on both sides. In retirement, Sir Lyell McEwin, for so long Chief Secretary in successive Playford Governments, also commented on the atmosphere which once prevailed in this Parliament, pointing out in the *News* on 9 June 1977 that there was 'none of this personal bitterness that seems to be as much a part of proceedings today'.

The South Australian Parliament has not been alone in experiencing a rise in the temperature of debate in the years since men of the ilk of Playford, McEwin or O'Halloran were members. However, this Parliament was alone in being subjugated to the wishes and whims of an Executive which increasingly, during the Labor rule of the 1970s, sought to govern without any due regard for the role of Parliament as a legislative and deliberative body.

Such a situation arose for two reasons: the Australian Labor Party's strict rule of adherence to the Party pledge, and the desire of a young and ambitious Premier to be seen as an Australian pace-setter, and even, on some issues, a world pace-setter.

Parliament was not to stand in the way of either Party or Premier—it was merely an irritant to be faced and consulted at the pleasure of a Premier more interested in how the public may have perceived his personal performance rather than the extent to which this Parliament had a role in checking and balancing some of the excesses which such a state of affairs inevitably produced.

I refer first to the early elections of 1975, 1977 and 1979. This succession of early polls was orchestrated by the A.L.P. purely because the Premier at the time believed that, if a Parliament was allowed to run its normal course, prevailing circumstances at the end of that period would not be particularly propitious for the return of an A.L.P. Government.

I defy any honourable member opposite to deny that. Many of those elections were brought on for one reason: because members opposite believed that the Government's popularity was at a level so that they could be returned. Therefore, they completely wiped out the idea of a full-term Government. Parliament and the public interest were of no concern in such a scenario. This Parliament and the people of South Australia were treated with utter contempt while the democratic process was manipulated. The manipulation was naked after the 1977 election, when the Dunstan Government advised the Governor to open this Parliament with a speech of a mere 23 lines as it was recorded in *Hansard*.

The former Government's disdain of the Parliamentary institution was there for all to see, and, in the Parliamentary sessions which followed, the Labor Government demonstrated conclusively just how arrogant it had become in office. A Police Commissioner was sacked without any

consultation with Parliament until public pressure required the former Premier to do so, and a whole series of reports about the very vital matter of uranium mining were concealed, while the former Premier proceeded to mislead Parliament about their contents.

In relation to this last example of the former Government's propensity to rule without reference to Parliament, it is interesting to note the comments of a member of the Labour movement in Britain whose views on most matters are extreme, to say the least. I refer to Mr Tony Benn, and to a recent book he has written, namely, *Arguments for Socialism*. As a former British Energy Minister, Benn deals in this book with Britain's need for nuclear power and accepts that it is necessary for Britain's future economic well-being. Benn canvasses the extent to which nuclear power should be controlled and complains that in Britain nuclear weapons have been developed secretly without Parliamentary knowledge or approval. He then later writes:

> Information is the key to democratic control. The publishing of information, except for sensitive technical data which might encourage the spread of nuclear weapons or make terrorism easier, must be regarded as the heart of democratic government.

The views of Benn, applied to the actions of the former Government in suppressing a great deal of information about uranium mining and processing, are confirmation of the extent to which democracy was subverted and which Parliament by-passed in the years between 1970 and 1979.

The Hon. C. J. Sumner: How often did the Parliament sit then compared to the Playford days?

The Hon. M. B. CAMERON: Labor members opposite certainly made a mess of things.

The PRESIDENT: Order! The honourable member does not have to answer interjections.

The Hon. M. B. CAMERON: It is pleasing to note, therefore, that the present Government has taken some positive action to restore the role of Parliament and to give all members a more meaningful opportunity to participate in deliberations and decisions which affect all South Australians. If we continue to consider the example of uranium mining and processing, this Government has tabled in Parliament a series of reports and statements to ensure that the Parliament and the public are kept fully informed on this most vital of matters.

A Select Committee has been sitting for almost two years, and while, as a member, it would be most improper for me to comment on any possible outcome of this committee, I believe that I am justified in pointing out the extent to which the Government has assisted in the committee's deliberations.

The Government has assisted in making available a wide range of advice to the committee and, as one example, I nominate the action taken to ensure that Mr Justice Fox was available to the committee. In these circumstances, I was rather disturbed to read a recent public statement by the Hon. Mr Milne which indicated his belief that the Government was treating the committee with some contempt. That is simply not the case.

There are many other examples of Select Committees of this Parliament that have made a most important contribution to decisions which will affect all South Australians. Here, I refer to Select Committee recommendations on random breath testing which I believe produced a most satisfactory conclusion to a very difficult problem from the public's point of view, and to the Select Committee of another place which had a vital input into the historic Pitjantjatjara land rights legislation. I am sure all members of this Parliament and the South Australian public would agree that this had a very vital and successful effect on a most contentious issue.

In financial matters, the Government's budgetary proposals are now exposed to more detailed scrutiny through the Estimates Committees, and the Public Accounts Committee has been encouraged to seek out inefficiency and waste in the Public Service.

Another important extension of the influence of Parliament in the public affairs of this State will occur with the legislation, announced in the Governor's Speech, to establish a Parliamentary committee to review the role and relevance of statutory authorities.

It has to be acknowledged, from the facts that I have placed before the Council, that the decline in the extent to which the Parliament was consulted and involved in public decision-making occurred most markedly in South Australia during the last decade of Labor rule, but that since September 1979 action has been taken to restore the Parliamentary arm to its proper position as an arbitrator, initiator and investigator in the role of government. Of course, it will not be possible, even in one term of Government, to completely reverse the decline of a decade. However, it is obvious that this decline can continue to be reversed only by Liberal members, free from the rigid rule of Party discipline, who are prepared to take advantage, in a constructive manner, of the opportunities provided by an extension of the Parliamentary committee process to which the Government is committed.

The Hon. C. J. Sumner: How often have you crossed the floor in the past 12 months?

The Hon. M. B. CAMERON: When one has a good Government in office, one does not have to do so. I should like to say something about one statutory authority that I believe needs to be examined closely by the Government and this Parliament. I refer to the Egg Marketing Board. I have read in some detail the Auditor-General's report relating to the marketing of eggs, in which some of the information contained has led me to believe that we need to investigate this matter. This may not seem to be a terribly relevant matter to this Parliament, although I believe that it is an example of why statutory authorities must be put under closer scrutiny, why they should give reasons for their existence, and why they should say how they operate. Under the heading 'Loans and reimbursements', the Auditor-General states:

> Losses on local and interstate eggs amounted to $804 000, being roughly $589 000 (shell) and $215 000 (pulp). Sales of local and interstate eggs in shell produced an average loss of 6.2 cents per dozen, compared with profits of 0.39 cents in 1978-1979 and 0.84 cents per dozen in 1977-1978.
>
> The loss of 6.2 cents per dozen represents a financial value loss of $589 000. Of this loss approximately $480 000 was incurred through the sale of 560 000 dozen eggs to New South Wales for export processing at a price of 26 cents per dozen.

I do not know whether anyone in this Chamber does any shopping, although anyone who does will be well aware that eggs in the retail shops of Adelaide cost between $1.50 and $1.80 a dozen.

The Hon. C. M. Hill: I think that the Opposition is out shopping now.

The Hon. M. B. CAMERON: They have obviously gone to New South Wales to buy them, as eggs must be cheaper there. The Auditor-General continues:

> As the board paid an average 112 cents per dozen to South Australian producers the New South Wales sale was subsidised to the value of approximately 86 cents per dozen (or $480 000) by South Australian consumers.

They are not my words but those of the Auditor-General. That is an enormous subsidy for another State. The Auditor-General continues:

> The loss of approximately $215 000 on local pulp is a charge against board resources and reflects a cost/loss to the South Australian industry. Export losses of 87.17 cents per dozen (shell) and 94.64 cents per dozen (pulp) were considerably higher than results

for 1978-1979 (61.22 cents). In money terms the loss on exports was $2 288 000 compared with $2 353 000 in 1978-1979 notwithstanding a reduction in the volume of eggs processed for export from 2 985 000 to 2 451 000 dozen. Relative figures for 1977-1978 were a loss of $1.8 million on the export of 2 666 000 eggs.

In other words, we sold 2 500 000 dozen eggs excess to our requirements on which we had a loss of 87.1c per dozen. The quote continues:

Thus in 1979-80 the export market was subsidised by local consumers to the extent of approximately 19c per dozen and 26c per dozen respectively for shell/pulp product exported.

In his conclusions, the Auditor-General stated:

Comments under 'Losses and reimbursements' suggest that significant financial support was given to the interstate and export markets and that prices paid to producers, and wholesale selling prices, could be reduced if production and export volumes were reduced. Local prices appear to have been maintained at high levels to subsidise the cost of marketing excess seasonal production both interstate and overseas. It is considered that prices paid by South Australian consumers provided approximately 12 cents per dozen towards the disposal of some 3 011 000 dozen eggs surplus to South Australian requirements.

That is slightly higher than the 2 500 000 that I referred to earlier, but the others were of a different type. I believe it is clear that local consumers are subsidising excess production and export sales of eggs. We should be trying to determine whether, if prices were reduced in South Australia, it would increase local sales and obviate the need for these—and I use the expression carefully—'dump' sales on the export market. It seems rather strange to me that, while we have a Federal Minister for Primary Production bitterly complaining about the European Economic Community dumping agricultural products on the world market, we should be guilty of the same thing. It is clear to me that these eggs sold to export markets must be dumped and, worse, that we consumers in South Australia have to subsidise losses.

I accept that it is not necessarily the fault of any particular Minister of Agriculture, either present or past. I also accept that there may have to be slight over-production at certain times of the year when fowls are in full production. I believe that we have to look at whether there are other ways of getting rid of this excess production. It may be possible to reduce the price of eggs at times of full production, so that the losses we are subsidising provide a benefit to South Australian consumers rather than people in other areas. In that way, we will not be subject to the charge of hypocrisy when we are critical of the European Economic Community.

I question whether the egg production scheme has reached a stage where orderly marketing is turning into monopoly marketing. I have prepared two charts in relation to egg production for the years 1973-74 and 1979-80, and I seek leave to have them inserted in *Hansard* without my reading them.

Leave granted.

	Recorded Egg Production ('000 dozen)	Number of Producers Registered	Total Amount Distributed to Producers ($'000)	State Hen Quota ('000)
1973-74	18 034	1 721	6 573	*1 087 000
1974-75	18 941	1 500	7 624	*
1975-76	16 990	1 289	6 830	1 250
1976-77	15 287	1 199	7 473	1 187.5
1977-78	16 912	1 101	9 026	1 187.5
1978-79	17 311	955	9 294	1 187.5
1979-80	17 560	755	11 300	1 092.5

*The State hen quota was introduced from 1 July 1975: the inaugural quota of 1 250 000 was approximately 17 per cent below the number of laying hens during 1974-75.

Sources: Annual Reports of the Auditor-General on Marketing of Eggs for the years 1973-1974 to 1979-1980 (inclusive).

Market returns for eggs handled by the S.A. Egg Board—
Numbers of dozens sold and average realisations

	Returns from local and interstate sales				Returns from export sales through the Australian Egg Board					
	Eggs in shell		Egg pulp		Eggs in shell		Egg pulp		Overall	
	('000 doz.)	(Av. cents per doz.)	('000 doz.)	(Av. cents per doz.)	('000 doz.)	(Av. cents per doz.)	('000 doz.)	(Av. cents per doz.)	('000 doz.)	(Av. cents per doz.)
1973-74	8 773	60.44	1 779	47.17	669	19.53	2 483	16.16	13 703	48.70
1974-75	8 335	70.35	1 563	52.17	470	26.86	4 214	12.02	14 582	50.14
1975-76	7 948	77.40	1 683	55.59	484	21.87	2 645	10.50	12 760	58.55
1976-77	7 792	91.10	1 839	58.50	—	—	1 489	21.86	11 121	76.43
1977-78	7 874	98.05	1 889	60.60	38	47.49	2 628	35.17	12 429	78.91
1978-79	8 300	102.13	1 724	69.22	251	31.01	2 734	23.14	13 009	79.79
1979-80	9 446	106.24	1 812	70.98	417	33.61	2 034	32.80	13 709	88.48

Sources: Annual Reports of the Auditor-General on Marketing of Eggs for the years 1973-1974 and 1979-1980 inclusive. Note that the 'overall average price' for 1979-1980 was not shown by the Auditor-General and was calculated from the other data.

The Hon. M. B. CAMERON: It is relevant to note that the total number of producers registered in 1973-74 was 1 721, while in 1979-80 there were only 755. Therefore, the number of registered producers has decreased by half in that six-year period. I understand that producers who received quotas when the egg marketing scheme began received hen quotas. Those hen quotas can be sold. On reflection, that appears to have been a mistake, because the larger producers are now setting out to take over the industry. We are in grave danger of seeing an egg production monopoly in South Australia, and that was certainly not intended under the original scheme.

There was a time when a large number of eggs were produced in this State from small flocks on farms. Once a value is placed on a hen it is a temptation for farmers, during very bad years, to try to find an avenue for raising finances. Farmers have sold their quotas with the result that the majority of production is now carried on by large producers. I do not believe it is up to Parliament or the Government to continue a scheme that supports the protection of a monopoly production system. An upper limit should be set on the number of hens that can be held by any one producer. If that is not done, the scheme should be abolished. I believe that we should be very wary of restricting any primary production. We should try to determine whether a scheme is necessary and decide whether we should allow the market to prevail.

The Hon. G. L. Bruce: What about wool?

The Hon. M. B. CAMERON: There is no restriction on wool. The honourable member is showing his ignorance of how the system works. Wool is sold on the open auction market, and producers pay 8 per cent of their proceeds into a fund. That fund then sets out to purchase any wool that is considered not to have been sold at full value on the open market. It certainly does not place any restriction on the amount of wool that can be produced. There is absolutely no restriction, and that is probably the ideal system, because it is self-financing. That system has reached a stage where wool producers who put money into the fund in 1973 and 1974 will receive a refund because sufficient funds are in hand to continue. It is not a subsidy scheme, but a system that ensures that people cannot go to an auction and get their heads together and reduce prices. That is an excellent system, and I hope the honourable member was not speaking against it.

The Hon. G. L. Bruce: I was referring to the highs and lows of primary production.

The Hon. M. B. CAMERON: That may well be the system required, but it is certainly not operating here. If that is what the honourable member was suggesting, I apologise for any reflection I made. I believe we should take the value out of hen quotas. If the drop continues, as is evident in my chart, we will end up with very few producers, and I do not believe that Governments should support that.

I now turn to random breath testing. As members know, I was absent during the debate on this issue. As the former Chairman, I thank members of the committee set up to consider this matter for the way in which they approached the subject with open minds. I believe that the end result will be finally appreciated by the public of South Australia. It certainly became clear to the committee that the introduction of the scheme was supported by the majority of South Australians. I have read through the press clippings relating to this matter, and I am amazed at how so much emotion can be whipped up on such a matter. In fact, I am very surprised at some of the statements made, and I am also disappointed. I believe that some of the matters raised showed that the people making those statements had not read the report. If they had read it, I am sure that their views would have been changed. I have here information that I picked up in France, and I quote now from page 72 of a report from the European Parliament, which states:

> France, for example, amended its legislation in 1978 to enable spot checks and random samples to be taken from anybody driving. The result in this case has been a dramatic fall in mortality from road accidents.

The Hon. C. J. Sumner: It's not anywhere at any time?

The Hon. M. B. CAMERON: I believe that is the case, but it certainly showed a similar change to the one in Victoria. I hope that now that the legislation has been passed and the matter will eventually come into law it will receive the reasoned support of the press in this State. Unless such support is given, I do not believe the schemewill work. People need to be aware of the workings of the system. People should be aware of the end results if they ignore the system. I am not in any way indicating that there will not be a reasoned attitude, unlike the attitude that appeared to be the case before the introduction of the Bill, but I hope that a reasoned attitude will be shown in the matter by some sections of the press in South Australia. I have much pleasure in moving the motion for the adoption of the Address in Reply.

The Hon. R. C. DeGARIS: I second the motion for the adoption of the Address in Reply to the Speech made by His Excellency the Governor, Mr Keith Seaman, when opening the third session of the forty-fourth Parliament, and I thank him for the manner in which he performed his task. Through His Excellency, I convey to Queen Elizabeth II of England my continuing loyalty to the Crown.

The opening paragraph of the Speech referred to the death of Sir Thomas Playford on 18 June 1981 and, as I have already spoken on opening day on the death of Sir Thomas, I do not propose to restate what I said then, except to say once again that I will always feel privileged to have had the opportunity to serve in two Parliaments with Sir Thomas Playford.

In my Address in Reply speech last year I took the opportunity of examining the question of the increasing dominance of Executive Government in our Parliamentary system, not only here but also in respect of the whole of the Western democratic system. In that speech I did not examine in any depth the doctrine of responsible government or its bedfellow Ministerial responsibility, although I did mention it when speaking of the Hailsham defined elected dictatorship, which I said was more evident in South Australia than in any other Parliament in Australia, with the possible exception of Queensland. In that speech I quoted British M.P., Ian Gilmour, who said of Ministerial responsibility:

> It is no longer a sword in the hands of Parliament, but it is a shield on the arm of Government.

I understand it was more evident in South Australia than in any other Parliament with the possible exception of Queensland. The statement by Ian Gilmour indicates that at some stage in the past Ministerial responsibility was a sword in the hands of Parliament.

The Hon. C. J. Sumner: Why do you say we are worse than the other States?

The Hon. R. C. DeGARIS: I will come to that. I can tell you why Queensland is probably worst—it was due entirely to A.L.P. policy. Although responsible government and Ministerial responsibility have been key words in our political language since the mid nineteenth century in describing the Westminster system, modern developments in the United Kingdom Parliament have prompted comments such as those made by Ian Gilmour and prompted people of the standing of Hailsham to speak out on the subject of responsible government and Ministerial responsibility. The popular theory, of course, is based upon the accountability of officials, first to Parliament and, through Parliament, to an electorate. The concept of Ministerial responsibility and responsible government is a nineteenth century concept that has been overtaken by a series of developments with a quickening pace in the past 20 years.

When one is considering the question of Ministerial responsibility and responsible government, without Ministerial responsibility there cannot be any concept of responsible government. Because of the demands of the modern Party-political machines, Parliament has not been able to match the changing scene, and the Parliament, as a result, has declined in its role, its responsibility and its relevance to a modern political society. I pose the question: were these terms ever logically defensible as far as Australia was concerned?

What must be recognised is that in the first 20 to 70 years of Australian settlement (depending on which colony we choose), the Executive was not subject to Parliamentary control. The officers of Government were appointed by the Governor and the Secretary of State for the Colonies, their executive status being subordinate to those officials. The early constitutional demands in the Colonies were for 'self-government', although the demands were interpreted as being for 'responsible government'.

At the time the colonial demands were being made, the doctrines of responsible government and Ministerial responsibility were vague and not understood by the Westminster

Parliament itself, if it ever was thoroughly understood. I pose the question first: what then was the idea behind the Westminster doctrine of responsible government? In answering the question, I turn to R. S. Parker, in an address to the Royal Institute of Public Administration, July 1976, who put it this way:

> The concept had a reasonably precise meaning 100 years ago—the meaning can be demonstrated by asking the following questions:
>
> 1. Who were responsible in the governmental system?
>
> Answer—Ministers of the Crown, individually for their own departments and collectively for the administration of Government business as a whole.
>
> 2. For what were they responsible?
>
> Answer—Everything done by the department under their control.
>
> 3. To whom were they responsible?
>
> Answer—To the Parliament, of which they must be members for this very purpose, in which they must meet other members face to face, answer questions, explain, define or excuse their own policies.
>
> 4. How was responsibility enforced?
>
> Answer—Essentially on the honour system. Ministers would see to it that Parliament was adequately informed about Government operations, would resign individually if found incompetent, or worse, would resign in a body if the majority of the Lower House voted censure.

I think those four questions and answers sum up the basis of the liberal democratic movement of the middle nineteenth century which was really expressing a distrust of non-accountable power. But there is nothing in the State Constitution Acts or the Federal Constitution which gives any explanation of the terms 'responsible government' or 'Ministerial responsibility'. In Great Britain the conventions of responsible government emerged as the power of the House of Commons grew at the expense of the Crown and the House of Lords, while in the Colonies, as I have stated before, responsible government was the means of increasing the power of the Colonies to govern themselves.

However, in the Colonial approach many of the features of the old system survived, without the liberal democratic understanding of responsible government and Ministerial responsibility in the Westminster style. For example, the practice of giving public officials their own statutory powers common before self-government continued after it, and it was never an established convention that all official heads were subject in all matters to a Minister in the Australian context.

In the Australian constitutional climate of a transplanted mix of monarchical powers and republican idealism without the pressures of the ideas behind the Westminster acceptance of the concept of responsible government and Ministerial responsibility, contemporary developments tended towards developing 'peer group controls'. These developments were a reaction to the weakness of the Colonial Parliaments. The responsibility in the Australian scene was not primarily 'to' Parliament, as was required in the doctrines developing in the U.K.

When I first looked at the question of providing a Parliamentary check for the multitude of statutory authorities we have in South Australia and examined the only existing legislation in Australia (that now operating in Victoria), I came to the conclusion that here was the beginning of a break with the Westminster concept of 'Ministerial responsibility'. However, on examining the question more thoroughly I came to the inevitable conclusion that the Westminster ideas of 'responsible government' and 'Ministerial responsibility' have been an illusion as far as the Australian experience is concerned. It may well be that the doctrine is an illusion in the U.K. as well, if one accepts the opinions of some respected political analysts who have written on this subject.

While one can argue the case for the reforming zeal of the mid-19th century liberal democrats in Europe and America, there were still critics of the doctrine, even as perceived in the Westminster style. Walter Bagehot, in 1856, wrote:

> The fiction of the responsibility of Ministers is even more universally believed than that of judicial responsibility, but surely with no better reason. For how is a Minister made to answer for a breach of duty? If a member of Cabinet be even so much to blame, his colleagues are, according to modern maxims, bound to stand by him to the last. If they can command a majority, the delinquent is absolved. The truth is . . . under the established system of governing cliques and Party organisation, the House of Commons is incapable of enforcing the responsibility of any member of administration nor can we see any probable change of system calculated materially to diminish the immunity which modern Cabinets practically enjoy.

Even in Westminster, as far as Bagehot was concerned, responsibility 'to' Parliament was a fiction. I have referred earlier to 'peer group controls' and those forms of balance and check can be seen in the establishment of the Auditor-General, movements towards accountable management in the bureaucracy itself, for example, efficiency audits, Ombudsman, administrative appeals tribunals, etc.

A report in yesterday's *News* headed 'Tribunal is "blurring" democracy' reports Mr Justice Kirby, of the Australian Law Reform Commission, as follows:

> The boundaries of responsible government have been blurred by decisions of the Administrative Appeals Tribunal, the Chairman of the Australian Law Reform Commission, Mr Justice Kirby, said yesterday.
>
> In an address to a law conference in Canberra, Mr Justice Kirby questioned whether the tribunal should have the power to review and, in some cases, override the policy of a democratically-elected Government.
>
> 'When an unelected tribunal begins to evaluate, elaborate, criticise, distinguish and even ignore particular aspects of a Ministerial statement openly arrived at and even tabled in Parliament, the lines of responsible government have become blurred,' Mr Justice Kirby said.

When one considers this matter, one can see that it is an example of the unelected being appointed by the unelected and responsible to the emasculated. The plain fact is that the Parliament is not adequately holding the Executive Government responsible to it, so procedures for securing responsibility by other means are being implemented. Let us look for a moment at two reports. The first is the Bland Committee on Administrative Discretions, 1973, which stated:

> Such are the pressures on the Parliament nowadays that the doctrine of Ministerial responsibility can often be meaningless.

The Kerr Committee (Commonwealth Administrative Review Committee, 1971) stated:

> Parliament through its own procedures is unable to deal with all cases in which a citizen feels aggrieved.

That committee also stated:

> It is clearly beyond the capacity of Parliament, preoccupied as it is with broad and important issues of policy and administration, to debate and review all administrative decisions challenged as erroneous.

The development of 'peer group controls' is a direct result of the inability of the Parliament to exercise its own controls over the executive. In the outcome, the checks and balances are being devised by those who already hold power. Thomas Paine, in *Rights of Man*, saw a conflict in the mixture of methods evolving from 'Government by election' and 'Government by hereditary succession'. In such a mix, Paine said:

> There is no responsibility.

Paine went on to say:

> What is supposed to be the King in such a mix is the Cabinet—and as the Cabinet is always a part of the Parliament, and the members justifying in one character what they advise and act in another—a mixed Government becomes a continual enigma. By this pantomimical contrivance, the change of scene and character, the parts help each other out in matter which neither of them singly would assume to act.

The constitutional emancipation of the Australian Colonies occurred during the period of development and formation of the conventions surrounding the peculiar mixture of hereditary and elected elements, of Monarch and republic, evident in the Westminster system. While in Australia we have talked about responsible government and Ministerial responsibility, the more one examines the question, the more confused one becomes in identifying its meaning. If Bagehot, Mill and others had difficulty in recognising the doctrine in the U.K. context, it is no wonder that we have difficulty in the Australian scene.

The Hon. C. J. Sumner: How many people have resigned?

The Hon. R. C. DeGARIS: None in Australia. They have resigned in the United Kingdom.

The Hon. C. J. Sumner: Any in the Australian Parliament?

The Hon. R. C. DeGARIS: No.

The Hon. C. J. Sumner: In South Australia or other States?

The Hon. R. C. DeGARIS: None that I know of, but there may have been some.

A further complicating factor in the Australian constitutional scene is the influence of Federation. The doctrine of responsibility fostered in the English mixture of monarchical and republican concepts is even more difficult in a Federal system of divided responsibility. As a peculiarity, in the 1975 crisis with the Senate, Mr Whitlam took refuge in a Westminster-style interpretation, in claiming that the Government is solely responsible to the House of Representatives, while the Liberal-Country Party Opposition took refuge in the argument that responsibility lay with both Houses of Parliament, an argument suited more to American republican bi-cameralism. *Australian Politics* 5, edited by Mayer and Nelson, page 159, states:

> Although the division of powers in Federations is expressed in terms of a division of areas of legislative competence, and with conflicts between Governments being resolved by judicial arbitration, the distinguishing feature of the British Parliamentary tradition is that the legislation is dominated by the executive branch. To the extent that Cabinet is a Committee of the Party which controls a majority of votes in Parliament, Cabinet wields the power of the Legislature as well as its own executive authority. Parliamentary government in Australia has come to be largely synonymous with executive government. This has meant that Government structures have been concentrated in seven tight hierarchies and that intergovernmental relations have become the exclusive preserve of the executive branches and their supporting administrative machines.

In South Australia, even under the present regime, it is difficult to recognise any elements of the doctrine of 'responsible government' and 'Ministerial responsibility'. However, at the Commonwealth level, the Senate, with its powerful committee structure, developed over the past 15 years, has been able to give relevance to the doctrine of Ministerial responsibility and may in the future, if the views of the A.L.P., the Democrats and some Liberal members are brought to fruition, with a demand for no Ministers in that House, add a new dimension to the doctrine of Ministerial responsibility.

The only evidence one can find in the present Australian Parliaments of a system that is giving some relevance to the doctrine of Ministerial responsibility is in the Senate committee systems. Thomas Paine was not alone in expressing the view:

> That the Cabinet in such a system really replaces the King, and as the Cabinet is always part of the Parliament, so that members justify in one character what they advise in another becomes a continual enigma.

The Hon. C. J. Sumner: Like the Americans?

The Hon. R. C. DeGARIS: I am not arguing the American system at all. It depends on what the honourable member means.

The Hon. C. J. Sumner: A separation of the Legislature from the Executive.

The Hon. R. C. DeGARIS: That is partly my argument. John Stuart Mill also wrote on the enigma of Ministers being both members of the Government and also the Parliament, the point trenchantly criticised by Thomas Paine 70 years before. Mill also criticised the use of boards (statutory authorities). In Mill's view, a board 'is the act of nobody, and nobody can be made to answer for it'.

The Hon. C. J. Sumner: You can make boards and statutory bodies responsible to Ministers.

The Hon. R. C. DeGARIS: Certainly it can be done but one can look at the case I quoted a moment ago which was rightly criticised by Justice Kirby. Mill does not elaborate on this point to any depth but Bentham saw statutory authorities or boards as a screen. I think that the Hon. Mr Sumner would agree that statutory authorities have been formed as a political screen for that very purpose. He pointed out that the supreme board is a Cabinet itself.

In accordance with the theory of collective Ministerial responsibility, the Cabinet provided a 'screen' of closed Ministerial ranks behind which any Minister or Premier or Prime Minister could take refuge. As we know, the granting of 'responsible' government to the colony of South Australia established a bi-cameral system with the 'monarchical' based Legislative Council sharing equal powers with the 'republican' based House of Assembly. I use the terms 'monarchical' and 'republican' in the broadest possible sense.

The Hon. C. J. Sumner: I don't think you're right.

The Hon. R. C. DeGARIS: If we look at the question before self-government was granted we find that it was a monarchical based system. Then the establishment of a House of Assembly identified the merging republican feeling in Great Britain. I use the term 'republican' in the widest possible sense and not in the political sense as is being interpreted by the Hon. Mr Sumner. If one reads people such as John Stuart Mill and Bagehot, one will see the power of the House of Commons as interpreting the republican feeling in Great Britain, and I use it in that context. I am taking 'monarchical' and 'republican' as the two words to describe it in the broadest possible sense.

The Hon. C. J. Sumner: Do you mean popular elections and the general move towards full adult franchise?

The Hon. R. C. DeGARIS: That is exactly what I mean. Within a few months the 'monarchical' section took the role of corrective, while the 'republican' took the role of the basis of government. But the monarchical role has now migrated almost totally to the House of Assembly.

The Cabinet in today's South Australian Parliament, power based in the House of Assembly, has assumed that power, with the corrective declining towards being a useless appendage. Unless we recognise what has happened, the system we have spent so much effort in protecting will go the way of all such useless political institutions.

In South Australia we have developed an executive dominant form of government. I believe we have done this by default—not by conscious choice. The Liberal Party has argued for years in favour of bi-cameralism with an effective powerful and independent House of Review and is now accepting the executive dominated Parliament—the elected dictatorship of the Hailsham definition. The A.L.P. for many years has argued strongly for the abolition of the Legislative Council and in my opinion would have achieved abolition if it could have gained the numbers in the House so to do. In that battle the A.L.P. was arguing for a radical Westminster style of a dominant Executive responsible to one House, while the Liberal Party was arguing for the retention of bi-cameralism, with powers for the second

Chamber more in line with the Upper House powers in the American republican system.

The Hon. J. C. Burdett: And that is in the past.

The Hon. R. C. DeGARIS: Exactly.

The Hon. C. J. Sumner: When were you arguing that?

The Hon. R. C. DeGARIS: I am saying that the A.L.P. was arguing for a radical Westminster style of a dominant Executive responsible to one House while the Liberal Party was arguing for the retention of bi-cameralism with powers of a second Chamber more in line with Upper House powers in the American republican system. We have always argued that way.

Having won the abolition battle, the Liberal Party needs to give more thought to ensuring that the philosophy it argued is put into practice in the most effective manner. The A.L.P., having lost that battle, needs to examine its position, as it has done in relation to its stated policy on the Senate. I have come inevitably to the conclusion, as many others have, that a serious malaise pervades the management of government which stems from a weakening in the chain of responsibility—first, within the Government and, secondly, in the ability of the Government to require responsibility.

Accountability must be the essence of our democratic form of government. Accountability is the fundamental prerequisite for preventing the abuse of delegated or assumed power. At the very centre of this chain of accountability stands the Parliament—constitutionally supreme. It ultimately authorises the levels of revenue, expenditure and debt. No new policies can be put into effect by law without its consent. Therefore, it is not only Parliament's right but also its duty to ensure a high degree of accountability and responsibility from the Government. Robert Stanfield, the Leader of the Progressive Conservative Party in Canada, said recently:

> The current demands on our Government, and the consequential scope of its deliberations, decisions and activities, are beyond the supervision of our Parliament, to which the Government is supposedly responsible.

I think all honourable members would have some sympathy with the statement of Mr Stanfield. However, I am convinced that there are a number of steps that this Council can, and should, take to strengthen the ability of the Parliament to require responsibility and accountability.

In reaching the present position, the Parliament and the political Parties that exercise influence on what happens must accept blame for what has occurred. But, as I have said before, the electorate is beginning to become aware of the malaise that is gripping the Parliament and, if the major political Parties do not come to grips with the problem, the electorate will make the decision for them at the appropriate time.

There is plenty of room to manoeuvre between what we have at the moment, an elected dictatorship of the Hailsham definition exercising control over the whole of Parliament, and based in the House of Assembly, or a form of government having a powerful bi-cameral Legislature, with the means of requiring responsibility along the lines developed in the Senate. If the manoeuvres are not begun, the Liberal Party, as represented in the Parliamentary wing of the Party, will achieve more in undermining the Legislative Council than ever the A.L.P. could possibly have hoped to achieve with its blunt policy of abolition. Edmund Burke is reported to have said, in speaking of Parliamentary democracy—

> It is better to have monarchy for its basis and republicanism for its corrective than republicanism for its basis and monarchy for its corrective.

Now, the Hon. Mr Sumner can see why I want to use those two words. Thomas Paine saw this statement as only a jingle of words, but conceded that the British system remained a mixture of hereditary and elected elements of monarch and republic. He remained committed to representative government, which destroyed his sympathy for its monarchical parts.

In South Australia, there are no hereditary parts—but the kingship of the elected Leader of the House of Assembly, armed with assumed and delegated powers of patronage over all Liberal Party members and responsible to only a portion of them, entrenches the dictatorial power more deeply than in any other Parliament of Australia.

The Hon. C. J. Sumner: Why here more than anywhere else?

The Hon. R. C. DeGARIS: I have just stated why. The future of bi-cameralism, if the present attitudes persist, is threatened in a more subtle way than in the frontal attacks over the past 20 years from the A.L.P. If there is to be any rational and logical check and balance to the dictatorship of the House of Assembly-based Executive, then it must begin in this Council. If any credence is to be given to the conventions of responsible government and Ministerial responsibility, it must begin in this Council. If the Council does not accept this challenge, in my opinion it will become a useless appendage.

The Hon. G. L. Bruce: Why does it have to begin?

The Hon. R. C. DeGARIS: The honourable member should wait until I come to it. For the information of the Hon. Mr Bruce, it is a strange twist of history that only in the Legislative Council can we now develop the principles of republicanism as a corrective to the elected dictatorship of the House of Assembly. The philosophy supported by most Senators in the development over the past 15 years of powerful Senate committees is one way in which the Council can maintain a position in our political institutions.

Therefore, the first step that should be taken is to establish such standing committees to which legislation can be referred, as well as engaging in investigation and report upon other issues. For example, if one of the Council committees was responsible for all legal Bills coming before the Council, there would have been no need to establish a special Select Committee to investigate the question of unsworn statements; it would have gone naturally to that standing committee.

The Senate does not have a special committee looking at statutory authorities, as is the case in Victoria. It is part of the role of the Finance Committee of the Senate. Such standing committees should be established covering legal and constitutional matters, financial matters, health and welfare matters, and general administrative and services matters.

The second step is to operate without any Ministerial representation to break the influence of the Executive control of this Council.

The Hon. C. J. Sumner: What, no Ministers?

The Hon. R. C. DeGARIS: No, none at all. I do not intend to develop arguments along this line at this stage, except to say that in my opinion, in the near future, it will become the accepted form in the Senate and in other State Houses because there is a growing demand for the correct structuring of Houses of Review and a growing acceptance in the community that Parliament is not working as it should work.

There is a growing displeasure in the community with the dominance achieved over the Parliament by the Executive, and any political Party that ignores that community displeasure does so at its own peril. The removal of Cabinet Ministers from the Legislative Council will provide a capacity for the Council to give some meaning to the doctrine of responsible government and Ministerial responsibility. As I have said, I do not intend to canvass this point to any length, except to say that I hope that the Council will be disposed towards conducting an inquiry into the points I have made.

I wish to stress to the Council that, whether we belong to the Liberal Party, the Labor Party or the Democrats, it is unlikely that the Government of the day will be able to command a majority in the future in this Council. Therefore, it is clear, from the purely practical point of view of raw Party politics, that the adversary politics practised in the Lower House will not work in this Council. We must develop the machinery to ensure the maximum opportunity to reach consensus opinions on all matters before the Council, to enable the Council to give some relevance to the concept of accountability, to provide a means of allowing greater public access to the law-making process, and to provide sufficient research staff and secretarial staff so that the Council can fulfil its functions in an efficient, effective way to the benefit of all South Australians.

The Hon. C. J. Sumner: Why, then, didn't you vote with us on the motion in relation to the unsworn statement and the lack of research assistance?

The Hon. R. C. DeGARIS: I pointed that out at the time, and I do not want to repeat it now. I would have voted with you strongly if the Government had refused to meet your demands under Standing Order 413, under which you would have operated. If the Council is to retain its standing in the public mind and retain a place in the Parliamentary system, it must develop procedures that fit the role it is supposed to fulfil, taking into consideration the positions I have outlined. If the Liberal Party does not grasp the significance of these points, it will be denying the principles that it has stated so often over the past years.

If the A.L.P. does not grasp the significance of these points, it will be losing an opportunity to maintain an ability to influence the course of policy, whatever the power structure may be in the House of Assembly. If the Democrats do not grasp the significance of these points, they are throwing away a political harvest that is awaiting a small political Party that is prepared to fight for the principles to which I have referred.

Briefly, I would draw the attention of the Council to three other points that will serve to illustrate the general theme of this speech. As I said previously, accountability is the essence of any democratic form of Government. Accountability, in theory, should flow from the Public Service through a Minister to Parliament and ultimately to the South Australian people. That chain of accountability begins with Parliament and ends with Parliament.

The Government has been quite rightly concerned with the question of accountability within government, and the papers presented to the Council on programme performance budgeting will be examined in some depth when I speak in the Budget debate this session. In formulating a compatible management system appropriate to the requirements of the Government, such a system must comprise several closely inter-related elements operating within the Parliamentary framework.

Unless we are able to reform the Parliamentary structure, unless we can reinforce the capacity of Parliament to fulfil its historic and crucial role in the accountability chain, unless the Parliament has a House, divorced from the influence of the Executive, and able to call Ministers collectively and individually to account, then any new procedures for increasing accountability within Government will be cosmetic only.

The second point concerns the publication of a supplement in the *Advertiser* which has been criticised by the Opposition and by the editorialist in the *Advertiser* and has been strongly criticised by many other people. Over the past 10 to 15 years there have been occasions when the propriety of Government advertising, whether in newspapers, magazines or television has been raised in this Council. I would be surprised if the latest example is not subjected to strong criticism during the progress of the Address in Reply debate. I have no hesitation in adding my voice to that criticism, as I have been critical of the expenditure of public moneys on such exercises on previous occasions.

The Hon. C. J. Sumner: You did not go as far as that.

The Hon. R. C. DeGARIS: Yes, I did. If the Labor Party raises that question and criticises it, it should be aware that it used similar tactics when it was in Government and that it was roundly criticised in this Council. However, I am not taking that point. This type of expenditure is only a symptom of the disease about which I have been speaking. I leave this point by posing the question—Parliament has the power to impose its controls on matters such as this—has it the will to do it or will it complain, play politics and do nothing?

The third point is an advocation for a separate Appropriation Bill or Bills for the Parliament. Any consideration of what I have said in this speech cannot be divorced from this last point. The Parliament cannot be considered as an ordinary annual service of the Government. Such a view would be quite inconsistent with the concept of the supremacy of Parliament. If Parliament is to regain any of the influence it has lost to the Executive, the Parliament must assert greater independence and autonomy in regard to its own internal arrangement. I would suggest that separate appropriations should be required for each House, those appropriations to be under the control of the President and Speaker, with a Committee of each House chaired by the President and Speaker, with certain clear responsibilities. The Committee, for example, should be responsible for examination of the Parliamentary estimates and for making recommendations on the estimates and for employment of staff. One cannot divorce from what I have said the question that Parliament should have its own appropriations and be in charge of its own estimates and the employment of its staff.

I am quite convinced on three fundamental points:

1. If this Council does not consider reforms in its structure and procedures, it will become, I believe, a useless appendage in the Parliamentary system.
2. That reform should follow the lead given by the Senate in the establishment of Standing Committees covering all aspects of Government activity.
3. I come to this conclusion after careful consideration of what is happening here. The Council should operate without Executive representation so that its role can be enhanced and developed as a House of Review, as well as giving greater ability to require Ministerial responsibility to the Parliament.

In my opening remarks I said that in colonial days the Executive was not subject to Parliamentary control. The officers of the Government were appointed by the Governor and the Secretary of State for the Colonies, their executive status being subordinate to those officials. The more closely one examines the present position, not only here but elsewhere in Australia, the more one is prompted to ask the question: how far have we advanced since that time?

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

SESSIONAL COMMITTEES

The House of Assembly notified its appointment of sessional committees.

ADJOURNMENT

At 4.47 p.m. the Council adjourned until Wednesday 22 July at 2.15 p.m.