LEGISLATIVE COUNCIL

Wednesday 17 October 1984

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

PETITIONS: VIDEO TAPES

Petitions signed by 1 832 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 I. Gilfillan, R.I. Lucas and C.J. Sumner.

Petitions received.

A petition signed by 3 879 residents of South Australia praying that the Council will resist the pressure they believe has been created by a minority of the community to restrict the rights of adults to view adult video tapes, and that the relevant laws remain as they are, was presented by the Hon. C.J. Sumner.

Petition received.

MOTION FOR ADJOURNMENT: PRISON SYSTEM

The PRESIDENT: The Hon. Mr Cameron has informed me in writing that he wishes to discuss a matter of urgency, namely, that in view of the recent incidents at Yatala Labour Prison the Government must immediately review its deliberate policy of more lenient treatment and less discipline of prisoners. In accordance with Standing Order No. 116 it will be necessary for three members to rise in their places as proof of the urgency of the matter.

Honourable members having risen:

The Hon. M.B. CAMERON (Leader of the Opposition): I move:

That the Council at its rising do adjourn until tomorrow at 1 o'clock.

Yesterday in this Council I raised the issue of drugs in our prison system. It is a matter which, quite rightly, has caused grave concern in the community. The community has a right to know what is happening in the prison system. There are many questions which should be answered by this Government, and have not been. The response by the Minister of Correctional Services to my questioning yesterday was typical of the Government's response to the prisons question ever since it came to office. It is an attitude, I might add, that is quite at odds with its approach when in Opposition.

We are now being told not to be too worried—that there will always be escapes, that there will always be drugs, that there will always be the released offender who commits another crime. The Minister of Correctional Services wants to forget the problems in the hope that the embarrassment caused by his and his Government's laxity will go away.

I can give the Minister of Correctional Services this guarantee: his quiet acceptance of the problems is not acceptable in this community—a community which recalls the vindictive fervour with which the Labor Party in Opposition attacked former Chief Secretaries and which now looks with disdain at the way this Government has handled the prisons question. Indeed, while the former Government was under frequent attack from the ALP over its handling of prisons, we find that this Government has presided over a systematic decline in the authority of prison officers, over a disturbing number of breakouts, over a new parole system which appeases prisoners and fails to protect the public, now it appears, over a system of drug distribution and abuse.

We have raised this matter today because it is time that the public was made more aware of what is happening in our prisons and that the Government was called to account for its policy of peace at any price with prisoners. Yesterday, the Minister made what I regard as a minor threat and said:

I am sure if I was pressed I could bring in an extensive list of illegal substances that were found in South Australian prisons in the years 1979-82 when the present Government was in Opposition, but I do not propose to go through that exercise unless I am pressed.

If he wants to do that, I assure the Minister that he can because it does not bother us at all. If there is a problem it ought to be fixed. What I expected the Minister to do yesterday was to take the matter seriously and perhaps go into a little more discipline in regard to the prison system, but I will raise a few of those issues in a minute. It certainly does not bother us if the Minister wants to go back in the past. Of course, there have been problems. What we want to know is whether they are being fixed.

The public should be aware by now that it is the Prisoners Action Group—not the Minister or departmental officers—that is running Yatala Labour Prison now. The public should know too that our parole system is not working and that the full facts are being covered up. I accept that these are serious charges but the evidence clearly supports them. No-one would deny that running our correctional services institutions is an extremely difficult task. Prisoners must be treated fairly, but they must also be treated firmly. We got the impression at one stage that the Minister of Correctional Services was going to treat prisoners very firmly indeed. The Council will recall the headline 'We Will Shoot to Kill', when the Minister stated:

We are not namby pamby in South Australia. We do not mess around. We apply the ultimate sanction. I mean, we will shoot them and kill them to prevent an escape. What else is there after that?

Asked whether there was an instruction to shoot escapees, the Minister said:

Quite obviously—nothing can be tougher. Not many prisons in the world have that ultimate sanction. Other prisons in Australia do not permit guns on towers, but we do.

Members interjecting:

The PRESIDENT: Order! This is a matter of urgency. It should be treated as such and the Council should listen to the honourable member with the call.

The Hon. M.B. CAMERON: I had the distinct impression the Minister would even go a little further than I would and that he would be the tough man of the prison system. We will find that the evidence does not support that. There was just a bit of a show to offset criticism of that time. To uphold respect for the law, society quite rightly demands that those who do not obey the law must pay a price. Law abiding citizens must be protected. That protection is jeopardised if our prisons are run according to the dictates of the prisoners, rather than the demands of society. The policies of this Government are quite clearly tipping the scales in favour of the prisoners. We had the extraordinary situation where a young man sent to gaol for breaking the law was able to involve himself in illegal drug taking. To carry out this activity he was able to obtain illegal drugs and the equipment necessary for him to take them. This is an outrageous situation.

The Minister said that such incidents were to be regretted and went on to decry the problem by saying that it was world-wide. Certainly, that does not excuse it here or the fact that it is happening here and that we ought to do something about it. We are not the rest of the world. We are an entity on our own and we have to do whatever is necessary to stop that sort of thing happening—it is just not good enough.

Monday's incident was serious. A 22-year-old inmate of Yatala Labour Prison suffered a heroin overdose and the Minister blandly asserts that it is just part of a world-wide

problem. The Minister said that his Department had the matter in hand. He said that the Department of Correctional Services and the management of the prisons do whatever they can to minimise the opportunity of drugs entering and being used in prisons. That is simply untrue. About four years ago, a specially trained dog squad was established to detect the existence of drugs in all institutions. However, according to my information, that squad has not been allowed into prisoner's cells for some time—for at least several months as I understand it.

Yesterday, when he was questioned by the media about this matter, the Minister said that the Department had informed him that this was not the case. However, on the channel 7 television news last night, the Manager of Yatala Prison, Mr Lloyd Ellickson, was quoted as saying the dog squad had not been into cells as frequently as he would have liked. Mr Vic Smyth, representing the prison officers, confirmed on the same news service that the squad had not been permitted into the accommodation block. There is only one reason for that; the prisoners have threatened trouble if the dog squad is used as it should be. The use of the dog squad—or rather the lack of effective use of this specially trained squad—raises another question about searches of the prison to maintain internal security.

Notice now has to be given to prisoners before officers can undertake periodic searches of the prison. Quite frankly, when I heard the Minister's reply yesterday I was under the clear impression that prisoners obtain drugs in some other way because of all the searches and all the other precautions. We now find, according to our information, that notice of any search must be given to prisoners. How on earth can an effective spot search be conducted when prison officers must give notice? Surely such searches should be conducted without notice. How else can there be effective detection of drugs, weapons and the like which have been smuggled into the prison? The incident of drugs at Yatala poses a number of serious questions, and the Opposition strongly supports the call by the mother of the prisoner involved in the incident that a full investigation of the drug problem at Yatala is needed.

Today's *Advertiser* reports that the prisoner's mother yesterday spoke to her son at the Modbury Hospital. She said that he now held fears for his safety because of the trouble the incident had caused. The *Advertiser* article, quoting the mother, states:

> He told me that if he went back the people pushing the drugs might try and get him, as it could ruin their business.

What on earth is going on? What sort of prison system do we have, if prisoners have a drug supply business within that system? The article continues:

> She said her son had been introduced to drugs in Yatala and they were freely available. He had obtained both heroin and cocaine in the prison. He tried to break the habit but could not and got into trouble for breakings trying to finance it.

Clearly there is a problem. We need to know how drugs have got into our prison system. How readily available are these drugs? Who is supplying them? Are prisoners paying for these drugs? If so, where is the money coming from? If not, does this mean that on release drug-taking prisoners have to repay their suppliers? If so, this would be an extraordinary indictment of our prison system, for it would mean that prisons are being cultivated to supply workers in the drug trade, following a prisoner's release.

The question of strip searches after contact visits was raised by the Minister yesterday. He said a number of prisoners were selected at random after each visit for a full strip search. But we have been informed that, if a prisoner refuses to fully co-operate, these searches are not enforced. I do not criticise officers for that. They are simply acting under instructions—instructions based on this Government's direction that there must be no trouble in the prisons at any cost. Officers are being asked to turn a blind eye to this serious erosion of internal discipline, and they are becoming increasingly frustrated and intimidated about it.

The Council should consider another extraordinary example of lax discipline. The Opposition has the name of the prisoner involved and we will make it available to the Minister if he wants to check further.

Several weeks ago, this prisoner was in the new minimum security cottages recently opened at Yatala. On at least two evenings, and possibly three, he was visited by a woman, who remained with him in his unit through the night, leaving the next morning, no doubt after cooking him breakfast. There is evidence that on each occasion the woman was able to get into the compound under the perimeter fence. I understand that these cottages are not patrolled between midnight and 6 a.m. This prisoner had convictions for housebreaking, illegal use, rape, and indecent assault.

It has also been suggested to me that a number of prisoners have been allowed to leave the minimum security area for outside visits. This area already accords the prisoners a number of privileges in living conditions to prepare them for release, but that does not alter the fact that they remain prisoners while they are in this area and are not entitled to the degree of leniency that appears to be the standard at present. Indeed, it seems that this area is being used more as a holiday camp than as an area of penal detention.

We hear a lot about prisoners' demands, but we hear little about the problems that they cause for the correctional services officers—the men who day after day have to deal with the prisoners. As discipline has eroded, their authority has been undermined, and they are not receiving the support they need from the Government to perform their task effectively. In fact, they feel isolated and threatened. Management at Yatala is breaking down. I will give just one example. Recently, a fire alarm sounded; it was a false alarm, but, because the position of Fire Safety Officer at the prison has been abolished, no-one was sure what to do about the nine fire units from three stations that responded to the alarm. As a result, they were kept waiting outside the western gate of the prison for 25 minutes. No-one would allow them in; their time was totally wasted.

The morale of prison officers is suffering further because of the operation of the Government's new parole laws. Their concern is widely shared. This matter will be expanded by the Hon. Mr Griffin. The Secretary of the Police Association, Mr Brophy, has said that the Government could not wash its hands of the parole issue and that it was unclear to the public what a convicted person's sentence would be because of time off for parole and remission for good conduct. There is increasing evidence that the new parole system is subjecting the community to risk.

I understand that, since the system was introduced last December, 456 prisoners have been given early release. Many of them have been released much earlier than they would have been under the former system. In the May, June and July period of this year alone, there were 141 early releases. Many of these prisoners had been serving sentences for very serious offences and were not due for release until 1990 and later.

One case involved a man imprisoned on rape charges whose full sentence would have expired in December, 1990. However, he was released in June this year after serving 18 months of an eight-year sentence. Now he has been arrested again and charged on four counts of rape, two counts of gross indecency and two counts of kidnapping.

There are other examples: one prisoner who was recently granted parole faces a murder charge; another, recently released after serving only two years for manslaughter, is now back in gaol for a breach of parole. Examples like this

raise serious questions about the right of the public to be protected from hardened criminals.

There is increasing concern in the Police Force that dangerous and habitual criminals are being released back into the community without serving adequate prison sentences. Police often have to take personal risks to apprehend dangerous criminals, but they must be asking themselves whether some of the risks are worth it when they find that some of those criminals are released after serving only a small part of their sentences. A police officer himself has been the victim of a serious assault, allegedly committed by a man who had been released from prison on parole only two weeks before. There is an anomaly in this case: the person charged initially had begun a 15 month sentence on a receiving charge last November. His non-parole period was eight months. In January this year, he was further sentenced to 18 months, with a nine month non-parole period, on a charge of garage breaking and larceny. The sentences were to be cumulative. On this basis, even with full remission, the man should have served at least 11 months in prison and was not due for release until this month at the earliest.

However, he was released in June and within a fortnight of his release was allegedly involved in an incident in which a police officer suffered a hairline fracture of the skull after being hit on the head with a bottle. It appears that in this case the new non-parole period cancelled out his first one, making the sentences concurrent instead of cumulative.

The Government owes the community an explanation for cases such as this. The Minister, in his responses, hides behind the recidivism argument; I suggest that that is an attempt to hoodwink the public by using selective figures. The fact is that there is growing concern about the application of our new parole laws and that concern would be very much greater if the public was made aware of everything that is happening.

The Opposition recognises that the Government and the Minister face a difficult task in managing our correctional institutions. But the answer does not lie in giving in to the demands of prisoners simply to avoid trouble—to practise the principle of 'peace at any price'. The Government is spending significant sums to upgrade some of our institutions, and the Opposition has supported that. But that does not excuse the Government from its responsibility to maintain internal discipline within our institutions and to ensure that prisoners are properly dealt with.

The protection of society must remain the primary purpose of our system of criminal justice. We must, by all means, seek to re-educate and re-socialise offenders so that they can become more responsible members of society. But this Government has, in the opinion of the Opposition, got its priorities wrong. The facts I have given this afternoon expose a deliberate policy of more lenient treatment and less discipline of prisoners. It is a policy that the Government must review immediately.

The Hon. K. T. GRIFFIN: I support the motion, and I want to focus on the Government's new parole system. I have been a constant critic of the way in which the measure was brought into and rushed through the Parliament—it is now bearing its fruit. I remind members that under the old system of parole the courts had the responsibility for fixing a sentence, which was in fact the maximum term for which a prisoner would be required to be imprisoned. Under the Liberal Administration the courts were given responsibility to fix a non-parole period in every case, unless there were exceptional circumstances where the courts believed that that was not appropriate. There were not likely to be many of those cases. The non-parole period was the time fixed before which the prisoner could not apply for parole. It was an indication as to the seriousness with which the court regarded the crime committed.

After the non-parole period expired, the prisoner was entitled to apply to the Parole Board to determine whether or not he should be released into the community. The Parole Board had a discretion to determine whether or not, after the expiration of the non-parole period, the prisoner should be released. It considered a number of factors, including reports by prison officers; information being given to the police that an application had been made so that the police could make a submission to the Parole Board and draw the attention of the Board to any factors that had not been considered when the court was sentencing; the behaviour of the prisoner in prison; the skills of the prisoner in respect of a useful occupation upon release; the extent to which the prisoner was likely to have been rehabilitated and was unlikely to reoffend; and the support that would be available to the prisoner outside the prison after release. Of course, the Parole Board was informed of any job opportunities that were available for the prisoner upon release.

In that scheme of events the Parole Board had a significant discretion, a discretion to which, understandably, the Prisoners Action Group and other prisoner bodies objected. During the early days of the Labor Administration in 1983 there was a growing series of complaints from the prisoner population that they did not know when their sentences would expire.

They did not regard the minimum non-parole period as being an indication of any certainty as to release, and they did not regard the maximum period fixed by the court as any indication of ultimate release, so they put a considerable amount of pressure on the Labor Government to amend that system and to make it easier for prisoners to be released. In conjunction with that verbal pressure there was, as honourable members will recall, during 1983 a series of disturbances within the prison system including a couple of fires at Yatala and some sit ins. As a result of that pressure, the Government introduced a Bill to amend the Prisons Act on 29 November 1983. That Bill was introduced in the House of Assembly.

The Government wanted to debate that Bill on the occasion of its introduction—on the very day that it was introduced—with one day's notice to the Opposition. Understandably, the Opposition objected, but was prepared to accommodate what the Government regarded as an urgent situation by debating it on 1 December. The Bill then came to the Legislative Council and was through this place on 8 December, notwithstanding a variety of amendments which the Liberal Party moved and which were not supported either by the Government or the Australian Democrats, who in fact facilitated the rapid passage of this Bill until it became law in the form in which it is now operating in this State.

The present legislation, supported by the Australian Democrats, provides that the courts will now fix a maximum sentence and a non-parole period, and that there will be a third of the non-parole period remitted for good behaviour. On that two thirds of the non-parole period expiring the prisoner will be eligible for automatic release.

Members interjecting:

The Hon. K.T. GRIFFIN: Release is automatic: regardless of how the Government may seek to dress it up, that release is automatic. The Parole Board sets conditions for release, but those conditions are not onerous on any prisoner who is released. The general form of those conditions is set out in a letter from the Attorney-General to me dated 14 March 1984, in which he says that, generally, each set of conditions will contain the following:

That you report in person to the North East District Office of the Department of Correctional Services at Avco Building, 581

North East Road, Gilles Plains, S.A. telephone 261 6622 once each week commencing on [a particular date] for the period of your parole order, until otherwise directed in writing by the parole officer to whom you are from time to time assigned for supervision.

Other standard conditions are as follows:

(a) That you shall not commit any offence.

(b) That you shall be under the supervision of a parole office and that you shall obey the reasonable directions of the parole officer which include:

1. That you be of good behaviour, keep the peace towards persons, and do not commit any breach of the law.
2. That you do not frequent undesirable places or associate with undesirable people.
3. That you carry out faithfully all instructions and requirements of the parole officer under whose supervision you have from time to time been placed.
4. That you report as and when required by the parole officer.
5. That you attend for interviews as and when required by the parole officer.
6. That you do not attempt to depart from the State of South Australia without the prior written permission of the parole officer.
7. That immediately upon your release you report to the parole officer.
8. That you obey the directions of your parole officer with regard to your employment and accommodation.

The prisoner has to agree to those conditions. I bet that there are not very many, if any, prisoners who will not agree to those conditions.

The Hon. Frank Blevins: Some haven't.

The Hon. K.T. GRIFFIN: Some may not have agreed only because they did not want to be tied to parole and wanted to get out absolutely free when their period of remission for good behaviour was taken into account, and thereafter would not be subject to any scrutiny by the Parole Board. The Parole Board does not, in fact, have any power. The setting of the sorts of conditions to which I have referred is not real power, so there is no effective control over release. It is all very well for the courts to be required to fix a sentence, and it is all very well to say that prisoners did not have a definite release date, but, as I have indicated, the courts have previously fixed, in effect, a maximum and minimum period of sentence so that there was certainty, and now there is lenient certainty for those prisoners under the Government's minimum non-parole period reduced by one-third followed by automatic release.

This has created complete uncertainty for the public at large. The Chairman of the Parole Board has indicated that recidivism is low. Periodically we have seen press statements as to what that recidivism rate is. I think that it has fluctuated, according to who makes the statements, from about 7 per cent to 9 per cent or 10 per cent of those who have been released. The Government and the Chairman of the Parole Board say that that is low, and maybe it is, statistically speaking, if the statistics are correct and if recidivism as referred to in those statistics is adequately defined.

I have heard a suggestion that departmental figures on recidivism regard an offender who is released and commits the same or a similar offence as being a recidivist, but a prisoner who is released and commits a different offence is not a recidivist. Regardless of how one describes recidivism, and regardless of how low recidivism may be, that is not, in my view, an accurate picture, because what one has to do when considering recidivism is take into account the seriousness of the offence that is subsequently committed by a released prisoner and the offence for which the prisoner was originally committed to prison. That is a better reflection of the extent and seriousness of recidivism rather than saying that there have been 459 prisoners released since the new scheme came into operation and that only maybe 6 per cent to 9 per cent (or whatever the figure) have been returned to prison or have committed other offences.

The Leader of the Opposition in the other place has drawn attention on a number of occasions to the sorts of prisoners who are being released under the automatic release provisions of this Government's parole system, and has drawn attention to the seriousness of those offences for which the prisoner had been originally committed and subsequently released. Only last week he drew attention to the fact that a prisoner who had been imprisoned on rape charges and whose full sentence would have expired in 1990 was released in June this year after serving 18 months of an eight year sentence and was arrested again and charged on four counts of rape, two counts of gross indecency and two counts of kidnapping.

Earlier this year, in August, the Liberal Party drew attention to the case of a prisoner who was sentenced to five years gaol in March 1981 for rape, robbery with violence, common assault, assaulting police and breaking parole and who was released on 4 April this year but was returned to gaol on 28 April after being charged with murder. Yet another person, a prisoner who had been sentenced in April 1982 to seven years for manslaughter, had been released in April this year and was back in Adelaide Gaol for a breach of parole and another offence.

The Hon. Anne Levy: Do you realise you have been going for 35 minutes?

The PRESIDENT: Order!

The Hon. C.J. Sumner: Time expires at 3.15 p.m.

The Hon. K.T. GRIFFIN: Time can be extended. There are a number of other instances of persons convicted of serious crimes who have been released significantly earlier than they would otherwise have been available for release. Those persons have been identified by the Leader of the Opposition in another place as having been convicted of serious offences such as rape, malicious shooting, armed assault, attempted murder, armed robbery, manslaughter, burglary, and a variety of other offences, and released in May and July this year when, in fact, their sentences expired in 1989, 1990, 1991, and 1992. That is a very serious reflection on the Government's parole system.

There are many other issues to which I could refer in respect of parole, but I am conscious of the fact that our time to consider this matter is rapidly running out. To ensure that the Government has adequate time to respond, I do not propose to identify all the other issues, but suffice to say that there are matters of serious concern in the operation of the parole system, the extent to which prisoners have been able to exert influence over the prison administration in one way or another (particularly the Prisoners Action Group) and have for themselves gained a great deal of power and authority within the prison system, putting the community at large at more serious risk than it has been for some considerable time. Therefore, I support the motion.

The Hon. I. GILFILLAN: My advice from within Yatala concerning the drug issue is that Holland was suffering from an overdose and that other prisoners were flabbergasted at what happened. They believe that it is an indication of how much the situation has improved, rather than deteriorated. That may sound rather illogical, except that one quarter of a gram of good quality heroin is sufficient to overdose; in other words, an amount the size of a fingernail could overdose four people. Security would have to be almost inhuman to prevent those amounts of drugs going into Yatala. If people were determined to move it in it is almost a physical impossibility to have security so tight as to prevent it.

At least half the prisoners were armed 2½ years ago because of the drug warfare that was occurring. Heroin was

available by the pound if prisoners wanted it, and shotguns were smuggled in. At that time the Opposition was responsible for security. Presently the amount of drugs in the prison is probably one-tenth of what it was when the Opposition was in Government. I believe that the issue is still there and is an important issue, but the position is now much better than it was when the Liberal Party was in Government.

The Hon. L.H. Davis: Where are you getting this advice?

The Hon. I. GILFILLAN: From prisoner bodies. I believe those comments are significant. I do not want to diminish the importance of the issue because it is in everyone's interest to have the penal system in the best possible order, with efficiency and required discipline the best it can be. However, the aims are a little more clouded. The Democrats' aim is to mete out the proper degree of punishment commensurate with the crime and to produce the best state of preparedness for prisoners to return to society when they have paid the penalty for their crime. The Judiciary fixes this punishment, and under the current legislation a more predictable parole period can now be set without this indeterminate and vague factor that previously applied.

There will always be horrendous crimes and they are a blot on our society. Worrell was on parole, and that was under the old legislation. We should be protecting the victims of crime and should be more conscious of the way in which we rehabilitate the people who are convicted of crimes and put into prisons. It is not just a matter of incarcerating people like animals and then expecting them, because they have been in prison longer, to behave better. It just does not work that way. I believe that the Opposition has been conducting a sort of X and R rated scaremongering in relation to the events and incidents that have happened because of prisoners coming out on parole and re-offending. There has been a history of re-offenders in the penal system. The whole system needs to be reviewed and our motives properly analysed.

I am not diminishing the importance of trying, in every way, to diminish the recidivism and the horrendous acts of people who commit ghastly crimes in our society, either those who have been in prison or those who have not. I do not believe that the present Government can be accused of taking any step to have no trouble at any cost. I take the Minister to task because I believe he has been too severe in relation to a home leave measure that could have applied at Yatala. I do not consider that there has been a falling over backwards to meet all the prisoners' demands. In fact, I know that in many cases the prisoners feel quite resentful because of the hard stand of the current Minister. I am not using the time available to criticise the Minister, but make the point that I do not believe that either he or the present Government has gone soft to the extent that this urgency motion has been argued. This is a difficult issue. Certainly, there will be faults in the way in which the parole system is administered. There will always be recidivism. But, I do not believe that it is sensible to wave it around, scaremongering in front of the public. I do not believe that it is the fault of the current legislation.

The Hon. FRANK BLEVINS (Minister of Correctional Services): Obviously, I think that this motion has been a complete and utter waste of the Parliament's time. The Opposition seems to find it difficult during normal Question Time to fill the allotted hour with responsible and sensible questions. I appreciate its difficulty. It has been apparent to all members on this side of the Chamber that that has been the case. But, I do not think that using such a sensitive issue as the question of prison discipline and offenders to fill in an hour and to attempt to get a cheap headline is a very sensible use of the Opposition's time.

For the purpose of brevity, I will attempt to go through the farrago of misstatements, hyperbole and nonsense that was presented to the Council by the Hon. Mr Cameron, and attempt to deal with the question of the parole system, which appears to be the Hon. Mr Griffin's particular hangup. As I stated yesterday in Question Time, any incident of drug taking, whether in the community or in prisons, is something I absolutely deplore. The fact that drugs are documented so extensively in our community absolutely ensures that there will be drugs in our prisons. Where there is contact between the prisons and the world outside inevitably certain commodities will be involved in illegal trafficking.

If one could put prisoners on an island and leave them to fend for themselves without any contact with the outside world, then it could be prevented. Of course, we cannot do that. There is a large amount of daily contact between the prison and the outside community and, it is something, when handled sensibly, that I try to encourage. For example, requests from the media are handled quickly and I would argue that our prisons are more open prisons in relation to the community and the media than are prisons in any other State and almost any other prison system that has been described to me.

I think that that is good, because the information on what occurs in the prisons is available to the media without censorship and, therefore, is available to the community. In all these areas, whether it is in education, pastoral care or whatever, it increases the degree of availability—the degree of contact with the outside world. Where you have that higher degree of contact there will be a higher incidence of illegal trafficking.

Neither the Government nor I as Minister will attempt to close up the prison system to all outside contact. That would be unwarranted, based on the facts. The situation is a real problem but is not sufficiently serious that we should overreact and minimise contact between the prison and the outside community. There will be no overreaction from this Government—but there will be action. In the second paragraph of his speech the Hon. Mr Cameron said that I adopted the attitude in the Council yesterday of saying that there will always be drugs in our prisons and that that is not good enough. That is fact: it is a clear statement of fact. Also, I said that I was not going to mislead the Council by saying that I, unlike every other Minister of Correctional Services in the world, have the solution. I do not.

What I will do, and what we are doing, is taking every reasonable measure to prevent drug trafficking in Yatala, and I argue that we are far more successful today for a whole range of reasons that I will outline in a moment than was the previous Government. I believe that this is probably the most dishonest and reactionary matter of urgency that it has ever been my misfortune to read. It states:

> That in view of the recent incidents in Yatala Labour Prison the Government must immediately review its deliberate policy of more lenient treatment and less discipline of prisoners.

There was no evidence advanced in support of that at all, because it is quite contrary to the facts. The facts are that we inherited a prison system in 1982 that was in total and utter chaos. If people seem to doubt that they should go back to the Clarkson Royal Commission initiated during the Opposition's term in Government when there was an almost total breakdown in our prison system.

The Hon. K.T. Griffin: That's nonsense.

The Hon. FRANK BLEVINS: I did not interject on the honourable member—

The Hon. M.B. Cameron: When did the prison burn?

The PRESIDENT: Order!

The Hon. FRANK BLEVINS: We inherited that system after three years of Liberal Party rule. I say in fairness that

the problem did not start in 1979: it started many years before that and it is an indictment of Governments of both persuasions—

The Hon. K.T. Griffin: Nine years of Dunstan Government!

The Hon. FRANK BLEVINS: Indeed, and I do not shy away from that. I would appreciate not having interjections made, just as I did not interject earlier. Nevertheless, I would be happy to debate that matter with the honourable member if interjections are permitted. It is an indictment of all Governments over the past couple of decades that the prison system arrived as it did in 1982 and early 1983 in total and utter chaos. The previous Government started to address the problem, and I give it credit for that action, but it was far too late as far as the community was concerned. It will take us a considerable time still to get prisons in South Australia to be something of which we can be proud (if one can ever be proud of prisons).

My argument is that that will occur and that is occurring at an accelerated rate. The Hon. Mr Cameron made many incredible statements, such as his reference to the decline in the authority of prison officers. I argue that that is absolute nonsense. One of the first things I did, and I have been doing it constantly since, is to state to prison officers at mass meetings, at meetings of their delegates and to their union, that certain practices within the prisons had declined to a state that was unacceptable to the Government. I have urged prison officers, whether they be chiefs or GDs, to take control of their own occupations within the prison and do the job that they are paid to do, and they will have my support.

The Hon. R.J. Ritson: Why were they—

The PRESIDENT: Order!

The Hon. FRANK BLEVINS: In regard to prison officers at Yatala, that has been quite a difficult concept to get over, because there is no doubt that besides neglecting our prisons in this State we also neglected our prison officers. We gave them a lousy three weeks or four weeks training when they came into the system, perhaps 20 or 30 years ago, and we have left them alone ever since; we have not wanted to know them. They work in some of our prisons under the most appalling conditions and no-one has cared two hoots about prison officers, let alone the prisoners. That situation is being addressed.

To then go to the prison officers and say that this is what we want to do and we want you to do it with us is different from what they have had over the past couple of decades or so. It is difficult for them, but I am proud of them as a group and believe that they are superb. They are responding well to the measures that we are implementing to regain the degree of control that we want within our prisons.

The Hon. I. Gilfillan: They are pretty well paid.

The Hon. FRANK BLEVINS: They earn it. The Hon. Mr Gilfillan interjects that they are pretty well paid. Certainly, they are not paid as well as members of Parliament, I can assure the honourable member of that, and I know which job I would rather do. The opportunity is there for anyone to volunteer to be a prison officer, and there are not too many.

Further in his speech the Hon. Mr Cameron said that the public should know too that our parole system is not working and that the full facts are being covered up. What full facts? Any facts and figures or papers that I have are available to the Opposition. I have told the Opposition clearly that that is the case. Also, to a greater extent than in the case of any other Minister, that material is available to the media. The media can interview prisoners and speak to them directly. There is no censorship of that. To say that we are covering up anything is nonsense. In fact, when we have information that could be useful to the media to get out to the public we notify the media on the occasion of incidents within our gaols to ensure that the media gets the information correct, even before it hears it from elsewhere. There is no question of covering up anything that occurs in our prison system in regard to the community. However, the Hon. Mr Cameron did make one statement that was entirely correct. He stated:

> Prisoners must be treated fairly. They must also be treated firmly.

I agree with that statement completely. That was possibly the only point in his speech with which I did agree. We cannot and ought not degrade ourselves by treating our prisoners as some kind of animals. We do not want to do that but, if we did want to, we would not be permitted and that is as it should be. Everyone should remember that prisoners have constant and unlimited access to the Ombudsman—and that is how it should be. In Correctional Services we work within the law. The law states what we can do and what we cannot do, and we apply the law—that is all. If we attempted to overstep the law it would be forcibly brought to our attention by representatives of prisoners, by their legal representatives or by the Ombudsman, and that is how it should be. Everything we do, we do openly; we treat prisoners fairly under the law, but we treat them firmly.

I do not want to go through the case of Mr Holland who, it is alleged, took an overdose of some illegal substance. I think I covered that well yesterday. All I can say is that the report to me, the indications from his parole officer, was that he was involved in drugs before he came to Yatala. I have great hesitation in discussing any individual's case in Parliament.

If others speak out and discuss the case, as have the prisoner's parents, I think that to some extent I should have the right to redress the balance. I will not take that right to an extreme and outline the complete history of any prisoner, but the Hon. Mr Cameron has placed me at a strong disadvantage by citing the alleged facts as outlined by the prisoner's parents, while I do not have the full freedom to respond to those alleged facts, and that is what the Hon. Mr Cameron did. I will not respond in detail by outlining the private affairs of the prisoner concerned. Therefore, I am at a disadvantage in that area. Certain things are easily said by parents or by prisoners, but they do not necessarily line up with the facts. In fact, I know the circumstances in greater depth than does the Hon. Mr Cameron. If the Hon. Mr Cameron—

The PRESIDENT: Order! The time for debating the motion has expired.

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

> That Orders of the Day be postponed until the conclusion of the Hon. Mr Blevins's address.

Motion carried.

The Hon. FRANK BLEVINS: I point out that previous speakers took 45 minutes. In the interests of fairness, I expect that members would not object to my taking a similar period.

The Hon. M.B. Cameron: Thirty minutes.

The Hon. FRANK BLEVINS: It is now 46 minutes, because the Leader is interjecting. The whole thrust of the Hon. Mr Cameron's speech was that somehow the Government has tipped the scale in favour of prisoners. That is an absurd notion which really flies in the face of the facts. I think the Hon. Mr Gilfillan can confirm that. The Hon. Mr Gilfillan alluded to a recent dispute that I have had with prisoners at Yatala. I think I have met the prisoners committee at Yatala twice in the six months that I have been Minister. I think that is fair enough, because I am the Minister for prisoners, not just for prisons and prison officers. After the last meeting, the prisoners were very unhappy because I tightened up in an area that I think required very

firm action. The prisoners then complained to the Hon. Mr Gilfillan, who in turn complained to me.

I have in my possession what could be termed an 'X-rated letter' sent to me by a prisoner at Yatala following that meeting. The letter contains some charming expressions, as follows:

> Your refusal on the daily programme at Yatala is typical of this system . . . pull the rug out from under our feet. Just look out we don't pull the rug out from under your feet. You dog. I heard that—

a prisoner's name is then mentioned—

> called you a scum bag. Personally, I think he was flattering you.

The letter then becomes obscene. In deference to the sensibilities of the Hon. Mr Griffin, I will not read any further. I assure honourable members that, by and large, prisoners in this State appreciate our fairness. They appreciate that fairness, but they certainly do not get everything they ask for. Certainly, on occasions such as this—when I think the system has been freer than is warranted—the system has been altered.

To suggest that this Government, and I as Minister in particular, cave in to prisoners is nonsense. There have been sit-ins and mini riots, but there have been no serious riots since I have been Minister, and that is different from the period from 1979 to 1982. There have also been sit-ins on the roof of the prison. However, not one prisoner has gained anything from these actions. My response has been that, when they go back to their cells, their complaints will be put through the normal channels. If prisoners touch another person or prison property they are dealt with. In fact, we deal with prisoners who do that very firmly indeed.

No prisoner has gained anything from this Government unless they applied for it through the normal channels. We have not responded to pressure one iota. Those who know me would know that that is so. I appreciate that the Hon. Mr Cameron could not place in *Hansard* the names of those involved in the incidents he has mentioned. However, the Opposition in this State has been running a campaign, I suppose parallel to Mr Peacock's miserable Federal campaign on law and order. I would appreciate it if the Opposition gave me names so that the incidents can be investigated. If there is any question of illegality, the names will be given to the police. The Opposition should have done that in the first place so that the police could investigate the claims. The Opposition never supplies any detail. All we get is a headline—a throw away line. The Opposition does not come up with the hard facts.

The Hon. Mr Cameron said that there was a problem at the cottages. I think he said that a woman had been in there at night. The Hon. Mr Cameron said that he had the name of the prisoner involved and that he would give it to me. I will be delighted to receive the name and I will then investigate the matter. The Hon. Mr Cameron was quite wrong when he said that the cottages were not patrolled at night. My information is that that is not the case. In fact, there are three officers on second watch, which is from midnight to 8 a.m.

The Hon. M.B. Cameron: They must be blind.

The Hon. FRANK BLEVINS: I strongly object to that. The prison officers are not blind. Prison officers are not here to defend themselves, so the Hon. Mr Cameron should not make remarks like that about people who are not present. They are very conscientious officers who are doing a much more difficult job for a quarter of the pay that the Hon. Mr Cameron receives. One officer stays in the control room while two other officers do patrols across the Northfield Prison Complex. They are random patrols which include the cottages.

When I was at the cottages last week a prisoner complained to me about patrols during the night. He complained that we gave prisoners some responsibility but that the prison officers patrolled during the night checking up on them. The prisoner made that complaint to me during a general meeting of prisoners.

Therefore, the Hon. Mr Cameron's outrageous statements are blatant untruths. If the information was given to the Hon. Mr Cameron by a prison officer, that prison officer should have informed the Department of Correctional Services, and he is negligent in his duty if he did not do that. If the Hon. Mr Cameron gives me names, we will conduct an investigation. If there was a person illegally in the Northfield Prison Complex, that is a matter for the police and the Hon. Mr Cameron should give his information to the police.

I would like to take more of the Council's time on this matter, but in deference to getting on with more important business I will not do that. The Hon. Mr Cameron alleged that we will not support prison officers. The matter specifically relates to Yatala. Yatala is regarded as the most generously staffed prison by anyone who has been involved in correctional services. There are at least two Correctional Services Department personnel at Yatala for every prisoner—a ratio of 2:1. The position at Adelaide Gaol is just about reversed.

At Yatala there are about 125 prisoners (the number fluctuates) and about 250 Correctional Services Department staff. Without doubt Yatala is the most generously staffed prison that anyone has ever heard of. I agree that we do not train the staff very well, but we are addressing that matter; but to suggest that we do not supply enough staff is wrong. We are also restructuring the internal workings of Yatala, and I hope that will commence on 5 November, so that the staff will be used more effectively. We have plenty of staff, but they are not used as effectively as they might be. As from 5 November, hopefully that will change.

I do not want to debate the parole legislation with the Opposition. I am introducing two Bills into the Parliament today, which are technical Bills and not great policy statements. I am sure that the Opposition will use the opportunity of debates on those Bills for the Hon. Mr Griffin to work out his problems. The principle behind the new parole legislation is that the court alone is the appropriate body to incarcerate citizens in South Australia. The police, the Government, the Opposition or a Parole Board, however well meaning, should not have the right to say how long a person stays in gaol. That is the whole basis of our legislation, and we will not be moved from that.

The Hon. Mr Cameron went on in a similar vein to those things that I have mentioned. If there is anything in particular that he wants me to respond to I shall be happy to do so. Briefly, I will give the headings of some of the things that have occurred in Yatala in the past few months to ensure that the control of the Department of Correctional Services is strengthened daily. We work on the basis, as I stated when opening my address in this debate, that prisoners in this State are managed lawfully and openly and in full co-operation with all external agencies that have an interest in the system, such as the Ombudsman. We have instituted for the first time an incident reporting service so that the incidents as they occur in the gaol are reported to the management and to the Department, so that we can see for the first time what is happening in our gaols. Nobody even reported these things on any systematic basis prior to 1982.

We have appointed a prosecutions officer at Yatala, who is on prosecutions full time. In the six months ended 30 June 1984, 261 charges were laid; his job is to prosecute. So, to suggest that any breach of prison regulations, where there is evidence for prosecution, is not prosecuted is incorrect. We have formalised, also, the operation of the response squad, and it is an excellent squad. If a situation in the gaol

gets to a stage where a stronger response is required than the normal response that the prison officers make, we have a response squad. As soon as the order is given, that response squad will get its gear on and go to point A, where a problem looks like developing. It is there very swiftly—as quickly as five minutes. When the squad appears, the trouble stops. The response squad has a superb record of showing itself and stopping trouble. It has my full authority, under control, to do that. Its members are professionals, and it does its job very well.

We have sent officers interstate for training in riot control. We have developed clear policy statements so that everybody in the prison system knows where they stand. One of the most significant things that we are doing is opening the industries complex which, as everyone would know, was built some time ago but which has never been used because the staffing structure within the prison did not allow for sufficient flexibility to use it.

So, we are dividing the prison into three separate groups: operations, industry and accommodation. The start of that operation, so that we can use our staff more effectively, is on 5 November. We can also get prisoners to work. We can give them meaningful work to do, which, to our shame, we have not been able to do in Yatala. I could go on and on; I have rather an extensive list.

It is nonsense to suggest, as this rather poorly worded and presented motion states, that it is the Government's deliberate policy of more lenient treatment and less discipline of prisoners. Absolutely the reverse is the case. Prison discipline had got away from successive Governments, but it is being reinstated now. It is being reinstated gradually, but firmly, so that everyone in the system knows where we are going. I can assure members that everyone involved—prison officers, prisoners, members of Parliament, the media—knows that that is occurring because they are all made fully aware of the things that we are doing. The problems in our system will not disappear overnight, but I can assure the Council and the community in South Australia that we are managing the problems in the prisons well and to the best of our ability and that our control is increasing. That is a good thing because the situation did, without a doubt, over the past five years or so degenerate to an unacceptable state.

I deplore this urgency motion. The issues are far too important to have been treated in the way in which they were by the Opposition today, with suggestions—no facts, no information, but just a load of unsupported assertions—put in the most inflammatory and hyperbolic manner. It does the Opposition absolutely no credit at all, and I therefore have no hesitation in rejecting this urgency motion. If it was something that would be firmly put I would be delighted to amend it in a way that showed the people in South Australia just what the real picture was. In conclusion, I took half an hour—

The Hon. J.C. Burdett: You took more than half an hour.

The Hon. FRANK BLEVINS: I took half an hour. It is all here; it was 3.02 p.m. when the Hon. Mr Gilfillan sat down. I have taken half an hour, which is 15 minutes less than Opposition speakers took, which shows my generosity of spirit. If members opposite wished me to speak for a shorter period, they should have known me well enough by now to know that I respond only in kind. If they had taken 15 minutes or 20 minutes, I would have taken exactly the same time.

Orders of the Day called on; motion lapsed.

QUESTION ON NOTICE

SPLATT ROYAL COMMISSION

The Hon. K.T. GRIFFIN (on notice) asked the Attorney-General:

1. What is the final cost of the Splatt Royal Commission?
2. What is the detail of that cost, including, but without limiting, the detail:
   (a) the fees to solicitors and counsel for each party represented at the Commission, including fees paid or payable by the Legal Services Commission;
   (b) the cost of counsel, solicitors and clerks in the Crown Solicitor's office who were involved in the Royal Commission;
   (c) the cost of the Secretary to the Royal Commission;
   (d) the fees to the Royal Commissioner and the cost of his accommodation and travel (intrastate and interstate);
   (e) the cost of the transcript of proceedings;
   (f) the cost of orderlies and other staff assisting the Commission;
   (g) the cost of prison officers in arranging Splatt's attendance at the Commission;
   (h) the cost of witnesses, including the costs of such witnesses met by the Legal Services Commission; and
   (i) the costs of any laboratories (Government or private) and testing of materials?
3. What was the cost of printing the Report of the Royal Commissioner?
4. What costs and fees remain unpaid, to whom are those costs and fees owing, and when was each cost and fee incurred?

The Hon. C.J. SUMNER: The answers are as follows:

	$
1. Direct expenditure	1 368 604.14
Indirect expenditure (See 2 *(b)* and *(g)*) approximately	217 000.00
	$1 585 604.14

2. *(a)* The Legal Services Commission has not made any payments to solicitors or counsel in respect of the Commission. However, to date the Legal Services Commission has made available $250 000 to the Government to assist to defray the legal costs of representation of Mr Splatt before the Commission.

	$
(a) Fees to counsel and solicitors	354 707.95
(b) Estimate $167 000	
(c) $20 252.92	
(d) Fees $141 571; travelling expenses $5 526.40	
(e) $115 878.07	
(f) $22 688.32	
(g) $50 000 estimate	
(h)—	
Witnesses fees	18 359.50
Travel expenses	25 785.33
Accommodation expenses	33 230.87
	$77 375.70
Scientists fees	$598 864.29
(i) Laboratories $1 940, testing materials $4 248.95 (Note costs paid to scientists for performing tests included in fees paid to scientists (see *(h)* above).	
Sundry expenses	$31 739.49

3. $8 316.18 (unpaid). Reprint $3 850 (unpaid).

4. Although it is likely that further fees will be paid to some persons, it is not possible at present to predict the quantum of such payments. In relation to the three lawyers who represented Mr Splatt, namely Mr M. Abbott, Mrs M. Shaw and Mr P. Norman, discussions are occurring between

them and the Crown Solicitor on some outstanding cost questions. If this cannot be resolved then their bills may have to be taxed by a Master of the Supreme Court. It may be that further payments will be made.

Apart from the abovenamed lawyers, there are six witnesses/consultants whose accounts have not been finalised. These persons are:

(1) Professor J. Haken.
(2) Mr P. Hastwell.
(3) Dr T. Beer.
(4) Mr M. Pailthorpe.
(5) Mr G. Dickinson.
(6) Mrs M. Millingen.

The Crown is awaiting further information from these persons as to work performed and charges made in respect of such work. Once again, it is not possible to state what, if anything, remains to be paid to these persons. The Crown will not be making any further payment at this point of time. In addition to this a final telephone account is yet to be received and an account for the Government Printer for the printing of the reprints (see 3 above) is yet to be paid.

CHURCH OF SCIENTOLOGY

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

1. That a Select Committee of the Legislative Council be established to inquire into and report upon the activities of the Church of Scientology Incorporated and in particular the method of recruiting used by the church and methods of obtaining payment for the services provided by the church.

2. That the committee consist of six members and that the quorum of members necessary to be present at all meetings of the committee be fixed at four members, and that Standing Order No. 389 be so far suspended as to enable the Chairman of the committee to have a deliberative vote only.

I believe that an inquiry in the form of a Select Committee is warranted into the activities of the Church of Scientology Incorporated. Let me first recount the occasions in comparatively recent times when the activitie of the church have come under public notice in South Australia. The first is recounted in the *Advertiser* of 9 June 1984:

Salvation Army warns about scientologists: A Salvation Army official yesterday warned young unemployed people about signing contracts tying them to the Church of Scientology. The co-ordinator of the Army's youth accommodation centre at Pooraka, Mr Mike Berris, gave the warning after discovering two men staying at the centre had become involved with the church.

'These guys were in Adelaide late last month and were approached in Waymouth Street by people from the Dianetics Centre and offered a free evaluation,' Mr Berris said. 'They were then told that if they worked at the centre they would be given training and counselling free of charge. But before they could begin work they were told they had to sign contracts.

'Apparently these bound them to the scientologists for 2½ years and said that if they quit the centre before then they would have to pay for all the courses they had taken. Then the other day they received an invoice charging them $499.16 for a basic study manual which they had not even received.' One of the men involved, Peter Matthews, 20, said yesterday he would never have signed the contract if he had known he could have become liable for thousands of dollars in fees. 'I went in there for help and for a job which they promised and got stuck with this contract,' Mr Matthews said. 'I don't have that much education and I'm not familiar with contracts. I think they took advantage of me, especially because they have not paid us [Matthews and companion Philip Watts, 24] and they keep putting it of.'

A spokesman for the church denied the two men had not been fully informed about their contracts. 'The reason we get people to sign agreements is that in the past people have received very valuable auditing and training from us and then left without giving anything in return,' he said. 'So we now ask them to sign an agreement saying they will work for us for either 2½ or five years in return for the training and auditing we give them.'

The spokesman said it was a usual practice to send people invoices for manuals and services before they received them. 'Everything was clearly explained to Matthews and Watts before they signed and I don't see why they are complaining', he said. The spokesman said the two would not be held to their contracts because they were 'obviously unhappy about it' and because they had not received any training as yet. Any money owing to the two would be paid next Tuesday.

A senior investigator with the Department of Labour, Mr Ian Barry, advised Matthews and Watts to contact the Department with their complaints so an investigation could be made. Mr Barry said the Department had received a number of complaints about the church. 'The important thing for everyone to know is that before signing any sort of contract they should seek legal advice on it,' Mr Barry said.

The *Advertiser* then shows a copy of the bill headed 'Church of Scientology' set out in the usual accounting form and showing the cash sale at $499.16. There is then shown a photograph of the young man in question holding his bill. In fairness to the Church of Scientology, I must add that they wrote to me on 15 October, as follows:

Dear Mr Burdett,

In our meeting you referred to this story, Mr Griffiths has since informed you that an undertaking was given to Consumer Affairs, and it has always been the case that an individual who leaves our staff is not obliged to pay for services received if he or she does not wish to continue in scientology. I thought you might be interested to see this statement from one of the men concerned that indicates his attitude to the affair, and the way it was blown up by other parties.

Yours sincerely,
Signed—Stewart Payne, Public Affairs Director.

The statement of Phillip Watts reads:

I, Phillip Watts, wish it to be known that I never wanted any arguments or trouble with the church of Scientology but did wish to leave on good terms. I came to the church in June 1984 and only stayed about two weeks. I, personally, did not wish to be connected with any hassle—newspaper articles or anything. I believe I could have left scientology on friendly terms. I came in with a friend Peter Matthews whose name was mentioned in the paper, but I cannot be sure he wanted it mentioned or not.

I met a few nice people in the church and I believe in meeting people and getting to know them before drawing conclusions. I don't really believe in branding people with bad names unless all circumstances and evidence proves otherwise. I don't agree with everything in scientology, for example, prices on books and courses, but some of the people seem to be really friendly and kindly.

Signed by Phillip M. Watts.
Witnessed by a JP on 12.10.84.

Members will note that it was Peter Matthews not Philip Watts who made the statement to the *Advertiser*. As for the suggestion—'I cannot be sure whether he wanted it' (his name mentioned or not)—well, he obviously posed voluntarily for the photograph and gave quite a long statement to the *Advertiser*. As to the statement 'that an individual who leaves our staff is not obliged to pay for services received if he or she does not wish to continue in scientology'—why send the bill, and in a standard businesslike form? The next report appeared in the *Advertiser* of 8 August 1984. It states:

Woman exploited by scientologists: MLC.

A woman who paid $657 to the Church of Scientology had been subjected to a 'deplorable episode of exploitation', the Legislative Council was told yesterday. Dr Ritson (Liberal) said he had received a letter from a constitutent whose relative had been approached by a member of the church to take part in a survey in King William Street, City.

The woman had gone with a church member to the church's Waymouth Street headquarters where she had been 'questioned and counselled' for about six hours and then 'influenced' into signing a contract for a course in scientology, costing $400 plus $257 for books. The woman had later recovered the $400 but had been told the church would not accept the books for return.

Dr Ritson asked the Attorney-General, Mr Sumner, if any law prevented people being 'accosted' in city streets by people 'pretending' to conduct surveys and distributing handbills. He asked if there was any way of providing a 'cooling-off' period in relation to contracts signed or goods bought after 'unsolicited contact' in the streets. Mr Sumner said if Dr Ritson provided him with the details of the case, he would refer the matter to the Commissioner of Consumer Affairs.

The next case involved Mrs Kate Sivam who, to use the words of the *Advertiser* of 10 September 1984, signed up for courses worth $24 000 while emotionally distressed. You will recall, Mr President, that Mrs Sivam went to Consumer Affairs and was able to recover the money which had been paid. The report in the *Advertiser* says in part:

Mrs Sivam told the *Advertiser* she had been approached by church members in May this year, shortly after her husband died in a road accident. 'Emotionally, I was a mess and these people came up to me and said they could give counselling that would help me', she said. 'They took me to their office (in Waymouth Street, City) and kept me there until about two or three the next morning...

and I repeat 'until two or three the next morning'—

by which time I had signed up for all these expensive courses worth $24 000. When I came to my senses I realised I had been taken advantage of and I went to Consumer Affairs.

The Commissioner of Consumer Affairs, Mr M.A. Noblet, said his Department had received only three or four official complaints about the church in the past 12 months.

'However, we get a great deal more people coming in making inquiries about the church and its activities but who are too intimidated or cautious to make an official complaint in writing,' Mr Noblet said. One case I have been told of by an investigator is of a couple who came in to check on the church and told us they had sold their house so they could pay the church $70 000. When we informed them this might not be in their best interest and that they should make an official complaint they shied off, saying 'No, they didn't want to get in trouble with the church'.

The church's director of official affairs in South Australia, Miss Juanita Steele, said the attacks on the church were 'totally unwarranted' and had come from a 'fairly bigoted viewpoint' which was set against minority religions. 'There seems to have been a lot of trouble stirred about a case that was resolved quickly and without the need for any outside intervention', Miss Steel said.

'Mrs Sivam purchased courses off us with the aid of a loan. It was not her money, and within a week of her deciding to discontinue the courses we had paid back more than $20 000 of the money, which I think is a very quick resolution.'

Miss Steele said the balance of Mrs Sivam's money also had been returned. 'As for this story about the pensioners and their $70 000, it is a fable,' she said. Mr Noblet said that before people signed any forms making a financial commitment to the church they should discuss the documents with and have them examined by a qualified solicitor.

The story of Mrs Sivam was taken up on *Nationwide* and by Trevor Foord of 5DN. On the 5DN talkback programme numerous people rang in with similar stories of alleged exploitation. There was an article in two parts in the *News* of 19 and 20 September relating to the scientologists and other minority religious groups. I did have some contacts before the Mrs Sivam case, but since I made public statements about that case I have received numerous letters and phone calls, the most recent of them this morning (there were several such cases this morning) alleging high pressure approaches, usually made when the person concerned was in an emotional, depressed or disturbed state and alleging demands for 'up front' payments of large sums of money.

Most of the persons who contacted me wished to remain anonymous and did not want me to take up their case with the Church of Scientology. You will recall, Mr President, that in the *Advertiser* article which I quoted Mr Noblet, the Director of the Department of Public and Consumer Affairs, referred to people coming in to make inquiries 'who are too intimidated or cautious to make an official complaint in writing'. Certainly, many of the people who contacted me and some who spoke on 5DN talkback expressed fear of some sort of pressure from the church. It is in this kind of situation (where it appears clearly that people are making allegations of exploitation but are afraid to come forward) that a Select Committee is needed as the best way of arriving at the truth and informing the Parliament and the public whether there is large scale exploitation of this kind of which the Parliament and the public should be aware.

I have had three interviews with representatives of the church, several phone calls and some correspondence. I have replied to all correspondence calling for a reply. The church denies any improper practice and has given some undertakings which, if kept, would go some distance towards allaying my misgivings. The church has made undertakings about refund of moneys. It has undertaken to identify itself outside its Waymouth Street premises as 'the Church of Scientology'and not just 'Dianetics Centre'. It has undertaken that its operators in the street will wear a badge identifying themselves as scientologists. Last Friday I observed an operator outside the Waymouth Street premises. He was not standing close enough to the sign to identify himself with it. He was not wearing a badge.

I recognised him as a Church of Scientology operator from previous observations which I had made. He followed the usual pattern of stepping in front of pedestrians on the footpath and saying he was conducting a survey. Then followed a series of questions. He did not identify himself with the Church of Scientology. The procedure is that if the person questioned answers the questions in a certain way he is invited inside the building for further questions which, as Mrs Sivam's case shows, may be very extensive indeed—until 2 o'clock or 3 o'clock the next morning. I have had my observations confirmed by other persons. I am not satisfied that the undertakings given will be satisfactorily kept, at least in the long term. One has already been broken—that of wearing a badge. I believe that these potentially exploitative procedures should be inquired into by a Select Committee now.

There is considerable literature on the activities of the organisation. The *Readers Digest* of June 1980 and September 1981 sets out a quite horrifying account particularly of harassment of anyone who speaks out against the church. The *Bulletin* of April 1984 contains a revealing account by a journalist who allowed himself to be taken inside and questioned. In the United Kingdom an article in the *Sunday Times* of 5 August 1984 reads in part:

Scientologists are planning counter-attack. The Church of Scientology is planning legal action to counteract two recent attacks on the cult by British judges. Officials of the movement, whose leaders were once banned from entering Britain for over a decade, have been in touch with their headquarters in Los Angeles to receive advice on how to deal with the damaging publicity they have received. The first attack came in a child custody case between parents who were members of the cult. Mr Justice Latey called Scientology 'corrupt, immoral, sinister and dangerous' and its founder-guru, Ron Hubbard, 'obnoxious, a charlatan, like Hitler'.

At present three options are being considered by the church, which admits it was 'caught napping' by the decision: to draw the Lord Chancellor's attention to the judge's conduct; to invite the Appeal Court to give an *ex parte* ruling on a breach of natural justice; or to join the father in the case (who is still a cult member) in an attempt to win back custody of his children, aged 10 and eight, and use the case as counter-propaganda.

But the most formidable attack came last week from the former Master of the Rolls, Lord Denning. He advocated that every religious organisation, including established churches, be required to obtain a licence to operate. 'Bogus' religions—and high in Denning's mind was Scientology—could then be refused a licence and outlawed. 'Even youngsters of 18 need protection', said Denning, 'and the Crown is the parent of the country.'

In Victoria, the Anderson Report of the late 1960s, although not of course representing the present situation, is a most comprehensive report on Scientology. The Minister of Consumer Affairs has stated that a mechanism already exists for examining particular complaints. But, his own Director-General has stated in the article which I quoted that people appeared to be 'too intimidated or cautious to make an official complaint in writing'.

Moveover, I do not think that many people would regard this as a consumer matter and go to the Department of Public and Consumer Affairs. I doubt whether I would. As the case of the two youths which I quoted testifies, there will be cases where the Department of Labour will be

regarded as being appropriate. There will be other cases where the aggrieved person will not know where to go. The Minister of Consumer Affairs has undertaken an inquiry, but this has not yet been reported, as far as I am aware. In any event, I believe that this matter has wider connotations than merely consumer aspects, and a Select Committee is the appropriate method of inquiry.

The Minister of Health has referred to an inter-departmental group inquiring into the Psychological Practices Act and hopes to introduce a Bill before the end of this session. That is, in itself, all well and good, but I am not satisfied that this will open up the activities of the Church of Scientology, and I think we need an inquiry now.

Members will, of course, be aware that Scientology was previously prohibited in South Australia following a Select Committee. The prohibition was removed following a Select Committee by the Psychological Practices Act, 1973. I am not suggesting prohibiting the organisation or the practice of Scientology but, for the reasons that I have stated, I think that the public and the Parliament should be aware of what is going on in regard to the activities of the Church of Scientology and should be informed as to whether or not there are the exploitive practices which many people allege.

To sum up, I am concerned at the high pressure, unidentified approach in the streets, followed by lengthy intensive questioning of people often in an emotional or depressed state, followed by demands for large sums of money, often in advance, for courses said to benefit the individual in question. For these reasons I have moved this motion for a Select Committee.

The Hon. R.J. RITSON: I rise to support the Hon. Mr Burdett and will make a few brief remarks in support of much of what he said. My interest in this matter goes back some years when I received a number of complaints from constituents about advertisements placed in the employment columns of the daily newspapers. These advertisements offered to unemployed persons the prospect of training as social workers. One such person, a retired school teacher, answered one of these advertisements and had expected that she would be prepared for employment in one of the caring professions, only to discover that she was audited, and asked to sign a contract and pay some money. She realised what she had got into, and got out.

At about the same time, some officers from the Department of Labour telephoned me, having heard of my interest in this subject, and informed me that young people responding to advertisements which they took to be an offer of employment, in fact, found themselves in a situation where they were working for very low wages—indeed, almost non-existent wages—for the Church of Scientology and being offered counselling in return.

There were further complaints about hand bills being handed out in Rundle Mall. There were complaints about offers to treat psychosomatic illness. Following the publicity that those constituent complaints received, I believe that there was a change in the methods employed by the church because the practices complained of seemed to tail off to the point where the complaints stopped coming in. It is worth commenting at this stage that I do not believe that it is possible or right to ban an organisation by name because of the beliefs of its members. However, there are some marked differences between the type of complaints coming in about this organisation and the type of difficulties people have with any of the other churches, be they the major churches or the minor ones.

In respect of no other church have I received complaints which centre on money. Certainly, other churches receive donations, but I have never had a constituent come to me complaining that he had paid, say, the Catholic Church for a year's confessions in advance and wanted his money back. So, as the Hon. Mr Burdett pointed out, one of the particular issues that has bothered a number of people who have had contact with the Church of Scientology has been the great difficulty in obtaining what they believe to be a just refund of moneys paid.

As I say, it is quite remarkable that of all the groups calling themselves churches this is the only church which requires (and I emphasise 'requires') payment and binds people to contracts for payment for pastoral services. One of the basic planks in the platform of the Church of Scientology is that the process of auditing, which appears to be a form of confession combined with counselling, can lead people to a higher mental state. Much of its advertising draws on that body of people who are always present in society and who have some anxieties or depression. It is my belief that the offer that is held out is held out to a rather vulnerable group of people in society.

I note that the Psychological Practices Act was passed with the specific intention of giving some protection to those vulnerable sections of society—the psychologically vulnerable people in society. That is clear from reading the Parliamentary debate of the day. It is also true that no proscribed practices have ever been promulgated under the powers given in the Act, and I understand that this is because of drafting difficulties, difficulties finding wording that would not catch all sorts of other people who are really doing something quite different from that which the Church of Scientology does.

It is common knowledge that I have a personal bias (if one likes to put it that way) in the direction of conventional psychology and psychiatry, and it is perfectly obvious that the Church of Scientology advances its own form of counselling and has a particular hatred of conventional psychology and psychiatry. I do not wish to exercise my public duty without recognising my own bias in that regard. I do not wish to see regulation of the church's beliefs in this regard, but I do believe that Parliament should and is entitled to look at the sources of the constituent complaints and look at the psychological vulnerability of the sorts of people who would tend to be attracted to this counselling process, not with a view to banning scientology, not with a view to coming to any sort of philosophical judgments whether those beliefs are superior to mine or not, but principally with a view in the first place to seeing whether some recommendations can be made to give the people some protection if they have money extracted from them in arguable circumstances.

So, the first area of disquiet is the money question, which keeps recurring and, secondly, I believe that any inquiry ought to look at the Psychological Practices Act in so far as it relates to practices which might damage the vulnerable group and make recommendations whether any regulations and legislative action, are necessary to give disenchanted people some protection. In fairness to the officers of the Church who have spoken to me and the Hon. Mr Burdett, some attempt has been made to solve the problems of particular complainants. The matter of the sale of books to which I referred a couple of months ago and to which the Hon. Mr Burdett referred in his speech has been rectified, as I understand it.

I was contacted by the church and told that, if I wished, I could inform the constituent that the money paid for the books would be refunded. So, in fairness I recognise that but, because these matters have surfaced intermittently but regularly for many years, it is quite obvious that decisions to refund moneys depend very much on the particular attitudes of the office bearers within the church from day to day or year to year, and do not depend at all on any

legal protections that persons might have in regard to the form of contracting for these services.

As the Hon. Mr Burdett said, although the assurances about proper identification had been given, there was indeed a recent breach. It may not be the church's policy not to identify itself, or a particular individual may not have been aware of the new policy of the church in this regard; I do not know. All I am saying is that from time to time the church seems to have a relapse, as it were, in terms of its recruiting methods and practices. Whilst I am grateful to the church officers who spoke with me for their assurances, on past performance there may indeed be a relapse. I support the notion of having a look at this question from the point of view of particular types of complaints received, rather than from the point of view of trying to either ban the organisation or come to some spiritual judgment as to its values or its right to believe particular things. I support the motion.

The Hon. ANNE LEVY secured the adjournment of the debate.

HINDMARSH BY-LAW

Order of the Day, Private Business, No. 2: The Hon. G.L. Bruce to move:

That by-law No. 23 of the Corporation of Hindmarsh, made on 9 August 1984 and laid on the table of this Council on 14 August 1984, be disallowed.

The Hon. G.L. BRUCE: I move:

That this Order of the Day be discharged.

Order of the Day discharged.

NATIVE VEGETATION (CLEARANCE) BILL

Adjourned debate on second reading.

(Continued from 19 September. Page 951.)

The Hon. PETER DUNN: I support the Bill introduced by the Hon. Martin Cameron in respect of native vegetation clearance. The object of this Bill is to bring in sanity and fairness to the subject of land clearance. In the past we have seen regulations introduced by the Government that have proved to be most objectionable in respect of those people subject to them—land developers in this State. As the Council would imagine, there are not huge numbers of them, because most of the development in this State has already taken place. However, those people who are affected by the regulations have been severely affected, and it is with that position in mind that the Hon. Mr Cameron introduced this Bill in an endeavour to bring some sanity and fairness into the situation. In his second reading speech he explained in detail the effects of the Bill, and I will not go into that aspect. However, I would like to highlight a couple of important factors. The Bill cleans up what has proved to be a messy and poorly thought out action by the Government. Having native vegetation clearance controls under the Planning Act is not appropriate.

The Bill seeks to clean up the profusion of Acts that now have a bearing on native vegetation clearance, and it would be of interest to Parliament for me to read out that list of Acts that affect native vegetation. They are the Architects Act, the Boilers and Pressure Vessels Act, the Builders Licensing Act, the Building Act, the City of Adelaide Development Control Act, the Coast Protection Act, the Country Fires Act, the Crown Lands Act, the Health Act and the Housing Improvement Act.

The list also includes the Industrial Safety, Health and Welfare Act, the Lifts and Cranes Act, the Local Government Act, the National Parks and Wildlife Act, the Noise Control Act, the Pastoral Act, the Planning Act, the Sandalwood Act, the Soil Conservation Act, and the South Australian Heritage Act. That is a large number of Acts which influence the clearance or manipulation of native vegetation.

The Planning Board has limited expertise in controlling native vegetation. At the moment it has tremendous power, because it can stop the clearance of vegetation and it can regulate the type of crop grown by simply stopping its growth. In fact, already it has been flagged in the wetlands report of the South-East that it is proposed to use the Planning Act to control the use of these areas. Who knows what may happen in the future in relation to the control of what legitimately belongs to a landholder.

The Hon. Ms Levy said in her contribution that if the legislation caused hardship to landholders they could apply for compensation under existing rural assistance schemes. If that is the case and landholders are suffering hardship, that situation will continue if the problem is not solved. The problem is that landholders are unable to clear the land they have purchased. They want to improve the land and thereby increase their income. If they cannot do that, it is quite reasonable to assume that they will continue to be under economic pressure and, whenever there is a slump, a drought or low rainfall, thereby lowering the quantity and quality of the crops, it is reasonable to assume that they will seek further compensation from the Government.

I do not think that the Hon. Ms Levy's argument is strong. She also accused the Soils Branch of not knowing its job. She said that the Branch would be unable to determine what is viable and what is not viable, although she implied that the Department of Environment and Planning could do that. I suggest that the Soils Branch has over 100 years of experience in this area. I suppose we could go back to the time of Mr Goyder when he set his line in South Australia. He thought that this country could be tilled for the production of crops, and that has proved to be very accurate over a long period.

The Hon. Ms Levy cited what she said was the philosophy behind the Bill, as follows:

Essentially, the underlying philosophy of the Bill is that the environmental significance of the land has less importance than agricultural significance. That is not something which would be accepted by many people.

That is an unusual statement. The Hon. Ms Levy is saying that the idea of agricultural significance—that is, the production of food for due reward for those people who work and labour to produce that food—should not be recognised in advance of environmental significance. I am not saying that environmental significance is not important. I am saying the opposite of what the Hon. Ms Levy said; that is, that agricultural significance is more important today than is environmental significance.

The Hon. Anne Levy interjecting:

The Hon. PETER DUNN: We will have to agree to disagree. We could reafforestate half of South Australia and for every hectare we might be able to run another six birds or a few more lizards. However, I doubt whether that would significantly contribute to the well being of this State or to our standard of living.

The Hon. Anne Levy interjecting:

The Hon. PETER DUNN: The Hon. Ms Levy has already had a fair go in speaking to the Bill. South Australia still has a significant amount of scrub and vegetation, and the honourable member would know that if she took the opportunity to look around the State and get out into the country. Of course, areas close to the city have been cleared.

The Hon. Anne Levy: Less than 5 per cent.

The Hon. PETER DUNN: Areas further afield to the north, north-west, west and even to the east—

The Hon. Anne Levy: There is no bush there, apart from a little saltbush.

The Hon. PETER DUNN: The honourable member is showing her ignorance. I could take the honourable member to the Maralinga lands, which were recently under the spotlight. There is an area around Emu approximately 300 miles by 300 miles which is totally covered by native vegetation and bush.

The Hon. Anne Levy: You're not going to tell me that anyone wants to clear that area for agriculture.

The Hon. PETER DUNN: There is any amount of vegetation left on Kangaroo Island, and there is a large amount of native vegetation left in the South-East. To make the blatant statement that there is only 5 per cent of native vegetation left in South Australia is quite untrue. The regulations introduced by the previous Government resulted in a large amount of clearing and applications for clearance in South Australia—far more than would have been the case if those regulations had not been introduced. I believe that if those regulations had not been introduced in that manner we would not have the problems we are facing today. As I have said, our standard of living will go down if we do not promote agriculture in this State.

Sixty per cent of South Australia's total export income comes from agriculture, based on 1982-83 figures. That has increased over the past 10 to 12 years. In the late 1960s and early 1970s South Australia had a very diversified export income from, for instance, whitegoods, the shipbuilding industry, a well developed car industry, and ancillary industries. However, because of the many regulations and imposts placed on these industries they have scampered out of this State, mostly to the eastern States. As a result, we have lost our whitegoods industry, shipbuilding industry, car manufacturing industry, and all the support industries. Today, instead of agriculture producing something less than 50 per cent of our export income, it now produces more than 60 per cent.

I believe that agriculture should be given due consideration and due reward. This legislation cuts right across that objective and does not suppport or help agriculture in any way at all. The rural industry is under great pressure at the moment in South Australia and throughout Australia. Any legislation which places this industry under greater pressure will ultimately result in the Government's leading to provide greater support. I think that will happen. I refer to today's *Australian* and the headline, 'Rural production faces a grim year with a 29 per cent decline'. The report stated:

> The real net value of rural production is predicted to decline by 29 per cent, or $3 680 million, in Australia.

If we produce in the order of 8 per cent to 10 per cent of that, it is fairly easy to work out that this State will be much worse off because of the lower income from the rural industry. Stopping further development will only inhibit the rise in the standard of living in this State, but I admit at the same time that it would be very wise to increase our secondary industries and have some export income from them. Secondary industry is not growing very fast; in fact, it is very stagnant at the moment and we have high unemployment, which is a great shame.

Adding further regulations to primary or rural industry will only bring that industry back under the pressures that secondary industry now has. If this Bill is passed it will have two or three very significant effects. It will certainly set down clear guidelines to the rural producers so that they can plan ahead, remembering that it is only for a relatively short period that this will have to apply. There are not huge areas needing to be cleared; some areas will take a fairly long time, but they will not be extensive.

Rural producers can plan ahead if they know what the Act clearly states. At the moment, it is so fractionated that it is very difficult to determine what it implies. It also gives the Government the option to purchase land if it deems it necessary because of significant flora or fauna. I am the first to admit that there are areas of that, and that the Government ultimately will be required to purchase them for the betterment of the whole State. That is very laudable, but remember that all people benefit from that, not just those people who have to look after or who border that country. The Bill neatly packages vegetative clearance. It gives guidelines to the Government, to farmers and to other affected institutions. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

TOBACCO SALES TO CHILDREN (PROHIBITION) BILL

Adjourned debate on second reading.

(Continued from 12 September. Page 770.)

The Hon. J.R. CORNWALL (Minister of Health): I rise to speak briefly in support of the Bill. The Government agrees with the Hon. Lance Milne's strategy in taking the offence of selling tobacco to minors out of the Community Welfare Act, where it now is, as he said, 'submerged under section 83'. We also agree with the increase in penalties, and hope that this has a deterrent effect on vendors. Similarly, giving the offence prominence by requiring the display of warning statements by vendors, I believe, is a step in the right direction.

As I have indicated on other occasions, an estimated 16 000 Australians die each year from tobacco related disease. The Royal College of Physicians of the United Kingdom rates smoking 'as important a cause of death as were the great epidemic diseases typhoid, cholera and tuberculosis'. Like those great killers, death from smoking is preventable.

We should be aiming for a smoke free generation. As part of the programme of working towards a smoke free generation, an initial 880 schools throughout the State have been major participants in the 'Quit. For Life' campaign recently conducted. Special packs were produced for schools, for years 7 and 8, and I am advised that there has been an excellent response, so much so that packs are being reprinted. This Bill is another means of discouraging young people from using tobacco.

At the time of preparing the Controlled Substances Bill, the Government took the decision that the prohibition on the sale of tobacco to minors should not be buried in that legislation, as it has been in the Community Welfare Act, but should be highlighted by way of separate legislation. The Hon. Lance Milne has taken the initiative in bringing this Bill forward, and I congratulate him for it. It has, as the Hon. Mr Milne has indicated, been prepared in consultation with me and my officers and we have been happy to co-operate with him.

I acknowledge, as I think would the Hon. Mr Milne, that any prohibition of the type proposed in the Bill can be difficult to enforce. In particular, the rate of reporting of offences is often very low and, where a breach is suspected, the evidence to prosecute successfully is often scant. However, as the proposal stands, the vendor or supplier is strictly liable unless such person can demonstrate that he or she had reasonable cause to believe that the child was over 16 years of age. This is a reasonably stringent requirement and, coupled with the tenfold increase in penalty, I believe that the new controls will have a deterrent effect. Furthermore, the warning notice required by clause 4 should operate as

a constant reminder to both vendors and the public generally of the requirements of the proposed legislation. It is proposed that health surveyors will periodically check compliance with the requirements of clause 4.

I have pleasure in supporting the Bill and indicate that following its passage in this House, which seems assured, the Government in the House of Assembly will adopt it formally as Government legislation.

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

EVIDENCE ACT AMENDMENT BILL (No. 4)

Adjourned debate on second reading.

(Continued from 29 August. Page 598.)

The Hon. ANNE LEVY: I oppose the second reading of this Bill, with no tremendous enthusiasm, as it is apparent that the Hon. Mr Griffin has not heeded what I have said on this same topic on several previous occasions. Therefore, it is unlikely that he will take any more notice now, however well reasoned—

Members interjecting:

The ACTING PRESIDENT (Hon. C.W. Creedon): Order!

The Hon. ANNE LEVY: The Hon. Mr Griffin has not heeded what I have said on this topic on several occasions.

Members interjecting:

The ACTING PRESIDENT: Order! There must be order in the Council.

The Hon. ANNE LEVY: The Hon. Mr Griffin has not heeded what I and other people have said on this topic on several previous occasions, so it is most unlikely that he will heed what I am saying this time, however well reasoned, and however cogently the arguments are put. I remind the Council that the Select Committee in 1981 recommended retention of the unsworn statement but with reforms to its use. The main reason for retaining the unsworn statement was so that justice could be done in regard to some members of the community, however small the number, such as people who are illiterate, certain Aboriginal defendants, people with language difficulties, or those with many social disadvantages. There are no grounds to suppose that the reasons for retaining the unsworn statement have changed since then, and certainly the Hon. Mr Griffin has made no comment about the fate of these people should his Bill be passed.

In putting arguments for his Bill the honourable member talked only about rape cases and completely ignored the fact that it would cover many cases before the courts other than rape cases. I too have a great concern for rape victims and I certainly wish to change attitudes to this crime so that more victims come forward and more convictions occur. Women are certainly not chattels or vessels to be treated as instruments for men wishing to express their power over and hatred of women—because that is what rape is. This Government has done much for rape victims and it acknowledges that more must be done. The Government commissioned the Naffin Report on the substantive law regarding rape, and the committee made numerous recommendations for changes to the substantive law.

The Government previously had reformed the rules of evidence relating to unsworn statements, subjecting the unsworn statement to all the rules of evidence, including the requirement that section 34i should apply, that section controlling the introduction of evidence relating to the previous sexual history of the victim. This Government is currently reforming section 34i. This is a very important reform (still on the Notice Paper) and I hope that the provision will soon pass into law in this State. The reform of section 34i will, I hope, change the attitude of judges, counsel and the community about women's sexual behaviour and their rights to discriminate in regard to sexual partners. I will refer to this matter in more detail when we consider the item on the Notice Paper.

It will take time for the changes to sink in and to be evaluated. Obviously, the changes to section 34i have not been implemented. Reforms to the unsworn statement are just over 12 months old. I have managed to obtain from the Office of Crime Statistics data relating to the outcome of trials for sexual offences in the 12 months prior to the rules for unsworn statements being changed and in the 12 months following the change of those rules. The data is not extensive: there have not been a vast number of sexual offences in that time. In 1982-83 there were 37 trials for sexual offences, and in 1983-84 there were 57 such trials.

The Hon. J.C. Burdett interjecting:

The Hon. ANNE LEVY: I am comparing the 12 months before the changes to the unsworn statement and the 12 months after the changes, because it seems to me that that is a valid comparison in terms of the changes to the unsworn statement that were made just 12 months ago. In considering the figures, one must ignore the cases where the judge made a direction to the jury at the end of the prosecution case, because in those trials the accused gave neither sworn nor unsworn evidence. There remained 28 trials for sexual offences in 1982-83: 14 accused gave sworn evidence and 14 gave an unsworn statement. In the 12 months following the reform of the unsworn statement, there remained 53 trials for sexual offences, in which 36 accused gave sworn evidence and only 17 gave unsworn evidence. In other words, prior to the reform 50 per cent of people accused of sexual offences made an unsworn statement: after reform, only 31 per cent gave an unsworn statement.

The use of the unsworn statement obviously fell, although the figures are so small in number that significance with a statistical test is not achieved. Of those who gave an unsworn statement in 1982-83, 29 per cent were found guilty: in 1983-84, 41 per cent were found guilty.

The Hon. J.C. Burdett: Is this for sexual offences?

The Hon. ANNE LEVY: This is for sexual offences only and includes rape, attempted rape—all other types of sexual offences. Of those who gave sworn evidence in 1982-83, 29 per cent were found guilty, exactly the same proportion as for those who made an unsworn statement. In 1983-84, 47 per cent were found guilty, which is above the proportion of those found guilty in the same year when using an unsworn statement. Again, the numbers are very small and there is no significant difference between the percentages as calculated. What we can see from these figures is that it makes very little difference to the outcome whether an unsworn statement or sworn evidence is given. The proportion of those found guilty has risen, but the rise is the same whether the defendant gave sworn evidence or used an unsworn statement.

The Hon. J.C. Burdett: What about the people who would plead guilty because of the abolition of the unsworn statement?

The Hon. ANNE LEVY: These are not 'guilty' pleas but are related to trials.

The Hon. J.C. Burdett: You should address yourself to the number of people who would plead guilty if the unsworn statement was abolished.

The Hon. ANNE LEVY: I do not see what that has got to do with it.

The Hon. J.C. Burdett: I am sure it has: there would not be as many trials.

The Hon. ANNE LEVY: That is pure hypothesis.

The Hon. J.C. Burdett: Not really.

The Hon. ANNE LEVY: There were no cases where a defendant pleaded guilty in these figures. The figures I have are for those cases where there was a trial and where one can classify whether the accused gave sworn evidence or an unsworn statement.

The Hon. J.C. Burdett: Sure, but you have to consider the effect on the accused person who, if the unsworn statement was abolished, might plead guilty. It is hard to assess, but you cannot ignore it.

The Hon. ANNE LEVY: It seems to me that it is unassessable.

The Hon. J.C. Burdett: Sure, but you can't ignore it.

The Hon. ANNE LEVY: On the data I have, it is totally unassessable and I suggest it probably is, however extensive the data from the Crimes Statistics Office, so to that extent it is irrelevant to the figures I am quoting.

The Hon. J.C. Burdett: It is not irrelevant: you can't ignore it.

The PRESIDENT: Order!

The Hon. ANNE LEVY: The figures I have quoted show quite clearly that the outcome of a rape trial does not statistically depend on whether an accused gives sworn evidence or makes an unsworn statement. There is certainly no significant difference between the years for which I am quoting the data; that is, the year before the rules on unsworn statements were changed and the year after the rules on unsworn statements were changed. The proportion of defendants found guilty of sexual offences has risen both for those who gave sworn evidence and for those who gave an unsworn statement on this data. Admittedly, this relates to limited numbers, but there is no difference in the conviction rate. I feel that of far more importance to alleviating the plight of rape victims is the Bill on the Notice Paper to amend section 34i of the Evidence Act—

The Hon. Diana Laidlaw: That is not what some rape clinics claim though, is it?

The Hon. ANNE LEVY: The changes to section 34i are extremely important. I will not at this stage give the statistics, which indicate the great necessity for the change to occur, although I will give those statistics when we come to the debate on that Bill. We also have the changes to the substantive law on rape recommended in the Naffin report which are being considered at this stage by the Government. The abolition of the unsworn statement as proposed by the Hon. Mr Griffin will not achieve what he claims it will. It will not achieve a greater conviction rate for sexual offences, and there is no evidence that that will occur. It will not do for rape victims what he is claiming. The Government, by way of its other measures, is doing far more for rape victims.

The Hon. Diana Laidlaw: Why don't you go one step further?

The Hon. ANNE LEVY: Because one must not throw out the baby with the bathwater. There are good reasons for maintaining the unsworn statement. Those reasons have been stated in this Council on many occasions. There are people who need the protection of the unsworn statement. I am not just talking about sexual offence cases, but about all cases that come before the courts. The Hon. Mr Griffin's Bill makes no distinction between rape cases, which are a tiny minority of cases, and all the other cases that come before the courts.

The Hon. Diana Laidlaw: Is it just those minority groups that use it?

The Hon. ANNE LEVY: That they are minorities is no reason to deny them their rights.

The Hon. Diana Laidlaw: I am not denying them their rights, I am asking whether it is just those people who use the unsworn statement.

The PRESIDENT: Order! There have been enough interjections and I ask the Hon. Ms Levy to continue.

The Hon. ANNE LEVY: To sum up, my argument is that the unsworn statement is necessary for the protection of some defendants in cases before our courts. I realise that its retention can cause problems for rape victims, but no-one can say that the Government is inattentive to the problems of rape victims as it has done many things to help them, is doing many things to help them and will do more in the future without at the same time denying the rights of certain defendants who in many cases quite unconnected to sexual offences need the protection of the unsworn statement. It is for this reason that I oppose the second reading of the legislation put forward by the Hon. Mr Griffin. The figures suggest that it will be useless in terms of obtaining more convictions for rape and that the other measures being proposed and implemented by the Government will achieve what Mr Griffin claims his Bill will achieve, but which I feel will be useless in the context he desires.

The Hon. DIANA LAIDLAW secured the adjournment of the debate.

INSEMINATION AND FERTILISATION PROCEDURES

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

1. That a Select Committee of the Legislative Council be established to consider and report on the ethical and legal questions in and associated with the availability and use of artificial insemination by donor and *in vitro* fertilisation procedures in South Australia including, but not necessarily limited to, the following matters, namely, whether or not:
   - *(a)* to forbid the use of fertilised gametes of human beings for scientific or genetic experimentation;
   - *(b)* to permit the freezing of fertilised gametes which are surplus to the requirements of a couple during any one treatment cycle and to provide for the destruction of such fertilised gametes after one successful pregnancy or some other event;
   - *(c)* to forbid the use of a couple's fertilised gametes by another person, or if allowed, to propose laws to deal with that donation similar to the existing laws relating to adoption;
   - *(d)* to prevent the maintenance of fertilised gametes in laboratory culture medium beyond the physiological stage at which implantation will occur;
   - *(e)* to forbid use of known donors in artificial insemination by donor or *in vitro* fertilisation programmes;
   - *(f)* to ensure that in the best interests of children from successful pregnancies following *in vitro* fertilisation, the same degree of anonymity should apply as it applies with children from successful pregnancies following other infertility treatments;
   - *(g)* to prevent the release of any information concerning participants or donors in artificial insemination by donor or *in vitro* fertilisation programmes in order to maintain privacy and confidentiality;
   - *(h)* to prevent the flow of information relating to either the donor of gametes or the child born following the use of such donated gametes;
   - *(i)* to prohibit surrogacy either in artificial insemination by donor and *in vitro* fertilisation programmes or more widely and, if prohibited, the mechanisms which should be established for achieving that objective.
2. That in reporting in accordance with its terms of reference, the Select Committee should, if possible, produce draft legislative proposals to deal with the legal and ethical questions requiring attention.
3. That the committee consist of six members and that the quorum of members necessary to be present at all meetings of the committee be fixed at four members and that Standing Order No. 389 be so far suspended as to enable the Chairman of the committee to have a deliberative vote only.

(Continued from 29 August. Page 599.)

The Hon. J.R. CORNWALL (Minister of Health): The Government has decided to support the establishment of a Select Committee into a whole range of matters related to *in vitro* fertilisation, embryo transfer and artificial insemi-

nation by donor. I intend to move substantial amendments that have recently been placed on file. The reason I intend to move amendments is, among other things, that I believe we need rather more precise terminology than that which is proposed by the Hon. Mr Griffin in his original motion. For example, in several instances in the original motion, the Hon. Mr Griffin used the term 'fertilised gametes'.

With no disrespect and with the great deferential respect I normally show to the Hon. Mr Griffin in most of the matters that he raises in this Council, I point out that his training is in the law and not in matters biological, whereas my colleague and friend, the Hon. Anne Levy, has a very formidible reputation as a scientist and geneticist. She immediately pointed out that the term 'fertilised gametes' is a contradiction in terms: it is not possible to fertilise a sperm. I do not want to be pedantic about that, but we should get—

The Hon. R.C. DeGaris: Are you sure about that?

The Hon. J.R. CORNWALL: No further comment.

The Hon. K.T. Griffin: I used the terminology that was used in your working party's report.

The Hon. J.R. CORNWALL: Indeed, the Hon. Mr Griffin points out that the term 'fertilised gametes' was used throughout the Connon-Kelly Report. It was imprecise in that context just as it is imprecise in the context of a proposed Select Committee, and for that reason I think we most certainly should not use it. I intend to move formally that this inquiry be open to the public. I believe that that is fundamental and extremely important. I have had numerous submisions (in fact, countless submissions) from a whole range of individuals and organisations ranging from the Oasis Circle, which is an organisation of couples who are or have been in the *in vitro* programme, through to the feminist movement. All of those people, without exception, made it very clear that they believed that there should be a public inquiry. They did not specify in many cases what form that public inquiry should take, but there is a very clear belief among those organisations and individuals, and I think increasingly a very clear expectation in the community at large, that the inquiry will be open to public scrutiny.

In recent weeks I have also involved myself in a wide ranging consultative process with a number of groups and individuals. These included Dr Keith Rayner (Anglican Archbishop of Adelaide), Father John Swan (the official representative of the Catholic Archbishop of Adelaide) and the Reverend Michael Sawyer (the Moderator of the Uniting Church in South Australia). The amended terms of reference I intend to move are, to a significant extent, changed in response to those representations, not only of the mainstream churches but of other organisations and individuals. They also follow consultation with my own professional officers and with my colleagues in the Parliamentary Labor Party Health Committee, the Cabinet and the Caucus. The amended terms of reference are, I guess, not perfect, but are as close to covering all of the aspects which must be addressed and resolved as it is possible, I submit, for us to get.

It is important that I very briefly trace the history to this point of embryo freezing in South Australia—at least that portion of it to which I am privy as Minister of Health. I was put under very considerable pressure in the early part of 1983, and particularly the middle of 1983, to seek Cabinet approval for embryo freezing. That was done particularly by the group who are working in the programme at the Queen Elizabeth Hospital. It was as a result of that that I established the two person committee comprising Dr Aileen Connon, a very senior obstetrician and gynaecologist in the Health Commission, and Miss Philippa Kelly, a lawyer who at that time was in the Attorney-General's office.

Their terms of reference were, I acknowledge, quite limited. They were, among other things, specifically limited because we needed to get some recommendations particularly regarding surrogacy and embryo freezing. As I pointed out previously, at that time as Minister of Health I was under considerable pressure from medical scientists involved in the programme at Queen Elizabeth Hospital to seek some sort of Cabinet decision on that matter. Following consideration of the Connon-Kelly Report I took a recommendation to Cabinet which specifically sought an interim approval whereby we would permit embryo freezing under certain strict conditions and ban surrogacy at that time, at least. Both these decisions were to be enforced by administrative fiat and, therefore, were only ever to be regarded as an interim arrangement. It was always very clear that following much more community consultation, the taking of a great deal more advice and following the sorts of trends and decisions that were being taken elsewhere in the country and overseas, we would be in a better position to address a full range of vexed measures that remained unresolved. One of the major things that will have to be addressed by this proposed Select Committee is the range of controls that should be imposed.

Traditionally, it has always been the case that scientists are at the leading edge, the cutting edge of experimentation, and one has to be very careful not to unduly restrict or stultify that sort of experimentation. The history of science is littered with the casualties of people who have appeared to be ahead of their time and who in many ways have been subjected to the ridicule of their more conservative colleagues.

The Hon. R.J. Ritson interjecting:

The Hon. J.R. CORNWALL: There was a time when most people believed that the earth was flat—there are not many of them left now. It is most important that we do not stultify scientific advance. At the same time in this case we are literally dealing with the creation of new life outside the uterus and for that reason we have to treat it as a very grave matter, a matter which in some ways at least transcends the normal moral and ethical issues that are involved in the application of medical science generally.

There are four basic ways in which this can be done. The first is professional self-regulation. There are numerous examples of that as it is applied in the practice of medicine and the allied health professions every day of the week. The second is through ethics committees, and again by and large ethics committees, and particularly hospital ethics committees, have served us very well for a very long time. There is then administrative direction, and that is where we are at as a Government now with regard to surrogacy and embryo freezing. Finally, there is legislation. Clearly, in these matters I do not believe that professional self-regulation is anywhere near enough, and there are quite clear examples in the IVF-ET programme, which show that quite dramatically.

Secondly, I do not believe that hospital ethics committees as presently constituted are adequate for many of the serious dilemmas that are created by these programmes. First, the composition of those ethics committees would need to be expanded to begin to address some of these problems. Certainly, they should include a lawyer and possibly an intelligent consumer or lay representative. They also need to respond and report to boards of management or hospital boards rather more succinctly than they have done in the experience to date on the IVF programmes.

Also, I believe—and it is not a question of belief so much because there is incontrovertible evidence—that administrative direction is not adequate in these matters, because there are many reasons why that responsibility simply cannot and should not be taken by individuals without regard to

the existing processes of Parliament. Finally, we have legislation. That, in many of these instances, is very difficult. It will be arrived at in some ways by quite tortuous and prolonged processes. It is important that we get it right. It is also important that we leave a degree of flexibility to take into account the rapid advances that will doubtless continue in this area. So, for all those reasons there is no question that this ought to be a responsibility of the South Australian Parliament, rather than a responsibility of the Executive.

It is most important that the people of South Australia are all represented in the best possible sense. It most certainly should not be a matter for political squabbling. I have always made very clear throughout this year that there had to be full community consultation. Because of that, after the release of the Connon/Kelly Report I asked the South Australian Post-Graduate Medical Education Association (SAPMEA) to organise and conduct a seminar on IVF, which was conducted last July. That was personally sponsored and funded by me as Minister of Health. We had a wide range of speakers and interested representatives. Numerous discussion groups were conducted during the afternoon of that seminar. We called for responses arising out of those discussions, and the responses were so significant and numerous that I subsequently extended the time for the responses to 31 October.

What I have always sought and what I am on record as seeking is at least some sort of fragile community consensus. I would have to say at this time that that has been difficult to achieve. Indeed, it may well be impossible in the foreseeable future to achieve that in the community at large. However, I do believe that it should be possible, and I am optimistic that it is possible, for a Select Committee through its deliberations to arrive at some degree of unanimity. Certainly, it is highly desirable that the matter not only be resolved by the South Australian Parliament, rather than on a Party-political basis, but that it also should be arrived at to the extent possible on a basis of true tripartism. Therefore, I move the amendment standing in my name:

(a) Leave out all words after 'on' in line 1, down to and including all paragraph 2, and insert the following words in lieu thereof:

Artificial Insemination by Donor, *In Vitro* Fertilisation and Embryo Transfer procedures in South Australia and related moral, social, ethical and legal matters, including:

(i) the possible freezing of early human embryos and any limits of time or circumstance which should be placed on their subsequent maintenance;

(ii) the possible implantation of human embryos into a person other than the donor of the ovum, and the conditions which should apply if such implantation is to take place;

(iii) the possible use for scientific or medical experimentation of the pre-implantation human embryo and any conditions which should apply;

(iv) the possible laboratory maintenance of human embryos beyond the stage at which implantation naturally occurs, and their use for scientific or medical experimentation;

(v) eligibility and conditions for admission of individuals to artificial reproduction programmes (with particular reference to social issues, such as marital status, the patient's ability to pay and the provision of adequate counselling services);

(vi) the desirability or otherwise of anonymity for donors of human gametes and the circumstances and mechanisms for possible disclosure of identity of such donors;

(vii) the desirability or otherwise, in the case of children resulting from artificial reproductive techniques, of:

(a) anonymity/privacy

(b) knowledge as to the identity of the donor (having regard to the existing rules for adopted children)

(c) access to information (e.g., genetic information);

(viii) the desirability or otherwise of surrogate motherhood using artificial reproductive techniques or otherwise, and the methods to achieve any control recommended;

(ix) the appropriate range and extent of services offered in IVF programmes in South Australia;

(x) the appropriate agencies to provide the services to which reference is made in (ix) above;

(xi) funding issues associated with artificial reproduction programmes in South Australia;

(xii) mechanisms for developing and monitoring a policy on the use of artificial reproductive technology which takes into account the wellbeing of the child and its family, any long-term effects on personal relationships in particular, and on society in general;

(xiii) development of mechanisms for monitoring and reviewing the use of artificial reproductive technology and in particular, the role of self-regulation, ethics committees and general consultative committees;

(xiv) the present technical and scientific position regarding ova preservation and freezing and likely future developments;

(xv) legislative implications which may arise out of consideration of points (i)-(xiv) above and the desirability of any such legislation being uniform throughout the Commonwealth of Australia; and

(xvi) any other matters of significance related to points (i)-(xv) above.

and

(b) Insert after existing paragraph 3 the following words:

That this Council permit the Select Committee to authorise the disclosure or publication, as it thinks fit, of any evidence presented to the Committee prior to such evidence being reported to the Council.

The Hon. ANNE LEVY: I second the amendment and indicate my support for the principle of having a Select Committee on the whole question of AID and IVF, but I indicate that I prefer the terms of reference moved by the Minister rather than those moved by the Hon. Mr Griffin. I believe that the terms of reference in the amendment cover all the points made in the terms of reference moved by the Hon. Mr Griffin but go beyond them in widening the area for consideration by the Select Committee, particularly widening them to extend for the Select Committee to consider questions relating to future monitoring of any artificial reproduction programme and the role of possible self-regulation and ethics committees, as opposed to other forms of monitoring what will occur.

This is not a static area of research. Developments are occurring every day and in 12 months the situation may be different from that which applies today. I believe it is highly desirable for the Select Committee to consider not only the issues in relation to existing technology but to devise procedures whereby future changes in technology can be evaluated and account taken of them in programmes in this State. There have been numerous inquiries into these matters, and not only those in this State as mentioned by the Minister, because there has been a major inquiry in Victoria by the Waller Committee; and there has also been a major inquiry in the United Kingdom by the Warnock Committee.

The Waller Committee produced a report nearly one inch (or 2 cms) thick, in three separate instalments. Although the Warnock Committee Report is smaller it is perhaps more compact, but it probably has an equivalent number of words to that produced by the Waller Committee. I think the Council might be interested in some of the conclusions reached by the two committees. However, that is not to say that our own Select Committee will reach the same conclusions. In no way do I wish to pre-empt any findings by our Select Committee, but I will quote some of the recommendations of the two inquiries to show the wide ranging nature of the recommendations and the topics covered as a result of detailed study given elsewhere.

The report entitled, 'Report on Donor Gametes in IVF' by the Waller Committee, states:

The use of donor sperm in IVF should be permitted . . . The use of donor ova in IVF should be permitted . . . The Government

should initiate a programme of information about the causes and incidence of infertility . . . The matters set out in paragraph 6.3 should be incorporated into an appropriate course of study prescribed for secondary school students. Comprehensive information, including ethical, social, psychological and legal matters bearing on all aspects of the treatment of infertility, should be available for all infertile couples.

The information . . . should be translated into as many community languages as possible. Counselling should precede, accompany, and follow participation in donor gamete in IVF programmes. Consent to the use of donor gametes in IVF should be given, and recorded in a document, by the couple before they begin to participate in the procedures.

I have a copy of the consent form currently used in Victoria. The report continues:

Before a couple is admitted to an IVF programme involving the use of donor gametes they should have undertaken all other appropriate medical procedures, during a period in excess of 12 months, which may, in their particular circumstances, overcome their infertility. Admission to a donor gamete in IVF programme should be based on the criterion of need, taking into account not only medical but also social and psychological considerations.

Admission to a donor gametes in IVF programme should not disqualify patients from admission to or retention on adoption waiting lists. Donors of gametes should not receive payment. Donations of gametes from children should be prohibited. Selection of donors should be based not only on medical but also on social and psychological considerations. Donors should receive comprehensive information and counselling about the implications of gamete donation. Donors should complete and sign a document consenting to the use of the donated gametes . . . Donors of gametes may withdraw consent before the donated gametes have been used in an IVF programme.

The use of known donors in donor gamete in IVF programmes should be permitted, where both partners request it. Special counselling should be provided for the donors and the couple. It should be unlawful to seek or use donor ova obtained from women in an IVF programme unless consent has been given before the treatment has been instituted. The hospital should offer non-identifying information about the sperm or ovum donor to the recipient. The hospital should offer non-identifying information about the recipients to the gamete donor.

The hospital should advise the donor, if the donor so chooses, of the results, in the form of non-identifying information, of any successful use of the gametes donated. The Health Commission should establish a central registry containing comprehensive information about donors whose gametes have been successfully used in an IVF programme.

Information in the central registry should be exempt from the provisions of the Freedom of Information Act which has been passed in Victoria. Hospitals should be specifically authorised to use donor gametes in IVF programmes. The terms of the authorisation should provide that conscientious objection to participation by doctors and other personnel in the hospital shall be recognised.

The use of donor embryos in IVF should be permitted in the Victorian community . . . It should be unlawful for donor embryos to be used except in the case of couples whose infertility cannot be overcome by other means, or where the couple may transmit undesirable hereditary disorders. Information and counselling, where appropriate, should draw attention to the complexities that may arise from the use of donor embryos in IVF. Donors' gametes should not be used to create donor embryos unless each donor has given explicit written consent to such use.

I refer to the Waller Committee Report entitled 'Report on the Disposition of Embryos Produced by *In Vitro* Fertilisation', as follows:

The freezing of embryos formed in an IVF programme shall be permitted . . . Research on and development of techniques for the freezing and storage of human ova should be warmly encouraged. Freezing and storage of embryos shall only be undertaken in a hospital already approved to conduct an IVF programme . . .

Information and counselling on freezing and storage of embryos shall be made available to couples participating in IVF programmes.

An embryo shall only be frozen and stored if the couple whose gametes have been used in its formation agree to the procedure. The agreement shall be recorded in an appropriate document, which shall state clearly the purpose and the expected duration of the embryo storage.

I have a copy of the form that is used for this agreement. The report continues:

The couple whose gametes are used may not sell or casually dispose of the embryo.

The couple shall be required to make their decision about the disposition of the embryo which is to be stored before the procedure is initiated.

If the couple agree that an embryo may be donated, it shall be permissible with their consent for that embryo to be stored until the next appropriate reproductive cycle of the woman who is to receive that embryo.

Where frozen embryos remain in storage after the establishment of a viable pregnancy, the prior decision of the couple concerning their disposition shall be given effect as soon as possible.

The Hon. K.L. Milne: Where is this from?

The Hon. ANNE LEVY: This is the Waller Committee Report on the Disposition of Embryos Produced in *In Vitro* Fertilisation. Other recommendations state:

Where a couple consents to long-term storage, that consent shall be reviewed after five years, and may then be renewed.

The couple shall be required to indicate, by means of the consent document, what the disposition of the stored embryo or embryos shall be in the event of accident, death or dissolution.

In any case of accident, death or dissolution where an indication concerning disposition has not been given, the stored embryo or embryos shall be removed from storage.

Embryo research shall be limited to the excess embryos produced by patients in an IVF programme.

There were four dissentients from that recommendation: two who felt that embryos should never be used for research and two who felt that embryo research should not be limited to excess embryos. Other recommendations state:

The use of any embryo for research shall be immediate, and in an approved and current project in which the embryo shall not be allowed to develop beyond the stage of implantation, which is completed 14 days after fertilisation.

All research on human embryos shall be regularly scrutinised by the Health Commission or by a standing review and advisory body . . .

Surrogacy arrangements shall in no circumstances be made at present as part of an IVF programme.

A standing review and advisory body shall be established to examine and report on all matters in the scientific and medical management of infertility, and related issues.

These are just some of the recommendations from the Waller Committee Report. Not all the recommendations were unanimous. There are minority reports relating to some of the recommendations from the Waller Committee.

The recommendations of the Warnock Committee from the United Kingdom anticipate many of the recommendations from the Waller Committee, but a few deal with different matters from those considered by the Waller Committee. The Warnock Committee recommends that in the United Kingdom:

A new statutory licensing authority be established to regulate both research and those infertility services which we have recommended should be subject to control.

There should be substantial lay representation on the statutory authority to regulate research and infertility services and that the chairman must be a lay person.

I would have thought that the chairperson should be a lay person, but obviously Dame Mary Warnock did not adopt that terminology. One recommendation of interest by the Warnock Committee—I have just picked out several which are different or which go beyond what the Waller Committee has recommended—states:

The use of frozen eggs in therapeutic procedures should not be undertaken until research has shown that no unacceptable risk is involved. This will be a matter for review by the licensing body.

Further, there is a recommendation that:

Where trans-species fertilisation is used as part of a recognised programme for alleviating infertility or in the assessment or diagnosis of sub-fertility it should be subject to licence and that a condition of granting such a licence should be that the development of any resultant hybrid should be terminated at the two cell stage.

Further, it is recommended that:

The licensing body be asked to consider the need for follow-up studies of children born as a result of the new techniques, including consideration of the need for a centrally maintained register of such births.

A further recommendation states:

For the present, there should be a limit of 10 children who can be fathered by one donor.

Another states:

It should be accepted practice to offer donated gametes and embryos to those at risk of transmitting hereditary disorders.

Another recommendation states:

Funding should be made available for the collection of adequate statistics on infertility and infertility services.

Under the legal recommendations is the following:

The placing of a human embryo in the uterus of another species for gestation should be a criminal offence.

Elsewhere, the Committee states:

Legislation should be introduced to render criminal the creation or the operation in the United Kingdom of agencies whose purposes include the recruitment of women for surrogate pregnancy or making arrangements for individuals or couples who wish to utilise the services of a carrying mother; such legislation should be wide enough to include both profit and non-profit making organisations.

Legislation should be sufficiently wide enough to render criminally liable the actions of professionals and others who knowingly assist in the establishment of a surrogate pregnancy.

It be provided by Statute that all surrogacy agreements are illegal contracts and therefore unenforceable in the courts.

Legislation be enacted to ensure there is no right of ownership in a human embryo.

I have quoted just a few of the recommendations from the Warnock Committee out of the total of 63. We should perhaps note that its recommendations on surrogacy do not suggest any penalty for a woman who is involved in surrogacy: only for the people who advertise, arrange or carry it out.

The Hon. R.I. Lucas: What if the woman herself advertises?

The Hon. ANNE LEVY: Advertising is prohibited according to the recommendation of the Warnock Committee. I am not saying that I necessarily support all the recommendations of the Waller and Warnock Committees. It may well be that other members of the Select Committee will disagree with some or all of them. However, I have quoted these to indicate the range of the matters which have been considered very deeply elsewhere and to which doubtless this Committee will have to address itself.

We may or may not reach the same conclusions as these other bodies, but I am sure that all members of the Select Committee will want to read these reports and consider the matters raised. They will certainly form a starting point for the Select Committee.

I understand that the Government intends to make available medically and legally qualified research staff to the Select Committee; that will certainly facilitate the working of the Select Committee. In conclusion, I believe that, with the amended terms of reference, this will be a very valuable and worthwhile Select Committee, which should contribute to a matter of great importance in the community of South Australia, and I look forward to serving as a member of the Select Committee.

The Hon. R.I. LUCAS: I support the motion. One problem is that the ultimate passage of this motion and the establishment of a Select Committee will delay the introduction of comprehensive legislation on this matter. In supporting the motion obviously I agree that there is a need for the Select Committee to carry out the very important work outlined by previous speakers. However, because of the vastness of the terms of reference and the amount of work that the Committee will have to do, I believe it is unlikely that it will be able to complete its charter within nine to 12 months. I do not know what the intent is, but the work load of the Select Committee will be such that I doubt whether it will be able to complete its task within nine to 12 months. That takes us into the third or fourth quarter of 1985, which is the likely period for a State election, being three years since the election of the Bannon Labor Government. Of course, the presentation of a Select Committee report does not mean the immediate introduction of legislation in any case: it will require debate in Parliament and then a decision by the Government of the day. I predict that the passage of the motion will mean that we will not see comprehensive legislation from this Government: it is likely to be a responsibility of the next Government, whether an Olsen Liberal Government or another Labor Government.

The problem is that the administrative instructions to which the Minister of Health referred will be operative until the passage of comprehensive legislation. Those administrative instructions, which were issued in June this year (and the Minister of Health has indicated the background to those instructions), cover two major points, the first being the freezing of embryos. I thought that the Minister was a little less than open when he did not refer to the other major point that the present administrative instructions cover, and that is the ultimate destination for those human embryos or excess human embryos—destruction or termination, or whatever word one might like to use.

I was comforted to hear the Minister of Health outline what he saw as the four ways in which the IVF programmes can be controlled, rejecting the first three and importantly rejecting the continued use of administrative fiat and plumping in the end for legislation. The Minister of Health and I certainly agree on that view: it is a view that I put in my contribution on the Family Relationships Act Amendment Bill and one that I hold very strongly—that we as a Parliament representing the community must make decisions on these controversial matters. We ought not to leave it to a small group, all male, members of a Cabinet, to decide and then by executive or administrative action to implement decisions in these controversial areas. I support what the Minister of Health said today: that is, we cannot continue with administrative instruction.

The Hon. R.C. DeGaris: It can only apply to Government operated organisations, can't it?

The Hon. R.I. LUCAS: No. I know that the Hon. Mr DeGaris takes the view that these controls ought to apply to only Government operated agencies, such as the QEH and the Flinders Medical Centre. He is entitled to that view, but it is not a view that I share. I believe that we must lay down guidelines across the board. That means that, if any private entrepreneurs want to get into this operation, whatever guidelines we establish for Government agencies ought to apply equally, in my view, to those private entrepreneurs. I support what the Minister said today regarding the need for legislation, but the passage of this motion and the commencement of the Select Committee will delay legislation probably until 1986, in the time of the new Government after the next State election. That means that the present administrative instruction that this Cabinet has issued will continue. The administrative instruction was based on recommendation 20 of the working party report.

The Hon. J.R. Cornwall: These Committees can produce an interim report, and I would envisage that this Committee may well do that.

The Hon. R.I. LUCAS: The Minister says that the Committee may lodge an interim report. That may or may not be the case, I do not know, but we are not in a position to rely on an interim report from the Select Committee. There is nothing to bind the Select Committee to lodge an interim report, and I would argue further that, before it was likely to lodge an interim report, I am sure that it would be keen to take a lot of the evidence that it will eventually have to take before making interim recommendations. Recommendation 20 of the working party report provides:

Storage of fertilised gametes should be maintained until such time as any of the following events occurs:

(a) a couple wishes to use the fertilised gamete(s) themselves in a subsequent treatment cycle;

(b) a couple requests in writing that storage of their fertilised gamete(s) be ceased;

(c) the relationship of a couple ceases through death or any other reason; or

(d) at the expiration of an agreed period of time but in any event no longer than 10 years from the date of commencing storage.

Cabinet accepted that recommendation and implemented certain consent forms. The consent forms are summarised on pages 54 to 56 of that working party report. I seek your guidance, Mr President, about whether the forms on the back of the working party report, which are not really statistical, can be incorporated.

The PRESIDENT: They are hardly statistical.

The Hon. R.I. LUCAS: Then I will read them into the record:

CONSENT FORM *IN VITRO* FERTILISATION AND TRANSFER OF FERTILISED GAMETES (1984)

NOTE: Both sections (I) and (II) must be completed. The attending medical practitioner shall not witness any signature on this form.

Section I CONSENT

We ..... and .....
(full name of female partner) (full name of male partner)
agree that should the ..... (name of Hospital) agree to consider ..... (name of female partner) as a candidate for the procedure of *in vitro* fertilisation and subsequent transfer of fertilised gametes.

1. We consent to the procedures of *in vitro* fertilisation and subsequent transfer of fertilised gamete(s) and acknowledge that they are medical procedures intended to produce pregnancy through the use of fertilised gamete(s) being introduced into the female partner's uterus by means other than sexual intercourse.

2. On the basis of our consent we authorise the attending medical practitioner, ..., to employ
(name of medical practitioner)
and seek the assistance of such qualified persons as he may desire to assist him.

3. We understand that though the procedures of *in vitro* fertilisation and the subsequent transfer of fertilised gamete(s) will be performed by the medical practitioner, there is no guarantee or assurance or undertaking on his part that pregnancy will result.

4. We authorise the medical practitioner to implant no more than .....
(write in number) of our fertilised gametes during this treatment cycle.

5. We understand that there may be fertilised gametes in excess of the above number during any one treatment cycle. We authorise*/do not authorise* the medical practitioner to store those fertilised gametes.

If we have given such authority to store those fertilised gametes then we acknowledge that such storage will cease upon any one of the following events occurring:

(a) upon our request for their use in a future treatment cycle;

(b) upon jointly signed written request by us to discontinue storage;

(c) upon cessation of our domestic relationship either through death or for other reasons; or

(d) at the expiration of an agreed period of time but in any event no longer than ten years from the date of the commencement of storage.

6. We understand that, despite the exercise of all reasonable care and professional skill, if pregnancy should result there is a possibility of complications of pregnancy or childbirth or the possibility of the birth of a physically and/or intellectually disabled child or children.

Dated this ..... day of 19
Signature of Female Partner .....
Signature of Witness .....
Dated this ..... day of 19
Signature of Male Partner .....
Signature of Witness .....

Section II CONFIRMATION

I, ... have described
(name of medical practitioner)
to the abovenamed wife and husband the nature, consequences and effects of the procedures of *in vitro* fertilisation and subsequent transfer of fertilised gamete(s). In my opinion they both understood this explanation.

Dated this ..... day of 19
* Delete whichever is inapplicable.

They were the consent forms compiled as a result of a Cabinet decision made in June of this year and based on recommendation 20 of the working party report. What those consent forms do is, first, authorise storage or the freezing programme: the Minister, in his contribution, was open enough to indicate that. However, what the Minister did not indicate in his contribution was that they go further than that: it is not just the approval of storage that has been implemented by administrative action of Cabinet: it is one way of ultimate destruction or termination of surplus embryos.

Under 5 *(b), (c)* and *(d)* of the consent form there are three ways in which excess frozen embryos can be destroyed or terminated, whatever phrase one wants to use. Under 5 *(b)*, if there is a jointly signed request by the participating couple to discontinue storage, if that decision is taken and there are surplus embryos, or if they just decide not to continue, then that very important decision and action must be taken by the doctors. Point 5 *(c)*, refers to cessation of a domestic relationship, either through death or other reasons, so if one of the participating couples dies, or they get divorced, then the consent form necessitates the doctor's destroying the embryo in storage.

The Hon. J.R. Cornwall: Withdrawal of extraordinary means of support is a less emotive and far more accurate term.

The Hon. R.I. LUCAS: I know that that is the Minister's phrase.

The Hon. J.R. Cornwall: I don't play politics with matters such as this and I understand it better than the honourable member because of my background.

The Hon. R.I. LUCAS: I am trying not to argue with the Minister. He has said on a number of occasions that it is not destruction: it is the withdrawal of extraordinary means of support. That may well be the Minister's view, and he may well also use that terminology for a human foetus in an incubator as being an extraordinary means of support.

Point 5 *(d)* mentions the expiration of the agreed period of time and, in any event, no longer than 10 years, so it is possible for the participating couple to sign a consent form saying that after six or 12 months, which is less than the period within which this Select Committee is likely to report and legislation is likely to be passed, they would ask the doctors of the IVF programme to terminate or destroy the frozen embryos. None of that was mentioned today by the Minister. He talked, as I have said, about the freezing of embryos, but there was no mention of the quite significant extra step that Cabinet has sanctioned by administrative fiat.

While he has said that we cannot continue too long with administrative fiat, the argument which I put forward during the debate on family relationships and which I put again to the Health Minister is that if we are genuine about this proposal for a Select Committee I would have thought that what Cabinet and the Minister would do is withdraw in part the administrative instruction that he has given and that, while we wait for the Select Committee to report and comprehensive legislation to be discussed and debated, we maintain all those frozen embryos, surplus or otherwise, in storage and that we do not take any decision about the ultimate destination of those human embryos.

There is a strong body of opinion (and Dr John Kerin is at the forefront of this opinion) that there is an option other than destruction or termination, that is, donation of those embryos to other couples who would like to participate in the programme. Doctor Kerin argues persuasively that that

is an option that ought to be considered. Under the present administrative instruction, and therefore for the next, as I argue, 12 to 18 months before we see legislation, that option is prevented from occurring in the two IVF programmes in South Australia because of the administrative instruction issued by Cabinet in June of this year.

The Hon. Diana Laidlaw: Is Dr Kerin abiding by that instruction?

The Hon. R.I. LUCAS: I do not know what the situation is. I have been advised by one participant that they have not yet been confronted by the situation envisaged in 5 *(b), (c)* and *(d)*: that is, they have not yet been confronted with the situation of having to terminate or destroy a frozen embryo.

In my view that is fortuitous at the moment, but it does not mean that that situation is likely to continue for the 12 to 18 months before we are likely to see comprehensive legislation in South Australia. As the Government has issued an administrative instruction, I think for those reasons it should, at least in part, withdraw that section which would require the destruction or termination of human embryos in the IVF programme until we, as a Parliament on behalf of the community, have had time to debate the matter and see whether we would like to provide an alternative, such as donation of embryos as suggested by Dr Kerin, or whether we agree with the administrative instruction issued by Cabinet.

As I said before, if the majority of members of the Parliament disagree with the view that I put and agree with the views put by the administrative instruction issued by Cabinet, people like myself will have to accept it. I do not believe that it is right for decisions like this on quite controversial aspects of IVF programmes to be actioned by a completely male Cabinet in South Australia without any reference to the Parliament. I conclude on two related matters. First, I placed on file an amendment standing in my name. The amendment moved by the Minister of Health is certainly more substantive than my amendment, and I indicate that I will support that amendment and will not proceed with the amendment I have on file.

Secondly, when last we debated a Select Committee report—on local government—two members in this Chamber indicated some doubt about certain aspects of it. I, for one, said that I would support the Select Committee's recommendations after indicating my doubt. After that, the Hon. Mr Bruce gave both the Hon. Mr Gilfillan and myself what could be colloquially described as a father of a hiding, for daring to bring into question the results of a unanimous decision of a Select Committee. I said to the Hon. Mr Bruce privately after his contribution and say now publicly that I do not believe that it is incumbent on any member in this Chamber to accept, without reservation, the decisions of a Select Committee, whether it be unanimous or otherwise.

I believe that we, as individual members of Parliament, must make up our own minds about the recommendations of a Select Committee. Certainly, if the decision is unanimous there is great weight in the decisions of that Select Committee and we would need to come up with some substantive reasons why we might personally oppose it. I believe that it is the right of every member in this Chamber either to accept or reject, totally or in part, any Select Committee report, whether unanimous or not. Because of the strong views I have on certain aspects of this Select Committee on the IVF programme I, for one, certainly will not be accepting holus-bolus the collective wisdom of six members of this Chamber on such a controversial matter.

The Hon. R.C. DeGaris: The Select Committee only recommends to the Council.

The Hon. R.I. LUCAS: That is the view I take. It was not the view taken by the Hon. Mr Bruce during recent debate on a Select Committee decision relating to local government issues. I support the motion and will be supporting the amendment of the Minister of Health.

[*Sitting suspended from 6 to 7.45 p.m.*]

The Hon. DIANA LAIDLAW: During my second reading speech on the Family Relationships Bill I expressed some disappointment that the Government had not also seen fit to introduce a Bill that focused on the merits and future use of human reproduction procedures. At that time I considered that the two issues—the status of children born as a result of *in vitro* fertilisation procedures and AID procedures, and the merits and future use of human reproduction procedures—could not and should not have been divorced, that both questions were equally pressing. The need for complementary legislation of the nature to which I have referred was recognised both in New South Wales and in Victoria when the respective Governments in both those States introduced Bills to legalise the status of children born by IVF and AID procedures.

However, the Government did not choose to follow this path and I therefore welcome the initiative taken about a month ago by the Hon. Mr Griffin in seeking to establish a Select Committee to address a host of complex questions of a legal and ethical nature that arise from AID and IVF procedures. I have the most strongly held belief that the issues involved in human reproduction techniques are not simply matters for the infertile couple, doctors or scientists, and I raise this point because I am aware that the Waller Committee in Victoria, in both its interim and final reports, places prominence on the fact that most submissions to the committee favouring the IVF programme had come from people participating in it and, therefore, one could suggest that they had a vested interest in the continuation of that programme.

Further, I am aware that a number of doctors—if not all doctors involved in fertility procedures—believe that they alone should have the final say in all cases. At a Commonwealth Club luncheon that I attended in September, Professor Lloyd Cox, Head of the University of Adelaide Obstetrics and Gynaecological Department, was the guest speaker. Professor Cox advised the meeting that he believed any legislation in these areas should incorporate broad guidelines alone and that the drafting of specific guidelines should be left to the medical practitioners. Professor Cox did not refer to what he believed should be incorporated in those specific guidelines. I view his approach with some suspicion because of his later remarks, and I refer to an *Advertiser* article of 5 September in which Professor Cox is reported as stating:

> Doctors should have the final say in artificial conception cases because politicians do not know enough about the complex issue to draft guidelines. The medical bits—how it is done and that sort of thing—does not have to be put into law because it will change. And the politicians don't want to put them in because they don't understand it and they can get it all wrong, then there is terrible trouble. Legislation—which was difficult to amend—on IVF would be quickly out of date because of rapid advances in artificial conception techniques. As for other groups drafting guidelines, hospital ethics committees took too long to make a decision, research committees existed only to allocate funds, and the public wasn't interested in IVF and could therefore never reach consensus on the matter.

Beyond the fact that Professor Cox's remarks were not only patronising and chauvinistic and in my view arrogant, I can assure him that politicians do understand the concern in this area, that they do want controls and that they are sufficiently able to draft adequate legislation to cover all eventualities. Further, I believe that there is wide community concern about the future direction of these programmes. I know, for instance, that women are very concerned.

They are concerned about apparently uncontrolled developments in this field, about their voices not being heard, and one can see from Professor Cox's remarks that he certainly has not heard them to date and about their apparent inability to influence the process. In speaking during the second reading speech of the Family Relationships Bill I read into *Hansard* a call by concerned feminists to the Minister of Health to establish a public inquiry. I do not intend to read that letter again, but I add that the format of that submission was certainly used by many other women's groups in addressing their concerns on IVF procedures to the Minister's call for public response to the report that he released earlier this year.

When the Hon. Mr Griffin moved for a Select Committee the Attorney at that time interjected to the effect that we really had the benefit of a considerable number of inquiries in Australia and elsewhere, and he asked whether we really needed a further inquiry. In speaking earlier on this motion the Hon. Anne Levy demonstrated clearly by her references to conflicting recommendations in some instances in both the Waller Committee and the Warnock Committee in England that there is reason for a further inquiry—

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: They do conflict in some areas and I believe, therefore, that it is important that South Australians have an opportunity to discuss the issues involved because, certainly, everyone is not of the one opinion of how communities should proceed in respect of human reproduction technology. The amendment moved by the Minister of Health contains essentially the same areas for inquiry that the Hon. Mr Griffin suggested, but I accept that perhaps the Hon. Mr Griffin's private member's Bill in this area may have been considered to have been subjective in the way the terms of reference were framed. I have no problem with the amendment moved by the Minister of Health; in fact, I believe it is stronger than the motion moved earlier by the Hon. Mr Griffin because of the provision that the inquiry be open to members of the public. I think that is very important, because I see it as part of the community educative programme which is essential in this area. I support the amendment.

The Hon. R.C. DeGARIS: I will not be long in addressing this question, and no doubt most members would agree with that contention. First, I congratulate the Hon. Mr Griffin on his resolution to establish a Select Committee to investigate this area. I think the Council should have established a permanent committee some time ago to examine these matters, particularly those related to the medico/legal field. I agree with the Hon. Mr Lucas that a Select Committee established now will take a long time to reach conclusions on its terms of reference. Nevertheless, by the time the committee has done that I am quite certain that further advances will have been made in medical technology and the committee will still have to look at changes in our law and make recommendations for changes in relation to modern methods and modern medical technology.

I support the amendments moved by the Minister of Health; I think they explain and set out the terms of reference that are required. In supporting the amendments I am quite certain that the Council agrees with the establishment of a Select Committee. I spoke at some length on the Family Relationships Bill, explaining my views on quite a number of questions. I asked the Attorney-General, when replying to the second reading debate, to reply to those questions. Most of the questions that I asked will be covered by the Select Committee. I will comment on an interjection I made during the Hon. Mr Lucas's contribution.

The Hon. R.I. Lucas: Which I misunderstood.

The Hon. R.C. DeGARIS: I would not say that the Hon. Mr Lucas misunderstood; perhaps I explained it badly. I would say that the existing Ministerial fiat which applies only applies to Government institutions. The Government cannot make the law in relation to general society, but it can make rules in relation to the establishments that it functions. I think I explained that to the Hon. Mr Lucas after he had spoken, and he agreed with my point. I strongly support the establishment of the Select Committee. It is a very wide subject and it will take some time before it can produce a report for the Council. Nevertheless, it is very important that we have a committee to conduct this investigation and report to the Council. I hope that the Council agrees with the recommendations the committee makes. Like the Hon. Mr Lucas, I reserve my opinion—

The Hon. L.H. Davis interjecting:

The Hon. R.C. DeGARIS: I have not found that out yet. I strongly support the establishment of the Select Committee and hope that its recommendations come before the Council as soon as possible.

The Hon. K.T. GRIFFIN: I welcome the Minister of Health's indication that the Government will support the establishment of a Select Committee to look at a variety of complex moral, legal and ethical questions relating to *in vitro* fertilisation, artificial insemination by donor and embryo transfer procedures. I also welcome the indication, which has come through the Hon. Anne Levy, that the Government will make available to the Select Committee appropriate and adequate legal and research staff to assist in the range of work to be undertaken by the committee.

The Minister of Health has moved a series of amendments to the terms of reference of the Select Committee. I am certainly prepared to accept those amendments, because they cover in much greater detail the sorts of issues that I had envisaged the Select Committee covering in the terms of reference contained in my original motion. I do not intend to get into a skirmish in relation to the terms of reference. I am prepared to accept the Minister of Health's proposals. I am also prepared to accept that in this instance it is appropriate for the committee to have authority to determine to release evidence from time to time during the course of its deliberations prior to presenting its final report to the Legislative Council.

The Hon. Mr Lucas raised some concerns about certain procedures within Government hospitals being dealt with according to administrative direction by the Minister of Health. I do not think there is any option but to allow that course to be followed. I think that, if the Government had brought in a comprehensive Bill dealing with the moral, legal and ethical issues raised by this subject without it being considered on a bipartisan basis, there would have been considerable controversy. I do not believe that this is an area which ought to be the subject of controversy, and that is why I have moved to establish a Select Committee. I think that will give us the best prospects of reaching an agreement on most, if not all, of the questions considered by the committee. Although I appreciate that the Hon. Mr Lucas has some concerns, particularly in relation to the time in which the committee may report, in view of the breadth of its task I am still hopeful that it will make reasonable progress towards making a report—perhaps even an interim report—towards the middle or certainly the second half of 1985. Therefore, I foreshadow that I accept the Minister's amendments and look forward to the work of the committee.

Amendment carried; motion as amended carried.

The Council appointed a Select Committee consisting of the Hons J.R. Cornwall, I. Gilfillan, K.T. Griffin, Anne Levy, R.J. Ritson, and Barbara Wiese; the Committee to

have power to send for persons, papers and records, and to adjourn from place to place; the Committee to report on 2 April 1985.

PUBLIC SECTOR SUPERANNUATION

Adjourned debate on motion of Hon. L.H. Davis:

That without detracting from the need for the State Government to act immediately on the recent recommendations of the Acting Public Actuary, this Council urges the State Government to establish forthwith an independent public inquiry into public sector superannuation schemes in South Australia with the following terms of reference—

1. The adequacy of present provisions for the management of all South Australian public sector superannuation schemes, including:
   (a) structure and management of schemes;
   (b) representation of contributors;
   (c) actuarial assessment and valuation;
   (d) reporting to Government and contributors, and contributors' access to information, and
   (e) auditing requirements

in terms of the efficient operations of these funds and the protection of the interests of contributors and the Government.

2. Whether existing administration of schemes is efficient and administrative costs are reasonable.

3. Whether the terms and conditions governing eligibility for membership of various schemes are reasonable in comparison with other schemes in Australia and whether these terms and conditions are equitable between different employees.

4. The appropriateness of the current benefits, having regard to—
   (a) the needs of contributors, superannuants and beneficiaries;
   (b) comparable benefits for public sector employees in other States and in the Commonwealth Government and those prevailing in the private sector, also having regard to any differences in salary packages and to the role of superannuation in the recruitment and retention of South Australian Government employees, and
   (c) vesting

and including the reasonableness of provisions governing breaks in service, resignation, early retirement, ill health, retirement, retrenchment or redundancy.

5. The suitability of the present basis of Government funding of the various schemes including the funding of administrative costs, and the future financial implications for Government of the existing basis of funding.

6. Whether the existing investment powers and pattern of investments of these schemes is optimal from the point of view of contributors and of the Government; and whether existing arrangements provide the most efficient mechanism for maximising the investment income of the schemes.

7. The adequacy of the existing legislative and regulatory framework for the operation of schemes and the appropriate legislative framework for any recommended changes in the structure and operation of the schemes.

and that such inquiry should report to Parliament by 30 September 1985.

(Continued from 22 August. Page 443.)

The Hon. C.J. SUMNER (Attorney-General): The Government will support the general proposition of an independent inquiry into the public sector superannuation schemes of this State. The Hon. Mr Davis has outlined a number of reasons for moving his motion, which contains detailed terms of reference. While the Government is prepared to support the need for an independent inquiry into public sector superannuation, we are not prepared to support at this stage the specific terms of reference in the motion.

The motion sets out seven terms of reference, which are almost identical to those of the Economic and Budget Review Committee of the Victorian Parliament, which looked at public sector superannuation in that State and which, I understand, is shortly to table its final report. That Committee has already issued some interim reports that have been critical of the public sector superannuation schemes in Victoria. In New South Wales there has been an inquiry into the financing of superannuation costs by New South Wales public authorities, conducted by the Public Accounts Committee on a reference from the New South Wales Government. The report was tabled in the New South Wales Parliament a few weeks ago and was also critical of some aspects of superannuation arrangements in that State. The New South Wales Public Accounts Committee has now commenced an inquiry into the investment performance of New South Wales public sector funds.

Therefore, a number of options are open to the Parliament in determining what sort of inquiry there should be into public sector superannuation: a Select Committee; a Public Accounts Committee inquiry; an inquiry by an independent person, perhaps an independent actuary; or some kind of Government working party with representatives from people concerned with public sector superannuation.

The Hon. R.C. DeGaris: Does the Government intend following the Acting Public Actuary's recommendations?

The Hon. C.J. SUMNER: I will get to that in a minute. I will address the question. Did the honourable member think that I would leave it out?

The Hon. R.C. DeGaris: I thought that you might.

The Hon. C.J. SUMNER: I thought that the honourable member had more faith in my capacity to cover all relevant matters. The Government, however, considers that the terms of reference as stated in the honourable member's motion need some working on. For that reason, I move:

Leave out all words after the word 'That' in line 1 and insert in lieu thereof the following:

'this Council urges the State Government to establish an independent inquiry into the public sector superannuation schemes in South Australia. The Council urges the Government to ensure that the terms of reference of such an inquiry take into account the concerns raised in New South Wales and Victoria, and the relevance of those concerns to the South Australian schemes.'

Without committing the Government to particular terms of reference at this stage, I indicate that the terms of reference will cover the concerns which the honourable member has and which have been demonstrated by inquiries in New South Wales and Victoria. The Government believes that those terms of reference need to be formulated after some further discussions, but would prefer that an independent expert conduct the inquiry. Whether that will be a public actuary or an actuary or not, is yet to be determined. The Government has not yet firmed up the terms of reference; nor has it made an approach to anyone to conduct the inquiry, but the Government considers that it should be conducted by someone independent, probably someone from outside the State. That person may be an actuary or, if not, someone with actuarial qualifications and specialty or, if not, would certainly have independent actuarial advice and research available.

We do not favour an inquiry that has open submissions in the sense of witnesses and cross-examination in the nature of a Royal Commission, but it will be public in the sense that public submissions will be called for from interested parties and from the general public. So, there will be no restriction on members of the public or anyone else in Parliament putting to the independent inquiry such submissions as they might wish. The proposition is that the report would not be made directly to the Parliament; it would be a Government-commissioned report, but the report would go to the Government and would then be made public. That is the proposition that the Government is prepared to support. It would pick up most of the terms of reference of the inquiries in New South Wales and Victoria and certainly the concerns expressed in those States.

The next question that arises is what action the Government should take concerning the recommendations in the Acting Public Actuary's Report on public sector superan-

nuation schemes that was tabled in the Parliament recently. The Government takes the view that it would be premature to automatically increase the contribution rates or otherwise affect the public sector superannuation schemes until the report is brought down, particularly in relation to such a sensitive matter as contribution rates. That should await the results of the independent inquiry.

However, it is true that the Acting Public Actuary in South Australia has advised that South Australian public sector superannuation schemes are operating better than schemes in other States and would not be liable to the same criticisms as those raised in other States, although there certainly may be some criticisms or comments made about the schemes. If concerns had not been raised there would be no need for an independent inquiry, but we recognise that an independent inquiry may draw some conclusions that the Government would have to consider.

However, the Acting Public Actuary has indicated that he believes that the South Australian schemes are operating better than schemes interstate that have been subject to criticism in those States. The Government has already taken action to take account of criticisms of superannuation schemes raised in other States. For example, on 24 September Cabinet approved two submissions relating to a requirement that all public sector superannuation schemes prepare annual reports and a requirement that public authorities receive the Treasurer's approval before changes are made to superannuation arrangements.

The Government could consider a number of other matters before the inquiry. However, I am not in a position to outline more specifically what the Government might do in the interim. I believe that when an independent inquiry is established it is prudent (as I do not imagine that the inquiry will take all that long, particularly if it is conducted in the manner I have outlined) to await the results of the inquiry before carrying out any major changes to the schemes.

The Hon. R.I. Lucas: That will be after the next election, won't it?

The Hon. C.J. SUMNER: It may not be—one would hope it is not. If the inquiry is conducted by an independent person in the manner I have outlined, and if that person has the time to conduct the inquiry expeditiously, I would expect a report to be presented well before the next election. However, I cannot give any guarantees to that effect. All I can say is that the Government has in mind the sort of inquiry I have outlined. The inquiry will not involve public hearings, witnesses, cross-examinations, counsel and all the paraphernalia of a Royal Commission. That being the case, if submissions are made in writing and if those people can be interviewed, the inquiry should take less time than an inquiry with the full trappings of a court inquiry or a Royal Commission.

However, some matters can be considered, including separating the executive responsibility for the Investment Trust's operation from the Public Actuary to improve his independence in reporting (in fact, temporary arrangements in this regard were made a few months ago and expire at the end of the year); requiring the departments to account for superannuation on an accrued liability basis (this was previously agreed to in principle by Cabinet, subject to further information on implications for Government charges); requiring statutory authorities which participate in the State superannuation scheme to improve the presentation of superannuation costs in their accounts; providing for employee representation on boards of funds; and allowing or requiring the Investment Trust to manage the investments of any public sector superannuation fund so that investment returns are improved.

A number of other matters could be and may be addressed by the Government prior to a report from the independent review. However, they are not matters upon which the Government can give any firm indication at this stage. Suffice to say that at least in the area of contribution rates I do not believe it would be prudent to make any alterations prior to the report of the independent inquiry. Some matters have already been addressed, such as the reporting procedures, the role of the Treasurer, and the other matters I have mentioned, which could be considered prior to the report of the independent inquiry. However, they are matters that will be continually kept under consideration by the Government.

In conclusion, we support the need for some form of independent inquiry. We accept that this has occurred in Victoria and New South Wales and that a similar inquiry, but perhaps on a less grandiose scale than the inquiry in Victoria, is warranted. In fact, it is interesting to note that the Victorian Committee released six reports, held 47 public meetings and 80 other meetings, and commissioned five consultancy reports, the total cost of the inquiry being more than $500 000. I do not believe that we need an inquiry of that nature: it would not be justified.

The Hon. L.H. Davis: There are many more public sector schemes.

The Hon. C.J. SUMNER: Yes. Such an inquiry would not be justified. The system I have outlined—an independent expert, hopefully from interstate, public submissions, and a report to the Government which would then be made public—would satisfy the request and the desires of members opposite, and indeed the desire of the Government. Obviously, once the report is presented and made public, if other matters require further consideration, the Parliament can consider them at that time.

The Hon. DIANA LAIDLAW: I move:

That the amendment of the Attorney-General be amended by adding at the end thereof the following words:

and that such inquiry should report to Parliament by 30 September 1985.

I am pleased to note that the Government is finally prepared to concede the need for a public inquiry in South Australia on the public sector superannuation schemes operating in this State. Certainly, concern has been expressed for many years by a number of Liberal members of the Legislative Council in respect of the escalating costs of the South Australian Superannuation Fund in particular. I mention specifically my father when he was a member of this Parliament, the Hon. Ren DeGaris and the Hon. Legh Davis.

On this occasion I would like to commend the Hon. Mr Davis for taking the initiative and moving on 22 August for the establishment of an independent public inquiry. That inquiry would operate under wide and comprehensive terms of reference, modelled, as the Attorney's amendment recognises, on similar inquiries that have been established in New South Wales and Victoria in recent times. I do not propose to comment on the references that the Hon. Mr Davis first put forward, but I would like to highlight my concern about the South Australian Superannuation Fund investment policy.

This, as some members may recall, was a particular concern of my father's when he was in this Chamber. He certainly had, and still has, considerable expertise and knowledge about such matters. While he was a member he asked many questions on this subject and on 6 March 1980 he noted in one question that at the end of the financial year 1979 the fund held no ordinary shares against its investments. This policy, he indicated, was in variance with every other State and private sector superannuation fund. Such a negative policy is very damaging, and has been very damaging, to the fund operating in this State for it has denied that fund considerable capital appreciation.

Over the past two years the Australian share price index has risen by about 55 per cent reaping substantial rewards for private sector superannuation funds, which invariably commit about 25 per cent of their funds to equity shares. The percentage in equity shares invested by the South Australian Superannuation Fund is nowhere near that mark. As I indicated, in 1979 it held no such shares, although I am aware there has been a slight change of direction since then.

The Hon. R.C. DeGaris interjecting:

The Hon. DIANA LAIDLAW: The dividend return on investment is greater than the fund will gain from its investment in the ASER development. That should be of further concern to this Parliament when it is debating this measure. The investment policy of the fund seems to be dominated by an obsession with property. The example of ASER is a further instance of this.

The example I will cite of such an investment is the decision taken by the trustees of the fund in 1980 to purchase the old Grenfell Street Mail Exchange. The price paid for the building in that year was $1.3 million. Over four years has passed since that purchase and the building is still unoccupied, although I noticed earlier this week some renovation work has commenced. The loss of interest on money used for that purpose has been in excess of $200 000 a year, so in the four years since the fund purchased that building it has lost over $800 000 in interest receipts alone.

The Hon. C.J. Sumner interjecting:

The Hon. DIANA LAIDLAW: I am talking about the decision taken by the trustees of the fund to purchase that building and then not utilise it.

The Hon. C.J. Sumner: What about Mr Griffin and the Sir Samuel Way Building? That cost a packet.

The Hon. DIANA LAIDLAW: I am talking about the Mail Exchange Building, which has been unoccupied for four years. The Attorney-General should be equally concerned about this investment policy, instead of getting stuck into the Liberals.

The Hon. C.J. Sumner: I am.

The Hon. DIANA LAIDLAW: Good! The Attorney should be concerned because the poor investment policies of the fund in the past have meant that more and more general revenue, taxpayers' money, has been committed to this fund to make up the shortfall caused purely because of poor investment policies. In addition to increases in the general revenue commitment we find that the public actuary is now recommending that there should be an increase in contributions of 1.5 per cent by members of the fund. Therefore, the investment policy of the fund over the 10 years that it has been in existence should be of concern, equally, to members of this Parliament, taxpayers in general and members of the fund.

Concern about investment policy was one reason why New South Wales and Victoria decided to establish inquiries in their States. As the Attorney noted when moving his amendment, both inquiries have found that there is reason for criticism of not only investment policy but also of many aspects of the administration policies of those funds. I indicated earlier that the Acting Public Actuary in his recent triennial report recommended that the contribution level of members should be increased by 1.5 per cent. This matter was specifically referred to by the Hon. Legh Davis in moving his private member's Bill. I am sorry that the Attorney-General's amendment excludes any reference to immediately acting upon the Public Actuary's recommendation.

I think that it is significant that the Government has decided not to accept that aspect of the Hon. Legh Davis's recommendation because, while this inquiry meets, the need for funds from general revenue will be considerably greater every day that the Government delays calling on public servants to play their part with regard to the Superannuation Fund. I regret that the Government has not had the courage to act on that recommendation. In fact, I suggest that any group that actually goes to the Government in future looking for funds and has its application refused could well have reason to believe that it is denied those funds simply because the Government has not had the courage to act on this recommendation made by the Public Actuary. I do not think that such a suggestion is at all fanciful.

It is also significant that the Government has decided not to include a second aspect of the Hon. Legh Davis's motion, that the inquiry should report to the Parliament by 30 September 1985. I believe that it is important that there is a date set for conclusion of this inquiry, or to at least indicate to the Parliament what progress it is making. The Public Actuary has, as I have indicated, highlighted that there are serious areas of concern about which action should be taken. If the Government is not to move at this stage to organise and arrange for public servants to pay this extra 1.5 per cent contribution, then we should at least be ensuring that this inquiry does not drag on *ad nauseam*. I hope strongly that the amendment I have moved that this inquiry should report to the Parliament by 30 September will be supported.

The Hon. K.L. MILNE: I think that it is important we recognise from the start that this will be an inquiry instigated by the Government and not by this Council. Therefore, I think that the number of instructions we give the Government should be few.

I congratulate the Premier and the Government on taking this step to institute a public inquiry. I realise that other people have been pressing for an inquiry. The Hon. Mr DeGaris has been pressing for it and warning that something had gone wrong, long before the Hon. Mr Davis was in the Council. I will not take anything away from the Hon. Mr Davis for taking the initiative to actually place this matter on the Notice Paper. I remind honourable members that I have been complaining about the scheme in the press and other media since 1980 and saying that such an inquiry would become necessary sooner or later. I place on record some of the facts. The figures that made me and others see trouble looming were these—

The Hon. C.J. Sumner: Didn't Tonkin, Burdett and others see them?

The Hon. K.L. MILNE: If they did they did not look thoroughly. These are the figures: in 1979-80 the annual amount subscribed by the taxpayer was $27 million; in 1980-81 it was $32 million, an increase of $5 million; in 1981-82 it was $37.6 million, an increase of $5.6 million; in 1982-83 it was $45.2 million, an increase of $7.6 million; and in 1983-84 it was $53.8 million, an increase of $8.6 million. Not only did the increase from the taxpayer double in those five years, but the rate of increase increased each year. If that continued, by the year 2000 it was obvious that contributions from the taxpayer would be approximately $200 million per annum.

Not only that, but the proportion of the payment from the fund and the Government was out of gear. Originally, in 1974, the Actuary told us, when some adjustments were made to the scheme, that when a person retired the Government would contribute 72 per cent and the Superannuation Fund 28 per cent. In fact, after the first year, after the new scheme with its supplements, indexing and so on was instituted, the Government contributed 93.5 per cent and the Superannuation Fund 6.5 per cent. Since then there has been a slight improvement but now the effect is, on average, about 82 per cent from the taxpayer and 18 per cent from the fund.

Two things are obvious: first, the Actuary made a mistake in 1974 in what was recommended; and secondly, the administration of the fund and its investment policy, as the Hon. Miss Laidlaw made quite clear, left a great deal to be desired. In fact, its performance has been very poor. Furthermore, we must realise that the fund was not protected, and successive governments from that of Sir Thomas Playford onwards have raided it from time to time. The fund is made up of contributions deducted from the salaries and wages of public servants, and it is their money held by the trustees in trust and invested for them. It is quite immoral, and in fact should be illegal, for governments to borrow from that fund at special rates of interest, thus reducing the contribution from the fund and increasing the contribution from the taxpayer.

I mention this now in the hope that whoever conducts the inquiry makes quite clear that some arrangement must be made where that fund is sacrosanct and isolated, and not available for borrowing. The State should not rely on that money: it was never State money. I hope that there will be a protection, and that when this Parliament hears about it both Houses will pass resolutions that any borrowing in future will be illegal.

The criticism of the Hon. Mr DeGaris, the Hon. Mr Davis, myself and others over the years is not an attack on the public servants. I think that some public servants, including the Secretary of the Public Service Association, have felt that we were blaming them. That is not the case. After all, the scheme is not all that good to them. They would be better off if they had invested in private superannuation schemes. The test of whether or not the scheme is good for them is that only about one third of public servants belong to it. So, it cannot be all that attractive from their point of view. It is simply a bad scheme. It is too expensive for the taxpayer and the State economy, and it has been badly run. In 1973-74 the proportion of total State taxes going into the Public Service Superannuation Fund was 4.4 per cent; in 1983-84 it was 8.8 per cent. This year I expect that it will be about 10 per cent. So, the proportion of State taxes going to the fund has doubled in 10 years.

I bring these facts before the Council to illustrate that the matter is urgent. This matter should have been seen to much earlier. I am delighted that the Government is tackling it now. I support the principal of a general inquiry instituted by the Government. I am satisfied with the Attorney-General's remarks that the inquiry will be carried out expeditiously. The Government is aware that the matter is urgent, and, the fact that it will not make any adjustments to the scheme until the report is received illustrates that it wants to carry out the inquiry quickly, as the situation will get worse while we wait. I accept the Attorney-General's statement that the report will be made public—that is essential. I have pleasure in supporting the motion.

The Hon. R.I. LUCAS: I congratulate the Hon. Mr Davis for his initiative in moving the original motion and putting it before Parliament. Some of the more recent speakers, and the Hon. Mr Milne in particular, have been less than generous towards the Hon. Mr Davis when giving credit where credit is due.

Whilst people like the Hon. Mr Milne and the Hon. Mr DeGaris and others have raised questions about superannuation in previous years, no-one but the Hon. Mr Davis took the initiative in this Council and put a motion on the Notice Paper. If there is to be action, there is not much use talking to the press or anywhere else other than where the decisions are taken and where the Government has to stand up and vote on each matter. By putting pressure on the Government—and the Attorney-General was placed in the situation where he was going to have to vote for or against the Hon. Mr Davis's motion on the Notice Paper today—and, not wanting to be seen to be voting against it, the Attorney and the Government have been pressured by the Hon. Mr Davis to accept the public inquiry.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: Much of the information has only come to light recently.

The Hon. C.J. Sumner: Why did not Tonkin and Burdett let—

The Hon. R.I. LUCAS: It is not worthy of the Attorney to play down the role of the Hon. Mr Davis in respect of his worthwhile motion. The other point that I wanted to comment on concerned the Attorney's amendment which was a broad amendment, as the Attorney indicated. It is broad in that it does not specifically set out what the terms of reference will be, and equally it does not take up two other matters in respect of the Hon. Mr Davis's motion. The first is in respect of these words of the motion:

> That without detracting from the need for the State Government to act immediately on the recent recommendations of the Acting Public Actuary . . .

That was the original wording of the Hon. Mr Davis's motion. I have no doubt that, whilst the Attorney and the Government have been pressured into supporting the Hon. Mr Davis's concept, one of their reasons for doing so—and I suggest a very important reason—is to defer the very tough decisions that will have to be taken at present by the Bannon Labor Government with respect to the Public Service superannuation scheme. Some very tough options have been given to the Government already by the Acting Public Actuary; that is, either contributions are raised or benefits are reduced. It is as simple as that, and the Government with its close links with the union movement and the PSA and its unpreparedness to bite the bullet in respect of that tough decision has a special difficulty because the Government will want to keep its options open for an election some time next year.

The Hon. C.J. Sumner: Do you know why Tonkin, Griffin and Burdett did not do anything about it? You might like to answer that.

The Hon. R.I. LUCAS: It is worrying the way the Attorney keeps meandering into the past all the time: we are now in the present. The decisions have to be taken now.

Members interjecting:

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

The Hon. R.I. LUCAS: Decisions have to be taken and the Attorney is not just willing to do that.

Members interjecting:

The ACTING PRESIDENT: Order! If the Hon. Mr Lucas faces the Chair he will fare much better.

The Hon. R.I. LUCAS: There is no doubt that the Premier, the Attorney and other members of the Bannon Cabinet have an eye to the election that is due some time before March 1986 and is likely to be held some time next year. There is no doubt that the Attorney tonight—

The Hon. M.B. Cameron: He might not agree with that, but the others might.

The Hon. R.I. LUCAS: We know the Attorney's views on fixed terms have no support in Cabinet. The Minister of Agriculture is a very firm critic of those propositions of the Attorney. I must say that I agree with the Attorney and not the Minister of Agriculture.

The Hon. C.J. Sumner: Then you will vote for our Bill.

The Hon. R.I. LUCAS: We will not see a fixed term Bill from you.

The Hon. C.J. Sumner: Three years fixed.

The Hon. R.I. LUCAS: Come on! We will not see a fixed term Bill. The Attorney has been forced away from that, but that is another matter.

The Hon. C.J. Sumner: Three years minimum on a four-year term.

The ACTING PRESIDENT: Order! The Hon. Mr Lucas should continue.

The Hon. R.I. LUCAS: There is no doubt that, as the Attorney said tonight, the Government will not take the tough decisions about increasing contributions or reducing benefits until the results of the inquiry are available. The Attorney went on to suggest that he hoped (I forget his exact words) that this independent inquiry would report well before the next State election, but of course he could give no guarantees. I say tonight that I have no doubt at all that we will not see a decision from the Bannon Labor Government on this matter before the next State election—whenever it is—whether it is March 1985 or March 1986.

I am sure it is for that reason that the Government will probably not support the amendment moved by the Hon. Diana Laidlaw to put a time limit on the inquiry. It was a reasonable limit of September next year. Personally, I would have made it tighter and put the limit on June next year, so that we could be assured of getting the report prior to a possible State election late next year. That will be why the Government will not accept the very sensible amendment of the Hon. Diana Laidlaw. With those few words I support the motion of the Hon. Mr Davis. I was a little disappointed, and I conveyed that disappointment privately to the Hon. Mr Davis, about the Hon. Mr Sumner's amendment, but in his wisdom we will accept that, and I also support the amendment of the Hon. Diana Laidlaw.

The Hon. L.H. DAVIS: In rising to conclude what has been quite a lively debate on this motion I would emphasise that in accepting the need to establish an independent inquiry into public sector superannuation schemes in South Australia the Government has implicitly accepted the merit of the argument that has been advanced over the past 18 months in my several speeches on the subject and, of course, as has already been observed, the arguments that have been raised in this Chamber over many years, notably by the Hon. Mr DeGaris and the Hon. Mr Laidlaw. I am interested to see that the Government has not denied the facts that I placed before the Council when moving my original motion in late August.

The Hon. C.J. Sumner: That will be a matter for the inquiry.

The Hon. L.H. DAVIS: Indeed, as the Hon. Mr Sumner has said, many of these facts of course will be matters for the inquiry, but some of the facts that I did place before the Council I believe are incontrovertible. I would like to refer briefly to them. First, in respect of the structure of the South Australian Superannuation Fund, as I have mentioned, the President of the Superannuation Board is the Administrative Officer of the Board. It happens to be the Public Actuary who is the Actuary to the Board. The same person—namely, the Public Actuary—is Chairman of the South Australian Superannuation Fund Investment Trust, which manages and directs the investments of the Trust. If that is not enough, as Public Actuary he advises the Government on the state and sufficiency of the fund.

Therefore, the structure of the South Australian Superannuation Fund needs serious attention, to put it mildly. Secondly, the review process which has been established by legislation is most unsatisfactory. We have seen that it took the Acting Public Actuary 13 months to produce the triennial review of the South Australian Superannuation Fund. That triennial review, for the three years up to and including the 1982-83 financial year, was tabled in August. I think honourable members should know that the triennial review for the Police Pension Fund, for the three years ended 30 June 1983, is not yet available. In other words, some 15½ months after the period in which it should be reported on, Parliament has not yet received that triennial review.

I have made inquiries in the private sector and actuaries have told me that, if that was the standard adopted in the private sector, they would be out of a job. They have said that is not good enough for the client, and in this case the client is the Parliament, the people of South Australia and those police officers who are members of the fund.

The Hon. K.L. Milne: They are grumbling, too, aren't they?

The Hon. L.H. DAVIS: Indeed they are. It is not good enough that this triennial review, for the three years ending 30 June 1983, is not yet available. Quite frankly, it is a most unsatisfactory state of affairs. At least in the short term, irrespective of the terms of reference of the inquiry, the Government should initiate steps to ensure that the triennial review is tabled in Parliament before we rise for the Christmas break. If it is a matter of insufficient staff in the Public Actuary's Office, that should be remedied. However, if the private sector can complete jobs within 12 months—which is the figure indicated as a standard procedure for matters of this nature—surely the Government can adopt that as a minimum standard. I have already commented on that on numerous occasions in relation to annual reports that see the light of day some 15 or 18 months, or more, after the due date.

Thirdly, the cost of the South Australian Superannuation Fund has nearly doubled over the past four years. In the 1983-84 year the cost to the Government (the taxpayers of South Australia) was some $53.8 million. I would judge that the Government contributes about twice the level contributed by private sector employers to their schemes. Finally, I have referred to the most unsatisfactory nature of the investments in public sector schemes. I am quite confident that the independent inquiry, however it is constituted, will find that, over the decade since the South Australian Superannuation Fund was established in 1974, the investment performance of the fund has been far inferior to private sector funds.

The Hon. C.J. Sumner: Do you think that is because it is obliged to invest always in South Australia?

The Hon. L.H. DAVIS: No, I do not believe that is the case at all. It is not obliged to invest in only South Australian investments. In fact, it has had many equity and convertible note investments over the years in companies which do not have head offices in South Australia—they may have operations in South Australia, but certainly their centre of operations is not based in this State. If one looks at two major public sector schemes—the South Australian Superannuation Fund and the Police Pension Fund—one can see severe defects in the operation of their investments.

I have expressed concern previously, and I will do so again, about the South Australian Superannuation Fund's participation in the ASER project. The Campbell Committee of Inquiry into the Australian financial system, along with insurance groups and investment groups around the world, has adopted the criteria of a maximum figure of no more than five or 10 per cent of any investment pool being invested in one investment. However, we find that, in the ASER project investment, the South Australian Superannuation Fund has committed over 20 per cent of its $300 million of assets into that one project by way of equity and loan investment. That is contrary to all the good rules of investment which are adopted by superannuation funds in the private sector. I think that is an imprudent action.

I am not querying the investment itself, because we do not have information on that as yet. However, I am saying that I would find it hard to believe that anywhere in Australia a public sector or private sector superannuation fund of a

reasonable size would have more than 20 per cent of its investment pool locked up in one investment—such as is the case with the South Australian Superannuation Fund. In relation to the Police Pension Fund, we see total investments of the order of $34 million as at 30 June 1984, with less than 40 per cent of that amount invested in capital growth investments. When I refer to capital growth investments, I include property and equity shares.

The Hon. C.J. Sumner: Where's the rest?

The Hon. L.H. DAVIS: Of course, the Attorney-General wades in and asks 'Where's the rest?' Ignorance is not bliss in this matter. The fact is that the rest of the 60 per cent is invested in what can be described as static investments—investments with fixed interest returns only with no prospects of capital growth. As I mentioned when introducing the motion, the common benchmark for private sector funds in superannuation is that 50 per cent, and more likely 60 per cent, of the funds should be invested in capital growth areas. Over the past decade the Police Pension Fund has suffered greatly, as has the South Australian Superannuation Fund as a result of an abysmal selection of investments.

Since the criticisms started over the past two or three years there has been unquestionably a shift away from fixed interest investments into capital growth investments. The Hon. Ms Laidlaw corroborated the point that I made in introducing the motion, namely, that the South Australian Superannuation Fund has had a predisposition to invest in property rather than in property and equity shares. Both of those investment vehicles offer good prospects for capital growth. I am quite confident that the independent inquiry will also be critical of the investment procedures and the investments themselves in major public sector superannuation schemes, which will be the subject of this independent inquiry.

Having said that, I am pleased that the Government has seen fit to move in the direction of establishing an inquiry. Because I am not churlish, I have accepted, with some reservations, the proposal of the Attorney-General. However, I will certainly support the amendment that has been proposed by my colleague the Hon. Ms Laidlaw. It is important that we put a time limit on this inquiry. We have seen in New South Wales, Victoria and the Commonwealth major inquiries into public sector superannuation schemes.

The Hon. K.L. Milne: The Commonwealth scheme is an absolute disgrace.

The Hon. L.H. DAVIS: Indeed it is, but one of the advantages of an inquiry into superannuation schemes in South Australia is that the independent person or persons who make up this inquiry will not have to focus on dozens of public sector superannuation schemes, as was the case, for instance, in Victoria where they had literally hundreds of schemes to look at. It is possible within 10 or 11 months to put together a comprehensive report that can be brought before Parliament so that the Government of the day may act on the recommendations on that independent inquiry.

The Attorney-General claims that the Public Actuary has advised that the public sector schemes in South Australia would not be subject to the same criticism as interstate schemes. That is a comment that can certainly be made, but I reserve judgment on its accuracy until I see the results of the inquiry. The Public Actuary—and I do not seek to criticise him when I say this—is hardly in a position to make judgments on the adequacy, the management and the investments of the scheme because he is the scheme, by and large, in the sense that he has three hats that he has to wear to fulfil his legislative duties.

I am pleased to hear from the Attorney-General that the Government has moved, albeit in a superficial way, to correct some of the current defects in the public sector schemes: requiring annual reports and requiring public authorities to improve their reporting procedures in relation to their provisions for superannuation. Statutory authorities and various departments in the superannuation scheme will have to accrue superannuation costs in their accounts as they are incurred, and that procedure has been adopted in recent years. That has made a pretty dramatic impact on the accounts of some of those larger bodies. One can instance the Housing Trust, which has been a public critic of the large provision that it has to set aside annually for public sector superannuation.

I hope that the terms of reference will be broad enough to take into account those terms which were the subject of the motion that I moved in this Council. Although I indicate support for the proposition that has been moved by the Attorney-General, I place on the record that if those terms of reference are not broad enough I will certainly be an outspoken critic of them.

I accept, however, in good faith the indications that the Attorney has given to this Council tonight, namely, that the terms of reference will be established in the broadest sense, that they will take into account the New South Wales and Victorian experience, that they will be made public, and that members of the public and interested parties in the superannuation scheme here and interstate will be invited to participate.

The Attorney properly says that this public sector superannuation inquiry could have been established in many ways: it could have been a Parliamentary inquiry, as was the case in both New South Wales and Victoria, through the establishment of a Select Committee, through the Public Accounts Committee or in other ways. The Attorney has indicated that an independent person or persons will make up this inquiry, preferably from interstate. The indication from the Commonwealth, New South Wales and Victorian Government inquiries is that independent actuaries from the private sector have been willing to participate and assist in inquiries of this nature. I hope that the Government will go out of its way to ensure that private sector actuaries give an independent view on the fund.

I am pleased to see that in moving her amendment the Hon. Miss Laidlaw has indicated that the inquiry should report directly to Parliament by 30 September next year. The Attorney may object to that; he may say that it is more appropriate for the inquiry to report to the Government, but it is important that it report to Parliament. I am pleased, nevertheless, that, whatever action the Government may take in this matter, the Attorney has indicated that the final report will be made public. I hope that contributions of a significant nature to this independent inquiry will become public as they are presented to the inquiry.

The Hon. C.J. Sumner: That will depend on the people presenting them.

The Hon. L.H. DAVIS: Exactly. I am pleased to report to members of the Council that experience in other States is that independent actuaries have been prepared to make public their contributions to the inquiries in those States.

Public sector organisations here—the Public Service Association and the South Australian Institute of Teachers—have, not surprisingly, reacted to the suggestion that an inquiry should be established. Sadly, what has not been mentioned in those reports to the teachers and to public servants in their respective journals is the unsatisfactory structure, the poor investment performance and the cost of the funds and (a point that the Hon. Mr Milne touched on) the fact that the funds, although they have generous provisions for the beneficiaries, are structured in such a way as to make them relatively unattractive for people entering them at a young age.

I expect that many aspects of these funds could be found to be unsatisfactory by such an inquiry. It is important that employees, whether they be in the private or the public

sector, should be encouraged to take up superannuation, in other words, to prepare for their retirement by setting aside a nest egg, whether it be a payment by way of lump sum or by way of pension.

In concluding, I repeat that I accept the arguments that have been advanced by members in this debate. They only underline the points that were advanced when this motion was first moved. I am pleased that the Government has seen the wisdom of the suggestion and has reacted in a positive fashion. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

PRICES ACT AMENDMENT BILL (No. 2)

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Prices Act, 1948. Read a first time.

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

That this Bill be now read a second time.

This Bill proposes amendments to the Prices Act, 1948, designed to remove certain restrictions upon the powers of the Commissioner in three areas. First, the Bill proposes removal of a restriction upon the power of the Commissioner to communicate information to consumer authorities in other jurisdictions. Section 7 of the Act imposes an obligation of secrecy on the Commissioner but authorises him to communicate information to the Minister or any person concerned in the administration of a Commonwealth, State or Territory law relating to the control of prices. This reference to the control of prices is a carry-over from the days when the Prices Act dealt only with price control. The Act now includes all the principal consumer affairs powers and functions of the Commissioner for Consumer Affairs. The Commissioner should clearly be able to communicate to other consumer affairs agencies any information regarding the exercise of those powers and functions without risk of being held to have contravened the secrecy provision.

Although it is arguable that such communication would not infringe the Act because of other provisions, the rights of the Commissioner to provide confidential information to the Trade Practices Commission and the Corporate Affairs Commission has recently been challenged. The amendment proposed by the Bill would put the matter beyond doubt.

Secondly, the Bill proposes amendments which would remove certain restrictions upon the powers of investigation of the Commissioner. Under section 18a of the Prices Act the Commissioner may investigate 'excessive charges for goods or services or . . . unlawful or unfair trade or commercial practices or . . . infringement of a consumer's rights arising out of any transaction entered into by him as a consumer'. However, the section goes on to provide that the power of investigation may be exercised only upon the complaint of a consumer; at the request of a Commonwealth, interstate or Territory consumer authority; or where the Commissioner suspects on reasonable grounds that excessive charges have been made or that an unlawful or unfair practice or an infringement of a consumer's rights has occurred. Furthermore, the Commissioner is required to report to the Minister any case where he commences an investigation based upon a reasonable suspicion of the kind just referred to.

These provisions impose unnecessary restrictions on the ability of the Commissioner to conduct investigations. The requirement that an investigation should not be conducted unless the Commissioner 'suspects on reasonable grounds' that there is something which requires investigation is impractical; often it is not possible to establish such grounds until after an investigation has been commenced. For example, where the Commissioner sees an advertisement which seems 'questionable' he is not necessarily in a position to prove that he has 'reasonable grounds' to suspect that the advertisement infringes the law. However, he should be able to investigate the matter immediately, rather than sit back and wait for a complaint to be received. He should not have to wait until the horse has bolted before he attempts to lock the stable door.

The provisions also prevent the Commissioner from conducting monitoring programmes to ascertain whether the law is being complied with. For example, it is arguable that an investigation officer should not call into a used car yard to make a random spot check of whether all cars have the correct notices displayed and that other provisions of the Second-hand Motor Vehicles Act are being observed by the dealer. These provisions were inserted at a time when the consumer affairs function was relatively new and some concerns were expressed about the way in which the statutory powers under the Act might be abused. Also, when this proposal was last considered in 1977, the Commissioner was not subject to the jurisdiction of the Ombudsman, which may have added to the fears of abuse.

The Government believes that the consumer affairs function is now more widely accepted and respected and has greater credibility than might have been the case in 1977. Any fears about abuse of powers should have lessened considerably having regard to the way in which these powers have been exercised over the past seven years. The arguments raised in 1977 are not supported by experience. Furthermore, as stated, the commissioner is now, and has been since January 1981, under the jurisdiction of the Ombudsman. There is therefore a mechanism which operates as a restraining influence and under which action could be taken in the unlikely event of the Commissioner's abusing his powers.

A recent report by the Australian Federation of Consumer Organisations on 'The role of prosecution in consumer protection' was critical of consumer affairs agencies for the lack of enforcement action taken by them. Although the report acknowledged that South Australia was the leader in this area, the report recommended that less reliance should be placed on complaints in the enforcement process and that consumer affairs agencies should undertake random or focused surveys of compliance with key laws. The removal of these restrictions is a necessary step if there is to be clear power for the full and proper enforcement of South Australia's consumer laws.

Finally, the Bill proposes amendments to remove certain restrictions upon the Commissioner's power under the Prices Act to commence, defend or assume the conduct of civil proceedings on behalf of consumers. Under section 18a, the Commissioner may represent a consumer in legal proceedings where he is satisfied that there is a cause of action and that it is in the public interest or proper so to represent the consumer. He must have the consent of the consumer and also obtain the consent of the Minister.

The constraints to which reference has been made ensure that frivolous proceedings are not undertaken and that the procedure is not used as a means of providing legal aid to all consumers. As a result, the procedure has been used sparingly in the past—usually in test cases where the results of one action may benefit other consumers or in cases where a trader has persistently refused to negotiate satisfactory resolution of disputes and needs to be reminded of his obligations by a court order. However, section 18a goes on to limit the power of the Commissioner to represent consumers to cases involving a monetary amount of less than $5 000. The section also excludes the exercise of that power in relation to cases involving a consumer as a purchaser or prospective purchaser of land. The monetary limit of $5 000, which was last increased in 1977, provides an arbitrary constraint with no logical justification.

It operates as an unwarranted fetter on the Commissioner's ability to represent consumers in legal proceedings. The same can be said of the other restriction which prevents the Commissioner from representing a consumer in proceedings involving the biggest transaction he or she is likely to enter into—the purchase of a home.

The Commissioner is currently conducting an investigation involving a large number of consumers who have monetary claims some of which are below and some above the $5 000 limit. It is highly likely that legal proceedings will be necessary to sort out the rights and obligations of these consumers—possibly by way of individual cases but more likely by a joint action seeking a declaration from the Supreme Court. Some of these consumers would qualify for legal aid, but others may not. In the event of a joint application to the Supreme Court, it would be highly desirable for the Commissioner to represent all these consumers in the public interest. He could then argue the case not only for their benefit but also to obtain a definitive interpretation of the applicable law which would assist with future cases of this kind.

It should also be pointed out that the Residential Tenancies Act contains a provision almost identical to section 18a (2) of the Prices Act, except that it applies only to residential tenancy agreements and there is no monetary limit on the amount which may be involved. There should be consistency in these matters. The inability of the Commissioner to represent a consumer in legal proceedings involving his or her purchase of a house or land also has little justification in logic. It means, for example, that the Commissioner could represent a consumer in legal proceedings involving a contract to build a house on the consumer's own land for $75 000, but could not do so if the transaction was a package deal for the purchase of a house and land for the same amount. The Government is firmly of the view that it is now time to remove these arbitrary restrictions. I commend the Bill to the House. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 amends section 7 of the principal Act which prohibits the unauthorised disclosure of information acquired by any person in the course of the performance of powers or duties under the Act. Paragraph *(c)* of subsection (4) authorises the Minister or the Commissioner to communicate to the Minister or any person concerned in the administration of legislation of another State or the Commonwealth or a Territory relating to the control of prices any information which that Minister or person reasonably requires for the purposes of that legislation. The clause removes the reference to legislation relating to the control of prices and replaces it with a reference to legislation relating to a matter of the same or a similar kind as a matter to which the principal Act relates.

Clause 3 amends section 18a of the principal Act which, *inter alia*, authorises the Commissioner to investigate excessive charges, unlawful of unfair trade or commercial practices or infringements of consumers' rights and to commence, defend or assume the conduct of legal proceedings on behalf of a consumer. The clause removes present subsection (1a) which places a restriction upon the investigatory power of the Commissioner that an investigation is not to be conducted except upon the complaint of a consumer, or at the request of the counterpart of the Commissioner under the laws of another State or the Commonwealth or a Territory, or where the Commissioner suspects on reasonable grounds that an excessive charge has been made or an unlawful or unfair practice or an infringement of a consumer's rights has occurred.

The clause removes present subsection (1b) which requires that where the Commissioner conducts an investigation based upon a reasonable suspicion of the kind referred to above, he shall as soon as practicable after commencing the investigation notify the Minister of the substance of the investigation. The power of the Commissioner to commence, defend or assume the conduct of legal proceedings on behalf of a consumer is restricted under subsection (2) to claims involving an amount not exceeding $5 000. The clause amends subsection (2) by removing this restriction. Finally, the clause removes subsection (3a) which provides that the Commissioner shall not institute, defend or assume the conduct of proceedings to which the consumer is a party or prospective party in his capacity as a purchaser or prospective purchaser of land.

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

NATIONAL CRIME AUTHORITY (STATE PROVISIONS) BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to make provision for the operation of the National Crime Authority in South Australia. Read a first time.

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

That this Bill be now read a second time.

From reports of Royal Commissions and Commissions of Inquiry in recent years, it is evident that organised crime presents a real problem in Australia and that organised crime recognises no boundaries. The establishment of the National Crime Authority is the first attempt to establish a nation-wide Federal/State co-operative attack on organised crime and as such is strongly supported by the South Australian Government. With the enactment of this measure South Australia will be able to participate fully in the fight against organised crime.

Every State and the Northern Territory has notified its intention to participate. This national co-operation is fundamental to the success of the National Crime Authority. The Government firmly believes that the National Crime Authority is an appropriate and effective body to tackle organised crime. The new body has powers not available to Royal Commissions. Royal Commissions have no legal authority or mandate to investigate matters outside the jurisdiction within which the letters patent are issued. The use of Royal Commissions does not necessarily lead directly to people being brought before the courts. In fact, criminal and civil charges arising out of Royal Commissions, on any significant scale, are a recent development.

The National Crime Authority, on the other hand, is specifically designed to assemble evidence which can be used to obtain convictions against major criminals. The Authority, when it has a reference to investigate a particular matter, has additional powers not available to a Royal Commission, for example, access to Commonwealth records not normally made public; power to apply to the Federal Court for a person's passport to be retained by the court; and power to apply to the Federal Court to issue a warrant for the arrest of a witness where there are reasonable grounds to believe that the witness is likely to leave Australia to avoid giving evidence.

Further, the National Crime Authority is not constrained by narrow terms of reference. Using its ordinary powers it can investigate any relative criminal activity. Once a reference is given it can use its special powers to pursue the

full range of relevant criminal activity without hindrance. Evidence given before the Authority may be used in prosecutions except in criminal proceedings against any person who provided that evidence under indemnity and the Authority has power to enable arrangements to be made for the protection of witnesses.

The Federal Act makes clear that the real task of the Authority is to gather evidence for prosecutions rather than to produce reports. There is formal mechanism in the Federal legislation for achieving co-operation with law enforcement agencies. The Authority can arrange for the establishment of joint task forces and co-ordinate investigations by the task forces so that the national effort against organised crime is maximised. I can assure members that the Authority will receive the utmost co-operation from South Australian law enforcement agencies.

Much has been made recently of the power of a State to veto a reference for the Authority to investigate offences against the laws of that State. It should be noted that no State can stop the Authority from using its general powers to investigate any matter anywhere in Australia. No State can veto references from the Federal Government which relate to possible breaches of Commonwealth law in a particular State. No State can veto references which relate to possible breaches of State law in another State. If a State does seek to use its veto powers, it will have to face up to the political consequences of such action.

While, as I have said, the South Australian Government is firmly of the opinion that the National Crime Authority is an appropriate and effective body to tackle organised crime we will certainly be prepared to co-operate if it appears that its structure and powers need alteration. However, in the fight against crime we must not lose sight of our democratic traditions. Laws which transgress the accepted standards of civil liberties cannot be countenanced.

I seek leave to have the detailed explanation 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 definitions of expressions used in the measure. Subclause (2) provides that expressions used in the measure that are also used in the National Crime Authority Act, 1984, of the Commonwealth ('the Commonwealth Act') have, unless the contrary intention appears, the same respective meanings as the expressions have in the Commonwealth Act. Attention is drawn to the definitions of 'relevant offence' and 'relevant criminal activity'. 'Relevant offence' is defined under the Commonwealth Act as meaning an offence that involves two or more offenders and substantial planning and organisation; that involves or is of a kind that ordinarily involves the use of sophisticated methods and techniques; that is committed or is of a kind ordinarily committed in conjunction with other offences of a like kind; and that involves theft, fraud, tax evasion, currency violations, illegal drug dealings, illegal gambling, obtaining financial benefit by vice engaged in by others, extortion, violence, bribery or corruption of public officers, bankruptcy and company violations, harbouring of criminals, forging of passports, armament dealings or illegal importation or exportation of fauna or other similar offences.

The expression does not include offences committed in the course of a genuine industrial dispute (unless committed in connection with or as part of a course of activity involving the commission of a relevant offence); offences the time for the prosecution of which has expired; or offences not punishable by imprisonment or punishable by imprisonment for less than three years. 'Relevant criminal activity' is defined under the Commonwealth Act as meaning any circumstances implying, or any allegations, that a relevant offence may have been, or may be being, committed against a law of the Commonwealth, of a State or of a Territory. Clause 4 provides that the measure is to bind the Crown in right of the State.

Clause 5 provides that the Minister administering the measure may, with the approval of the inter-governmental committee, by notice in writing to the National Crime Authority, refer a matter relating to a relevant criminal activity to the Authority for investigation in so far as the relevant offences are or include offences against the law of this State. The reference is, under the clause, to describe the general nature of the circumstances or allegations constituting the relevant criminal activity; to state that the relevant offences are offences against the law of this State (but need not specify the offences); and to set out the purpose of the investigation. Subclause (4) provides that where a reference is in force in respect of a matter relating to a relevant criminal activity, it is a special function of the Authority to investigate the matter in so far as the relevant offences are or include offences against the law of this State. The term 'special function' is defined by clause 3 accordingly; while 'special investigation' is defined as being an investigation conducted by the Authority in the performance of its special functions. Under subclause (5), the Minister may, by notice in writing to the Authority, withdraw a reference. The Inter-Governmental Committee referred to above is established and its proceedings governed by the Commonwealth Act, in particular, sections 8 and 9 of that Act.

Clause 6 corresponds to section 12 of the Commonwealth Act and provides for the performance by the Authority of its special functions. The Authority is, under the clause, to assemble evidence of offences against the law of the Commonwealth or a Territory or a State and to furnish that evidence to the Attorney-General or law enforcement agency for that jurisdiction. The Authority is to co-operate and consult with the Australian Bureau of Criminal Intelligence and may make recommendations for reform of the law or administrative or court procedures or practices to the Minister, or to the Commonwealth Minister or the Minister of another State, as the case may require. Subclause (4) limits the power of the Authority to interview any person in relation to an offence that the person is suspected of having committed to a case where the person has been summoned to appear as a witness at a hearing before the Authority and has not yet so appeared. Under the measure, a 'hearing' is a hearing convened under clause 16 relating to a matter referred to the Authority by the Minister under clause 5. Subclause (4) does not, however, affect the powers that members of the Australian Federal Police or the Police Force of a State who are serving on the staff of the Authority have in their capacities as members of those Police Forces.

Clause 7 provides, in effect, that the Authority may, with the consent of the Inter-Governmental Committee and the Commonwealth Minister, exercise powers and functions (such as those of a Royal Commissioner) conferred by the Governor or a Minister in relation to relevant criminal activities. Clause 8 limits the right of any person other than the Attorney-General of the Commonwealth or a State to challenge by legal proceedings the validity of a reference to the Authority by the Minister under clause 5. Clause 9 requires the Authority, in performing its special functions, to co-operate with law enforcement agencies. Clause 10 provides that the Authority has power to do all things necessary or incidental to the performance of its special functions. Clause 11 provides that the Minister may arrange for the Authority to be given, by any authority of the State,

information or intelligence relating to relevant criminal activities.

Clause 12 provides for the issue by a judge of the Federal court or a court of this State, upon application by a member of the Authority, of a warrant authorising the conduct of a search, for the purposes of a special investigation. Such a warrant is to have effect for a period (not exceeding one month) specified in the warrant. The clause provides for the seizure and retention of anything found on a search that is connected with the subject matter of the special investigation or that it is believed on reasonable grounds would be admissible as evidence in a prosecution for an offence against any Commonwealth, State or Territory law. Under the clause, anything seized must be returned to the person apparently entitled to it unless its retention is necessary for the purposes of a special investigation or the investigation of offences against Commonwealth, State or Territory law or for civil proceedings by the Crown related to an offence to which the relevant criminal activity relates.

Clause 13 provides for an application for a search warrant under clause 12 to be made to a judge by telephone. The grounds for the issue of a warrant upon a telephone application are, under the clause, to be verified by the applicant by affidavit which, together with the form of the warrant completed in the terms indicated by the judge, is to be forwarded to the judge not later than the day next following the date of expiry of the warrant. Clause 14 empowers judges of the courts of this State to perform such functions as are conferred on them by sections 22 and 23 of the Commonwealth Act (the issuing of search warrants according to the same procedures as are provided for under clauses 12 and 13).

Clause 15 provides for a judge of the Federal Court, upon application by a member of the Authority, to make an order for the delivery to the Authority of the passport of a person who has been summoned to appear at a hearing of the Authority or who has appeared at a hearing of the Authority where there are reasonable grounds to believe that the person may be able to give relevant evidence or produce any relevant document or other thing and reasonable grounds to suspect that the person intends to leave Australia. Clause 16 provides for the Authority to hold hearings for the purposes of a special investigation. At a hearing, the Authority may be constituted by one or more members or acting members of the Authority. A witness in a hearing may have legal representation, as may a person other than a witness where the Authority, by reason of any special circumstances, consents to such representation. Hearings before the Authority are, under the clause, to be in private and no persons (other than members or staff of the Authority or counsel assisting the Authority) are to be present except as directed by the Authority. Counsel assisting the Authority, legal representatives and persons authorised to appear before it may, so far as the Authority thinks appropriate, examine and cross-examine witnesses as to any matter relevant to the special investigation.

The Authority may restrict publication of any matter relating to a hearing to prevent prejudice to the safety or reputation of a person or the fair trial of a person who has been or may be charged with an offence. Under the clause, the Authority, shall, on the certificate of a court, make available for the benefit of a person charged with an offence before the court, evidence given before the Authority that the court considers should in the interests of justice be available for the purposes of the proceedings before the court. Clause 17 authorises a member or acting member of the Authority to summon a person to appear before the Authority at a hearing to give evidence or produce a document or other thing.

Clause 18 authorises a member or acting member of the Authority, by notice in writing to a person, to require the person to attend before a specified member of the Authority or the staff of the Authority at a specified time and place and to produce any specified document or thing that is relevant to a special investigation. Under the clause, such a requirement may be made whether or not the Authority is conducting a hearing for the purposes of the special investigation. Subclause (3) provides that it is an offence punishable by a fine not exceeding $1 000 or imprisonment for a period not exceeding six months for a person without reasonable excuse to refuse or fail to comply with such a requirement. Subclause (4) attracts for the purposes of this clause, the provisions of clause 19 governing the circumstances in which a person may refuse to comply with a requirement to produce a document or thing to the Authority.

Clause 19 provides for offences of failing to attend in answer to a summons of the Authority, to take an oath or make an affirmation, to answer a question or to produce a document or thing at a hearing. The clause permits a legal practitioner to refuse to answer a question or produce a document on the grounds that the answer would disclose, or the document contains, a privileged communication, provided that he may be compelled to identify the person to whom or by whom the communication was made. The clause permits a natural person to refuse to answer a question or produce a document (other than a business record) or other thing if the answer, document or thing might tend to incriminate the person except in a case where an undertaking that the answer, document or thing will not be used in evidence in criminal proceedings against the person is given by the Attorney-General, Director of Public Prosecutions, Crown Prosecutor or other authorised person for the jurisdiction in which the proceedings would take place. Under the clause, the Authority may recommend to the relevant authority the giving of such an undertaking.

Clause 20 provides for the issue by a Federal Court judge of a warrant for the arrest of a person who has been ordered to deliver his passport to the Authority (whether or not the person has complied with the order) where there are reasonable grounds to believe that the person will in any event attempt to leave Australia. Clauses 21 and 22 provide that where a person claims to be entitled to refuse to answer a question or to produce a document or thing, the Authority shall decide whether the claim is justified, and that a person adversely affected by such a decision may have the decision reviewed by the Federal Court or the Supreme Court of the State. The effect of the clauses is that the Federal Court has jurisdiction to review the decision if the answer or document or thing is required for the purposes of a special investigation arising from a reference by the Minister that relates to a matter that is also a subject matter of a reference by the Commonwealth Minister or the Minister of another State.

Where there is no matter to which the special investigation relates that is a matter that has also been referred to the Authority for investigation pursuant to the Commonwealth Act or the Act of another State, then an application for review under the clauses may be heard by the State Supreme Court. Under clause 22, the Authority is required to make a determination on this question that has *prima facie* force and the Supreme Court may, when hearing an application, transfer the application to the Federal Court if the Supreme Court considers that it would be more appropriate for the Federal Court to hear and determine the application. On hearing an application, the relevant court may affirm the decision of the Authority or set the decision aside. Where the court sets aside a decision relating to the production of a document, the court may nevertheless, if satisfied that an undertaking of the kind referred to in clause 19 has been given in relation to the production of the document, require

that the document be produced to the Authority. Provision is made under subclause (8) of clause 21 for the court to order excision or concealment of incriminating matter contained in a document.

Clause 23 creates an offence of giving evidence at a hearing that is, to the knowledge of the person, false or misleading in a material particular. Clause 24 provides for a member of the Authority to make arrangements (including arrangements with the Minister or members of the Police Force) to protect a witness or person who has or is to produce a document or thing to the Authority from intimidation or harassment. Clause 25 provides for offences of obstructing or hidering the Authority or its members in the performance of a special function or disrupting a hearing before the Authority. Clause 26 protects a person from being punished both under this measure and under the Commonwealth Act for the same act or omission, while preserving the right to prosecute under both measures. Clause 27 provides for the powers of acting members of the Authority.

Clause 28 provides that the Minister may make an arrangement with the Commonwealth Minister under which the State will, from time to time as agreed upon under the arrangement, make the holder of a judicial or other office of the State available as a member of the Authority or make an officer or employee of the State or a member of the State's Police Force available to perform services for the Authority. Clause 29 provides protection and immunity to members of the Authority, to legal practitioners assisting the Authority or representing persons before the Authority and to witnesses before the Authority.

Clause 30 provides that appointment of a judge as a member of the Authority does not affect the person's tenure of judicial office or his rank, title, status, precedence, salary or other rights and privileges. Clause 31 provides for secrecy in respect of information acquired by a member of the Authority or its staff in the course of the performance of duties under the measure. Clause 32 provides that the Minister shall cause a copy of each annual report of the Authority that he receives together with any comments made on the report by the inter-governmental committee to be laid before each House of Parliament. Clause 33 provides that proceedings for an offence against the measure (other than the offence provided for under clause 23) shall be disposed of summarily. Clause 34 provides for the making of regulations. Clause 35 provides that the measure shall, unless sooner repealed, cease to be in force at the expiration of 30 June 1989.

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

ELECTION OF SENATORS ACT AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Election of Senators Act, 1903. Read a first time.

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

That this Bill be now read a second time.

Late last year the Commonwealth Electoral Act was amended and now provides that the writ for a Federal election must fix the date for the close of the rolls and sets out a revised time table for the conduct of Senate and House of Representatives elections. Under the Commonwealth Constitution the issue of the writ for a Senate election and the setting of the time table for Senate elections is a matter for State laws:

> Section 9 of the Commonwealth Constitution provides that 'the Parliament of a State may make laws for determining the times and places of elections of Senators for the State': Section 12 of the Commonwealth Constitution provides that 'the Governor of any State may cause writs to be issued for elections of Senators for the State'.

In the light of those provisions of the Commonwealth Constitution, this State and the other States have maintained Acts dealing with the issue of writs and the times and places for Senate elections.

However, the amendments made to the Commonwealth Electoral Act have created the need for the provisions of that Act and the Election of Senators Act to be harmonised. The amendments proposed not only do that but also mean that the South Australian Act is uniform with the corresponding legislation in each of the other States and mirrors the provisions of the Commonwealth Electoral Act relating to the times and places for Senate elections. 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 amends section 2 of the principal Act which presently provides as follows:

> 2. (1) For the purpose of the election of Senators for this State to the Senate of the Commonwealth, the Governor may, by proclamation—
>
> *(a)* fix the date for the issue of the writ;
>
> *(b)* appoint a place for the nomination of candidates and fix a date (referred to in this Act as 'the day of nomination') on or before which candidates must be nominated;
>
> *(c)* fix the date for the polling;
>
> *(d)* fix a date on or before which the writ must be returned.
>
> (2) Nomination must be made after the issue of the writ and before 12 o'clock noon on the day of nomination.
>
> (3) The polling shall take place at all polling places within the State appointed under the law of the Commonwealth for the time being in force for the regulation of Parliamentary elections.

The clause amends this section by substituting for paragraph *(b)* of subsection (1) provision for the proclamation to fix the date for the close of electoral rolls (see s. 152 (1) *(a)* Commonwealth Electoral Act (formerly s. 52 of that Act)) and the date for the nomination of candidates. The place for the nomination of candidates is provided for under proposed new subsection (2a) as being the office of the Australian Electoral Officer in the State (see s. 167 Commonwealth Electoral Act (formerly s. 72)). The clause also inserts new subsections providing for the other matters relating to the times and places for Senate elections that are provided for under the Commonwealth Electoral Act and the legislation of the other States.

Proposed new subsection (1a) provides that the writ shall be deemed to have been issued at 6 p.m. of the day on which the writ was issued (see s. 152 (2) Commonwealth Electoral Act). Proposed new subsection (1b) provides that the writ shall be dated as of the day of its issue and that the dates fixed by the proclamation under subsection (1) shall be specified in the writ (see s. 152 Commonwealth Electoral Act). Proposed new subsection (1c) provides that the date fixed for the close of the electoral rolls shall be seven days after the date of the writ (see s. 155 Commonwealth Electoral Act (formerly s. 61A)).

Proposed new subsection (1d) provides that, subject to subsection (1e), the date fixed for the nomination of the candidates shall not be less than 11 days nor more than 28 days after the date of the writ (see s. 156 (1) Commonwealth

Electoral Act (formerly s. 62)). Proposed new subsection (1e) provides that where a candidate for an election dies after being nominated and before 12 noon on the day fixed by the writ as the date of nomination, the date of nomination shall, except for the purposes of subsection (1f), be taken to be the day next succeeding the day so fixed (see s. 156 (2) Commonwealth Electoral Act).

Proposed new subsection (1f) provides that the date fixed for the polling shall not be less than 22 days nor more than 30 days after the date of nomination (see s. 157 Commonwealth Electoral Act (formerly s. 63)). Proposed new subsection (1g) provides that the day fixed for the polling shall be a Saturday (see s. 158 Commonwealth Electoral Act (formerly s. 64)). Proposed new subsection (1b) provides that the date fixed for the return of the writ shall not be more than 90 days after the issue of the writ (see s. 159 Commonwealth Electoral Act (formerly s. 65)). Proposed new subsection (2a) has been described above. Proposed new subsection (2b) provides that the poll shall be open at 8 a.m. and shall not close until all electors present in the polling booth at 6 p.m. and desiring to vote have voted (see s. 220 Commonwealth Electoral Act (formerly s. 111)).

Clause 3 amends section 3 of the principal Act which presently provides as follows:

3. Within 20 days before or after the date fixed for the polling, the Governor may, by proclamation—

(a) extend the time for holding the election;

(b) extend the time for returning the writ:

(c) provide for meeting any difficulty that might otherwise interfere with the due course of the election.

The clause amends this section by inserting two new subsections dealing with the other matters provided for by section 286 of the Commonwealth Electoral Act (formerly s. 144 of that Act). Proposed new subsection (2) provides that any provisions made under subsection (1) be valid and sufficient and any date provided for under that subsection in lieu of a date fixed and specified in the writ under section 2 shall be deemed to be the date so fixed and specified. Proposed new subsection (3) provides that no polling day shall be postponed under the section at any time later than seven days before the time originally appointed.

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

PRISONS ACT AMENDMENT BILL

The Hon. FRANK BLEVINS (Minister of Correctional Services) obtained leave and introduced a Bill for an Act to amend the Prisons Act, 1936. Read a first time.

The Hon. FRANK BLEVINS: I move:

That this Bill be now read a second time.

In introducing this Bill to amend the Prisons Act, the Government is again showing its commitment to bringing the operation of the correctional services system in South Australia into line with standards already established in other Australian States and overseas.

The legislative programme of the Government, involving these amendments to the Prisons Act and amendments to the Correctional Services Act, will complement the major capital works programme already begun by this Government. This programme will allow South Australia to introduce programmes into our institutions which have been available interstate and overseas for a number of years.

Members will be aware that the Correctional Services Act was assented to on 29 April 1982. That Act will ultimately replace the Prisons Act. However, until the regulations pursuant to the Correctional Services Act are drafted, we will continue to work with the Prisons Act, and it is therefore necessary in the first instance to amend the Prisons Act.

This Bill provides for amendment of those sections of the Prisons Act dealing with parole. The amendments proposed by the Government will allow the parole system to operate more efficiently and effectively for all concerned. These amendments are the result of 12 months of working with the legislation passed by Parliament last December.

Following the passage of the Prisons Act Amendment Act, 1983, in December 1983 the Government was able to introduce significant changes to South Australia's parole system. These changes placed the responsibility on the courts to determine what proportion of a person's sentence was spent in gaol, and what proportion was spent in the community under supervision. In addition, the 1983 amendments gave those sentenced to a term of imprisonment some guidance in determining what proportion of the sentence would be spent in an institution. Managers of institutions also received assistance in managing, by being able to award a limited amount of remission of a sentence to a person who behaved well while in the institution.

The courts are now able to clearly sentence a person to a fixed period of imprisonment in an institution and a fixed period in the community under the supervision of a parole officer, knowing the maximum amount of remission a person is able to earn for good behaviour.

Those time periods set by the court to be spent in an institution, and outside but under supervision, reflect the particular circumstances of the trial judgment. The person sentenced now knows from the day of sentencing how much time will be spent in an institution if they are of good behaviour, how much time will be spent in an institution if they are not of good behaviour, and how much remaining time will be spent back in the community under supervision.

Following 12 months of working with these amendments the Government is satisfied that the new parole system is a significant improvement on the old parole system, and is firmly of the view that the courts are the most appropriate place for determining the length of time a person should spend in gaol. The amendments in this Bill to those sections of the Prisons Act dealing with parole will clarify a number of aspects in relation to the operation of the parole system.

In particular, the few remaining prisoners who had applied to the old Parole Board for parole release before the 1983 amending Act will now clearly know that they are required to return to the appropriate sentencing court to have a non-parole period fixed before they can be released from an institution.

An area which has caused some confusion since the proclamation of the Prisons Act Amendment Act, 1983 is the requirement that a court shall fix a non-parole period for all sentences of more than 12 months, except in exceptional circumstances. It is evident that the requirement should more appropriately be that a non-parole period should be fixed by the court on sentences of 12 months or more.

In working with the new parole system, the Parole Board found that the requirement to release a person on the day calculated as their release day has caused some concern. In particular, when a person has returned to court to have a non-parole period fixed in some cases the release date has been set as the day on which the judgment was given. Given the procedures involved in setting parole conditions, the Parole Board has found it difficult to work with directions from the court that a person be released on the day the order is made. The amendment will allow the court to give the Parole Board 30 days from the day on which the court makes an order, to have the conditions of release prepared, and the person ready for release.

The Government and the Parole Board are also of the view that the Parole Board should have the discretion to

vary or revoke the parole conditions of a parolee with a determinate sentence; that the Parole Board of its own volition should be able to recommend to the Governor a variation in parole conditions for a person given a life sentence; and that short prison sentences for failure to pay a fine should not invoke the cancellation of a parolee's parole release. Amendments are included to cover these situations.

The Government is also of the view that the power of the permanent head to delegate certain powers to other officers should only be done with the approval of the Minister. An amendment to provide the permanent head with such a power of delegation has been included in the Bill.

A change to the administration of the remission system has also been incorporated in the Bill. At present institutions are required to calculate a prisoner's remission at the end of each month each prisoner serves. This means the institutions are constantly required to calculate remissions as a month served comes up for each prisoner. The amendment will allow institutions to calculate everyone's remission at the end of each calendar month, and to award part remission for part months served.

The most significant amendment to the Prisons Act put forward by the Government in this Bill is the incorporation of those sections of the as yet unproclaimed Correctional Services Act which allows 'day leave' from an institution to occur. Provision was made in the Bill introduced by members opposite in 1982 for the introduction of a system of unescorted day leave.

However, due to the unavoidable delay in drafting regulations pursuant to the Correctional Services Act, 1982 the current day leave programme operated by the Department of Correctional Services is inadequate. The incorporation of the appropriate sections in the Prisons Act will avoid further delay in introducing a much needed system of unescorted day leave into our institutions. Such leave will allow people soon to be released to re-orient themselves to the wider community in a more planned and caring way, by using temporary leave to find employment, to re-establish ties with families, to undertake work release and to study.

This Bill has two main objectives in mind. First, it aims to improve the operation of the new parole system, following 12 months experience with the legislation. Secondly, it aims to make day leave available to current prisoners, rather than waiting for the proclamation of the Correctional Services Act. I seek leave to have the detailed explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clauses 1 and 2 are formal. Clause 3 provides that all applications for release on parole that were before the old Parole Board prior to the 1983 amending Act, and that still have not been disposed of, shall be deemed to have been withdrawn. A prisoner affected by this provision will thus have no alternative but to go back to the appropriate sentencing court and apply to have a non-parole period fixed. The amendments to subsection (4) will enable the current Parole Board to deal with such matters as the cancellation of warrants for arrest that were issued at the direction of the old Board.

Clause 4 is consequential upon the next clause. Clause 5 gives the Director the power to delegate, subject to the approval of the Minister. Clause 6 empowers the Director to grant what is commonly known as 'day leave'. This power is given to the Director under the as yet unproclaimed Correctional Services Act, and should be available to him now.

Clause 7 provides that non-parole periods must be fixed by the courts for all sentences of one year or more. The Act as it now stands only makes such provision where the sentence exceeds one year. The power of a prisoner to apply for a non-parole period to be fixed is now extended to all prisoners serving sentences of one year or more who do not have a non-parole period. Thus, prisoners serving a year's sentence may go back to the sentencing court, as may any prisoner who was sentenced before December 1983, and any prisoner in relation to whom a court at any time exercises its discretion not to fix a non-parole period.

Clause 8 provides that a prisoner must be released on parole on a day no later than 30 days after the day calculated as his release day. As the Act now stands, he must be released on that release day, which gives the Parole Board very little leeway in carrying out its task of fixing parole conditions. Clause 9 does not effect a substantive change, but simply makes it clear that life prisoners released on parole prior to the commencement of the Prisons Act Amendment Act, 1981, remain on parole for the remainder of their sentence (the 1981 Act provided for the fixing of a fixed period of parole for life prisoners released on parole after that Act came into force).

Clause 10 provides the Parole Board with the power to vary or revoke, of its own motion, parole conditions (or recommend to the Governor such variation or revocation) in respect of any parolee. As the Act now stands, the Board may only act on its own motion in relation to a parolee released from a sentence of life imprisonment. Clause 11 makes it clear that a sentence of imprisonment in default of paying a fine or other sum does not operate to cause cancellation of parole. Clause 12 amends the section dealing with remission, so that the granting of remission is done at the end of each calendar month, not at the end of each prisoner's month of imprisonment.

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

CORRECTIONAL SERVICES ACT AMENDMENT BILL

The Hon. FRANK BLEVINS (Minister of Correctional Services) obtained leave and introduced a Bill for an Act to amend the Correctional Services Act, 1982. Read a first time.

The Hon. FRANK BLEVINS: I move:

That this Bill be now read a second time.

In introducing this Bill to amend the Correctional Services Act I wish to remind honourable members of the Government's commitment to bringing South Australia's correctional services system into the 1980s. Once the Correctional Services Act has been amended the Government will complete the drafting of regulations pursuant to it, and so have it proclaimed. Some of the amendments to be moved by the Government in this Bill have resulted from the two-year process of drafting the regulations. A major portion of the amendments, however, will simply bring the Correctional Services Act into line with the Prisons Act, particularly in relation to parole. These sections will be discussed in detail in the clause by clause reading. The most significant new aspect of the amendments proposed in this Bill relate to the running of the institutions and the management and control of prisoners.

The Bill contains provisions for the confinement of prisoners apart from other prisoners for up to 30 days in various sections of institutions, for a written statement containing the particulars of the orders of the sentencing court or a warrant of commitment to be presented when a person is

admitted to an institution, for the proper control of visitors to institutions, for procedures to be followed in assessing prisoners for placement in an institution, for the person in charge of an institution to be more correctly described as a 'manager' rather than a 'superintendent', and for the rules of an institution to be made available to a prisoner in the most appropriate language.

The Bill includes the current provisions in the Prisons Act in relation to the release of prisoners before their due release day when it is known that it will fall on a public holiday. The amendment will provide the Permanent Head with the discretion to authorise the release of a prisoner on any day up to 30 days preceding the due release day.

It is also intended to bring the timing for the presentation of annual reports into line. Under the amendment proposed, the Department of Correctional Services, the Correctional Services Advisory Council and the Parole Board will all be required to report by 31 October each year. The Government proposes that justices of the peace be appointed to inspect prisons and hear complaints from prisoners, and that these justices of the peace should be different from those who hear complaints against prisoners. The Government wishes the current system of hearing complaints against prisoners through justices of the peace to continue. Given resource constraints it is not possible at this time to have magistrates appointed especially to hear complaints against prisoners for breach of the regulations.

Appropriate amendments will be moved by the Government to accommodate the continuation of the current system of hearing complaints in terms of the penalties to be imposed by a justice of the peace, and the procedure to be followed if a charge is not found to be proven. Provision is also made in the Bill for the proper disposal of a prisoner's property, particularly property remaining unclaimed a reasonable time after release. The amendments follow a study by the Department of Correctional Services of the current system, and the recommendation from that study that legislative backing was necessary for the introduction of a more considered approach to the issue of the disposal of a prisoner's property. In examining the unproclaimed Act it was also found necessary to include provision for dealing with a breach of day leave conditions, as no such provision had previously been made. The provisions relating to the assessment of prisoners are proposed to be amended to place the responsibility for assessment on the Permanent Head of the Department of Correctional Services. The Permanent Head will be assisted by a committee established by the Minister, and on request a prisoner will be granted an interview with the committee.

In conclusion, I would say that this Bill has been introduced for three main reasons: first, to overcome the difficulties experienced in drafting regulations to the Bill in its original form; secondly, to bring it into line with amendments previously made to the Prisons Act in relation to parole; and, thirdly, to allow the current system of hearing complaints against prisoners to continue once this Act is proclaimed. 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 amends the arrangement section. Clause 4 makes consequential amendements to various definitions and replaces a definition of 'superintendent' with a definition of 'manager', the new title for the officer in charge of a correctional institution. Clause 5 provides that the Permanent Head may only delegate his powers with the approval of the Minister. The Permanent Head is given power to delegate to the manager of a police prison.

Clause 6 brings this section into line with the Prisons Act. Clause 7 provides that a visiting tribunal may be constituted of a magistrate, two justices of the peace or a single justice of the peace. Clause 8 empowers the Minister to designate certain areas of a correctional institution to be for the detention of prisons of a specified class. Clause 9 provides that all correctional institutions are to be inspected regularly at the direction of the Minister who may appoint justices of the peace for the purpose. A justice of the peace who is a visiting tribunal or a member of such a tribunal for a particular correctional institution cannot inspect the institution. The purpose of such inspections is to oversee the treatment of prisoners.

Clause 10 deletes a provision which is incorporated in the next clause. Clause 11 provides that a prisoner cannot be admitted to a correctional institution except upon presentation of the relevant court order or warrant of commitment. Clause 12 provides that the Permanent Head may not only assign a prisoner to a particular correctional institution, but also to a particular part of an institution. Clause 13 substitutes Division III dealing with the assessment of prisoners. The Permanent Head is given the responsibility of assessing certain prisoners after their initial admission and thereafter at regular intervals, for the purpose of determining the appropriate prison or part of prison for a prisoner. The Minister is given the power to set up a committee to assist the Permanent Head in this task. A prisoner who requests a personal inteview for an assessment must be granted his request.

Clauses 14 to 17 (inclusive) effect consequential amendments. Clause 18 provides that a manager of a correctional institution cannot cause a letter to be actually perused except with the approval of the Minister. Letters to and from an inspector of a correctional institution are to be exempt from censorship. Clause 19 is a consequential amendment. Clause 20 provides that the Permanent Head may cause a prisoner to be segregated from other prisoners for up to 30 days pending investigation of an allegation that the prisoner has committed an offence. Segregation for other reasons remains at no more than seven days in the first instance. The expression 'segregation' is used in preference to 'separate confinement'.

Clause 21 provides that a prisoner may be searched not only upon entering a correctional institution but upon moving from one part of the institution (for example, a workshop) to another. Clause 22 brings this section into line with the Prisons Act by empowering the Permanent Head to grant up to one month's early release. It is further provided that a prisoner whose fine is paid after 5 p.m. on a particular day need not be discharged until the next day. Clause 23 inserts three new provisions dealing with prisoners' property. All property (including money) must be handed to a prisoner upon his discharge. If property is left behind, the prisoner must be notified. If he fails to collect the property within three months, the manager may dispose of the property as he thinks fit if it consists of items that he believes are of no monetary or sentimental value. In any other case, the manager must cause the property to be delivered to the prisoner if his whereabouts is known, except where it is not practicable to do so. Any item which the prisoner is not permitted by law to possess is not to be delivered or handed back to him. Clause 24 is a consequential amendment.

Clause 25 repeals the section that provides for the hearing of not guilty pleas by visiting tribunals constituted by a magistrate, and for the right of a prisoner to elect to have a magistrate or justices of the peace determine penalty for a breach of the regulations. The situation now will be that a visiting tribunal, however constituted, may deal with all

cases of breaches of the regulations. Clause 26 strikes out the provision that requires the Crown to assume liability for the acts or omissions of members of visiting tribunals—this is not appropriate for a judicial body that deals with offences. Clause 27 effects consequential amendments and makes it clear that a manager who hears proceedings against a prisoner has a power to acquit him of the charge.

Clause 28 makes similar provision in relation to a visiting tribunal. The power of a visiting tribunal to impose a further sentence of imprisonment up to 90 days is deleted, partly because for the time being tribunals will be constituted of justices of the peace and partly because the power of justices of the peace to impose up to seven days further imprisonment is anomalous in view of the fact that they have the power to cancel up to 30 days of remission. Clauses 29 and 30 are consequential amendments. Clause 31 repeals a provision that purported to make it clear that where a prisoner is charged with any offence other than a breach of the regulations, he will be dealt with in the 'normal' way, that is, in the appropriate court. This section is not strictly necessary and is seen perhaps to be ambiguous and so is struck out.

Clause 32 makes it clear that where a prisoner is sentenced to a further term of imprisonment for escape, that further sentence is cumulative upon his existing sentence. Clause 33 provides a new offence where a prisoner who is granted leave of absence fails to comply with a condition of his leave. A sentence of imprisonment imposed for such an offence is cumulative upon the existing sentence. Clauses 34, 35 and 36 bring the provisions of the Act that relate to the composition and procedures of the Parole Board into line with the Prisons Act. Clause 37 provides that the annual report of the Parole Board must be furnished by the same date as that of the Advisory Council and the Permanent Head, and also brings the section into line with the Prisons Act.

Clause 38 brings the provision that deals with the fixing of non-parole periods by courts into line with the Prisons Act. Clauses 39 to 48 (inclusive) similarly bring the provisions of the Act that deal with the release of prisoners on parole and the cancellation of parole into line with the Prisons Act. Clause 49 repeals the Part that provided for conditional release, and substitutes provisions for remission that are identical to those in the Prisons Act. Clause 50 requires the Minister to cause prison rules to be published for the benefit of prisoners, and to take reasonable steps to make them known to prisoners who are illiterate or whose principal language is not English.

Clause 51 is a consequential amendment. Clause 52 repeals the section that provided for a statement of a prisoner's 'rights, duties and liabilities' to be handed to him on his initial admission to a correctional institution. Clause 53 inserts two new sections. One provides for the confidentiality of departmental files kept on prisoners, parolees and probationers. The other provides for the removal or barring from a correctional institution of any volunteer or visitor whom the manager reasonably believes is likely to interfere with the good order or security of the institution. Clause 54 amends the regulation-making power. The regulations may provide for the hours of admission of prisoners to correctional institutions. The holding or investing of prisoners' moneys or personal property may be prohibited or regulated, as may the entering into of contracts between prisoners.

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

EVIDENCE ACT AMENDMENT BILL (No. 2)

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Evidence Act, 1929, and to make consequential amendments to the Criminal Law Consolidation Act, 1935, and the Justices Act, 1921. Read a first time.

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

That this Bill be now read a second time.

Its provisions clarify the law relating to suppression of the publication of names referred to, and evidence given in South Australian courts. The Bill ensures that a balance is maintained between two principles; the need for the courts to be open to the public and the need to protect the rights of individuals. In response to concerns expressed by the public and in the press about the way in which courts were using their powers to suppress names and to hear proceedings *in camera*, the Government carried out a review of the law of suppression. Interested persons were invited to comment on the need for change in the present law. Twenty-one written submissions were received and a report prepared in the light of those submissions. This Bill implements the majority of the recommendations in the report.

The Bill provides that, when an order is made to clear a court, for instance, to avoid embarrassment to a victim in a case involving sexual violence, the court may provide a transcript of evidence taken in closed court to anyone who was excluded from the court, for example, to press representatives. Power to order that the public be excluded from a courtroom may presently be found in section 69 of the Evidence Act, section 74 of the Criminal Law Consolidation Act and section 107 of the Justices Act. It is undesirable that there should be more than one such provision. Accordingly, section 74 of the Criminal Law Consolidation Act and section 107 of the Justices Act are repealed.

Other provisions of the Bill ensure that interested parties may intervene to make submissions on any application for suppression of names or evidence, provision is made for appeals against decisions on suppression applications and judicial officers making suppression orders must give the Attorney-General a copy of the order and in the case of an order forbidding the publication of evidence, a transcript or other record of that evidence and a summary of the reasons for which the order was made.

In order that informed debate can take place on the question of suppression orders it is important that basic information is available to the public. Accordingly, the Bill provides that the Attorney-General shall report annually to Parliament on the number of suppression orders made in the previous year, the courts in which such orders were made, and the reasons, in general terms, given for the making of the orders. The provisions of the Bill also take account of the fact that a person charged with a crime is presumed to be innocent unless or until he or she is proved to be guilty and that the mere publication of the charge can do substantial damage to the person so charged. The fact that the person has been acquitted may never be published although the fact of the charge, details of the committal proceedings and trial may have been reported in detail.

Accordingly, provision is made to require the fact of an acquittal to be published as prominently as any report of the charge, committal proceedings or trial. If the publisher does not report the result of the proceedings he will be guilty of an offence. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 provides for the insertion of a new heading in the principal Act. Clause 3 provides for the amendment of section 68 of the principal Act by inserting further definitions for the purposes of the Part:

'court of summary jurisdiction' is defined to include a justice conducting a preliminary examination;

'primary court' in the context of an appeal means the court which made the order appealed from.

Clause 4 provides for the repeal of sections 69, 70 and 71 of the principal Act and the substitution of new sections 69, 69a, 69b, 70 and 71.

New section 69 provides that, where a court considers it in the interest of the administration of justice, or to prevent hardship or embarrassment to any person, it may order any persons to absent themselves from the place in which the court is conducting its proceedings. Under subsection (2), the court may provide a person excluded from the court with a transcript or other record of the evidence taken in his absence. Subsection (3) provides for an appeal against a refusal by the court to provide a transcript. New section 69a provides that where a court considers it desirable in the interests of the administration of justice or to prevent undue hardship to any person it may make a suppression order forbidding the publication of specified evidence or an account of such evidence or forbidding the publication of the name of any party or witness or any person alluded to in the proceedings and of any other material tending to identify such persons. A suppression order may be subject to exceptions and conditions (subsection (2)). Under subsection (3), where an application for a suppression order is made:

(a) the court may, without considering the merits of the application, make an interim suppression order, to have effect until the application is determined;

(b) the applicant, the parties, and any person who satisfies the court that he has a proper interest in the question of whether or not a suppression order should be made, may make submissions and may by leave of the court, call or give evidence in support of the submissions;

(c) the court may (but is not obliged to) adjourn the proceedings to make possible non-party intervention.

A suppression order may be varied or revoked by the court which made it (subsection (4)). Under subsection (5), an appeal lies against a suppression order or a decision not to make a suppression order or the variation or revocation of a suppression order. Under subsection (6), the following persons may institute or appear at the hearing of an appeal:

(a) the applicant;

(b) any party;

(c) a person who satisfied the primary court that he had a proper interest in the question of whether to make a suppression order;

or

(d) a person who did not appear before the primary court but satisfies the appeal court that he has a proper interest in the subject matter of the appeal and that his non-appearance before the primary court is not attributable to any lack of proper diligence on his part.

Under subsection (7), when a court makes a suppression order other than an interim order, it shall forward to the Attorney-General a report setting out:

(a) the terms of the order;

(b) the name of any person whose name was suppressed;

(c) a transcript of the evidence which was suppressed; and

(d) a summary stating with reasonable particularity the reasons for the order.

New section 69b provides that an appeal lies to the court to which appeals lie against final judgments of the primary court and where there is no such court, the Supreme Court. Under subsection (2), an appeal must be heard as expeditiously as possible. Under subsection (3), the appeal court may confirm, vary or revoke the order of the primary court, may make any order that the primary court could have made and may make orders for costs and other incidental matters. New section 70 provides that where a person disobeys an order under the division he shall be liable to be dealt with for contempt (if the court has power to punish for contempt) and whether or not the court has such power, be guilty of a summary offence punishable by a fine not exceeding $2 000 or imprisonment for six months. Under subsection (2) a person shall not be proceeded against both for contempt and a summary offence. Subsection (3) deals with procedural matters.

New section 71 requires the Attorney-General to prepare an annual report in relation to end financial year specifying the total number of orders made, the number of orders made by each of the various courts and a summary of the reasons assigned for making the orders. The Attorney-General must lay the report before each House of Parliament.

Clause 5 inserts new headings into the principal Act. Clause 6 makes a minor amendment to section 71a of the principal Act which is consequential upon clause 7. Clause 7 inserts new section 71b into the principal Act. Under the new section, where a report of proceedings taken against a person for an offence is published by newspaper, radio or television; the report identifies the person against whom the proceedings have been taken; the report is published before the result of the proceedings is known; and the proceedings do not result in a conviction on the charge that was laid against the person to whom the report relates—the person by whom the publication was made shall, as soon as practicable after the determination of the proceedings, publish a report of the result of the proceedings with the same degree of prominence as that given to the earlier report. Where such a report is published after the result of the proceedings is known, the person by whom the publication is made shall include prominently in the report a statement of the result of the proceedings. In each case, the penalty provided for a contravention is $2 000.

Clause 8 inserts a new heading into the principal Act. Clause 9 provides for the repeal of section 74 of the Criminal Law Consolidation Act, 1935. Clause 10 provides for the repeal of section 107 of the Justices Act, 1921.

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

ANTI DISCRIMINATION BILL

Adjourned debate on second reading.

(Continued from 16 October. Page 1087.)

The Hon. DIANA LAIDLAW: At the outset I believe I should pay honourable members the courtesy of warning them that I have quite a bit to say on this subject. South Australia led Australia in the field of anti discrimination legislation in 1975 when David Tonkin as a backbencher introduced a private member's Bill to address the denial of opportunities to some people on the basis of one's sex or marital status. Since that time successive South Australian Governments have passed the Sex Discrimination Act, 1975; the Racial Discrimination Act, 1976; and the Handicapped Persons Equal Opportunity Act, 1981. Meanwhile, similar legislation has been passed in Victoria, in New South Wales and at Commonwealth level, and I understand that Bills are proposed for both Tasmania and Western Australia.

In passing, I note that based on the South Australian experience over the past decade I found it most difficult to

appreciate the emotive and often absurd statements that erupted from certain quarters some 12 months ago when the Commonwealth Bill was introduced. The Commonwealth Sex Discrimination Act makes allowances for the co-existence of State and Commonwealth law in this area by expressly preserving the legal operation of some State laws relating to discrimination and providing the Sex Discrimination Commissioner with power to delegate his or her functions in relation to inquiry into and conciliation of complaints.

In general terms I believe it is a sad reflection on our society that Parliaments across Australia believe it is necessary to introduce legislation of the nature that I have mentioned. How satisfying it would be if we could say with conviction and pride that members of our society do not encounter injustices that stem from prejudices, and how satisfying it would be if we could demonstrate that we do not blindly squander the creativity, energy, experience, talents and training of any sector of our community by the placement of artificial barriers in the way of a person's development. However, to entertain such thoughts is wishful thinking. The fact is that we do not live in an ideal world and injustices do occur and artificial barriers are in place.

Anti discrimination legislation signals that both practices are unacceptable. Attempts as far as legislation is concerned can go some way to ending intolerance and discrimination in our community. I know that the law cannot create attitudes of the heart and the mind, but it can seek to prevent offensive actions. It can also seek a remedy for these actions and in the process have an educative role. In the meantime, I look forward to a period when people of any colour, race or sex are afforded equality without resort to the protection of the law. While legislation in this field has a dual role—that of educating and promoting equal opportunity, along with providing an avenue for redress in cases of discrimination—I believe its major objective is an educative function.

In October 1982 the then Attorney-General (Hon. K.T. Griffin) moved amendments to the Sex Discrimination Act to require both the Commissioner and the Board to place greater emphasis on conciliation, with prosecution and penalty being a last resort when all else failed. I agree with that approach. While the Bill before us also emphasises that approach, the title of the Bill and the name of the tribunal, in terms of anti discrimination, stresses the aspect of redress over and above the intent of the legislation—that of fostering amongst the community a positive attitude to equal opportunity. I admit that I am surprised the Government has not chosen to convey the more forward looking positive message contained in the report of the working party to review anti discrimination legislation in South Australia. In fact, it is that report on which the Attorney claims this Bill is based, and which recommended, 'That the new Act bear the positive title of "equal opportunity" '. Moreover, all the submissions that I have received that chose to comment on the title favoured this terminology. I hope that in hindsight the Government will be prepared to see the wisdom of this course.

A further matter of a general nature that I raise at this stage relates to the basis on which the Government selected the grounds of sex, sexuality, marital status, pregnancy, race, and physical impairment as the only grounds on which to prohibit discrimination. At present, the grounds have been confined to the physical or legal status of a person, that is, sex, marital status, pregnancy, race, and physical impairment. They are characteristics over which people have little or no control and which do not include overt inherent values as a part of those states and do not lead to large numbers of people holding strong moral views about such states. If a Government sought to extend the grounds on which legislation was to apply, a logical extension within the present category that I have just defined would be to include age and intellectual impairment.

Certainly, the Commissioner for Equal Opportunity has highlighted in successive reports that discrimination on the basis of age and intellectual impairment is an area of concern. In fact, in her last report, dated 1982-83, Mrs Tiddy notes at page 35:

> It is concerning me that people who are experiencing discrimination on grounds which are outside of the jurisdiction of the legislation I administer often have no avenues of redress. For example, in the area of aged discrimination I have received inquiries from both men and women who have been told that they are too old for certain jobs or employment—several at the age of 40 years.

However, the Government has opted not to provide avenues of redress for people who claim they have experienced discrimination on the grounds of age or intellectual impairment. The Government has chosen instead to extend the ambit of the present legislation to include sexuality.

The inclusion of sexuality introduces an entirely new concept to anti discrimination/equal opportunity legislation in this State, for it is generally considered to be an orientation or preference rather than a state of being. Having opted to introduce this new category, the Government has not seen fit to advance sexuality alone as the only area within this sphere to which to prohibit discrimination. Why has the Government selectively ignored religious and political convictions, for example? Both religious and political convictions have been noted by the Commissioner for Equal Opportunity in past annual reports as areas of concern.

Incidentally, I am sure honourable members will be interested to know that when the New South Wales Government introduced its anti discrimination legislation in 1976 nine grounds of unlawful discrimination were listed, and they included race, sex, marital status, age, religious and political convictions, physical handicap or condition, mental disability, and homosexuality. The New South Wales Government's approach was comprehensive and in this respect showed some integrity. By contrast, while the Attorney-General claimed in his second reading speech that the legislation his Government has introduced is, 'The most comprehensive legislation in this field', it is in truth highly selective in its range. In fact, I suggest that the selective inclusion of areas in which the Government wishes to prohibit discrimination is in fact discriminatory in itself.

This Bill seeks to incorporate into one piece of legislation the law relating to discrimination on the grounds of sex, marital status, pregnancy, physical impairment, and race and to include the new ground of sexuality. The formula for identifying discrimination is similar in each case. The discrimination to which the Bill addresses itself is in the areas of employment, education, superannuation, the provision of goods and services, and accommodation, including clubs. The Bill also addresses the vexed question of sexual harassment and provides that it be outlawed in certain circumstances.

For the purposes of this debate I intend to limit my remarks to the following specific areas: the composition of the tribunal, pregnancy, sexuality, sexual harassment, superannuation, and sporting clubs. The principal recommendation of the working party to review anti discrimination legislation in South Australia was that there should be one Act, one agency to administer the legislation, and one tribunal to deal with disputed complaints. At this time South Australia is the only State in which anti discrimination or equal opportunity legislation operates or is proposed that does not have such a structure. I welcome the Government's endorsement of this recommendation.

It is proposed that the Tribunal should comprise three people: a Presiding Officer or Deputy Presiding Officer and two persons chosen from a panel of 12 persons nominated

by the Minister and appointed by the Governor. Clause 17 (2) provides that:

> In selecting nominees for appointment to the panel, the Minister shall ensure that each nominee has expertise that would be of value to the Tribunal in dealing with the various classes of discrimination to which this Act applies and shall have regard to—
>
> *(a)* the experience;
> *(b)* the knowledge;
> *(c)* the sensitivity;
> and
> *(d)* the enthusiasm and personal commitment,

These prerequisites totally deny any attempt to convene a body which could provide a fair hearing, as they demand by inference the appointment of persons with clearly defined biases in respect to disability, race, sex and sexual orientation.

This section is an overkill and will serve to undermine the credibility and value of the Tribunal in the community. This outcome would be most unfortunate (especially as it is avoidable), considering the hopes we all share that this Bill will help to foster a positive attitude towards equal opportunity and a respect for the inherent value of each individual. I was aware last December, when we debated the Bill to amend the South Australian Ethnic Affairs Commission Act, 1980, that the Parliament accepted virtually the same criteria for the selection of nominees for appointment to the Commission. The Commission, however, has an entirely different function from that of the Tribunal and does not enjoy the very broad jurisdiction and power which it is envisaged will be entrusted to the Tribunal under this Bill. The appointees to the Tribunal should be seen as harbouring no bias.

The Commissioner for Equal Opportunity has noted in successive annual reports that the Sex Discrimination Act is not providing protection to people who experience discrimination, often to their serious detriment. Part III of the Anti Discrimination Bill seeks to address the concerns raised by the Commissioner and echoed by many in the community by including pregnancy and sexuality among the grounds on which discrimination is prohibited.

Clause 27 (5) deals with discrimination on the basis of pregnancy and I agree with the intention of this section. At the present time pregnancy is not specifically a basis for unlawful discrimination in any State Acts, although provisions to this effect are included in the Commonwealth Sex Discrimination Act. Despite the omission in our State Act, the South Australian Sex Discrimination Board ruled in October 1977 that pregnancy was a female characteristic within the meaning of section 16 (2), which concerns indirect discrimination. Accordingly, the Board found that discrimination in employment on the ground of pregnancy was unlawful in this State. Notwithstanding this finding, the Commissioner for Equal Opportunity has recommended repeatedly that the Act be amended to state clearly that discrimination against pregnant women is unlawful. For instance, in her 1982-83 report, the Commissioner noted on page 36 that her office had received 15 complaints that year citing pregnancy as a basis of discrimination, and on page 37 that 'pregnancy is a continuing area of complaint, even though unfair treatment of pregnancy is unlawful'.

In October 1982, the former Attorney-General introduced a Bill to amend the Act to extend the provisions to include pregnancy. In contrast to the amendment we are debating at the present time, the Liberal initiative took account of health and safety considerations. In a submission to the present Attorney-General, the Chamber of Commerce and Industry, the Metal Industries Association and the Retail Traders Association highlighted the employers' concern that no attempt has been made on this occasion to incorporate health, welfare and safety considerations. After noting that the organisations agree with the intentions of clause 27 (5), their submission outlines the following dilemma:

> Employers under section 29 *(b)* of the Safety, Health and Welfare Act are required to:
>
> > Take all reasonable precautions to ensure the health and safety of workers employed or engaged in that industry or in or on those premises or on or in connection with that work.
>
> There is, in addition to this, a common law duty of care on all employers in respect of their employees.
>
> From an industry perspective, we perceive potential difficulties with this section if employers are not given the option to discriminate where there are identified health risks to either the expectant mother or the unborn child.

I repeat: the organisations are referring to 'identified health risks to either the expectant mother or the unborn child'. To these parties I would add that other persons should be considered, for industry also has an obligation to ensure, to the best of its ability, that individuals do not endanger the work environment for others. If the Government is genuine in its concern about the massive workers compensation premiums which employers bear at the present time, I will support the amendment proposed by the Hon. Trevor Griffin which addresses the difficulties employers see arising from clause 27 (5). While the amendment will qualify clause 27 (5), it will not, in any shape or form, undermine the intention of the section.

Part III, clause 27 (3) deals with discrimination on the grounds of sexuality. We are advised in section 4 that sexuality means heterosexuality, homosexuality, bi-sexuality and transsexuality. However, no interpretation is provided for the first three named instances of sexuality, while the interpretation of transsexuality 'to mean a person of the one sex who assumes the characteristics of the other sex' is so broad as to be virtually meaningless. Indeed, I understand from the Hon. Dr Ritson that the interpretation in medical terms is incorrect. He can pursue that. The passage of the Bill in its present form will provide lawyers with a financial bonanza. Certainly in the United States discrimination legislation has become a multi-million dollar growth industry. The Attorney-General will be aware of concern in this respect if he was able to attend (or subsequently has received advice on matters discussed) the annual conference of the Anti-Discrimination Boards of Australia and New Zealand in Adelaide last week.

Beyond the question of interpretation, I readily acknowledge that the entire section on sexuality has caused me considerable anguish. Advice that such anguish is not uncommon when members are faced with major social questions has been of little comfort. This is the first time that a Parliament in Australia has been required to address sexuality in the context of anti-discrimination/equal opportunity legislation. In New South Wales, discrimination solely on the basis of homosexuality has been prohibited since 1977. Hosts of arguments have been presented to me over the past few weeks as to the merits of incorporating provisions concerning sexuality and alternatively on why the provisions should be deleted from the Bill. In most instances I have found the arguments on both counts have merit and certainly all have been presented as sincerely held views. The Parliamentary Liberal Party has determined that a decision on the sexuality provisions will be a matter of conscience for its members.

The Hon. Trevor Griffin, in his contribution to the debate yesterday, gave many well argued reasons why he would be moving to delete clause 27 (3). It is my intention, however, to outline all the arguments that have been presented to me both for and against this proposition. The lists in both instances are neither exhaustive nor in any order of priority.

Essentially the arguments in favour of deleting the provisions have been as follows:

1. That it is not possible to compel people to be accepting of another.
2. That the Bill enshrines in the laws of our State the values of a minority who claim to have been discriminated against and, by doing so, gives these values a status equal to heterosexuals.
3. That the legislation does not respect the rights of a sizable minority, or even a majority, of people who have a strong moral or religious objection to sexual variance. By denying these people a right to act within the confines of their beliefs, they will be discriminated against and their religious freedom compromised.
4. That legislation should follow community opinion, not lead it, and to date there has been insufficient public debate on the issue and no groundswell of opinion calling for the change.
5. That while the Hawke and Bannon Governments acknowledge unemployment will decrease only through a revival of the private sector, they are unashamedly sponsoring measures like sexuality laws and redundancy payments that will further limit the private sector's capacity to expand and to employ people.
6. That employers are not solely in business for the love of employing people at any cost and measures which add to labour costs and involve further regulation will ensure, as surely as night follows day, that employers will embrace new labour saving technologies with ever increasing enthusiasm.
7. That the provisions of this legislation are not appropriate in periods of high unemployment.
8. That small businesses in particular do not have the capacity to keep abreast with the intricacies of legislation or to employ a personnel officer for this purpose.
9. That a successful business manager, like a coach of a sporting team, should be entrusted with the responsibility of selecting the best team for success—not the spectators.
10. That considering the volume of complaints received by the Commissioner for Equal Opportunity, sexual preference does not warrant inclusion in this Bill ahead of areas such as age, political or religious convictions and intellectual disability.

The Hon. Anne Levy: They know that there is no point going to them.

The Hon. DIANA LAIDLAW: There will be no point going to them after the passage of this Bill regarding the other categories that have been highlighted as areas of concern. The principal arguments that have been forwarded to me in favour of inclusion of provisions to outlaw discrimination solely on the grounds of sexuality are as follows:

1. That as men and women are suffering discrimination on the basis of their sexuality and on misinformation about their sexuality, this fact alone is sufficient reason for the legislation.
2. That there is ample evidence that homosexual individuals are unable to change their orientation to heterosexual and should not be discriminated against on the basis of an orientation which cannot be altered.
3. That some 11 years ago the American Psychiatric Association and the Royal Australian and New Zealand College of Psychiatrists removed homosexuality from their classification of mental illness following consistent findings that homosexuals were no different from heterosexuals in respect to mental health.
4. That moral stances are a private concern and a matter of individual choice and should not be imposed on all citizens by law.
5. That one's private life is entirely separate from one's employment and, unless it directly affects one's work, should remain so.
6. That opinion in the Christian churches about the status of homosexuals is diverse, ranging from outright condemnation (in the case of fundamentalists) to acceptance (in the case of Quakers) and further within the denominations opinion is deeply divided.
7. That a readiness to make allowances for the sensitivities of those who regard homosexuality and transsexuality as sinful or abhorrent amounts to approval of prejudice and the discrimination it leads to.
8. That Christians ought to be working for a more just society, not impeding its development, and that the church should not be seeking to uphold the sanctity of marriage as a basic unit of society by giving approval for the continuing persecution of a significant minority of our society.
9. That fears that sexuality legislation may lead to the flaunting of homosexuality and transsexuality ignores the flaunting of heterosexuality which permeates the whole of our society.
10. That the New South Wales Anti Discrimination Act, 1977, with provisions in respect to homosexuality has prompted few complaints to be lodged with the Commissioner or industry organisations. In fact, the Chamber of Commerce and Industry in New South Wales could not recall any instances.
11. I have been reminded by quite a number of Liberals that the philosophy of liberalism as outlined in the State platform reads:

Liberalism is a philosophy based on concern for the needs and hopes of each person.

Liberalism is about people.

It is a philosophy which is concerned with the quality of life, and seeks more than material fulfilment, and, as such, it is well suited to meet the challenge of the future.

This philosophy looks to the individual, and not to the State, and sees the State not as an end in itself, but as a means of helping people to achieve their own goals.

Liberals believe that Government should consider people and their needs as individuals allowing their personalities to develop subject to the rights of others.

Liberals do not believe in authoritarian teachings because they are destructive of personal freedom and initiative.

Before listing the arguments for and against clause 27 (3), I point out that they all have merit. The lists themselves demonstrate that the issue is not clear cut, and accordingly I must admit that at this stage I intend to reserve judgment on the sexuality provisions. However, I understand that one of my colleagues may move an amendment to this clause, helping me to ease my dilemma. In the meantime, I am aware that the Liberal Party has provided that my decision on this question may be exercised as a matter of conscience.

The Hon. C.J. Sumner: I thought you did that with all Bills.

The Hon. DIANA LAIDLAW: I can do that, but sometimes it is more difficult than at other times. The Bill also addresses the question of discrimination in relation to superannuation. The problems of discrimination in superannuation schemes arise at three levels: first, at the level of employment practice; secondly, at the level of eligibility or access to the superannuation scheme; and, thirdly, at the level of contributions and benefits provided under the scheme.

The Hon. R.C. DeGaris: What about retirement?

The Hon. DIANA LAIDLAW: I will refer to that later. At the present time the Sex Discrimination Act does not

provide for equality of opportunity at any of these levels. Injustices on all these counts have been raised with me on a continual basis over some years by women in the labour force.

A major example of discrimination is in death benefits. The benefits on death of a man are regularly at a high level, reflecting the conventional attitude that he has a dependent wife and children, whereas the benefits on death of a single man and a single or married woman are minimal—even though in such cases they, too, may have dependants. I therefore welcome the Government's efforts in Division VI of this Bill to address the discriminatory practices that are in operation, founded essentially on the basis of sex and marital status.

A report in 1977 by the New South Wales Anti-Discrimination Board 'Discrimination in Superannuation' noted (page 16) that the evolution of superannuation scheme design has been based on the traditional view of employment and social structure. The traditional view is that the woman is employed for a short period prior to her marriage, after which she is involved in home duties indefinitely, but the man has a long and continuous working life, and is married with dependent wife and children. Changing patterns of employment have made this traditional view no longer valid. Community awareness of these changes is also growing.

As honourable members will be aware, this traditional view does not reflect the facts today. Enormous changes have taken place in the second half of this century in respect of the profile of women's participation in the work force. Today it can be assumed with some confidence that the majority of young women now in the labour force can expect continuous careers for over 30 years. Moreover, countless reports have projected that the trend for married women to work has increased; from 29 per cent of women with children under the age of 12 years being in the labour force in 1969, increasing to 42.5 per cent in 1980. Moreover, countless reports have projected that the trend for married women to return to the work force at a young age will continue and these women will tend to remain in the work force until a normal retirement age.

This is quite a dramatic change in the work pattern of women who in the past have tended to have short, broken periods of employment. The facts highlight that the differences in work patterns between men and women have diminished and can be expected to do so further in the future. Too many superannuation schemes operating today ignore the trends that I have outlined. In doing so they also ignore the fact that a women in the work force may be self-supporting, contributing to the joint income of a household, or may be the head of a household bringing in the only income. To continue to ignore current trends and facts about the nature of women in the work force is unjust. I therefore welcome the opportunity to support measures which help to ensure that discrimination in superannuation schemes on the grounds of sex and marital status is unlawful.

My one regret with the Government's proposals in relation to superannuation schemes is that the Government itself has erred too far on the side of caution. It has, in my view, ignored the fact that actuarial factors are also responsible for many of the differences in the status of men and women in such schemes today. These factors are reflected in both the costs of benefits and thus in the calculated contribution required from the employer and the member. Clause 39 (3) of the Anti Discrimination Bill provides:

> This section does not render unlawful discrimination on the ground of sex in the rates upon which a pension payable to a member under an employer-subsidised superannuation scheme may, at his option, be converted to a lump sum or a lump sum payable to him under the scheme may, at his option, be converted to a pension, where the discrimination—
>
> *(a)* is based upon actuarial or statistical data that has been disclosed by the person acting in the discriminatory manner to the person the subject of the discrimination, being data from a source upon which it is reasonable to rely;
>
> and
>
> *(b)* is reasonable having regard to that data.

This section is relevant, for a striking example of where actuarial factors have a discriminatory impact between men and women is in the value of retirement pensions.

The basis for the discrimination is that actuarial calculations are determined on a class test. The rationale for the practice is that insurance companies are competing in the issue of policies and that it is, therefore, necessary for premium rates to be fixed having regard to the average experience or characteristics of each identifiable class of policy holders. The report by the New South Wales Anti-discrimination Board on Superannuation, to which I referred earlier, recommended in favour of an individual test of equal status as opposed to the present class test in determining the provisions pertaining to superannuation schemes. It noted that the United Kingdom, the United States, New Zealand and some Canadian provinces had adopted the individual test of equal status. The merit of this approach in respect to anti-discrimination/equal opportunity legislation is the fact that such legislation looks at the circumstances of and benefits for the individual and not for the class.

As I stated earlier, I regret that the Government has not incorporated in this legislation the individual test of equal status in respect to the superannuation provisions of the Bill. Its failure to do so will not rid superannuation schemes of discriminatory practices. However, as the Bill also provides that the superannuation provisions will not be implemented immediately, possibly the matters I have raised can be investigated by the Government in the meantime.

Clause 82 of the Bill deals with sexual harassment. Sexual harassment is an intentional act with sexual connotations which is unwelcome, unsolicited and non-reciprocal. In welcoming the Government's decision to make acts of sexual harassment unlawful, I am aware that the former Attorney-General, Hon. Trevor Griffin, moved to amend the Sex Discrimination Act in 1982 to address the same matter. I did not believe at the time that his amendments went far enough. It is my intention in discussing this issue further to relate my remarks to sexual harassment in the work place, although I am aware, as the Bill confirms, that it is by no means isolated to the work place.

The history of sexual harassment has seen the problem dismissed in most quarters as trivial, isolated, a matter of bad luck, humorous or, alternatively, rationalised as 'natural' or 'biological'. It is none of these things. It is in fact a gross and diverse form of sex discrimination which perpetuates inequitable working conditions. Most of the victims of sexual harassment happen to be women, and their vulnerability to this harassment is particularly high in periods of high unemployment, as we are experiencing at the present time. An excellent publication released last year by the Administrative and Clerical Officers Association entitled *Sexual Harassment in the Work Place* states:

> Sexual harassment creates an uneasy, intimidating, hostile or offensive work environment, interfering with an individual's work performance; and includes a work environment laden with sex-stereotyped attitudes and behaviours which assert a sex role over the function of a worker.

The publication also notes on page 34:

> As a mechanism of social control, sexual harassment, with its underlying threat of violence, is used to control what kinds of jobs women have offered to them; to control the level of job success and rank they attain; and importantly to compensate men for the powerlessness in their own lives.

I concur wholeheartedly with both statements by the ACOA and I believe equally emphatically that all people in the

work place have a basic right to work in an environment that is free from unsolicited and unwelcome sexual overtures.

While the whole question of sexual harassment involves the notion of consideration and sensitivity to the feelings of others, both employers and the trade union movement have a responsibility to work towards good employment relations in the work place—to work towards improving the quality of life at work for all employees. Policies, such as the one adopted by the ACOA, should be developed by all unions, while employers should establish comprehensive guidelines for staff conduct and procedures for dealing with complaints. Such guidelines should carry a list of prohibited behaviour so employees are clear about what the definition means. The development by employers of such guidelines and procedures would be considered in the terms of the sexual harassment provisions of the Commonwealth legislation as a demonstration that they had tried to prevent sexual harassment, and their liability would be limited accordingly. I support this approach.

Based on experience in New South Wales where the Anti-discrimination Act in that State contains sexual harassment provisions, employers' efforts to eliminate this abuse have been hampered by woolly definitions. The law in that State is specific about who picks up the cost of damages, but is less than precise about prohibited conduct. We see the same situation repeated in the sexual harassment provisions of the Bill we are debating. As I believe it is important for employers to develop guidelines and procedures to help them comply with the Commonwealth Act, I cannot support a situation where they would be required to draw up a second and different policy to comply with State provisions. For the sake of consistency, especially when employers are entering a new area where everybody is to be educated, I therefore believe the provisions of our State Act should be the same as the Commonwealth provisions. This uniformity would also aid the Commissioner for Equal Opportunity in administering section 82. If the Commonwealth provisions are found to be unsatisfactory they can, of course, be amended later.

The Bill also addresses discrimination on the grounds of sex in sporting clubs with mixed membership. Section 33 specifically provides that, after one year from commencement of the Act, it shall be unlawful to refuse to admit a person to any particular class of membership on the grounds of sex. I welcome the new provisions as they will ensure that women are no longer treated as second class members of sporting bodies. This goal is one that the Liberal Party sought when in Government.

The Hon. C.J. Sumner: It didn't include it in its Bill.

The Hon. DIANA LAIDLAW: I am coming to that. We tried. In July 1982 the Governor's Speech noted that the Tonkin Government intended to introduce a Bill to amend the Sex Discrimination Act during the forthcoming session to require 'clubs with mixed membership to provide the same facilities and services to male and female members'. When the amending Bill was introduced in October 1982 the Hon. Mr Griffin noted in his second reading speech:

> Fortunately, discrimination in clubs admitting men and women to membership is gradually diminishing. The Government has a concern about such discriminations, and has been discussing this with various interested groups. Some further consultation is required but rather than delay this Bill to enable consultation to be completed the Government has decided to proceed with the valuable reforms in this Bill now. Consultation with respect to mixed clubs will continue with a view to introducing a second amending Bill to deal with this matter later in this session if possible.

The Hon. Mr Griffin found, and I am also aware that the Attorney-General also found, that the issue of discrimination in mixed sporting clubs was a complex area for negotiation. The new provisions relating to sporting clubs will affect hundreds of thousands of South Australians. As such I am encouraged to learn that the Attorney-General and the Commissioner for Equal Opportunity (Mrs Tiddy) consulted with over 40 sporting associations during the past year. Their endeavours will help to ensure that the provisions not only pay due regard to the conflicting interests of varying categories of members but also that clubs have a reasonable time to make the necessary adjustments.

I acknowledge, nevertheless, that the proposed changes will not please everyone. In addressing the impact of the new provisions on sporting clubs I intend to concentrate my comments to golf clubs. I do so because I am a keen member of a golf club and, although golf is not the largest sport numerically, over 180 golf clubs and societies in this State are affiliated with the South Australian Golf Association representing men and the South Australian Ladies' Golf Union. These associations represent 18 000 men and 11 000 women golfers, respectively.

Traditonally, in this State and elsewhere only men can be full members of golf clubs with voting rights to elect the committee of management, to control times of play and to control rights within the clubhouse. Women are associate members. They pay about 60 per cent of the full subscription paid by men, but have restricted playing rights, no voting rights and rarely can play on Saturdays. Associates have committees to regulate their own affairs but have no voting equality to control their club. These circumstances apply particularly to the 12 private clubs in the metropolitan area. In country clubs, generally with fewer golfers wanting to play at any one time, the restrictions imposed upon women are far less severe.

For many women golfers, or associates, who are free to play during week days, the *status quo* is acceptable. The *status quo* is not acceptable however to many women golfers in the workforce who can only play during weekends, but are restricted from doing so. While these restrictions remain women in the workforce are being denied the right to participate in one of the most important sources of enjoyment and exercise available to men. Nor is the *status quo* acceptable to all who are genuinely interested in equality of opportunity. The Victorian Equal Opportunity Board in its June 1983 report entitled 'Discrimination in Sporting Clubs' stated:

> Sport is so central to the Australian way of life that until we eradicate discrimination in sporting clubs we cannot claim to be serious about eliminating discrimination in our society in general.

Under this Bill a woman will be able to apply to become a full member of a golf club and, if elected, would pay full subscription, could attend and vote at annual meetings and stand for election to the management committee. Similarly, a male golfer can apply to become an associate member.

Having provided for the concept of sexual equality, the Bill also provides provisions so that existing committees can continue to administer their sporting clubs without great upheaval. These provisions seem reasonable and I am pleased that the Government opted for this balanced course rather than include the option for affirmative action. Such a recommendation was proposed by the Victorian Equal Opportunity Board Report to which I referred earlier. Clause 33 (2) provides that discrimination on the ground of sex shall not apply. It states:

> This section does not apply to discrimination on the ground of sex in relation to the use or enjoyment of a service or benefit provided by an association:
>
> *(a)* where is is not practicable for the service or benefit to be used or enjoyed simultaneously by both men and women, but the same, or an equivalent, service or benefit is provided for the use or enjoyment of men and women separately from each other or at different times;
>
> or
>
> *(b)* where it is not practicable for the service or benefit to be used or enjoyed to the same extent by both men and

> women, but both men and women are entitled to a fair and reasonable proportion for the use or enjoyment of the service or benefit.

In respect of these provisions, I am informed that some hockey and lacrosse clubs have mixed membership and access to more than one oval but that their clubrooms very often are limited to one changing facility. Their committees find it necessary to vary playing times so that men and women have access to the change rooms at different times.

Likewise in golf clubs, when women become full members and men become associate members and where separate changing rooms exist, it is desirable that the sexes should be told to continue to use the changerooms designated for their respective use, without the committees fearing a charge due to this Act.

A more real problem is that of controlled starting times for men and women members of golf clubs and for various categories of men and women members who pay levels of subscriptions according to their rights. In the metropolitan area there are only 23 golf courses and 12 private clubs with their own courses. More and more people want to play golf and belong to private clubs. The cost of building new courses to accommodate the demand is almost prohibitive without generous Government financial assistance, and this is rarely forthcoming. The problem in Adelaide is no different from that in other western cities. Committees of golf clubs, therefore, over the years have introduced various categories of membership. In my club, there are 16 different categories for men and 13 for women. I understand that the committees see this Act as prompting them to reduce some of those categories, as they seem excessive. Those who pay the higher subscriptions get the best starting times whilst those who pay lower subscriptions get restricted playing rights. This approach is sensible for it enables many more golfers to play on metropolitan courses than would otherwise be the case. Women generally, however, are restricted even if they are prepared to pay higher subscriptions.

Section 33 (2) recognises the problem I have outlined. If a mass of men could descend on the first tee without restraint on Tuesday or Friday mornings when women generally have priority in order to hold their competitions, committees would be wary of admitting more women members, especially juniors, because of congestion. The same problem would arise if a mass of women could descend without restraint on the first tee on Saturdays.

The standard of men's and women's golf has improved dramatically in recent years. This is particularly so in South Australia amongst our junior men and women. It would be irresponsible of members of this Chamber, and indeed a tragedy for golf in this State if, after enactment of this Bill, juniors were refused entry to golf clubs because of uncertainty about congestion. While the Bill envisages that club committees may continue to control playing times, it also requires the committees to ensure that both men and women receive 'a fair and reasonable proportion of the use or enjoyment of the service', that is, the golf course.

A further so-called 'safeguard' is contained in clause 45 which states that it is not discriminatory to exclude 'persons of one sex from participating in a competitive sporting activity in which the strength, stamina and physique of the competitor is relevant'. This provision will enable golf club committees to continue to hold competitions exclusively for men off back tees and exclusively for women off forward tees at different times.

The Hon. Anne Levy: That has always been in the Act.

The Hon. DIANA LAIDLAW: I am just saying that it is repeated and, in fact, this has been a relief to many of the golf clubs.

The Hon. R.I. Lucas: Does that cover bowls?

The Hon. DIANA LAIDLAW: Of course it would.

The Hon. Peter Dunn interjecting:

The Hon. DIANA LAIDLAW: It would be equally relevant to the sporting associations and if they found they needed to rely on those provisions, they could do so. I have given a few examples of some sporting clubs which would encounter real problems in applying the concept of sex equality without some restraint, no matter how supportive they were of the goal of equality of opportunity. The problems would arise because there was no regard for equality between men and women whilst the sporting facilities were being created or due to a lack of finance to provide separate or more extensive facilities.

In conclusion, I wish to make a few remarks about the resources available to the Office of the Commissioner for Equal Opportunity to administer the considerably wider responsibilities that this Bill entrusts the Commissioner to administer. In her 1982-83 annual report Mrs Tiddy makes several references to the present staff/complaint ratio, noting on page 16 that any increase in the number of complaints without a corresponding increase in staff can only extend the already considerable time taken on complaints and cause the very real dissatisfaction of complainants and respondents. At page 9 of her report Mrs Tiddy states:

> Profiles of complainants indicate that complaints are more likely to be lodged by people from white collar industries, residing in the more affluent eastern suburbs. It would seem people who have lower social and occupation status, appear less likely to take advantage of the legislation which will protect their rights. It may be that lack of educational opportunity or an inability to take advantage of the educational services available, places such people at a disadvantage in two respects:
>
> - they are often not aware of their rights and they feel uncomfortable and out of place dealing with the bureaucratic system.
>
> Another factor which may make it more difficult for people of a lower socio-economic status to lodge complaints is their perception of their own vulnerability and lack of power. They may well fear reprisals and, therefore, do not take the first step, that is, to lodge a complaint. Resources in the Office of the Commissioner for Equal Opportunity are not available to research these important issues. The percentage (9 per cent) of complainants from the country remains small. This percentage is unlikely to increase until there are more community awareness programmes in the country.

As one can envisage that the Commissioner's office will receive a flood of complaints and inquiries following the passage of this Bill and as the major objective of anti discrimination equal opportunity legislation is its educative function, I ask the Attorney in summing up the second reading debate or in Committee to advise whether the Government has seen fit to provide adequate resources to the Commission to fulfil its functions and responsibilities to the community. If the Government does not provide extra resources, I believe that one could legitimately ask about its sincerity in introducing this Bill. I support the second reading.

The Hon. BARBARA WIESE secured the adjournment of the debate.

EVIDENCE ACT AMENDMENT BILL (No. 3)

Adjourned debate on second reading.

(Continued from 12 September. Page 776.)

The Hon. K.T. GRIFFIN: The Liberal Party supports this Bill, which provides that in cases relating to sexual offences a judge will no longer be required to give a jury a warning that it is unsafe to convict the accused on the uncorroborated evidence of the alleged victim. Secondly, it amends present section 34i to now allow an alleged victim to give evidence or to allow evidence to be given as to her report of a complaint of a sexual offence, and that will necessarily

include how soon after the alleged sexual offence and in what circumstances a report was made. Thirdly, it limits even further the right of an accused person to adduce evidence or ask questions of an alleged victim of a sexual offence 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.

I have had some discussions with lawyers who have practised on both sides of the criminal bar (that is, for the defence and for the prosecution) and a number of other people about the proposed amendments. It is clear that in some respects present section 34i has been criticised, as has the mandatory rule that a judge must give a warning to a jury about corroboration. On the other hand, there are some who have expressed the view that, notwithstanding specific criticisms of section 34i, the judges have endeavoured to administer it fairly and that it was generally working satisfactorily.

There are several points of view as to the way in which present section 34i operates. In regard to the question of corroboration there have been a variety of papers and comments on the appropriateness of the mandatory requirement that a judge should give a warning that it is unwise for a jury to rely on the uncorroborated evidence of an alleged victim in sexual cases. The most recent comment is in the second volume in the paper prepared by the former justice Mr W.A.N. Wells, and in paragraph 260, in relation to a whole section on corroboration, he states:

> As far as the complainant in a sexual case is concerned, it has for long been obvious to trial judges that, while there are cases where some such warning as at present given would be given by a trial judge without much hesitation, there are other sorts of cases where simply to give it is a mockery, and may cause a miscarriage of justice. Anyone who has had little more than a passing acquaintance with the criminal court knows that, while there are some cases where it is at least reasonably possible that the complainant has a motive for concealing or misrepresenting the truth (and where, left to himself or herself, the trial judge would, in any event, administer an appropriate caution to the jury), there are others where it would be plainly unjust to view the complainant with judicially implanted doubt or misgiving.
>
> Cases where the protagonists are well known to one another, with a history of sexual relationship between them, sometimes—by no means always—provide instances of the first kind. In cases where the complainant and the accused have never met, where the girl was set upon by an assailant while she was walking home, and sustained serious injuries, including injuries consistent with a forcible rape, and where the real issue is identity, it is really monstrous for the trial judge to have to perform the solemn farce of warning the jury against accepting the uncorroborated word of the complainant. In virtually every such case, a trial judge is able to discern, as is the jury, whether the complainant's testimony should be approached with special care, and support for his or her account should be sought elsewhere in the evidence, or whether the case should take its place with every other criminal trial in which the jury is regulated by the ordinary directions about the onus and standard of proof, leaving it to the good sense of the trial judge to make such comments on the testimony as he thinks fit.

Mr Wells goes on to state:

> I therefore strongly recommend to Your Excellency—

this is addressed to the Governor—

> and honourable members that the present law be changed by amending the Evidence Act.

In fact, he submits some drafting for a proposed change which is largely consistent with the provisions of the Bill. That statement by Mr Wells accurately and succinctly expresses the views which I hold in relation to the question of corroboration. Therefore, I support that part of the Bill. There is only one aspect of the Bill to which I would like the Attorney-General to give further consideration. I refer to new section 34i (5), which provides:

> . . . 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.

Quite obviously, that applies to the current rule of law which makes the delivery of the warning mandatory. It would necessarily extend to any rule which had become a rule of practice.

Following the enactment of this provision a court of criminal appeal or even the High Court could perhaps clarify some guidelines in respect of which the trial judges would be required to give or not give a direction. In that context would the rule made by a superior court be such a rule of law or practice establishing perhaps guidelines which would be overruled by new subsection (5)? I envisage that the judges themselves may attempt, either by rule of court or by decision at the appellate level, to establish some guidelines for the purpose of assisting trial judges. If new subsection (5) excludes that course of action, I would express concern about it. If it is only to deal with the present rule of law which makes it mandatory, I have no difficulty with it. I would like some clarification of that to ascertain the scope of the proposed amendment.

Present section 34i (1) provides:

> In proceedings in which a person is accused of a sexual offence, evidence of a statement made by the alleged victim of the offence:
>
> *(a)* after the time the offence is alleged to have been committed;
>
> and
>
> *(b)* otherwise than in the presence of the accused,
>
> is inadmissable unless introduced by cross-examination, or in rebuttal of evidence tendered by or on behalf of the accused.

The Attorney-General indicated in the second reading explanation that that provision has been used against a complainant by preventing the admission of evidence in relation to the time and circumstances of the making of a complaint or report and the nature of that report. That has militated against the prosecution rather than protecting the complainant as it was obviously intended to do. The Bill seeks to remove that provision, and the Liberal Party supports that.

Present section 34i seeks to exclude evidence of the sexual experiences of the alleged victim of a sexual offence prior to the date on which the offence is alleged to have been committed or in relation to the sexual morality of the alleged victim unless leave is granted by a judge. Leave is not to be granted by a judge unless the judge is satisfied that—

> *(a)* an allegation has been, or is to be, made by or on behalf of the prosecution or the defence, to which the evidence in question is directly relevant;
>
> and
>
> *(b)* the introduction of the evidence is, in all the circumstances of the case, justified.

Paragraph *(a)* has come under some scrutiny by the courts and in fact has been criticised particularly in relation to the phrase 'directly relevant'. In addition, the Attorney-General suggests that there has been some criticism by persons other than the judges that the judges have not addressed their minds to paragraph *(b)* (that is, to determine whether in all the circumstances the introduction of the evidence is justified), but have been automatically admitting the evidence if it is shown to be relevant.

The information supplied to me suggests that that is not a particularly fair criticism in the majority of cases and that the judges have endeavoured to deal with this matter fairly. Notwithstanding that, I am generally prepared to accept and support the amendment proposed by the Government in proposed new subsection (2). Among other things, new section 34i (2) sets out for the first time the principle which is to govern the decision as to whether or not leave is granted. That principle is:

> . . . that alleged victims of sexual offences should not be subjected to unnecessary distress, humiliation or embarassment through the asking of questions or admission of evidence of the kind referred to in that subsection.

The expression of that principle is supported. In fact, it is probably consistent with some of the proposals that have been expressed in opposing the Government's Acts Interpretation Act, which relates to the object and purpose of the legislation in the sense that there have been suggestions from this side that specific objects or purposes could effectively be set out within legislation as one way of overcoming the difficulties of interpretation of Statutes. That really is by way of an aside.

In the endorsement of that principle, the proposed subsection goes on to say that the judge is not to grant leave unless the judge is satisfied that the evidence in respect of which leave is sought:

(a) is of substantial probative value;
or
(b) would, in the circumstances, be likely materially to impair confidence in the reliability of the evidence of the alleged victim,
and that its admission is required in the interests of justice.

I raise for consideration by the Attorney-General, and I hope for some response at the appropriate time, whether the word 'substantial' that qualifies 'probative value' and the word 'materially' that refers to the likelihood of evidence impairing confidence in the reliability of the evidence of the alleged victim are likely to create some difficulties in interpretation and in the application of the principle in the earlier part of that proposed subsection, and whether the insertion of those words in the proposed subsection creates such a difficulty for an accused person that they tip the scales to an unreasonable extent against the accused person.

I realise that that is a sensitive issue because of the distress that can be caused to a victim of a sexual offence in cross-examination, but I raise the question because it is important for us, in attempting to provide balance within the judicial system, particularly in sexual cases, between the accused and the alleged victim, to continually remember that in our system the accused is innocent until proved guilty. I want to ensure a significant hesitation in putting such additional hurdles in the way of the accused that the onus is reversed and the presumption of innocence is compromised significantly.

I raise it in this context of sexual offences because I am very conscious of the fact that the accused person is already subject to a number of disabilities within the judicial process. We ought to be cautious about imposing yet further or greater impediments.

The Hon. C.J. Sumner: Like abolishing the unsworn statement.

The Hon. K.T. GRIFFIN: The unsworn statement is quite a different issue, but I suspect that some aspects of this provision are being raised by the Attorney-General in defence of his own position of failing to come to grips with the issue of the unsworn statement.

The Hon. C.J. Sumner: I have come to grips with it.

The Hon. K.T. GRIFFIN: The Attorney has not come to grips with the abolition of the unsworn statement. I do not want to get on to that, because I will reply to the remarks of the Hon. Ms Levy during the debate on my private member's Bill at the appropriate time. Certainly, the abolition of the unsworn statement will provide a better balance between the accused and the alleged victim and will not prejudice the accused or result in fewer convictions, because the statistics to which the Hon. Ms Levy has referred need to be put into a somewhat different context.

Be that as it may, it is important in consideration of section 34i and the points that I have made, particularly in relation to proposed subsection (2), that we have in mind the need to maintain that sort of balance. In this context, where there is an allegation of a sexual offence in the current climate and in response to the current community concern about those sorts of offences, it would be most likely that the person who is accused would be interviewed, most probably charged after arrest and then be required to attend for the committal proceedings. Where the accused does not have the opportunity of cross examining the alleged victim but is presented with a statement—not necessarily a proof—of the claims of the alleged victim, the accused is committed for trial.

The Hon. J.C. Burdett: That applies only to sexual matters.

The Hon. K.T. GRIFFIN: Only to sexual matters and not to the other crimes under the Criminal Law Consolidation Act. Then the accused is committed for trial, which may take three months or more according to the current waiting time. At the trial the accused for the first time will be able to hear the alleged victim in the witness box and undertake cross examination. So, already, a number of procedures are built into the system in relation only to sexual offences that create problems for accused persons.

I am not saying that I disagree with that; I am saying that in terms of adding any further impediments or hurdles we have to be particularly cautious. I would like the Attorney-General to give some consideration as to whether the use of the word 'substantial' in the context of establishing that the sort of evidence referred to in new subsection (2) in relation to probative value will create that sort of hurdle, whether in paragraph *(b)* of proposed subsection (2) the use of the word 'materially' is likely also to create that additional difficulty, and whether we may be able to achieve the objective that I and the Liberal Party support, expressed in the earlier part of proposed subsection (2).

The other question is whether the use of those words is likely to raise the same sort of criticism from the courts that the words 'directly relevant' in the present section 34i have attracted. Either something is relevant or it is not. The information that I have is that the courts find the use of the word 'directly' to be superfluous. In that context, are the courts likely to find that the use of the word 'substantial' and the use of the word 'materially' will create the same problem?

They are important issues, and depending on the Attorney's response in Committee I will further consider the use of those words in the context in which they appear. I repeat that the Liberal Party supports the Bill. The changes in the law are welcome generally and we support them. The questions that I raise are in the context of the balance that should be maintained and the courts' criticism of present section 34i. Subject to the Attorney's response, I am pleased to support the second reading.

The Hon. ANNE LEVY: I support the second reading with a great deal of enthusiasm. In dealing with the Bill, as the Hon. Mr Griffin has just said, one sees that one aspect is the corroboration warning that has been mandatory for judges to give in cases of sexual offences. I welcome the fairly dry reasoning that the Hon. Mr Griffin quoted in support of this proposal. I merely wish to add that until now this corroboration warning has been compulsory only in cases where the witnesses are children under the age of 10 years, people with intellectual retardation, or rape victims. This conjunction has always struck me as being extremely insulting, and it is about time we got rid of it. Another aspect of this legislation is the questioning of victims in terms of previous sexual history with other than the accused in cases of sexual assault or rape.

The Hon. K.T. Griffin: I think accomplices is the other area. I recall that Mr Justice Wells mentioned accomplices.

The Hon. ANNE LEVY: To put rape victims into those categories, as I am sure people would agree, is rather insulting, to put it mildly. In many rape cases the question of whether or not the victim consented is the key issue of the trial. The existing substantive law of rape provides that there is

a need to establish whether or not the victim consented to intercourse with the accused and further whether, if she did not consent, the accused knew that she had not consented or was recklessly indifferent as to whether or not she had consented.

Section 34i limits the questioning of the victim as to previous sexual history with other than the accused, and this line of questioning is usually pursued in terms of establishing whether or not she consented to the act with the defendant in the trial. Section 34i was enacted in 1976. That has helped the plight of the rape victim in a trial, but I would maintain that it has not helped sufficiently. Currently, section 34i provides that sexual experiences of the victim or the sexual morality of the victim cannot be brought up in evidence except by leave of the judge and that the judge must be satisfied that the evidence is relevant to an allegation of the defence and is justified in all the circumstances.

Quite obviously, the defence will feel that such evidence is of advantage to the defendant, and I would maintain that the judge's ideas of relevance to the case are not those which Parliament intended when the provision was first enacted. In fact, statistics show that in 70 per cent of rape trials since the provision was brought in seven years ago application has been made to pursue such a line of questioning and the judges granted permission in 88 per cent of applicatons. This means that in 62 per cent of rape trials the victim's previous sexual behaviour has been dragged out in court. This was not what Parliament intended.

It is obvious that leaving the matter to the judges' discretion has not achieved the aims intended by Parliament in 1976. It seems that too many people in our community and perhaps also on the bench have the old prejudice that a woman who says 'Yes' in one circumstance to one individual is likely to say the same to another individual in a different circumstance, reflecting the old adage that 'Good girls don't'. So a woman who says 'Yes' even once is not a good girl and is likely to be promiscuous and consent to any offer of sexual intercourse. I most emphatically oppose this notion. Any woman has the right to be discriminating about whom she sleeps with. She can say 'Yes' to six different men on six successive days and no-one has the right to assume that therefore she will say 'Yes' to a seventh man on a seventh day.

Questioning as to how many men a woman has had sexual intercourse with on how many occasions is totally irrelevant to the question whether or not she consented to a particular man on a particular occasion. Anyone who suggests anything to the contrary is denying the right of discrimination to a woman and implying that she cannot exercise choice between different offers of sexual intercourse. It is part of the old double standard with regard to sexual behavior that has plagued our society for too long. For heavens sake, we should realise that some good girls do and some good boys do; and that some good girls don't and some good boys don't.

The Bill is based on the Victorian Act dealing with the same part of the Evidence Act. It will prohibit absolutely any evidence on the sexual reputation of the victim. This is very welcome for, as I have said, it is surely irrelevant to the question of consent for a particular individual in particular circumstances. The judge will still be able to permit questions on sexual activities with other than the accused where he or she is satisfied that the evidence is of substantial probative value or relates to the credibility of the witness.

However, the judge must observe the principle that victims must not suffer unnecessary distress, humiliation or embarrassment. It is certainly unusual to put such a principle in legislation, but I can see no other way of convincing judges that Parliament means exactly that, that it does have great concern for the victim of a rape that she is not on trial herself, that the distress and humiliation she has already experienced at the crime is enough and that we do not want her to be pilloried again. I sincerely hope that new section 34i will improve rape trials for the victim and so encourage other women who have been raped to come forward and lay charges.

Despite changes to the law in the past few years there are still many women who will not come forward, fearing the investigation and trial procedures too much and so letting rapists go scot free in our community. I hope, too, that this new section will help change attitudes in the community. Women are discriminating individuals and sexual relations with one individual are totally irrelevant to questions of consent to another. It is about time that everyone, including judges, lawyers and politicians, accepted that fact. I support the Bill.

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

COUNTRY FIRES ACT AMENDMENT BILL (No. 2)

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

ADJOURNMENT

At 11.30 p.m. the Council adjourned until Thursday 18 October at 2.15 p.m.