LEGISLATIVE COUNCIL

Wednesday 12 September 1984

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

PETITION: FIREARMS

A petition signed by 18 residents of South Australia praying that the Council will defeat any firearms legislation which is further restrictive; consider the effectiveness of present legislation; refuse further unwarranted increases in fees; and apply a significant part of the revenue gained to promote and assist sporting activities associated with firearms, was presented by the Hon. Peter Dunn.

Petition received.

PETITIONS: X RATED VIDEO TAPES

Petitions signed by 771 residents of South Australia praying that the Council will ban the sale or hire of X rated video tapes in South Australia were presented by the Hons J.C. Burdett, M.B. Cameron, M.S. Feleppa, and I. Gilfillan.

Petitions received.

MEMBERS' SHAREHOLDINGS

The Hon. K.T. GRIFFIN: I seek leave to make a brief explanation before asking the Attorney-General a question concerning the Constitution Act.

Leave granted.

The Hon. K.T. GRIFFIN: Yesterday, I raised questions about the seat of Mr Duncan in the House of Assembly and the seat of the Hon. Miss Levy in the Legislative Council and the forfeiture of those seats by virtue of their having accepted Government money from a Government agency in breach of the Constitution Act. It now appears from the morning newspaper that the Hon. Lance Milne is in the same position. The questions raised yesterday focused on an issue of basic constitutional importance. Are the seats of the three members now automatically vacant? If they are vacant, as I believe they are, they now lay themselves open to prosecution in the Supreme Court and a penalty of $1 000 under section 53 of the Constitution Act. The Constitution Act is not clear whether that is $1 000 only or $1 000 per day, but there is precedent in the United Kingdom for that penalty being a daily penalty.

The other question of greater constitutional significance for the Government is on votes and divisions in each House, but more particularly in the Legislative Council. If there is a division and the Government wins it with the support of the Hon. Miss Levy and the Hon. Mr Milne and later it is confirmed that they are not in fact entitled to vote, what then is the status of the division or, in fact, any Bill that may pass with their support? It is inconceivable that a challenge may be made to the validity of such Bill purporting to have been passed with a majority of votes. Clearly, the matter is one for urgent consideration and resolution beyond any doubt. It may well precipitate a major constitutional crisis in this State. My questions are as follows:

1. Will the Government immediately institute proceedings in the Supreme Court to resolve the questions but without necessarily seeking penalties from the three members?

2. In the meantime, will the Government request the three members not to sit in Parliament until the question is resolved?

The Hon. C.J. SUMNER: I appreciate that the honourable member opposite is trying to provide some suggestion of crisis as far as the Constitution is concerned in regard to honourable members sitting in this Council and an honourable member in another place. I agree with only one matter that the honourable member has raised at this point in time at least, that is, that the matter needs to be resolved urgently. Yesterday, following the honourable member's question and following the matter having been raised in the House of Assembly by the Leader of the Opposition (Mr Olsen), I set in train certain inquiries that are not yet complete. As soon as they are complete I will inform the Council and have someone—a Minister in another place—inform the House of Assembly. However, the issues that the honourable member has raised are complex; they are important and I believe they need to be looked at properly before a reply is brought down. I agree with the honourable member that it is a matter that should be considered as a matter of urgency—and I am doing that. I point out that in another place yesterday the Leader of the Opposition said that he had an opinion on this issue and the Premier, in response to Mr Olsen's question, asked whether that opinion could be made available to be considered in the light of the investigation that needs to be undertaken. I do not know whether that opinion has been made available to the Premier. As far as I know, it has not been sent to me—

The Hon. R.I. Lucas: Would you—

The Hon. C.J. SUMNER: It has not been made available to me. It was just a request made by the Premier—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: All I am suggesting is that if the Leader of the Opposition wanted to make that opinion available to the Government it could be considered along with the investigations that are being carried out. All I am saying is that I do not believe that that opinion has been received. Nevertheless, the questions raised by the honourable member are important and must be resolved as soon as possible. I am attempting to do that.

The Hon. K.T. GRIFFIN: I desire to ask a supplementary question. I asked the Attorney two questions, which have been neatly avoided. First, will the Government immediately institute proceedings in the Supreme Court to resolve the questions without necessarily seeking penalties in relation to the three persons? Secondly, in the meantime, will the Government request the three persons not to sit in Parliament until the question is resolved?

The Hon. C.J. SUMNER: Those questions were not avoided; they were answered in what I had to say. The matter is being inquired into; I am having inquiries made. Until the inquiries are concluded, I am not able to indicate what action I or the Government intend to take. I do not intend to pre-empt any opinion or the result of any inquiries that might come forward by taking the action suggested by the honourable member. That is not appropriate at this stage, until the matter has been further examined.

The Hon. K.T. GRIFFIN: I desire to ask a further supplementary question. In the light of the Attorney's answer, will the Government avoid any divisions within either Chamber until the matter has been resolved?

The Hon. C.J. SUMNER: It is not a matter for the Government to avoid divisions; it is a matter for Parliament or for each individual Chamber of Parliament. Whether there is a division depends not on the Government but on all members of Parliament. I do not imagine that there will be any divisions of great significance before the matter is

further inquired into. As the honourable member knows, this is not a matter for the Government. Indeed, the resolution of this matter may not be up to the Supreme Court, either; it may be a matter for Parliament itself. That question is being looked at as a result of the inquiries that I have set in train.

REST HOMES

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister of Health a question about rest homes.

Leave granted.

The Hon. J.C. BURDETT: I was pleased to hear in the Minister's statement yesterday that he has at last, under threat of closures, agreed to do something in relation to rest homes. On 1 December last year (as reported at page 2192 of *Hansard*) I raised this very matter with the Minister and asked him to contact his Federal colleague to produce some rationalisation and consistency in this area. In his reply, which commences on the same page of *Hansard*, the Minister agreed to do this. The Minister then proceeded to say that he was looking at the possibility of extending domiciliary care services to residents of rest homes, where appropriate. The Minister concluded:

> To that extent, I suspect that while there have obviously been a number of significant preliminary discussions and possible scenarios drawn up, there is nothing concrete at this stage. However, I am aware of the problems in general and I am aware of the rest home problem in particular and I have written to Dr Blewett on several occasions concerning aged care in general and institutional and non-institutional aspects of it in particular. I can assure the Hon. Mr Burdett that I will be in constant contact with my Federal colleagues and, if necessary, in the near future I will most certainly write to Dr Blewett and Senator Grimes once again.

Those letters have certainly produced no result. My questions to the Minister of Health are as follows:

1. What have been the results of the constant contact with the Minister's Federal colleagues as promised last year?
2. Has any further progress been made in relation to the suggestion of providing domiciliary care services?
3. Just what has the Minister done since I asked my question in December last year, to solve this very serious problem, which involves not only the livelihood of rest home proprietors but more importantly the care of residents?

The Hon. J.R. CORNWALL: The constant contact that I have had with my Federal colleagues, but more particularly the Federal Minister for Health, has resulted in a number of very important initiatives being announced in the Federal Budget. The most significant of those is the Health and Community Care Project, for which the Federal Government has made a significant amount of money available in the 1984-85 financial year and for which the total predicted funding nationally is $30 million. The major thrust of that programme will be to maintain the elderly, and particularly the frail aged, in the community in their own homes and environments as long as is reasonably possible and as long as that is in the best interests of those frail aged persons. That was promised by the Federal Labor Party before the election. It has taken it until its second Budget—somewhat less than 18 months—to bring that to fruition. That is a very substantial achievement when one considers that a tremendous amount of energy and time was necessary to bring Medicare to fruition within a little less than 11 months of the Hawke Government's being elected. Notwithstanding that, there have been, as I said, a number of very significant initiatives, the talisman of which is the proposed Health and Community Care Project.

So, that is part of the result of the constant contact that I have had with my Federal colleague and friend, Dr Blewett. There is also, I am happy to tell the honourable member, a very major project in South Australia—the Aged Project—that is being put together at this very time. Some details of the financial arrangements are still to be finalised, but I hope that I will make an announcement about that major, multi-faceted complex and project within six weeks. The honourable member will have to be a little more patient there, but that will certainly be a major State initiative.

The honourable member mentioned that I said in this Council very early in December last year that I had offered representatives of the Rest Homes Association to extend the full range of domiciliary care services—and, I might add, district nursing services—wherever that might be appropriate. That offer was made during discussions with representatives of the Rest Homes Association when they were on their annual pilgrimage for more money late last year. The offer was never taken up.

The Hon. J.C. Burdett interjecting:

The Hon. J.R. CORNWALL: 'They don't get any money,' the Hon. Mr Burdett interjects, as though he had reinvented the wheel. They never have been given any Government money; they have been given the residents' money. They are private for profit organisations, and operate in a commercial way in the market place. They have never previously—

The Hon. J.C. Burdett interjecting:

The Hon. J.R. CORNWALL: They are not nursing homes. Poor John does not understand his shadow portfolio at all.

The Hon. J.C. Burdett interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: The fact is that rest homes have grown up and become a part of the aged care industry and, unfortunately, it is an industry at this stage; that is regrettable. They have become part of the aged accommodation scene, particularly, somewhat by default. I said in this place yesterday, and I will repeat as often as I have to, that if there are any nursing home type patients in South Australian rest homes they are being quite inappropriately accommodated, and the proprietors would be in breach of the law.

The Hon. J.C. Burdett interjecting:

The Hon. J.R. CORNWALL: Poor John interjects again, showing his ignorance, and says that they have nowhere else to go.

The Hon. C.M. Hill: Who is the 'poor John' he's talking about?

The Hon. J.R. CORNWALL: Poor old John Burdett.

Members interjecting:

The PRESIDENT: Order! I ask the Minister not to aggravate the situation by referring to honourable members by their Christian names.

The Hon. J.R. CORNWALL: I am quite proud to be a Christian. I try to show my charity to the poor man who does not understand his shadow portfolio area at all.

The Hon. J.C. Burdett: What rubbish!

The Hon. C.M. Hill: You want to apply to get into one of these rest homes.

The Hon. J.R. CORNWALL: Goodness gracious me.

The Hon. M.B. Cameron: He forgot to take advantage of it.

The Hon. J.R. CORNWALL: No, no.

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: They really are a pathetic lot. You, Mr President, really ought to make an example of them one of these days. But they do not put me off my train of thought at all. I am quite above and beyond that poor unfortunate rabble opposite. The Hon. Mr Burdett interjected in response to my saying that, if there are nursing

home type patients in rest homes, they are quite inappropriately accommodated. Indeed, if nursing home type patients are in rest homes, the proprietors are in breach of the Health Act and the regulations under the Act. If patients are accommodated inappropriately, they should be uncovered (if that is the right expression) by the extensive number of spot checks that will be undertaken by an assessment team operating with our proposed task force. If people are inappropriately accommodated in rest homes, they will be found alternative accommodation in nursing homes.

The Hon. J.C. Burdett: Where?

The Hon. J.R. CORNWALL: The Hon. Mr Burdett falls about on the front bench—poor old chap, his brain failure advancing more each day. He asks 'Where?'

The Hon. J.C. Burdett interjecting:

The PRESIDENT: Order! I ask the Hon. Mr Burdett to listen to the reply. If he wishes to ask a subsequent question, he will be entitled to do so.

The Hon. J.R. CORNWALL: Thank you for that protection, Mr President: I was badly in need of it.

The Hon. L.H. Davis: You need plenty of protection, mainly from yourself.

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: It is a statistical fact that South Australia has possibly more nursing home accommodation per 1 000 people over the age of 65 years than any other place on earth.

The Hon. R.C. DeGaris interjecting:

The Hon. J.R. CORNWALL: That is quite right, and certainly three times as much as The Netherlands, for example, where the aged care programmes concentrate, quite rightly, on the sorts of directions in which the Federal Government and the State Government are currently trying to go, and that is home and community care and support programmes. So we are very well supplied with nursing home accommodation. The real problem is that, because of the nature of what I have described as the aged care industry, for three decades our thinking in this country has been distorted by successive conservative Governments in Canberra that have fostered the idea that aged care was about, and almost exclusively about, the provision of nursing home beds. That was a disastrous road for us to follow, and it is a road from which we, as a progressive State Government, and the present Federal Government want to depart. It does not mean, of course, that people who are currently in nursing homes will be relocated: that would be unthinkable. Anyone who currently is in a nursing home or anyone who has a relative or friend in a nursing home can immediately set their mind at rest.

However, our admission processes and our thought processes with regard to nursing home admissions have been quite wrong and they must be changed. That sort of thinking will be changed under the administration of the Health Commission in South Australia (under my guidance), the Health Department in Canberra (under the guidance of Dr Blewett) and the Department of Social Security (under Senator Grimes).

Policies will be redirected so that people can be kept far more happily and far more appropriately in local community settings in their local environment where they can contribute to, and be part of, the mainstream of their local society. That will be a far more constructive way to go than was the direction in which conservative Governments have taken us in this country since the 1950s. I repeat what I said at the outset: if there are nursing home type patients in rest homes they are inappropriately accommodated and, the sooner the real role and function of rest homes in the aged care scene in South Australia is redefined, the better off we will all be and the better off will be the residents of those rest homes, and even the proprietors.

NAME SUPPRESSION

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Attorney-General a question about court orders relating to name suppression.

Leave granted.

The Hon. I. GILFILLAN: In late July an article appeared in the *Advertiser* describing an offence where an employee of the Adelaide City Council was charged with having stolen coins from parking meters while working and, in fact, admitted the offence.

The Police Prosecutor told the court that the accused had pleaded guilty and had agreed with the allegations made, but not the dates given. He was remanded by Mr Amey SM on $400 bail to appear a month later, on 27 August. The SM said that he would order a pre-sentence report because of the accused's plea and the fairly serious nature of the offence. At the hearing on 27 August the offender was convicted by Mr Amey SM and given a suspended sentence on a three-year $200 good behaviour bond. Mr Amey suppressed as from that date the name, address, past occupation or anything tending to identify the accused on the grounds of his father-in-law's and mother-in-law's ill health, bearing in mind, of course, that in the previous article in the *Advertiser* all those details were published. My questions to the Attorney-General are as follows:

1. Does the Attorney-General believe that the public is entitled to open disclosure of court proceedings and that the names of those involved should not be subject to suppression except in extreme and extraordinary circumstances?
2. Does he consider that the ill health of parents-in-law should not on its own normally be sufficient justification for a suppression order?
3. Does he regard the suppression of an offender's name by a court as denying the right of the public to know and observe the proper administration of the law?
4. Does he agree that the publication of court proceedings and penalties often acts as a deterrent and warning to others?

The Hon. C.J. SUMNER: The presumption is toward open disclosure and openness of the courts: that is clear in the system at the present time. However, there are provisions whereby names can be suppressed in certain circumstances in the administration of justice. I have no intention of commenting upon this case. It is up to a magistrate or judge to consider each case on its merits and to apply the criteria laid down by the Superior Courts as to the circumstances in which suppression orders should be made.

I do not intend to comment on this case. Whether or not the ill health of parents-in-law is a reason justifying a suppression order depends on a whole lot of matters that are not known to me, but presumably were known to the magistrate. All these factors are taken into account by a magistrate in determining whether or not a suppression order is in the interests of the administration of justice. The question of suppression orders is a difficult one. The presumption, as I have said, is towards openness. However, there are certain circumstances in which suppression orders are justified, and it is for that reason that the power to impose such orders is in the legislation.

The Hon. I. GILFILLAN: I have a supplementary question. If I make the exact details of this case available to the Attorney-General will he undertake to investigate this situation and report back to the Council as to his opinion?

The Hon. C.J. SUMNER: It may be that it is not appropriate for me to give an opinion on a particular court decision. I am happy to look at the matter and the incident that the honourable member has raised to ascertain whether

or not there is anything further I can add to what I have said today.

SALARY STATISTICS

The Hon. ANNE LEVY: Has the Attorney-General an answer to the question I asked about salary statistics on 5 April?

The Hon. C.J. SUMNER: There are 408 public servants receiving in excess of $40 000. Seventeen of them are women. On the question of figures from other States, it is difficult to gather statistical information which enables comparisons to be made between States. For example, Queensland does not collect figures relating to breakdown by sex. Moreover, every State and Territory varies as to the number and type of statutory authorities which exist in their public sector and, since the Public Service Board's information on employees does not extend to those in statutory authorities, no proper comparison is possible between States.

Q THEATRE

The Hon. C.M. HILL: I seek leave to make a short statement prior to asking the Attorney-General, representing the Minister for the Arts, a question about the Q Theatre in Halifax Street.

Leave granted.

The Hon. C.J. Sumner: You're a bit late. Hasn't he already made a statement?

The Hon. C.M. HILL: When?

The Hon. C.J. Sumner: Probably in today's *News*.

The Hon. C.M. HILL: I have not seen the *News* today; I do not rush out to buy it.

The PRESIDENT: Order! The Hon. Mr Hill has the right to ask his question, and there are other members waiting.

The Hon. C.M. HILL: An announcement in the *Advertiser* on Monday this week indicated that the Q Theatre, in Halifax Street, was for sale and that its owner, a Sydney resident, had indicated that running the theatre was not viable and that that was the reason for its proposed disposal. The *Advertiser* indicated in a leading article on the same day that it would be a great shame if the theatre and its performances were lost to Adelaide and its audiences. I endeavoured to raise this question yesterday, but due to the shortness of time was unable to get the call from you, Mr President.

The Government has indicated during its present term of office that it has some interest in the acquisition of venues for cultural purposes. Earlier this year it announced that it had purchased the Fowler property on North Terrace and was considering having that property used as what is known as a living art centre. I understand that the purchase price of that property was about $1.8 million, although I am not certain of that figure. It most certainly involved a large sum of money. As many Adelaide people have gained great enjoyment from attending performances at the Q Theatre, and because the theatre and its performances have become part of Adelaide's culture, will the Government consider the possibility of acquiring this theatre venue so that live theatre at the Q Theatre is retained for Adelaide?

The Hon. C.J. SUMNER: This is a matter of concern to the Minister for the Arts. I understand that officers of the Department for the Arts are holding discussions with the Q Theatre administrator, as apparently there is no board of management as such, and that the Premier is inquiring into the situation at the Q Theatre. I saw a report in the *News* today that the Premier was making some inquiries about the matter. I think that all I can do is refer the honourable member to that statement by the Premier and, if there are any further developments, I will advise him of the result.

FINANCIAL INSTITUTIONS DUTY

The Hon. R.C. DeGARIS: I seek leave to make a brief explanation before asking the Attorney-General a question concerning financial institutions duty.

Leave granted.

The Hon. R.C. DeGARIS: During debate in the Committee stage of the Bill concerning the imposition of the 4c per $100 financial institutions duty, I pointed out to the Council that the $22 million return that the Government predicted was underestimated. I stressed that the return at a conservative estimate would be $25 million per annum and, at the top level, possibly $30 million per annum.

The return to the Government in the first six months was approximately $13.5 million and the estimated return for the next 12 months is $28.5 million. The original figure estimated by the Government of $22 million for 12 months operation would have been close to that estimate if the Government or the Democrats had agreed to a duty of 3c per $100, which amendment was moved in this Council by the Liberal Party. In his contribution to that debate the Attorney-General said:

> The Hon. Mr DeGaris may be able to put an argument that it has been a conservative estimate. If that is the case that is a point that can be made in the next debate next year.

Will the Government now accept that the estimates were conservative? Will the Government agree that in a full 12 months operation the estimated $22 million would have been achieved had the duty been 3c per $100? When the Attorney-General referred to the 'next debate next year', did he mean that if the estimates were extremely conservative the Government would introduce a Bill to reduce the duty to 3c per $100?

The Hon. C.J. SUMNER: With respect to the latter point, no, that is not what I meant: what I meant was that the matter could be reconsidered in debate in Parliament this year. No doubt that opportunity will be given to the honourable member very shortly. In fact, it has probably been given to him already, because a motion to note the Budget papers will be moved by me later today. So, there is an opportunity for the honourable member to comment on it. I cannot comment further on the specific matters that he has raised, but I will refer them to the Treasurer and bring back a reply. In the meantime, should the honourable member wish to debate the matter further, there is the opportunity for him to do so during discussion on the Budget.

NATIONAL WORKERS COMPENSATION SCHEME

The Hon. DIANA LAIDLAW: I seek leave to make a short statement before asking the Attorney-General, representing the Minister of Labour, a question concerning a single national workers compensation scheme.

Leave granted.

The Hon. DIANA LAIDLAW: Last week in Federal Parliament the Government introduced a Bill entitled the 'Constitution (Alteration) Bill, 1984' to facilitate the holding of two referendums at the next Federal election. One of those referendums concerns the interchange of powers between the Commonwealth and the States. During debate on the Bill the ALP member for Stirling, Mr Ronald Edwards, gave a number of reasons why the interchange of powers question should be strongly supported in both the Parliament and the electorate. I make no apology for the English expression—

it is Mr Edwards', not mine—but one of the reasons he gave was:

> This interchange of powers arrangement would make it far more possible for us to get towards a single system of workers compensation. We want to work towards a single system of workers compensation throughout Australia that would cut administrative costs.

Is the Minister of Labour aware that one of the arguments pushed by his Federal colleagues in favour of an exchange of powers is their desire to establish a centralised national workers compensation scheme in this country? Does the Minister support this goal? If so, would his support for this objective help explain why he has taken so long to bring before this Parliament the amendments that he promised to make to the workers compensation arrangements in this State? Finally, if the Minister does not favour the establishment of a national workers compensation scheme or, indeed, the use of this argument as a reason for supporting the exchange of powers question at the next election, will he convey his objection to the Prime Minister and make that objection public?

The Hon. C.J. SUMNER: The question of a national compensation scheme to cover workers compensation and other accidents is a matter that has been the subject of debate at the national level and in the States for some considerable time. It was the subject of a comprehensive report prepared by a New Zealand judge, Mr Justice Woodhouse, in 1975, I think, which advocated a comprehensive national compensation for injury scheme. That scheme was to operate irrespective of whether the injury occurred at work, on the roads, at home, or in any other circumstance. Part of the problem at the moment is that if persons are injured at work they are compensated, if they are injured on the road and are not guilty of any negligence themselves, they are compensated, but if a person is badly injured in a home accident or something of the kind, where there is no claim against anyone on the basis of negligence, then that person is not entitled to any compensation.

The argument has been that it is better to have a comprehensive scheme so that all people can be entitled to some benefits following an accident. Of course, that has been looked at. It is not an easy issue to resolve (there is the question of what one does with common law damages in those circumstances), and the issue has not progressed very much further. There have been some discussions about trying to get a comprehensive no-fault scheme operating throughout Australia in regard to road accidents, for instance. Now the honourable member has raised the question of the workers compensation area—

The Hon. Diana Laidlaw: I didn't raise it. It was raised in Federal Parliament.

The Hon. C.J. SUMNER: That presumably is a statement by a back-bencher in the Federal Parliament.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: I am not prepared to comment on the matter. That may be an idea he has that could arise out of the interchange of powers proposal. Clearly, if there were to be an interchange of powers proposition passed, then the implementation of a national compensation scheme such as I have outlined could be facilitated by those States referring powers on the matter and perhaps the Commonwealth also referring some powers to the States to enable the scheme to be implemented. That is a matter for the future. As I understand it, the Minister of Labour at present is looking at amendments that might be possible in the South Australian workers compensation system in order to cut down some of the costs associated with the scheme.

The Hon. DIANA LAIDLAW: I desire to ask a supplementary question. The Minister has given a general reply to my question, but will he ascertain specific information?

The Hon. C.J. SUMNER: I thought that I gave a comprehensive answer to the questions raised. If the honourable member believes that by some oversight some matters need further pursuing, I will have her questions examined by the Minister of Labour.

INNAMINCKA FILM LOCATION

The Hon. M.B. CAMERON: I seek leave to make a brief statement before asking the Minister of Health, representing the Minister for Environment and Planning, a question about a film company at Innamincka.

Leave granted.

The Hon. M.B. CAMERON: Considerable concern has been expressed to me about proposals advanced by a company intending to make a film on Burke and Wills. The first proposition was to poison a big area in order to provide the necessary atmosphere of barrenness to resurrect what was considered to be the atmosphere—

Members interjecting:

The PRESIDENT: Order!

The Hon. M.B. CAMERON: —in which Burke and Wills perished. Mr President, you would be aware that it has been an excellent season in the North and it is now not quite the atmosphere—

Members interjecting:

The Hon. M.B. CAMERON: That is right: there are no cattle in the area at all and obviously there is excessive growth. I gather that the company might now have dropped that idea because it is past the season when poison would have any effect. I gather that the company now intends to enter the area with flamethrowers and burn off an area to provide the necessary atmosphere. It should be established whether or not these rumours are correct. If they are correct, the Minister for Environment and Planning should take whatever steps are necessary to advise these people from another State that such preparation is not acceptable to the people of South Australia and that before they do anything to alter the natural environment in that area the company should consult with the Minister for Environment and Planning and his Department to obtain whatever permissions are necessary. If this sort of activity takes place there will be much hostility from people. We already have enough problems with tourists in that part of the world.

The Hon. J.R. CORNWALL: I do not know the substance of what the Hon. Mr Cameron is saying. On his own admission he says these are rumours only. I am able to advise the Council in my capacity as Minister of Health that in fact Burke and Wills died of vitamin deficiency—they did not perish through a lack of water and food. They were camped terminally, as I understand it, on Coopers Creek for 2½ months. I know my early Australian history, but watching the Bert Newton show sometimes helps. Really, I do not know why anyone would be proposing to use flamethrowers—

Members interjecting:

The Hon. J.R. CORNWALL: I am not an intellectual snob and do not confine my viewing to the ABC.

The Hon. C.M. Hill: He watches *New Faces.*

The Hon. J.R. CORNWALL: I do, and it takes me back to my tap dancing days when I was a little boy, Murray.

Members interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: I find it extraordinary that the Hon. Mr Davis would denigrate my activities in entertaining the troops in the Second World War. Where is his patriotism? However, this question was not addressed to me as Minister of Health, and I will refer it to my colleague in another place and bring back a reply.

MEMBERS' SHAREHOLDINGS

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Attorney-General a question about the Constitution Act.

Leave granted.

The Hon. R.I. LUCAS: The Attorney-General indicated earlier that the Premier had requested the Leader of the Opposition to make available the opinion he had received on the position of the three members in question. The member for Elizabeth (Hon. Peter Duncan) indicated this morning that he had received a QC's opinion on this matter. Has the Attorney-General or the Premier requested Mr Duncan to provide them with a copy of that QC's opinion to assist them in their inquiries and, if not, why not?

The Hon. C.J. SUMNER: I cannot speak for the Premier. I understand that Mr Duncan has made a statement of this kind that he does have a legal opinion. I have not yet studied that opinion in any detail.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: Yes, I have received a copy of the opinion, but I have not studied that opinion in detail.

The Hon. Frank Blevins: Ask him about Mr Olsen.

The Hon. C.J. SUMNER: Yes, I will. I have not studied that opinion in detail but I have a copy of it. As far as I am concerned, any information that can be brought forward from honourable members—those directly involved or perhaps others with an interest in it—I would be interested to have so that it can be considered in the inquiries being made at my instigation. I can only say to the honourable member who has asked the question that yesterday Mr Olsen said that an opinion was available; the Premier requested politely, I understand, whether that opinion could be made available—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: I merely reiterate the request that was made yesterday, but of course it is now entirely a matter for honourable members, if they have that opinion—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: I am having the matter looked at by the Crown at the moment. What the fate of those inquiries will be the honourable member will have to wait and see.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: I do not think that is the issue at all. It is not now an issue of the individuals—it is now a constitutional matter that has been raised by a member of Parliament that affects the sittings of Parliament. It may affect your position, Mr President. In situations like that, it has been normal for opinions to be obtained from the Attorney-General and Crown Law officers, including the Solicitor-General. I do not see that there is any difficulty now in the Crown providing advice or the Attorney-General providing advice to Parliament on this topic relying on the advice of Crown Law officers. The view I took earlier when the matter was drawn to my attention as a result of some advice tendered by the Crown Solicitor was that, because at this stage it was essentially a private matter involving the honourable members concerned, they should seek their own legal advice. I outlined that to the Council yesterday following the first question that the Hon. Mr Griffin asked. In response to the Hon. Mr Lucas, any information that he or the Hon. Mr Griffin or Mr Olsen might have on the topic would be welcomed by me should they feel free to provide it.

DRIVERS LICENCES

The Hon. PETER DUNN: Has the Minister of Agriculture a reply to the question I asked on 14 August about drivers licences?

The Hon. FRANK BLEVINS: My colleague, the Minister of Transport, advises that the honourable member's comments have been brought to the attention of the task force examining the practicality of introducing a graduated system of drivers licences.

TOBACCO SALES TO CHILDREN (PROHIBITION) BILL

The Hon. K.L. MILNE obtained leave and introduced a Bill for an Act to prohibit the sale or supply of certain tobacco products to children, and to amend the Community Welfare Act, 1972. Read a first time.

The Hon. K.L. MILNE: I move:

That this Bill be now read a second time.

There are two purposes behind the introduction of this Bill: first, to place greater emphasis on the question of selling tobacco products to children under 16 years of age by taking the subject out of the Community Welfare Act, where it is submerged under section 83, and giving it an Act of its own; and, secondly, to make the penalty for selling tobacco products to minors much higher. It is hoped that the policing of this legislation will be much stricter. If this does not have a deterrent effect on delicatessen owners, hotel proprietors and other outlets, we will have to go further.

I make it clear that the number of outlets that sell cigarettes to children are believed to be very much in the minority. It is felt that higher penalties will make it worth while proceeding against offenders. The Council may be interested to know that recommendation No. 49 of the Senate Standing Committee on 'Drug Problems in Australia—An Intoxicated Society?' in 1980 stated:

> That laws which make the sale of tobacco products to minors illegal be strictly enforced, and that the penalties prescribed be increased.

I have consulted the Mixed Business Association, the Hotels Association, the Small Business Association and the Retail Traders Association. While they may not have been enthusiastic, they were not opposed to the Bill. However, the Mixed Business Association would like some additional protection for shopkeepers. I can well understand that, and I will deal with that aspect later.

A recent study in England, Scotland and Wales estimated that children between the ages of 11 and 16 years spend the equivalent of over $A1 million each year on cigarettes. I expect that the trend is very much the same in Australia. The tobacco companies never let up: in spite of all the irrefutable evidence to the contrary, they still deny that smoking is harmful. I simply do not understand their attitude. I have copies of two letters. The first letter is dated 13 June 1984 from the Tobacco Institute of Australia Limited to the Principal of Strathmont Primary School, Gilles Plains. The letter is signed by the Institute's Information Officer, Cathy Deegan, and states:

> Dear Sir/Madam—

I presume that copies of the letter were sent to other schools as well—

> A number of requests for information on tobacco and smoking have been received from students at your school undergoing a 'Health' course 'Smoking is a health hazard'. The industry is very concerned that a teacher is misleading children and filling them with his/her own opinions.

As a matter of policy, the tobacco industry does not in any way condone smoking by children. It is our view that smoking is an adult custom; the decision whether to smoke should be based on mature and informed free-choice.

Obviously the information being given to the students is incorrect and the Tobacco Institute would welcome an opportunity to debate the smoking and health issue either with yourself or the teacher concerned, after we have cleared the debate with the Department of Education.

Please contact me for further information.

Yours faithfully, Cathy Deegan

On 25 June 1984, a few days later, David Bacon, the Executive Officer of the Tobacco Institute of Australia Limited in Sydney, wrote to Mr Phelps, the Principal of Strathmont Primary School, Gilles Plains, as follows:

Dear Mr Phelps

I refer to a letter from the Tobacco Institute of Australia dated 13 June 1984 and our recent telephone conversation.

Unfortunately, due to the short notice we will not be able to attend the press conference for Tuesday 26 June but the Institute does reiterate its offer to debate with you and the teacher concerned issues relating to cigarette smoking. We do wish to point out, however, that we wish to clear this debate with your Department of Education. Further, we see no reason for the press and other parties to be present and if you insist on a debate of this nature then we would like formal notification of who is to be present and the subject matter that you wish to discuss. Naturally we will also have to clear this with the Department of Education.

As discussed in our recent telephone conversation the offer of the debate was for the benefit of you and the teacher concerned only. We do not make a practice of discussing with children the smoking debate and we were hoping that by putting our point of view to the teacher and yourself that some of our points would be put before your students for their own assessment.

Our letter to you dated 13 June 1984, as we stated in our telephone conversation, was a private communication and not for publication.

We do not question the integrity of your school or your teacher and simply seek an opportunity to add a different perspective to the issue of smoking in Australia today. We strongly object to your proposed publication of a personal letter and advise against such a course. Our Chief Executive Officer, John Dollisson, who is away at the present, will contact you some time next week to arrange an appointment to see you if you so desire.

I do not know what this Council would make of those letters, but they are not the kind of letters that should be sent to schools or to teachers at schools.

Back in June of this year, in Canberra, Senator Jack Evans displayed a gift pack of 40 cigarettes which he said had been mailed to a 14 year old girl in Canberra. With the free pack was an invitation to the girl to send a coupon to the tobacco company for a free carton. If this is not persuading children to smoke, what is?

In the *Sunday Mail* of 8 September, I noticed a statement to the effect that Mr Jim Sneddon, President of the Mixed Business Association, considered that the proposed penalty in this Bill for selling tobacco products to children was too harsh. My own view is that it is still not nearly harsh enough. He also proposed that there should be a fine on under-age children who purchase cigarettes. He asked me about this during a discussion about the Bill, in Parliament House some time before, and I undertook to speak to the Minister about it. This I did, and Dr Cornwall pointed out that there were many difficulties in punishing children through legislation of this kind and said he would not agree to it. I can see this point of view, and I have no doubt that he will mention this aspect of the Bill as debate proceeds.

The Mixed Business Association also asked whether we could include a clause to make a person over the age of 16 who purchases a tobacco product on behalf of a person under 16 guilty of an offence. This is quite a logical request. The problem of older people deliberately buying cigarettes for children has bothered my mind, but I am told that this would be almost impossible to police and that such a request would probably be rejected. I can see the Government's point of view, but will gladly raise it again if there are known instances of this behaviour after this Act is in force.

I do not propose to labour the point further; I simply hope that this Bill, fine and mild as it is, will remind those who sell tobacco products that they are selling a harmful drug which today would be classified as a poison, and that it will make them more responsible.

Clause 1 is formal. Clause 2 defines 'supply' and 'tobacco product'. Clause 3 sets out what an offence under this Bill is and specifies that the penalty will be up to $500 instead of $50. Clause 4 is new and refers to the requirement that a person selling tobacco products must display a statement to the effect that it is illegal to sell them to persons under the age of 16, and introduces a penalty of $200. Clause 5 is formal. Clause 6 amends the Community Welfare Act so that tobacco laws will now be under a separate Act if this is passed and not submerged in the total Community Welfare Act.

I am looking at the question of whether the evidence from children that they have purchased cigarettes has to be corroborated. The Mixed Business Association has asked for some protection for the shopkeepers along these lines because I understand that there have been instances where children probably stole or somehow came across cigarettes and then said that they had bought them at the corner store. In one instance the prosecution took the word of the child against the storekeeper. I agree with the Mixed Business Association that this could be most unfair and I understand that under other laws evidence from children needs to be corroborated. I may move an amendment in Committee that will address that problem, and Parliamentary Counsel is presently considering it. I commend this Bill to the Council, and trust that all members will support it, in the interests of the children of South Australia.

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

PLANNING ACT AMENDMENT BILL (No. 3)

Second reading.

The Hon. I. GILFILLAN: I move:

That this Bill be now read a second time.

The Bill is brief and to the point of making restitution to landholders who have suffered as a result of an application to clear native vegetation. I realise that another Bill that is before the Council very largely deals with this issue in a wider context, and I look forward to speaking further and in more detail at a later stage on that Bill. However, in so far as it may appear that there is some conflict, I believe that the other Bill, introduced by the Hon. Mr Cameron, makes substantial and constructive suggestions towards getting the situation of clearing native vegetation in South Australia on a better footing. But where it deals with what that Bill describes as compensation, I do not believe that it offers a particularly workable formula. The formula that is put forward is fraught with some problems and dangers.

I emphasise that I am referring specifically to the action that would result from my Bill in operation as being a value readjustment rather than a compensation, because the word 'compensation' has a lot of unfortunate connotations and ramifications, specifically when it is applied to environmental issues, both rurally and in the city. The principal reason for this Bill is to ensure a reasonable chance that native vegetation will remain intact for succeeding generations of South Australians. I do not believe that one should try to put any time limit on it; we would be neglecting our responsibility if we were not planning for the retention of considerable areas of native vegetation indefinitely. It is our responsibility

to take action now to ensure that there will be significant areas of native vegetation for all sorts of purposes in South Australia: recreational, environmental, research and, if we are talking in the time span to which I refer, even evolutionary.

In the practical sense it would be criminal neglect if any further species are eliminated through our permission to destroy native vegetation. It is patently obvious that further species will be discovered as being significant, both in themselves from nutrition and other points of view and also in genetic contribution in the years ahead. So I do not consider that there is any argument against this Parliament's making every effort to maintain significant areas of native vegetation in South Australia for all time.

To achieve that, we need the goodwill of those who will be most closely connected with the retention and protection of native vegetation and who are addressed in this Bill—the landholders. Unfortunately, some resentment has been built up by the implementation of the regulations: they are counter-productive. I believe that a form of economic justice for those who suffer will do a considerable amount towards diminishing the resentment of the landholder who has been obliged, as the result of an application to the Planning Commission, to retain more native vegetation than he or she wished to retain.

This Bill attempts, in very simple terms, to allow for a value to be calculated of an area of native vegetation before and after an application has been processed, if the landholder considers that he or she has suffered a considerable loss as a result of the application. I have not specified the exact detail as to how that valuation should be done, because I believe that that would probably cumber the process too much. The matter must be discussed in practical terms. I have previously suggested how the valuation could be done; I originally suggested that the Valuer-General's Department be the valuing authority, but experience may prove that the matter should be dealt with by a wider representative group. However, that is relatively insignificant to the substance of the Bill.

The Bill makes a further significant point: it attempts to ensure that, should the Government pay money as a value adjustment because of a planning decision, the land cannot subsequently be cleared unless the sum paid, with interest, is returned to the Government. Obviously, this will prove to be a deterrent to anyone who might attempt irresponsibly to capitalise on the situation by obtaining some form of capital readjustment and then attempting to clear the land without reimbursing the Crown. This could apply to a member of the family or a future proprietor. The Conservation Society has suggested that there may be grounds for a heritage agreement where areas of native vegetation have been set aside for attention and where the Government is obliged to make a capital adjustment payment. I believe that this proposal is worth considering; however, I do not believe that it is essential or necessary to the intent of this Bill.

Under clause 2 there will be a restriction on clearing land in regard to which compensation has been paid. The heritage agreement suggestion might apply in areas of significant size and in regard to land that in the normal process of heritage assessment would be considered suitable for heritage listing. I want to avoid unnecessary bookwork and bureaucratic involvement. The system must be as cheaply and efficiently managed as possible. I believe that there are difficulties in dealing with this matter in any other way because, if the Government is to acquire land—as has been suggested elsewhere—there could be quite extraordinarily difficult shapes to define for specific ownership. In many cases (I suggest in more than 90 per cent of cases) landholders will be quite willing proprietors and caretakers of native vegetation if the implementation of my scheme shows that their responsibility has been recognised by the Government and the people of South Australia and if they are acknowledged as taking this action not only for themselves but also as contributors to the well-being of South Australia.

I recommend the Bill to the Council. I recommend the Bill specifically to the Minister for Environment and Planning, because he will notice that I do not share the opinion that the responsibility should lie anywhere else but with the Minister as the one responsible for that portfolio. I must stress again that the Minister owes it to the people who are most affected by these regulations to seriously consider this proposition in the sense of justice for those who are subject to an economic penalty. The Minister must consider the matter with compassion for those who may suffer quite substantial economic losses. If he is responsible in his attitude to this part of his portfolio, he must definitely ensure that those people who are opposed to the retention of native vegetation do not completely negate any efforts to secure the retention of native vegetation in rural areas. It is just too easy for an antagonistic landholding population to make sure that native vegetation does not survive if they are hostile to the procedure.

I emphasise again that the Minister for Environment and Planning must pay very careful attention to this suggestion for a capital readjustment. If any modifications or suggestions come forward from either the Government or the Opposition (and I believe that we are all now seriously attempting to go forward with this proposition), I would be very happy to hear them in the debate. I support the second reading.

The Hon. G.L. BRUCE secured the adjournment of the debate.

ADMINISTRATION OF THE LAW

Adjourned debate on the motion of the Hon. K.T. Griffin:

That the Report by W.A.N. Wells, Esq., on the Administration of the Law be tabled.

Debate adjourned on 22 August, Page 449.

Motion carried.

The Hon. FRANK BLEVINS: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

BUDGET PAPERS

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

The the Council take note of the papers relating to the Estimates of Payments and Receipts, 1984-85.

In moving this motion I adopt a practice that has been adopted in this Council in recent years of providing the Council with an opportunity to debate the Budget simultaneously with its being debated in the House of Assembly. Yesterday I tabled the Premier's statement and Budget papers. I move this motion in order to provide honourable members with an opportunity to contribute to this debate. As I have said before, and as I think former Leaders of the Government have said in this Council, there is still an opportunity for honourable members to contribute when the Appropriation Bills are before the Council, but there has been an understanding that, if members have contributed on the motion to note the papers relating to the Estimates of Payments and Receipts, they will restrain themselves in relation to the Appropriation Bills when they come before us.

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

WHEAT MARKETING ACT AMENDMENT BILL

The Hon. FRANK BLEVINS (Minister of Agriculture) obtained leave and introduced a Bill for an Act to amend the Wheat Marketing Act, 1980. Read a first time.

The Hon. FRANK BLEVINS: I move:

That this Bill be now read a second time.

Since the Second World War, the wheat industry in Australia has operated under a series of five year marketing (or stabilisation) schemes. Details of a new wheat marketing scheme, which is to operate from 1 October 1984, are currently being finalised and legislation to implement the scheme will be passed by the Commonwealth and all States in due course. That legislation will cover all aspects of the Australian wheat industry. In the interim, this short Bill seeks to amend the Wheat Marketing Act, 1980, to permit the new domestic pricing arrangements for human consumption wheat to operate from 1 October 1984, thereby allowing continuity of wheat sales to millers under those pricing arrangements which form an important part of the new wheat marketing scheme.

Currently, the domestic price of human consumption wheat is determined annually by a formula which is designed to maintain the home price, on average, at a level of 20 per cent above export parity. The formula has failed to achieve this aim. At the present time, the domestic human consumption price is around 40 per cent above export parity. Under the Bill, a domestic human consumption price will be determined each quarter. The price will be an average of forward Australian Wheat Board for *(a)* the quarter in which the price will apply and *(b)* for the quarter preceding the quarter in which the price will apply.

To this average price the Commonwealth will add an amount made up of two components:

1. An amount to cover the extra costs incurred by the Australian Wheat Board in servicing the domestic human consumption market, compared to those costs incurred by the Board in servicing the export human consumption market; and
2. A levy to finance the shipment of wheat to Tasmania.

There will be no change in the role of the Australian Wheat Board in administering the domestic human consumption wheat market. The amended method of price determination will result in an improvement in the economic efficiency of wheat marketing by linking the domestic human consumption price directly to export returns. The quarterly price will be determined prior to the commencement of each quarter and, because the price will be an average over two successive quarters, the effect of any major export price changes between quarters will be dampened.

Consultation with wheat growers and their representatives and with the milling industry has been exhaustive and the proposal is considered an acceptable compromise between all groups. I seek leave to have the detailed explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 provides that the Bill comes into operation on 1 October 1984. Clause 3 makes an amendment to section 14 of the principal Act that is consequential upon the amendments contained in clause 4.

Clause 4 amends section 21 of the principal Act. Subsections (1) and (2) are struck out and new subsections substituted. New subsection (1) provides that the price at which, during the relevant season, the Board shall sell wheat for consumption in Australia is the price derived under this section. New subsection (2) provides that, during a quarter (the 'relevant quarter') the price per tonne of Australian standard white wheat in bulk sold free on rail at a port of export for human consumption in Australia is the amount determined by the Commonwealth Minister in the following manner: by taking the average export price quoted by the Board during the 20 business days immediately preceding the sixteenth day of the months immediately preceding the relevant quarter and the quarter preceding the relevant quarter (that is, the average price over those 40 days) for Australian standard white wheat to be disposed of during the relevant quarter or the preceding quarter, by the Board by way of export sale, and by adding to that average price such amount (if any) estimated by the Commonwealth Minister under subsection (2a).

Under new subsection (2a) the Commonwealth Minister may, after consulting the Board, estimate an amount per tonne by which the costs of marketing wheat for human consumption in Australia exceed the costs of marketing wheat for human consumption for export. Paragraphs *(b), (c), (d), (e), (f), (g)* and *(h)* make minor amendments that are consequential. Paragraph *(i)* provides that subsection (12) is struck out and the following subsections substituted: new subsection (12) provides that where a person exports wheat products that contain any wheat sold by the Board under this section, the Board shall, on the application of the person, refund to him the amounts referred to in subsections (2a) and (3) that applied in relation to that wheat when it was sold by the Board.

Under new subsection (13), applications under subsection (12) must be in a form approved by the Board. New subsection (14) provides definitions for use in the section: 'associated farm' has the same meaning as in section 13; 'business day' means a day other than Saturday, Sunday or a public holiday in the place where the head office of the Board is situated; 'quarter' means a period of three months commencing on any 1 January, 1 April, 1 July or 1 October; and 'relevant season' means the year beginning 1 July 1984. Clause 5 provides for the repeal of the schedule to the principal Act which, by virtue of the amendments to section 21, is no longer required.

The Hon. PETER DUNN: In the interests of passing this Bill quickly, and as the Minister stated this is required by 1 October, I will endeavour to explain the position of the Opposition, which supports the Bill wholeheartedly. A couple of matters in this Bill need further explanation. Principally, the Bill changes the system by which the human consumption price of wheat and the price of wheat for stock feed are determined. In the past the Bureau of Agricultural Economics put out a formula based on its forward projection of the price of export wheat for the ensuing 12 months.

The price of that wheat determined the price of wheat for human consumption and stock feed in Australia. Endeavours were made to keep that price below a limit of about 20 per cent, although no specific percentage was set. Over the past two or three years the BAE has been wrong in its projections for the forward 12 months. This is understandable as wheat prices fluctuate quite severely with seasons. We have recently seen in the paper where the Russian wheat season, which considerably determines the price of export wheat, has been unsuitable for wheat growing and the expected crop is lower than was at first thought. I understand also that the American season was not as conducive to high yields of wheat as was first thought and, because of that, there has been an increase in the price of world export wheat.

This meant that the BAE projected that the price of wheat would rise, but it did not rise as much, because of our big season last year—a record wheat yield season. This year it appeared that the price fixed by the formula set up by the

BAE of about $227 per tonne for wheat for human consumption would be close to 40 per cent above the export price of wheat.

That was distinctly unfair, especially to the consumer, and the producers were receiving the average of the prices for human consumption wheat, stock feed wheat and export wheat; that was unrealistic. So, it was decided to change the method of determining the price of wheat for human consumption and stock feed to a method based on the export price alone, plus the costs of administering the holding of that wheat.

The costs of administering the holding of wheat are made up of costs associated with on-site buildings to hold the wheat and the segregation of the wheat required for human consumption. Generally, home consumption wheats are hard wheats or high protein, high quality wheats used for bread making. Of course, some wheat is used for pasta-making and biscuit making, but that is not of such high quality. This wheat must be separated; otherwise, the mixing of them makes for poor products. There is also the extra cost of handling the wheat and of treating these huge quantities of wheat for insects to keep them insect free.

Recent reports from overseas indicate that some countries object to our grain products containing snails and, I believe, some castes in India do not like creatures of any type in their grain. Therefore, as an export nation, our products must be free of insects. Finally, there are bulk handling charges. All these charges can add up to $26 per tonne, which is added to the export price of the wheat, whether it be a prime hard wheat, an Australian standard white wheat or just an Australian standard hard wheat.

That $26, or whatever price is determined in a State, is added to the export price and becomes the price of wheat for human consumption and stock feed wheat. I see no problems with the Bill as it is only complementary legislation to fall into line with Federal legislation. This Bill must pass before 1 October; otherwise, it will have to be made retrospective to cater for millers buying wheat after that period. I support the Bill and look forward to its speedy passage.

The Hon. FRANK BLEVINS (Minister of Agriculture): On behalf of the Government I record my thanks to the Hon. Peter Dunn who, on behalf of the Opposition, has assisted in the speedy passage of this very important piece of legislation.

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

CRIMINAL INVESTIGATION (EXTRA-TERRITORIAL OFFENCES) BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to provide for the issue of search warrants for the investigation in this State of certain offences against the law of other States or Territories of the Commonwealth; and for other purposes. Read a first time.

The Hon. C.J. SUMNER: I move:

That this Bill be now read a second time.

It is designed to form part of the legislative scheme under which offences committed against the law of one participating State or Territory can be investigated under the authority of search warrants issued and executed in another. At present a search warrant issued in one State has no authority outside the boundaries of that State; furthermore, there is no authority to issue a warrant in a State except in relation to a crime committed in that State. The Standing Committee of Attorneys-General has agreed that corresponding measures be enacted in all States and Territories to ensure that the investigation of criminal offences is not impeded by State or territorial boundaries. This Bill is in the form adopted by the Standing Committee.

Under the Bill a member of the Police Force can apply to a magistrate for a search warrant to be issued and, if the magistrate is satisfied that there are reasonable grounds to believe that an offence to which the measure applies has been committed, or is intended to be committed, in another State or Territory and there are present in this State objects relevant to the investigation of the offence, the magistrate may issue a search warrant.

Of particular note is the fact that an application for the issue of a warrant may be made personally or by telephone. An application by telephone may be made only in circumstances where a warrant is urgently required and there is insufficient time for the making of a personal application. Stringent procedural rules are imposed in relation to telephone applications, including the following: the applicant must provide information establishing his credentials as a police officer; he must provide information sufficient to satisfy the magistrate that proper grounds exist for the issue of a search warrant; the magistrate shall not issue a search warrant unless the applicant undertakes to forward an affidavit verifying the facts on which the magistrate relies as grounds for the issue of the warrant; and the magistrate must note on the warrant those facts.

The Bill provides for the making of Ministerial arrangements under which objects seized in the State or Territory in which the warrant is executed are to be transmitted to the Commissioner of Police for the State or Territory in which the offence is alleged to have been committed. When no longer required for the purpose of criminal investigation or as exhibits in criminal proceedings, the objects are to be returned to the State or Territory in which they were seized. Provision is made for the ultimate return of the objects to their owners. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clauses 1 and 2 are formal. Clause 3 provides for the definition of expressions contained in the measure. Of particular note are the following definitions: 'appropriate authority' means in relation to another State or Territory (other than the ACT) an authority in that State or Territory that is equivalent in its functions to the South Australian Commissioner of Police, and in relation to the ACT, means the Commissioner of the Australian Federal Police; 'night' means the period between 7 o'clock p.m. and 7 o'clock a.m.; 'offence to which this Act applies' means an indictable offence against the law of a reciprocating State (being an offence arising from an act which, if done in this State, would attract criminal liability under the law of this State); 'reciprocating State' means another State or Territory in which a corresponding law is in force and in relation to which arrangements are in force under section 7; 'search warrant' means a warrant under the measure authorising a search of premises; 'telephone' includes any telecommunication device.

Under subsection (2), anything obtained by the commission of an offence, used for the purpose of committing an offence, or in respect of which an offence has been committed, anything that may afford evidence of the commission of an offence, or anything intended for use in the commission of an offence, is, for the purposes of the measure, an object relevant to the investigation of the offence. Clause 4 provides that where a magistrate is satisfied on the application of a member of the Police Force that there are reasonable grounds

to believe that an offence to which the measure applies has been or is about to be committed and, that there is in any premises an object relevant to the investigation of that offence, he may issue a search warrant in respect of the premises. Under subsection (2), an application for a warrant may be made personally or by telephone. The grounds of the application must be verified by affidavit (subsection (3)). Under subsection (4), an application shall not be made by telephone unless the applicant is of the opinion that the matter is urgent and that there is insufficient time to make the application personally. Under subsection (5), where an application is made by telephone—

(a) the applicant must inform the magistrate of his name, rank and number in the Police Force, and on receiving that information, the magistrate is entitled to assume that the applicant is a member of the Police Force;

(b) the applicant must explain the grounds on which he seeks a warrant;

(c) if the magistrate considers that there are proper grounds to issue a warrant, he shall inform the applicant of the facts on which he relies as grounds for the issue of the warrant and shall not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts;

(d) if the applicant gives such an undertaking, the magistrate shall make out a warrant, sign it, and note on it the facts on which he relies as grounds upon which to issue it;

(e) the warrant shall be deemed to have come into force when signed by the magistrate;

(f) the magistrate shall inform the applicant of the terms of the warrant;

(g) the applicant shall, as soon as practicable after the issue of the warrant, forward an affidavit as required.

Under subsection (6), the magistrate must file the warrant or a copy of the warrant, and the affidavit, in the Adelaide Magistrates Court.

Clause 5 provides in subsection (1) that a search warrant authorises any member of the Police Force, with or without assistants, to enter and search the premises specified in the warrant and anything in those premises. Under subsection (2), subject to a direction by a magistrate to the contrary, the warrant shall not be executed at night. Under subsection (3), such force as is necessary may be used in executing a warrant. Under subsection (4), a member of the Police Force executing a warrant may seize and remove any object he believes on reasonable grounds to be relevant to the investigation of the offence in relation to which the warrant was issued. Under subsection (5), such an object shall be dealt with in accordance with arrangements in force under section 7. Under subsection (6), a member of the Police Force who executes a warrant shall prepare a notice in the prescribed form containing his name and rank, the name of the magistrate who issued the warrant and the time and date of issue and a description of any objects seized and shall, as soon as practicable after executing the warrant, give the notice to the occupier of the premises or leave it in a prominent position in the premises. Under subsection (7), if a warrant is not executed within a month of issue, it expires.

Clause 6 provides that a person who without lawful excuse hinders a member of the Police Force or his assistant in the execution of a warrant is guilty of a summary offence, the penalty for which is two thousand dollars or six months imprisonment. Clause 7 provides that the Minister may enter into arrangements with a Minister administering a corresponding law under which *(a)* objects seized under this Act that are relevant to an investigation in the State or Territory in which the corresponding law is in force are to be transmitted to the appropriate authority in that State or Territory and, when no longer required (unless disposed of by order of a court), are to be returned to the Commissioner of Police and *(b)* objects seized under the corresponding law that are relevant to an investigation in this State are to be transmitted to the Commissioner of Police, and when no longer required (unless disposed of by order of a court) are to be returned to the appropriate authority of the other State or Territory. Under subsection (2), the owner of an object returned to the Commissioner of Police under subsection (1) is entitled to the return of the object. Under subsection (3), the right conferred by subsection (2) is enforceable by action in detinue. Clause 8 is a regulation making power.

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

EVIDENCE ACT AMENDMENT BILL (No. 3)

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an act to amend the Evidence Act, 1929. Read a first time.

The Hon. C.J. SUMNER: I move:

That this Bill be now read a second time.

It amends the laws of evidence in relation to present controls on the examination of a complainant in a trial for a sexual offence and the present requirement that a judge warn a jury that it is unsafe to convict the accused on the uncorroborated evidence of the complainant in a sexual offence. Section 34i of the Evidence Act, 1929, was enacted in 1976 in an effort to prevent unnecessarily distressing, humiliating and embarrassing exposure of the sexual past of the complainant in sexual offence proceedings and to reduce as far as practicable intrusions during the trial into her private affairs and sexual morality. Prior to the 1976 enactment courts tolerated almost unlimited ferreting into a complainant's past sexual history and attacks on her character by direct question, by innuendo and sometimes by smear. Prior sexual experience by the complainant was treated as having a bearing on her veracity.

Evidence of sexual experience or sexual morality of a complainant cannot now be adduced except by leave of the judge. Leave to adduce the evidence cannot be granted except where the judge is satisfied that an allegation has been made to which the evidence in question is directly relevant and the introduction of the evidence is, in all the circumstances of the case, justified. Section 34i has now been tested in litigation and it has been effective, to some degree, in curbing the introduction of evidence of a complainant's 'prior sexual experience' and 'sexual morality'. In particular, it precludes the use of sexual behaviour as a basis of an inference of unreliability of the complainant as a witness. Critics of the section argue it is ineffective for the protection of complainants because there is a tendency to grant leave to cross-examine about a complainant's previous experience upon being asked to do so.

A study of 77 Law Department files for the prosecution of rape in 1979 and 1980 showed that applications for leave to admit evidence under section 34i were made in about 70 per cent of cases where such application is theoretically impossible. Eighty-eight per cent of defence applications were successful. The frequency with which leave is granted is, of course, no indication of the strength of the applications. But the study showed that once evidence proposed to be introduced is shown to have some 'relevance', it is ruled admissible, generally, with little limiting effect being given

to the second legislative requirement, namely, that the judge must be satisfied that its introduction is in all the circumstances of the case justified. It appears that where the evidence is regarded as having some probative effect it will be taken to be 'directly relevant' to a 'live issue' and therefore admissible.

Routinely, evidence is admitted from the accused as to his belief that, because the complainant was a woman of easy virtue, she was consenting to the act of intercourse which took place. The defendant is entitled, it has been held, to prove his belief that the complainant was of such sexual disposition that he had no reason to doubt that she was yielding to his advances. Under the provisions of this Bill such evidence will no longer be allowed. One of the criticisms of section 34i has been that it does not give the courts any guidance as to what competing considerations are to militate for and against the admission of evidence of sexual experience of the complainant. The Bill provides that the principle which is to guide the court in deciding whether evidence should be admitted is that complainants in sexual offence proceedings should not be subjected to unnecessary distress, humiliation or embarrassment and that the evidence must be of substantial probative value or materially damaging to the complainant's credibility.

It is often argued that evidence of prior sexual experiences of the complainant should never be admitted where its purpose is merely to impugn the credibility of the complainant. There are, however, some circumstances where cross-examination as to credit, in a way which would disclose prior sexual experiences, is necessary if the jury is to be able to judge the case fairly. For instance, if it is alleged that the complainant has previously made a false report that she was raped, knowledge that such a false report occurred would be material in assessing the complainant's credit. It may, however, be impossible to establish that the report was false without eliciting that the alleged victim engaged in sexual intercourse willingly.

Accordingly, the Bill provides that leave may be given to adduce evidence of the sexual experiences of the complainant if, in the circumstances, the evidence would be likely materially to impair the confidence in the reliability of the evidence of the complainant.

The Bill in substituting for the existing section 34i a new provision does not re-enact the provisions of present section 34i (1). Section 34i (1), which was enacted in 1976, provides that a self-serving statement made by a person who complains of the commission of a sexual offence against him is not to be admitted in evidence unless it is introduced by cross-examination or in rebuttal of evidence tendered by or on behalf of the accused.

Prior to 1976, upon a charge of rape, the fact that a complaint was made by the prosecutrix shortly after the alleged offence, and the particulars of the complaint could be given in evidence so far as they related to the accused, not as evidence of the facts complained of, but as evidence of the consistency of the conduct of the prosecutrix with her evidence given at the trial as negativing consent.

The enactment of section 34i (1) implemented a recommendation of the Criminal Law and Penal Methods Reform Committee (the Mitchell committee). That committee considered that there was no useful purpose in retaining the admissibility of a complaint of rape. Whether or not a person who is raped complains at the first opportunity depends largely upon her personality and her temperament. It is a false assumption to assume that every woman who is raped will necessarily immediately complain of rape. The fact that a woman may decide to give mature consideration to whether she will or will not report the rape does not of itself indicate that she is untrustworthy (so went the argument of all members of the Mitchell committee). The Mitchell committee also considered that the jury was likely to be confused when it was told that the complaint is not to be taken as evidence of the facts contained in it, or as corroboration, but merely as evidence of the consistency of the complainant's story, and may be used to negative consent on the part of the complainant.

However, the Chief Justice has recently expressed the view that the removal of the prosecution's right to lead evidence of a complaint made by the complainant immediately after the alleged crime was a mistake and should be reversed. He considers that the present law puts the prosecution at a considerable disadvantage and deprives the complainant of the right to tell the court that she complained as soon as she could after the incident. The question of whether and when a complaint was made springs naturally to the mind of a jury considering the credibility of an alleged victim and causes confusion in their minds to the detriment of the case for the prosecution.

Prosecutors agree with the Chief Justice. To be unable to show that, for example, a 16-year-old girl who alleges she was raped by the side of a road complained of rape to a driver of a car who came to her assistance, leaves a large gap in the prosecution case. The prosecution is unable to present the whole story.

The 1976 amendment has the result that evidence favourable to the prosecution cannot be introduced by the prosecution but the fact that a late complaint was made by the alleged victim can be elicited by the defence. Thus, the prosecution has the worst of both worlds. South Australia is the only State to have amended the law in this way. Accordingly, the Bill restores the pre-1976 position. The Bill also abolishes the rule of law or practice which requires a judge to give a warning to the effect that it is unsafe to convict the person on the uncorroborated evidence of the complainant.

It is often argued that the requirement that the judge must warn the jury against acting on the uncorroborated evidence of the complainant in rape cases is grossly offensive to women, and discriminating, based as it is on the presumption that rape complainants are particularly prone to lying. In fact, the rule also applies when the complainant is male.

Where there is manifestly an abundance of corroborating evidence—for example, a record of interview with the accused, verbal admissions, bruises and cuts, the evidence of eyewitnesses—the advantage obtained by the accused in planting suspicion about the veracity of the complainant is considerable, and this advantage may well be reinforced by a warning by the judge that the complainant's evidence alone cannot be relied on. To demand a warning where there is little risk that the testimony of the complainant is suspect may mislead the jury and result in an unjustified acquittal of the accused.

Under the provisions of the Bill the judge will have a discretion to comment, when appropriate, upon the weight to be given to the evidence of the various witnesses. If the corroborating evidence is in fact flimsy the judge will, no doubt, be inclined to give the traditional warning. If there is substantial corroborating evidence, he will not be required to—although he still may—give the traditional direction. Sufficient protection for the accused against the susceptibilities of testimony lies in the judge's duty to sum up fairly to a jury on the evidence, so as not to produce a miscarriage of justice.

Where a statutory provision requires evidence to be corroborated, as for example section 13 of the Evidence Act which requires the evidence of a child under the age of 10 to be corroborated in a material particular, the new provision will have no effect. I seek leave to have the detailed expla-

nation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 provides that the measure is to come into operation on a day to be fixed by proclamation. Clause 3 provides for the repeal of section 34i of the principal Act and the substitution of a new section. The proposed new section does not make provision for the matter provided for present section 34i (1). That subsection provided that no evidence shall be admitted in proceedings in respect of a sexual offence as to a statement made by the alleged victim after the time of the alleged offence and not in the presence of the accused unless the evidence is admitted by way of cross-examination or in rebuttal of evidence tendered or elicited by or on behalf of the accused.

Subclauses (1) to (4) make new provision in respect of the other matter dealt with in present section 34i, namely, the questioning of an alleged victim of a sexual offence as to sexual activities engaged in by the person. Subclause (1) provides that in proceedings in respect of a sexual offence no question shall be asked or evidence admitted as to the sexual reputation of the alleged victim of the offence or, except with the leave of the judge, as to the alleged victim's sexual activities before or after the events of and surrounding the alleged offence (other than recent sexual activities with the accused). This provision differs from the present provision in several respects. Under the present provision questions as to the alleged victim's sexual reputation are not excluded absolutely. The present provision does not limit questioning as to sexual activities engaged in by the alleged victim after the time of the alleged offence. Nor does it exclude from the requirement for leave of the judge evidence as to recent sexual activities engaged in by the alleged victim with the accused.

Subclause (2) seeks to spell out the public policy upon which limitations upon the admissibility of such evidence is based. The subclause provides that, in deciding whether leave should be granted, the judge shall give effect to the principle that alleged victims of sexual offences should not be subjected to unnecessary distress, humiliation or embarrassment through such questioning or the admission of such evidence and that leave shall not be granted unless the evidence is of substantial probative value or would, in the circumstances, materially impair confidence in the reliability of the alleged victim's evidence and unless the admission of the evidence is required in the interests of justice. This again differs from the present position where the criteria for the granting of leave are, in effect, that the evidence of the alleged victim's sexual activities must be relevant and its admission justified in the circumstances of the case.

Subclause (3) spells out that leave shall not be granted authorising the asking of questions or the admission of evidence the purpose of which is only to raise inferences from some general disposition of the alleged victim. Subclause (4) provides that an application for leave shall be heard in the absence of the jury (if any). Subclause (7) defines expressions used in the preceding subclauses. 'Evidence' is defined to include a statement or allegation made by way of unsworn statement; 'sexual activities' is defined to include sexual experience or lack of sexual experience.

Subclause (5) deals with a new and separate matter in relation to sexual offence evidence. The subclause provides that in proceedings in respect of a sexual offence the judge is not required by any rule of law or practice to warn the jury that it is unsafe to convict the accused on the uncorroborated evidence of the alleged victim of the offence. Subclause (6) provides that subclause (5) does not affect the operation of any provision of this or any other Act requiring that the evidence of a witness be corroborated.

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

ADMINISTRATION AND PROBATE ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.

(Continued from 11 September. Page 705.)

The Hon. C.J. SUMNER (Attorney-General): I thank the Hon. Mr Griffin for his contribution to this debate and for his indication of general support for the Bill. The honourable member has raised a number of questions that I am having examined at the present time. As I would like to comment on those questions prior to the measure being considered in Committee, I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

JUSTICES ACT AMENDMENT BILL

In Committee.

(Continued from 11 September. Page 706.)

Clause 2 passed.

Clause 3—'Application for postponement, suspension of warrant.'

The Hon. C.J. SUMNER: During the second reading debate the Hon. Mr Griffin asked why an application to suspend the execution of a warrant should be made only to a justice who is a clerk of court and not to any justice of the peace. That is a reasonable question to raise. The reason is purely administrative: the Courts Department will develop a system for keeping track of warrants, the execution of which has been suspended. If a person was able to approach any justice of the peace for the suspension of a warrant, the position could become quite chaotic with warrants being suspended without anyone knowing about it. Places where there is no justice who is a clerk of court will be able to contact the clerk of court by telephone. The basic reason for this move is to achieve some consistency in the administration of the proposal and, from an administrative point of view, to enable clerks of court to keep track of those warrants that are suspended. Unless any other system were introduced a considerable amount of chaos could result. Nevertheless, I appreciate that it is a reasonable question in relation to the Bill.

The other matter raised by the honourable member is the use of community service orders in place of imprisonment for failure to pay a fine. As the honourable member knows, the Government intends to extend community service orders across the State as resources permit. Once this is done, it will be desirable in principle to extend community service orders to fine defaulters. Certainly, the feasibility of doing that can be looked at; it is in fact being looked at now by Correctional Services officers and by officers in the Attorney-General's Department to possibly provide a further option for fine defaulters to try to ensure that, where they cannot pay a fine for economic reasons, they have an alternative method of paying their debt to society other than imprisonment. So that is a suggestion from the honourable member that I appreciate, and I advise that it is being looked at at the moment.

The Hon. K.T. GRIFFIN: I appreciate the answers that the Attorney-General has given; they are acceptable. How-

ever, I will pursue this question of who may postpone the issue or suspend the operation of a warrant. I recognise the need to ensure that administratively a very close check is kept on applications that are made in respect of such postponement or suspension because of the very real problem that if some other justice ordered suspension there might subsequently be a claim for wrongful imprisonment if the warrant has been suspended by one justice but executed by the police in the area in which the defaulting debtor resides.

The concern that I have is that if it is left merely to a justice who is a Clerk of the Court we are giving to Clerks of Court a much wider power than they currently exercise, as I understand it, and that power will now include the power to require payment by instalments and a requirement that specifies that security for payment be given. Those two powers are very much wider than I believe ought to be given to Clerks of Court, who have largely an administrative responsibility for the conduct of their courts.

I wonder whether it is possible for the Attorney-General to give further consideration to the matter on the basis that the application for suspension, if it is subsequently to involve an order for payment by instalments or that specified security be given, should be a matter that is heard in court rather than just dealt with administratively by the Clerk of Court. I was saying whilst the Attorney was otherwise occupied that the granting of this power to a Clerk of Court seems to be a very much wider power than previously Clerks have exercised, and it is really equivalent, perhaps, to the unsatisfied judgment summons procedure, which is an order of the court and is a procedure that is conducted in the court and not undertaken administratively.

I am not suggesting that it ought to be by any justice in the light of the Attorney-General's response that some close administrative controls need to be exercised over this so that orders can be tracked fairly carefully through the system, but there ought to be a careful examination as to whether or not a Clerk of a court ought to have this power. If the Attorney wants some further time to think about it, I am not anxious to push it, but it is an issue of some importance which needs some consideration given to it.

The Hon. C.J. SUMNER: I do not know that I can accept what the honourable member says about the problems that might arise. A Clerk of Court is, after all, a justice of the peace.

The Hon. K.T. Griffin: He is not a judicial officer acting as such.

The Hon. C.J. SUMNER: He is not a judicial officer acting as such, although Clerks of Court sometimes have acted in a judicial capacity. In this case it is true that he would be acting in an administrative capacity, but it is unlikely that any difficulties would arise, at least from the defendant's point of view, by this process being carried out in an administrative way. If there were some question of the liberty of the subject being adversely affected, I suppose that it ought to be dealt with by a properly constituted court, but that is not the situation here where the procedure is designed to assist a person to maintain his or her liberty, and therefore it is proper for it to be done in an administrative way.

The problem that I can see if it is done in a court is that it will tend to provide for difficulties in the operation of the procedure. If formal application has to be made to a court for a postponement or suspension of a warrant, this will place on the defendants and courts an added burden that is not justified. The reason for its being a justice who is a Clerk of Court is to try to provide some consistency in the operation of the system, but also to provide for the system to work reasonably expeditiously and with a minimum of administrative problem. I concede, I repeat, that if I believed that this was a matter that adversely affected the liberty of the subject, perhaps more consideration could be given to the point that the honourable member raises, but I do not believe, as it is set up to assist defendants to pay their fines, that it is necessary for orders to be made by a properly constituted court.

The Hon. K.T. GRIFFIN: I can accept that this is designed to provide an added benefit to defendants who have been ordered to pay a fine and are unable to do so and who under the present system would be confronted with a warrant and a demand either to pay up or go to gaol. I have indicated that I support the flexibility that this procedure gives. I do not intend to do anything more than to raise the question for consideration by the Attorney-General. If he wants to let it go through, I have done my duty by raising the point.

The point was that, in a case where a person is confronted with a warrant for imprisonment, that person being unable to pay for one reason or another, under this procedure applies to a Clerk of the Court. It could be a consequence that the Clerk of the Court says, 'You must pay so much a week.' However, the person who is required to pay, still notwithstanding information disclosed to the Clerk of the Court, may be unable to pay that sum. To that extent the Clerk is making a decision, based on information that the defaulting debtor has given, which may nevertheless not be fair and reasonable. That may occur only in remote cases but it is still a possibility.

It may be that in a similar case the Clerk says, 'I think you can give your car as security,' the defaulting debtor for some reason regarding that as unjust and unreasonable. However, he would obviously have no recourse to any higher jurisdiction and would have to be satisfied with the order made by the Clerk. That is the context in which I raise this matter. If the Attorney still thinks that there will not be a problem, I put the issue on the record and I hope that the Attorney will monitor events. I am sure he will recognise that, while there are many capable Clerks, to put any person in a position of having to make a decision, which does affect whether or not a warrant is to be executed, places a great deal of responsibility and power in the hands of that person. As I interpret the provision at present, there is no recourse from a decision of a Clerk of Court in circumstances which may be remote and in which there is an aspect of unreasonableness. I have satisfied my duty by putting this matter on the record, and it is up to the Attorney-General to decide whether or not he still believes that in those circumstances it is reasonable to proceed.

The Hon. C.J. SUMNER: I believe that it is reasonable to proceed. I can understand what the honourable member has said and I will consider whether or not there is any need perhaps to introduce an appeal mechanism to resolve these problems—either that or taking it to the court. The provision is designed to be beneficial to people who are caught in impecunious circumstances while still ensuring that they pay their debt as a result of being fined for some transgression. While accepting the points made by the honourable member as being worthy of further consideration, I ask the Committee to proceed with the Bill at this stage and I will examine whether there is a need for other procedures to be introduced.

The Hon. K.T. Griffin: A review by a magistrate might be an appropriate mechanism. I am not seeking an appeal and I am not even sure whether a review by a magistrate is appropriate, but it may be.

The Hon. C.J. SUMNER: The honourable member has interjected that there may be a case for some procedure for review, and I will certainly consider that before the matter is concluded in another place. If the honourable member prefers, I am happy to report progress.

Progress reported; Committee to sit again.

JURIES ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 11 September. Page 713.)

The Hon. L.H. DAVIS: The amendments to the Juries Act provide an opportunity to reflect on this long established custom of judging the guilt or innocence of an accused person. Trial by jury was found in the earliest Anglo-Saxon communities, where people accused of crimes could be released if people in the community came forward and swore that they believed that the accused were not guilty of the alleged crime. On the Continent, it became a custom that a jury of 12 people was required to obtain the release of an accused person, and similar customs developed in the laws of Rome and Greece.

It is worth reflecting on the established custom of trial by jury in South Australia. The quite detailed third report of the Criminal Law and Penal Methods Reform Committee under the chairmanship of Justice Roma Mitchell in the mid 1970s gave some interesting historic background to the jury system in South Australia. In 1837, people between the ages of 21 and 60 years who possessed real property to the value of 50 pounds or personal property to the value of 100 pounds were qualified to serve on juries. In fact, this provision remained substantially intact until 1965, when the qualification became entitlement to vote for members of the House of Assembly, which of course did not require any property qualification. Prior to that period a juror had been required to be entitled to vote at an election of members of the Legislative Council, in regard to which property qualification was a prerequisite.

In 1965, when that qualification was modified, the age limit of jurors, curiously, was increased from 21 to 25 years, and now we have before us a provision that seeks to reduce the age at which a person may serve on a jury from 25 to 18 years. Not only does that amendment to the Juries Act seek to sharply broaden the number of people who are eligible for jury service by reducing the age from 25 to 18 years but also broaden the range of occupations that have previously been prescribed as being those in relation to which people could seek an exemption from jury service. I indicate my support for the reduction in the age for people who are eligible for jury service from 25 to 18 years. As the Hon. Mr Griffin has already observed in his contribution, people of 18 years of age are eligible to vote, they serve their country in military zones, and they are now regarded as adults in the community. I am pleased to see that amendment has been proposed.

Another amendment before us is that the accused in a criminal trial may, at his option, seek to have trial by judge alone in preference to trial by judge and jury, provided that he is first given legal advice on the matter. The Hon. Mr Griffin has already stated his reservations about the granting of this option. Indeed, I understand that South Australia will become the first Australian State to give an accused in a criminal trial the right to an option of trial by judge alone if this amendment is carried. I indicate my support for the jury system in criminal trials, notwithstanding that many such trials are extraordinarily complex.

The Mitchell Committee Report into criminal law and penal methods in the mid 1970s came down on the side of giving an accused the right to elect to have a trial by judge alone. In what was undoubtedly a very comprehensive, balanced and well researched report, that committee set down the arguments for and against the jury system. I will briefly canvass some of the arguments set down in favour of the jury system: first, that a jury acts as a protector against harshness or inequity in the law; secondly, that a jury acts as a safeguard of the independence and quality of the bench.

The point has already been made that, in a society where, sadly, in recent days there has been some suggestion in other States that judges have been pressured or persuaded to hand down decisions in a certain way, a jury certainly does act as a safeguard of the independence of a judge. I think, also, that the jury system is well accepted by the public as a method of finding out the innocence or guilt of an accused person. Further points made in favour of the jury system by the Mitchell Committee were that it maintains citizen involvement in the administration of justice, enables a judge to share the onerous part of his judicial duties with a jury, and brings together people with a wide range of experience and from all walks of life in the community.

Of course, we have a random method of selection of jurors. I admit that I have not gone on to canvass the arguments against the jury system contained in that document. It is true that many learned legal men have advocated the abolition of the jury system in criminal trials—people such as Dr Glanville Williams. On the other hand, there have been advocates who have staunchly defended the jury system—people such as Lord Devlin. More recently, and I think most interestingly, there was a strong defence of the jury system advanced by no less a person than the Chief Justice of Australia, Sir Harry Gibbs.

The Hon. C.J. Sumner: It is not questioning the jury system.

The Hon. L.H. DAVIS: I know that we are not questioning the jury system, but what you are doing, as the Law Society has quite rightly suggested in its submission, is seeking to give an accused a right to trial by judge alone.

The Hon. C.J. Sumner: Another option.

The Hon. L.H. DAVIS: It gives them an option.

The Hon. C.J. Sumner: According rights to an accused.

The Hon. L.H. DAVIS: I see no compelling reason to give that additional option.

The Hon. C.J. Sumner: What if there has been massive pre-trial publicity?

The Hon. L.H. DAVIS: The Attorney asks, 'What about pre-trial publicity prejudicing the minds of a jury?' That could also be said to have some influence on a judge. Judges are not without their prejudices; they are human beings just as much as members of a jury. Sir Harry Gibbs, in July 1983, addressed the Twenty-Second Australian Legal Convention and addressed directly this most difficult area that had been touched on by the Mitchell Committee, namely, what can or should be done in complicated areas such as white collar crime where there will be lengthy, complex matters discussed which might be beyond the grasp of people serving on a jury. It might also involve cases where there is forensic science evidence to be presented, which, likewise, could be complex.

Sir Harry Gibbs said that he believed that the time had come to devise new pre-trial mechanisms designed to identify the issues in criminal cases and to obtain admissions on facts not really in dispute without impairing the right of an accused to have the prosecution prove every element of the case against him—that, rather than modify the jury system as we know it, we should be looking to reduce the length and complexity of trials in criminal matters. Sir Harry Gibbs said:

> I should hope that only as a last resort would the various Legislatures accept the view that has been expressed that the remedy is to deprive the accused of the right to trial by jury in some cases, for example, in cases of fraud. But they may be tempted to do so if some means is not found of shortening the trials and decreasing their complexity.

That, of course, has been one of the arguments advanced for changing or modifying the jury system. However, it is

very difficult to make judgments as to when this modification should take place. How do you know in advance whether a case will be complex, whether forensic science evidence will be contested, or whether in the case of a white collar crime the evidence of the prosecution will be contested? It is interesting to see that the Government in proposing these amendments to the Juries Act has not directly taken up that Mitchell Committee suggestion that we should empanel special juries for these more complex criminal trials. I think that is at least tacit recognition of the difficulty of making a judgment as to when a special jury will be required.

Nevertheless, the Government has sought to modify the jury system in criminal trials as we know it by providing an accused with the option of seeking trial by judge alone. Like the Hon. Mr Griffin, I have discussed this matter with several criminal lawyers in Adelaide and there seems to be a general view that accused persons, for the most part, would not wish to seek trial by judge alone.

Nevertheless, the ambiguity contained in the legislation does not overcome the proposition that was advanced quite properly by the Hon. Mr Griffin, namely, that if an accused is to make this election that they will prefer trial by judge alone, then there should be a specific time set down in legislation when that election is to be made. Otherwise, there is a very real danger that judge shopping could occur and that an accused could stall until he saw a so-called soft judge coming up on the list.

The Government has not advanced sufficient reasons to convince me that that option should be provided. I do not see that there is any need at this stage to change from trial by judge and jury in criminal cases. I accept that we should formally acknowledge the fact that juries in civil cases have not been used for many years and that, of course, is implicitly recognised in clause 5 of the Bill, which provides that no civil inquest shall be tried by a jury.

The other matter that seems to be unsatisfactory in relation to this legislation is this: if there is to be trial by judge alone, should there not be a right of appeal against the decision of a judge? The legislation is silent on that point. In fact, one of the few reasons that I can see for supporting the proposition of trial by judge alone is where an accused may have a genuine belief that his race, colour or religion may create some prejudice in the minds of the jury. It is possible to conceive a situation where a certain group of people in the community may believe that one of their number could be prejudiced by unfavourable pre-trial publicity and that their case could be more safely heard by a judge alone.

Superficially it is an attractive argument, but again I return to the interjection I made earlier, namely, that if members of a jury have their prejudices, then surely so do judges. I believe that the balance provided by judge and jury proved through the centuries is the appropriate device for all criminal trials.

The last point I want to refer to is the vexed question of interference with jurors. The Hon. Mr Griffin made some reference to this point. I have recently been in the United States and it was quite clear that interference with jurors in that country both during and after a trial had reached unprecedented heights. The Hon. Mr Griffin has already referred to the DeLorean trial. There were other examples where jurors had been telephoned by radio stations, where their friends and relatives had been contacted during a trial to see what was happening and where jurors were being interviewed by the media after a trial to ascertain who said what, what their feelings were, whether or not they believed that justice had been done, and so on.

We have had sporadic examples of that occurring in Australia. It is a tendency that is alarming: it is a practice to be deplored. The Hon. Mr Griffin suggested that it might perhaps be appropriate to amend the Bill to include a provision to make it unlawful to solicit from jurors information about what occurred in the jury room, how they came to arrive at their decision and what they now feel about the matter.

This point can be more adequately discussed during the Committee stage of the Bill, but it is a difficult problem because one does not want to place a penalty on persons serving on a jury as that may act as a deterrent to people in the future to serve on a jury. Also, one does not want to stifle the freedom of the press by placing a penalty on them. I hope that the Government addresses this problem because I sense that it is an issue of growing importance. I support the second reading of the Bill but indicate that I generally share the reservations that have already been expressed by the Hon. Mr Griffin and will be looking to the Committee stage to address those matters in more detail.

The Hon. R.C. DeGARIS: A number of points in this Bill deserve close attention. The Hon. Mr Griffin and the Hon. Mr Davis have, with their usual close attention, touched on those points. I agree with most of the submissions put to the Council by the Hon. Mr Griffin and the Hon. Mr Davis. There is little need for me to again cover the points they made. My only disagreement with the two previous speakers and the Government concerns the question of the reduction in the minimum age for jury service from the existing age of 25 years to 18 years. As cited by the Hon. Mr Griffin, the Law Society's submission to the Attorney-General opposes the reduction in the minimum age for jury service. The submission states:

> Jury service is an important social responsibility. Of its very nature, it is different from the right to vote, or the right to drink on licensed premises. It is different from the obligation to render military service. In its performance, it requires maturity, experience and sound judgment. At 25, some people will have none of these attributes and that simply cannot be avoided. But more people are likely to have them at 25 than 18. The extra few years in a juror's life are likely to add considerably to his or her maturity, experience and ability to exercise sound judgment.

I agree with the Law Society's submission on this point. If this matter was publicly debated and placed as a question on a referendum, that referendum would be defeated. The majority of people in South Australia would oppose the compulsion of jury service for 18 year olds on some of the cases that we have seen come before our courts.

I know that I may be alone in the views I express, but I feel that I should clearly express them. I do not object to the extension of the maximum age for jury service to a higher age than 65 years, but will oppose the reduction of the minimum age to 18 years. The only other comment I would like to make concerns the choice of trial by jury or judge alone.

I appreciate that the jury system will come under greater stress as time goes on. There will be increasing pressure to change our existing jury system, but I do not believe that we should permit the choice to be made whether the trial is by jury or by judge alone. If we wish to change our jury system, let us do so with certainty so that we know exactly where we stand. A choice of whether a case goes to a judge alone or to the jury would create further problems in our justice system, and it would be difficult to go through them all. I oppose the reduction of age for jury service from 25 years to 18 years. At this stage, I support the retention of our jury system, although I appreciate that there will be further pressures brought on that system as time passes.

The Hon. K.L. MILNE: I support what the Hon. Mr DeGaris has said about the age of people serving on juries. It does not matter much if the age is increased from 65

years to 70 years. Although I do not think that is necessarily a good idea, I do not oppose it.

The Hon. L.H. Davis: The change was made to fit you in.

The Hon. K.L. MILNE: I have done my jury service. I feel strongly about the question of reducing the age from 25 years to 18 years—not just because of the implied immaturity of people of 18 years but because they are not necessarily available to go on jury duty. Jury duty involves a great strain. I do not know how many members have been on a jury, but it virtually takes up a month and not many people have a month to spare, unless they are unemployed. In that case they might be grateful for it, but that is not a good reason for reducing the age.

We have to distinguish between decisions that 18 year olds have to make when things are normal, and putting them on a jury when decisions are made on matters that are not normal. That is an entirely different situation. Such people are quite capable. One argument might be that, if people are capable of serving in a war and carrying a rifle, then they ought to be capable of undertaking jury duty. That does not necessarily follow and, in fact, it is quite unfair to put young people on a jury, just as it is unfair to put the accused in the hands of a jury with people of that age on it.

Although it may not happen often, one can imagine what it would be like, especially for young sensitive people of either sex, who were suddenly put on a jury in a rape or nasty murder case. Such a procedure is not sensible. It is not necessary, because, although service on a jury is a tremendous education, it is a better education for older people. I hope that the Council will not pass that provision, which I will oppose. I support the Hon. Mr DeGaris on this matter.

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

FAMILY RELATIONSHIPS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 11 September. Page 709.)

The Hon. DIANA LAIDLAW: This Bill, which amends the Family Relationships Act, seeks to clarify the status of children born as a result of fertilisation procedures, namely, artificial insemination by donor or *in vitro* fertilisation using donor sperm or ova. The Bill provides an invaluable opportunity to focus on the merits and future use of the fertilisation procedures. Later, I intend to address some of those questions because they are considerations that have influenced my decision on the Bill.

Human reproductive technology has developed with lightning speed in recent years. The practice of AID has been in use for almost 15 years and many hundreds of children have been born as a result of that procedure. In respect of IVF, the procedures pioneered by Patrick Steptoe and Robert Edwards in Britain in the late 1960s resulted in the birth of Louisa Brown, the world's first so-called 'test tube' baby in 1978. The birth of the first child in Australia following IVF procedures occurred in 1980. Since then the procedure has become a routine exercise carried out not only in Australia and Britain but also in the United States, Germany, Sweden, Denmark, France, Austria, Italy, Singapore, and Israel. In Australia alone there are currently nine IVF centres.

By May this year 450 babies had been born following IVF procedures—200 of them in Australia. The success achieved since May with the freezing of embryos will add a new momentum to the IVF programme. The results that I have outlined above confirm the remarkable achievements that medical science has recorded in recent years in overcoming human infertility. In doing so, however, scientists and doctors have not only challenged accepted practices in the field of human reproduction but they have also far outpaced the ability of the law to keep abreast of their developments.

For instance, in South Australia the present legislation in the area of family relationships and parental responsibilities, child protection and welfare is based on the assumptions that the known natural parents are identifiable. Therefore, under the Family Relationships Act at present children born following AID or IVF procedures with donated gametes are illegitimate and their position for purposes of custody, access, maintenance, education, and inheritance remains uncertain. For the sake of these children it is time that the question of their status was settled beyond doubt. Father John Fleming in an *Advertiser* article on Monday stated:

> No individual is responsible for his or her conception at birth.

He added:

> So far as the law can ensure equality of treatment before the law for all, politicians should support the principal intention of this Bill.

I agree with Father Fleming's assessment, although I suspect the legitimisation of the children born as a result of the fertilisation procedures, using donor gametes, is the only issue in respect of AID and IVF on which there is any degree of community consensus.

This Bill proposes to deal with the question of the status of a child following AID and IVF procedures by, first, providing that a woman who gives birth to a child is the mother of the child and, secondly, that where a married woman undergoes with the consent of her husband a fertilisation procedure resulting in pregnancy the husband is the father of the child. Thirdly, where a child is born by the use of donor ovum or sperm, the Bill provides that the donor is not the parent of the child.

In each of these respects I have no objection to the course proposed by the Government. The proposals are clear cut, sensible and will overcome the uncertainty which currently reigns. They will also take full account of the interests of a child and the duties of parents towards a child. However, my acceptance of the Government's proposal ends at that point.

It is generally accepted that the law in its dealings with children should have the welfare of the child as its principal object. Legislation in this State and elsewhere dealing with adoptions and with custody and maintenance issues contains specific provisions making the welfare of the child the paramount consideration. As this principle is long standing and soundly based I have found it to be a convenient yardstick in coming to terms with a number of the proposals incorporated in this important Bill.

I do not apologise for seeking such a yardstick, for the Bill deals with difficult medico, legal and ethical questions for which it would be foolish to pretend that there were easy black and white answers. In the past it has been possible for Parliamentarians, and legal and medical professionals to resolve such questions by reference to a generally accepted Christian morality shared by the community at large. The problem today is that we seem to have lost this anchor. The community either does not share a stable traditional morality or is indifferent to the teachings of the church in relation to that morality. Furthermore, between the churches there are differences in relation to that morality, as witnessed by the varied comments from church leaders in response to the Federal Government's decision in the recent Budget to extend the dependent spouse rebate to *de facto* couples.

Specifically, I sought the use of the yardstick—concern for the best interests of a child—when assessing the merits

of the Government's approach to determining the status of children born by reproductive technology to couples who were not married. I intend to address this subject in some detail. The approach endorsed by the Government is to redefine 'married woman', 'wife', and 'husband', as follows:

'married woman' or 'wife' includes a woman who is living with a man as his wife on a genuine domestic basis; and 'husband' has a correlative meaning.

New section 10a (2) provides:

A reference in this Part to the 'husband' of a woman shall, where the woman has a lawful spouse but is living with some other man as his wife on a genuine domestic basis, be construed as a reference to the man with whom she is living and not the lawful spouse.

I am unable to accept these very broad, all-encompassing definitions of 'married woman' and 'husband'. The definitions attempt to confuse the marked differences between a legal marriage and a *de facto* relationship, and they deliberately downgrade marriage by the sweeping reference to 'a genuine domestic basis'.

Marriage, a *de facto* relationship and a genuine domestic basis are three distinct arrangements, and they should be addressed as such. If the Government is inclined to recognise and encourage the participation of *de facto* couples in fertility programmes, it should say so in clear terms. A possible means of doing this would be to use in part the definition of putative spouse. Likewise, if the Government wishes to encourage the programmes to be opened up to all who consider they enjoy a genuine domestic relationship, again it should say so in clear terms. However, it should not seek to achieve these objectives by downgrading a legal marriage and by tampering with the law in respect of traditional family relationships.

The August issue of the newsletter produced by the Institute of Family Studies features a report by the Director, Dr Don Edgar, entitled 'Double Standards in Australian Family Policy'. Dr Edgar states in the first paragraph of the report:

I am increasingly dismayed at the blind eye politicians of every ilk turn to family policy issues. On the one hand is the rhetoric of each Party about the centrality of the family unit, the good deeds they will do for families, their concern for motherhood, the welfare of the nation's children, the viability of the family home. On the other, sits an ignorance of what is happening to Australian families, of their real needs and problems and (worst of all) of the way every policy impacts on family life. As Bronfenbrenner and Weiss put it: Social scientists are subject to an ethical code that prohibits them from exposing children to situations that are injurious to their welfare. Unfortunately, there is no such restriction on the nation as a whole or on its duly empowered leaders and policy makers.

While I acknowledge that Dr Edgar was addressing his alarm specifically to the failure of politicians to complement pro-family rhetoric with real money and real policy initiatives, I have no doubt that he would see the implication of measures endorsed by the Government in this Bill as a further demonstration of the double standards of politicians in relation to family policy issues.

Dr Edgar's concerns are shared by many compassionate and caring people in our community. For instance, I cite the Archbishop of Adelaide who, referring to the private relationships of convenience that abound in our community, issued a fortnight ago the following words of caution to members of Parliament:

My present concern is the mess into which our law is getting.

While my views are not always in harmony with those of the Archbishop, in this instance I believe that his concern was justified and, further, that we in this Parliament would be compounding the mess to which the Archbishop referred if we accepted the Government's amendments in respect of the definitions of 'married woman' and 'husband'. My concern in this respect is not for the morality of any relationship outside of marriage that individuals may choose to enter, for that is their choice alone; rather, my concern is for the interests of any child or children that such a relationship may bring into the world as a result of a technological feat.

Reproduction technology is fast transforming social values that have been tested by time. However, this process will snowball if we accept the Government's proposal that all individuals who consider that they enjoy a genuine domestic relationship (however that is to be defined) can in turn consider that, with the consent of their partner, they are eligible to participate in a fertility programme. I cannot understand what the Government hopes to achieve by going to these lengths. In my view, as the proposal is basically unsound, I do not intend to support this clause. The range of concerns that I have expressed were echoed in the editorial of the *Canberra Times* of 22 December 1983, as follows:

Participants in the programme must be selected extremely cautiously. It is clear that only those in the most stable marriages, *de jure* or *de facto*, must be allowed to take part. Comprehensive rules on participants' suitability, similar to the criteria for adoption, must be rigorously enforced. If conception is not confined within marriages or long-term *de facto* marriages, the institution of the family may be eroded, and severe psychological disturbances may result for the child and the parent alike.

The Hon. R.C. DeGaris: Was some judgment made on marriages, whether or not they are to be in the scheme?

The Hon. DIANA LAIDLAW: I have said that I do not wish to get involved in any moral judgment on the way people wish to live. However, in relation to the children of such couples I am concerned. I endorse the measured, cautious approach deemed necessary in the editorial if fertilisation programmes are to operate, not only in the short-term interests of the parents but also in the long-term interests of the child.

In fact, I favour considerable restraints being imposed on the use of reproduction technology and have sympathy for the arguments that the programme and the associated research should not be allowed to advance further at this stage and that accessibility to the present programme should be limited. I intend to elaborate a little on these matters shortly.

I will briefly discuss the presumption in this Bill that the IVF programme should be available to *de facto* couples. To date, no *de facto* couple has been accepted in South Australia or elsewhere in Australia to participate in an IVF procedure using either their own or, alternatively, donor gametes, although the waiting lists at both the Queen Elizabeth Hospital and the Flinders Medical Centre have *de facto* couples registered. On this basis the Government has no grounds to claim that it saw a need to incorporate *de facto* spouses in the Bill so as to legitimise the birth of a child following an earlier IVF procedure. The restrictions that apply to *de facto* couples at both the South Australian IVF centres have been determined by the organisers of each program and their respective ethics committees.

I understand that the instinctive reluctance on the part of both the organisers and the ethics committees to participation by *de facto* couples can be attributed equally to a concern about community opinion and to a concern in regard to the legitimacy of the child. The Government now proposes to change the *status quo*. I have no profound objection to the participation of *de facto* couples in the IVF programme. I have some reservations about this course which stem essentially from research conducted into the nature of *de facto* relationships. I seek leave to incorporate in *Hansard* some tables highlighting the trends to *de facto* relationships and other related tables to which I wish to refer.

The ACTING PRESIDENT (Hon. G.L. Bruce): Can you give an assurance that the tables are of a statistical nature?

The Hon. DIANA LAIDLAW: Yes.

Leave granted.

No. of people living in *de facto* relationships

1971	34 166 (qualified—some people did not like to admit to a *de facto* relationship in those days)
1976	131 876
1982	337 316

Proportion of couples living in *de facto* relationships against married couples

	Per Cent
1971	0.6
1976	2.2
1982	4.7

No. of *de facto* families with dependent children

1971	10 407
1976	32 188
1982	59 640

Proportion of couples living in *de facto* relationships with children as against all *de facto* relationships

	Per Cent
1971	61
1976	49
1982	36

The Hon. DIANA LAIDLAW: The tables that I have been allowed to incorporate are based on figures provided by the Institute of Family Studies from a report on *de facto* relationships by the New South Wales Law Reform Committee, June 1983. Apart from the trend towards *de facto* relationships within our community—from 0.6 per cent in 1971 to 4.7 per cent in 1982—it is interesting to note the decreasing proportion of *de facto* couples with children compared to the total number of *de facto* relationships, from 61 per cent in 1971 to 36 per cent in 1982. By contrast, over the same 11-year period the proportion of married couples with children increased. These figures suggest—and this view is that also of the officer to whom I spoke at the Institute—that there is a general acceptance that when couples have children they believe that it is in the interests of their children that they be cared for and nurtured in a married couple environment.

The Commission, in preparing its report, also questioned 58 470 people in respect to the stability of their *de facto* relationships. They found that 1 230 had been in a relationship for 21 years or more, but that 9 370 had been living together for less than a year and 12 860 between one and two years; that is, 38 per cent had been living together for less than two years. The general instability of *de facto* relationships which these figures highlight was confirmed recently by S. Saratankos in her book, *Living Together in Australia,* which was published earlier this year. Her conclusion was that, in structural and functional terms, cohabitation did not seem to be as stable a relationship as that enjoyed by married couples.

Due to my reservations, based on the nature of *de facto* couples, as confirmed by the research to which I have alluded, my overall desire to limit the availability of IVF programmes, coupled with the recognition that many people are adamantly opposed to any change in the *status quo,* I am persuaded to accept that the participation of *de facto* couples in IVF programmes warrants further investigation and community debate before it is endorsed in South Australia.

Although both the New South Wales and Victorian Parliaments accepted extension of the programme to *de facto* couples earlier this year—and I understand that neither Act has yet been proclaimed—a Bill is before the Western Australian Parliament that provides that the IVF programme be limited to legally married couples. In resolution of this issue in South Australia, I believe that it is an appropriate subject for a Select Committee of this Council. At the outset of my remarks in this debate, I noted that beyond the question of the status of children this Bill also provides an opportunity to focus on the merits and future use of fertilisation procedures. The two issues should not be divorced, as the Government has sought to do on this occasion by addressing only the limited question of status of children. Of course, it is desirable that this question of status be resolved with some urgency, but no less pressing is the broader question of the future direction of the fertilisation programmes. The need for complementary legislation is not a view that I alone hold.

When addressing this issue earlier this year, both the New South Wales and Victorian Parliaments introduced legislation in this form: in respect to New South Wales, the Artificial Conception Act, 1984, and the Children (Equality of Status) Act Amendment Act, 1984; and in respect to Victoria, the Infertility (Medical Procedures) Bill, 1984, and the Status of Children Act Amendment Act, 1984. None of these Acts has yet been proclaimed, while the Victorian Infertility (Medical Procedures) Bill is still before the Legislative Council and will be subject to Government amendments following the release of the Waller Committee Report last week.

As the South Australian Government has not seen fit in this instance to follow the sound lead set by its New South Wales and Victorian counterparts, I applaud the initiative taken by the Hon. Trevor Griffin to seek the establishment of a Select Committee to address the host of complex and controversial legal and ethical questions arising from the AID and IVF programmes. When the Hon. Mr Griffin was outlining his reasons for proposing a Select Committee the Attorney-General interjected that surely enough work had been done on these issues throughout the nation. It is true that a Select Committee would not be sailing into uncharted waters, for the problems to be addressed have been identified in public reports and discussion in Australia and overseas. In Australia alone at one stage five inquiries were examining the law, society and IVF.

At that time I had little sympathy for the view held by the former Federal Attorney-General, Senator Durack, that because the subject was basically an area of State law it was not an appropriate one for reference to the Australian Law Reform Commission. In hindsight, the proliferation of State initiated inquiries has added considerably to the debate in this country, for a comparison of the recommendations not only highlights the area where there is a clear consensus but also the many areas where there are widely divergent views. Some of these views have been referred to by my colleagues, the Hons. Mr Griffin, Mr DeGaris and Mr Lucas, in their contributions to this debate. Divergent views also are held, on the Attorney's own admission, among his counterparts in the Standing Committee of Attorneys-General. Therefore, despite the volumes of material in Australia canvassing the legal and ethical questions associated with reproduction technology, the diverse views and the often intensely felt views as to the future direction of the fertility programmes point to a need for thorough community debate in this State before irrevocable decisions are made.

At present, there is a strong and growing feeling in South Australia that South Australians themselves have not been given a fair and full opportunity to present their views. The South Australian working party that reported on IVF and AID earlier this year has been criticised on the grounds that it comprised only two individuals, was required to report in three months and provided little opportunity for anyone

to make contributions. Their grievances have been aggravated since by the Government's decision to act some months ago on a number of the working party's recommendations and more recently to incorporate other recommendations in this Bill, notwithstanding the fact that community comments on the report did not close until 31 August last.

A number of women's groups are among those which have expressed concern about the lack of opportunity to convey their views on the reproduction technology programmes operating in this State. So that honourable members are aware of the depth of their concern, I will quote from a submission to the working party which was forwarded to the Minister of Health on 9 August by a group of concerned feminists. The content and format of this submission have been used subsequently by several other women's groups, including the Women's Electoral Lobby. The submission states, in part:

> We are concerned at the nature of the public debate about reproductive technology. We feel the debate so far has been inadequate, especially after our experience in attending the SAHC seminar *'In Vitro* Fertilisation and Artificial Insemination by Donor' where consumers were not canvassed or represented. We feel that, by publishing the 'Report of the Working Party on *In Vitro* Fertilisation and Artificial Insemination by Donor' prior to the seminar, there was inadequate opportunity for community contribution and debate in the preparation of that report.
>
> We do not accept the report of the working party because there was no opportunity for consumer contribution and no opportunity for community input: because the report does not address adequately the topics the working party mentions, nor does it address issues in the debate in which we are concerned as feminists—specifically, women's control of their own bodies.
>
> We submit that there be a full public inquiry to call for public opinion and debate from the widest perspective of women in South Australia: to disseminate information about the existing reproductive technology and its application for women and children, and to enable the views of women to be canvassed, analysed, publicly reported and considered by your Government.
>
> We submit that the membership of this public inquiry contain representatives from the broadest range of community interest and shall not contain a predominance of persons with technical and professional expertise.

I suggest it is highly unlikely that the Government will grant this request by this group of concerned feminists for a full public inquiry.

The Hon. J.R. Cornwall interjecting:

The Hon. DIANA LAIDLAW: No, I have never known how the Minister will react; he is quite right. He is highly unpredictable.

The Hon. J.R. Cornwall: It is part of my charm.

The Hon. DIANA LAIDLAW: As long as the Minister's colleagues can keep up with him.

An honourable member interjecting:

The Hon. DIANA LAIDLAW: I hope she can convey to him these women's concerns in respect of the length and depth of the debate in this State so far. As I suggested, I believe it is highly unlikely that the Government will grant this request for the full public debate that has been called for by these concerned feminists and by other women's groups into the issues raised by reproductive technology, and thus the Select Committee proposed by the Hon. Trevor Griffin would help, in part, to relieve their genuine anxieties.

The anxieties that feminists in general, and increasingly many others in the community at large, share with respect to the present momentum and future direction of the reproduction technology programmes are both very real and very justified. The question they raise is whether the benefits that new technology may bring to a few infertile women outweigh the potential danger that they pose to all women. The argument introduces a new level of concern about the procedures over and above the concern to which I referred earlier in this debate, namely, the concern for the interests and welfare of children who are born as a consequence of technological feats. Dr Robyn Rowland is a leading critic of the IVF programmes in particular. While she has been reported as generally supporting the programme as it has been conducted so far, her criticisms are based on the dangers she foresees. Dr Rowland is well placed to comment, being the former Chairwoman of the research co-ordinating committee at the Queen Victoria Medical Centre, which under the guidance of Professor Carl Wood leads the world in IVF technology.

Dr Rowland resigned from this position in April this year. An article in the *National Times* of 25 May claims that her decision to resign in part followed enthusiasm by members of the IVF programme for the technique of embryo flushing. This technique involves allowing a fertile woman to conceive, using her husband's sperm, and then flushing out the fertilised egg and implanting it in an infertile woman. I can understand Dr Rowland's wish not to be associated with this process and equally her calls for this technique not to be practised in Australia.

Dr Rowland is not alone in her distaste for aspects of the IVF programme. Professor Peter Singer, Professor of Philosophy and Director of the Centre of Human Bioethics at Monash University, in a book that he has co-authored with Mr Deane Wells, entitled *The Reproduction Revolution: New Methods of Making Babies,* alerts us to experiments being conducted by scientists and doctors in the name of humanitarian concern for the infertile person. These experiments include, first, genetic engineering, not merely to remove flaws but also to enhance characteristics in the embryo. Secondly, they involve womb leasing, where a woman who is unable to bear her own child will have her egg fertilised with her partner's sperm and then implanted into the uterus of another woman who is willing to bear the child. Another process is the production of a baby in artificial circumstances from conception to birth. There is also cloning, or the reproduction of an individual, perhaps in large numbers, by the replication of body cells without fertilisation.

Professor Singer and Mr Wells prophesy that the very fact that some of these practices are already being used by veterinary scientists is but one indication that they are likely to be used with humans. Further, considering the current state of the obsession with infertility, I have no doubt that, if the above techniques were available, many couples would resort, and would indeed feel pressured to resort, to using these reproductive technologies. In an interview in the *Sydney Morning Herald* of 18 May, Dr Robyn Rowland addressed the question of the current obsession with reproductive technology and the pressures it is placing on couples. She was responding to claims by Professor Carl Wood that IVF children are slightly above average and that IVF had the potential to breed out male aggressiveness. Dr Rowland is quoted as saying that it was dangerous to talk about reproductive technology in this way in effect opening the way, for people to say that all children can be born this way, so why should not everyone have children using the test-tube technique? Dr Rowland said that claims that IVF children are better will eventually lead people to ask for children with particular personality characteristics.

Once the demand is there she suggests that doctors will be able to justify such processes themselves. In effect, Dr Rowland is accusing Professor Wood and his colleagues of creating a classic vicious circle situation. She is arguing that by making the techniques available scientists and doctors are subtly, and perhaps not so subtly, pressuring couples to use them, thereby ensuring that when demand increases the scientists and doctors will then be able to justify the processes irrespective of the fact that they are breaking the limits of accepted practice in the field of human reproduction.

In this context I was interested to note that the Victorian Waller Committee, in both its interim and final reports, saw fit to place prominence on the fact that most of the

submissions to the committee favouring the IVF programme had come from people taking part in that programme. Further, in this context it is relevant to refer to an attitude expressed in the 'Report of the National Health and Medical Research Council Working Party on Ethics in Medical Research'. Point 5.5.6 of that report, which was published in October 1982, states:

> We accept that infertile couples have a right to seek and obtain treatment and that it is the doctor's proper role to try to help them, no less than to try to relieve disease and suffering in people whose health is impaired in other ways.

Although I uphold the right of an individual to seek and obtain treatment, and the right of a doctor to try to help in these circumstances in respect of reproduction technology, I believe that the matter is too important to be left only to the individual—the infertile person, the doctor and the scientist.

Government control must exist in this area, and the sooner the better. My regret is that a Bill incorporating such control was not introduced by the Government at this stage to complement the Bill we are debating to clarify the status of children born as a consequence of AID and IVF procedures. I acknowledge that there is a pressing need to resolve this question of status; I welcome this Government initiative. But no less pressing is the need to curtail the IVF programme to the limits at which it is operating at present and to address questions which my colleagues have raised in respect of surrogacy, experimentation, the disposal of frozen embryos and the right of a child to know its natural parents, among other issues. I support the second reading.

The Hon. R.J. RITSON: I also support the second reading of this Bill. I do so because existing children of IVF programmes have a right to expect that their legal status, their rights of inheritance and so on will be clarified. That is a matter of immediate importance. The other matters and the surrounding controversies that have been canvassed widely are issues of less urgency. Of course, I support the motion of sending those matters to a Select Committee in due course.

I understand that all of the children presently living who were born as a result of IVF technology are, indeed, the children of married couples. I think that there is very little objection in the community to married couples seeking medical assistance to use their own genetic material to overcome infertility. I believe that all members in this Council would support the Bill to that extent. It is primarily dealing with the legal status of children of artificially assisted conceptions and, as such, it does not promote or discourage, allow or disallow, any particular medical practice. Nevertheless, it does by implication raise wider questions, which do involve matters of moral and ethical preference. I propose to canvass those matters during the course of speaking to this second reading. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

COMMISSIONER FOR THE AGEING BILL

Adjourned debate on second reading.

(Continued from 11 September. Page 714.)

The Hon. R.I. LUCAS: This Bill seeks to establish by statute the office of the Commissioner for the Ageing and outlines the objective and functions of such a Commissioner. The Minister, during the second reading debate, summarised matters by saying:

> It is the Government's intention to create a focal point for information and advice about the ageing in South Australia and for the co-ordination and support of services for this important section of our community.

He went on to outline the fact that there is an increasing number of aged people in our community, and gave figures for 1983, I think, showing that people over the age of 65 years constituted about 11 per cent of the South Australian population. He said that by the end of the century those people were likely to constitute 13 per cent of the South Australian population.

However, one aspect to which the Minister did not refer was the combination of factors of early retirement and longer expected life spans for people. The trend in recent years, one that will probably continue, is that we are likely to retire earlier. In many instances people are retiring at the age of 55 or 60 years rather than at the previously accepted level of 65 years. The expected age at death of people has been extending over recent years. It is likely, in the opinion of some experts, that by the end of the century we can expect to live to 80 or 85 years, rather than the seventies, as at present. The combination of those factors will mean that the elderly or aged of the next century are likely to have a retirement period approaching 30 years between the retiring age of 55 and their possibly living to 80 or 85 years of age. The other trend which is happening and which is being encouraged by Governments is that entry into the labour force is being delayed so that more and more people will not be entering the work force until they are aged approximately 20 years.

So, there will be a reduced working life from age 20 perhaps through to possibly age 55. The combination of all those factors will mean that people of the next century may have retirement periods of some 30-odd years and have a working life of not much longer, perhaps 35 years. There will not only be an increasing number of people over the age of 65 years, as the Minister outlined in his second reading explanation, but also an increasing number of retired people in South Australia in the latter part of this century and the early part of the next century.

This increasing number of retired people will mean that the Government and the Parliament will face many challenges concerning the problems that may be experienced by the retired section of our community. Associated with this trend of an increasing number of aged people has been the realisation by both major political Parties of the growing political influence of the aged and the power of the respective pressure and lobby groups in this area.

Political Parties, being the political animals they are, really want to be seen to be doing something for these pressure groups. On this occasion the Government response is the Bill before us. I guess that one could say that this Bill is a response by the Government to pressure groups concerned with the ageing, as the Small Business Corporation was a response to pressure groups associated with the small business community and possibly the Bread Industry Authority Bill was a response to pressure groups involved in the bread industry.

I believe that the Bill before us is an example of tokenism: the Government sees a problem, throws a glossy new QUANGO at it and hopes that the problem will go away. Some of my colleagues in another place have argued that this particular Commissioner for the Ageing cannot be seen as a QUANGO. Without going into the long argument of it in this debate, I refer them and others to the definitions of QUANGO in the authoritative six reports of the Rae Committee (the Senate Standing Committee on Finance and Government Operations), the report of the Royal Commission on the Australian Government Administration of the 1970s, and the report presented to the current Joint Select Committee of this Parliament on the procedures of this Parliament. Those reports back my argument.

Earlier this year this Parliament was creating something of a record when it was creating one new QUANGO every sitting week. It appears that in this session we will continue in that vein. We have this particular Commissioner for the Ageing, the proposals for a workers compensation authority, the proposals for an occupational, health and safety commission, the proposals for a State institute of occupational and environmental health—

The Hon. J.R. Cornwall: Incorporated under the Health Commission Act. You didn't do your homework on that.

The Hon. R.I. LUCAS: The Minister ought to do his own homework. He is sadly out of his depth when he starts discussing QUANGOS. There is also the proposal for the commercial tenancies tribunal.

The Hon. J.R. Cornwall interjecting:

The Hon. R.I. LUCAS: Just to provide some information for the Minister, who is sadly lacking in this particular area, QUANGOS can be created by specific Statute and also under the ambit of an enabling provision, as exists in the Health Commission Act.

The Hon. J.R. Cornwall interjecting:

The ACTING PRESIDENT (Hon. G.L. Bruce): Order!

The Hon. R.I. LUCAS: If the Minister looks at the Alcohol and Drug Addicts Treatment Board—

The Hon. J.R. Cornwall: It doesn't exist any more.

The Hon. R.I. LUCAS: Will you listen?

The ACTING PRESIDENT: Order!

The Hon. J.R. Cornwall: Not to your nonsense. You're talking a lot of nonsense.

The ACTING PRESIDENT: Order!

The Hon. R.I. LUCAS: The Minister is absolutely hopeless.

The Hon. J.R. CORNWALL: I rise on a point of order. That comment was quite unparliamentary and I demand an apology.

The Hon. R.I. LUCAS: It's quite factual.

The ACTING PRESIDENT: It wasn't very Parliamentary. Is the honourable member prepared to withdraw it?

The Hon. R.I. LUCAS: No, I am not prepared to withdraw it. In my view it is not unparliamentary; it is a statement of fact.

The Hon. J.R. CORNWALL: I insist that the honourable member withdraw and apologise. What he said is grossly unparliamentary. If he does not withdraw it you, Mr Acting President, should throw him out.

The ACTING PRESIDENT: At this stage I am prepared to let the debate go on.

The Hon. J.R. Cornwall interjecting:

The Hon. Diana Laidlaw interjecting:

The ACTING PRESIDENT: Order! The Hon. Mr Lucas will address the Chair.

The Hon. R.I. LUCAS: I won't provoke the Minister by repeating my claim. The point I was trying to make to the Minister, who was obviously struggling to understand, was that the Alcohol and Drug Addicts Treatment Board, when it existed, was a statutory authority. The point I am making is that that body in all its functions is being replaced by another body with a different name called the Drug and Alcohol Services Council under the enabling provisions of the Health Commission Act. What this Minister wants us to believe—and he shows his ignorance in this matter—

The Hon. J.R. CORNWALL: I am not going to sit and have this fellow use grossly unparliamentary language towards me. I think it is about time that he was put in his place.

The ACTING PRESIDENT: Order! Yes, I believe that the Hon. Mr Lucas should address the debate and the Chair rather than be involved across the Chamber in discussions. I ask him to come to order and address the debate and his remarks to the Chair.

The Hon. R.I. LUCAS: Thank you very much, Mr Acting President, for your protection. I was dealing with the Alcohol and Drug Addicts Treatment Board. A new body which will do very similar functions and, in effect, a lot more in the area than the Minister wants it to do—I am not criticising that—will be created. On any definition or understanding of a QUANGO, that body, even though formed under an enabling provision of the Health Commission Act, should be construed, and would be construed by those authoritative sources I gave earlier, as a QUANGO.

To continue my short list of what the Government is about there are proposals for a police ombudsman, possibly an independent health ombudsman and some form of committee for food quality and nutrition. In my view and, indeed, in the view of many others, the Government and Parliament (both sides of the political fence can accept responsibility for this) are creating these QUANGOS in a quite undisciplined fashion. As I said, we created something of a record earlier in the year with one new QUANGO each week and it looks as though we will continue in that fashion during this session.

As I argued during my Address in Reply speech some two weeks ago, I believe we need in South Australia a form of QUANGO justification test, that is, a test to establish the need for a particular QUANGO and to establish whether or not the functions and objectives of the QUANGO can not be achieved administratively or through some other form of administrative mechanism rather than through the presentation of legislation in this Parliament with the creation of some new statutory authority or QUANGO. I believe that, if we had instituted procedures for such a QUANGO justification test, this proposal would not be before us.

The Hon. J.R. Cornwall interjecting:

The Hon. R.I. LUCAS: I am trying desperately hard not to be provoked by the Minister. The reason we have this QUANGO in this Bill and the attempted justification for it is given by the Minister in his second reading explanation. At page 609 of *Hansard* the Minister states:

The reason we have this QUANGO in this Bill and the attempted justification for it is given by the Minister in his second reading explanation. At page 609 of *Hansard* the Minister states:

> In addition, as a part of the process of developing the proposal that there be a Commissioner, the Government was confronted with the question of whether to establish the office of the Commissioner by the enactment of special legislation, whether to provide for a statutory office by amendment to the Community Welfare Act, or whether to establish an office by administrative act. Obviously, it would have been possible simply to appoint a person within the Public Service to perform the functions that are to be prescribed by legislation.

Clearly, the Minister agrees with the point that I put earlier that it would be quite possible simply to do everything one wants to do in this Bill by simply appointing a person or persons within the Public Service to perform these functions and objectives. The Minister goes on to say:

> However, the Government has perceived that many people in the community think that it would be appropriate that the functions of a Commissioner be contained in legislation, and it is certainly the case that an office prescribed by Statute will acquire a status that is, in the opinion of Government, desirable because of the special needs and position of the ageing within our community.

That is the only attempted justification as to why we need this Bill at all and why we need to create by Statute a new statutory office, the Commissioner for the Ageing. As the Hon. Mr Burdett interjected earlier, the proposal to perform all these functions or similar functions or objectives was included in Liberal Party policy prior to the 1982 State election, and that particular proposal was:

To establish a bureau for the ageing within the Department of Community Services and the Ageing to focus upon advocacy and research.

It then goes on to explain some of the functions and objectives of the particular bureau. The argument of my Party prior to 1982 was that all these quite laudable aims for the Commissioner for the Ageing could be achieved within an existing, albeit renamed, department without the need for any specific new legislation to be introduced.

The present shadow Minister of Community Welfare (Hon. Harold Allison) in his contribution in another place on the Bill raised in a number of areas questions as to the need for this Bill, and I intend to quote two aspects of his contribution. At page 579 of *Hansard* he states:

The danger to which the Minister refers of the Commissioner duplicating existing avenues of investigation and providing a conflict of roles also begs the question whether the appointment of a Commissioner is not, in itself, a duplication of services already available through the South Australian Council for the Ageing and other bodies which are essentially voluntary in nature.

Then at page 580 he states:

Another question is whether this work might not be just as well accomplished by transferring equivalent funds to already existing agencies, such as those within the umbrella of SACOTA (the South Australian Council on the Ageing).

The question that could be put to me is what is the problem with having another QUANGO. I believe the answer is well summarised by the Rae Committee in the Fifth Report of the Senate Standing Committee on Finance and Government Operations on Statutory Authorities of the Commonwealth, and I quote from pages 22 and 23 of that report, as follows:

There seems to have been a tendency on the part of Governments after taking the decision to undertake a new function, to create a new authority to perform it rather than absorb the functions into existing departmental structures. But, whatever the limitations of the departmental structure, it has a basic advantage over that of the statutory authority.

When governmental functions being performed by departments change—for example, if they become obsolete or more or less important—the consequent structural alterations are relatively simple: the administrative orders can be changed and staff can be transferred. This makes departments more flexible than authorities. The creation of an authority by Statute enshrines its structure with a greater degree of permanency. If, in the future, a Government wishes to change the functions performed by the authority, the problems of changing the authority's structure are more intractable.

Put simply, what the Senate Committee—an authoritative committee in the area of statutory authorities—is arguing is that the creation of QUANGOS creates a lack of flexibility in Government administration and a degree of permanency that is not needed in many instances and that these authorities can grow like topsy with respect to the appointment of staff, facilities, and the associated cost of separate (admittedly, in varying degrees) staffing and facilities for the particular authority. I have argued that this Bill is tokenism in its extreme by this Government. I intend to look at some of the specific provisions of the Bill, but I now seek leave to continue my remarks later.

Leave granted; debate adjourned.

ADJOURNMENT

At 6.12 p.m. the Council adjourned until Thursday 13 September at 2.15 p.m.