LEGISLATIVE COUNCIL

Wednesday 15 March 1989

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

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

PAPERS TABLED

The following papers were laid on the table:

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

Department of Local Government Annual Report, 1987-88.

QUESTIONS

PORT ADELAIDE COUNCIL

The Hon. M.B. CAMERON: I seek leave to make a brief explanation before asking the Minister of Local Government a question about the Port Adelaide council.

Leave granted.

The Hon. M.B. CAMERON: Last Wednesday, the Minister was asked a question about superannuation arrangements made for a former Chief Executive Officer of the Mitcham council which resulted in a payout of almost $655 000. The Minister had known about these arrangements for at least eight months. During her response, the Minister said:

> Certainly it is of concern to me that these arrangements were made and that there has been no public disclosure by the council of the arrangements that were entered into.

The Minister also said, 'I treat this as a very serious matter.' However, I have further evidence concerning another metropolitan council which suggests that the Minister is not pursuing this serious matter as strongly or effectively as she should be. I refer to confidential minutes and other documents of the Port Adelaide council going back to October 1986 when an agreement was reached with the present Chief Executive Officer, Mr Keith Beamish, to provide him, at council expense, with a Saab 9000 turbo motor car for personal as well as business use. The agreement carried with it the option of buying the vehicle after three years at 25 per cent of its purchase cost, with the council continuing to meet the vehicle's running, maintenance and operating costs.

I seek leave to table a copy of the Minutes of the Committee of the Whole Council of the City of Port Adelaide of 19 December 1988.

Leave granted.

The Hon. M.B. CAMERON: This matter was discussed informally amongst members of the council's management committee at a meeting on 8 October 1986. I have a copy of a note signed by the Chief Executive Officer requesting committee members to attend the meeting. It states:

> It is suggested that those informal discussions take place in my office when the meeting of the ICI Building Committee is concluded at about 6.15 p.m. Please enter via the staff door.

The apparently clandestine nature of these discussions led to expressions of concern by some members of the council. The management committee met on 9 October and formally approved a recommendation for an improved three-year employment contract for the Chief Executive Officer to include the Saab car.

At a full council meeting on 20 October the public was excluded from discussion of a motion that the full council should approve the contract. During that discussion, one council member had recorded in the minutes the following:

> Council members must be reminded that they may well be held individually and severally liable for any legal transgression approved by council and subsequently undertaken at any time. The initial proposers may only be found guilty of aiding and abetting.

Another member of the council sought to conceal the earlier informal discussion by management committee members with the Chief Executive Officer by having recorded in the minutes:

> At no time has the management committee had an informal meeting with the Town Clerk.

The decision of the full council on this matter was that documents relating to the contract be marked 'private and confidential' and be excluded from the minutes, nor made available to the public.

The ratepayers of Port Adelaide were accordingly denied this information in 1986. And now, almost 12 months before the Chief Executive Officer's employment contract is up for review, there are further moves to keep this matter from the public.

I have tabled a document which refers to a recommendation to be considered by a committee of the whole council on 19 December last year proposing that in return for the extension of his term of employment for a further two years, from October 1989, the Chief Executive Officer be given another new Saab with the option to purchase it, this time after only the further two years.

That is laid out in the recommendation in the documents I have tabled. Clearly, it is stated that the Local Government Act enables the council to exclude the public from attendance at meetings and to consider in confidence the report of the terms and conditions of employment of the Town Clerk/Chief Executive Officer. That is certainly not the case in relation to members of Parliament, where our terms and conditions of employment are made very public, and in a very public way. Also, it indicates that reports and documents be kept confidential, and that there was a report from the Town Clerk indicating that he should be given an upgraded car 'provided for my use and my initial employment', at contract at book value based on a 25 per cent straight line depreciation. The recommendation of the clerk, as I understand it, was as follows:

> That the supplementary terms of engagement of Mr C.K. Beamish as Town Clerk/Chief Executive Officer be extended for a further period of two years from 23 October 1989, with the new replacement vehicle being of similar value in real terms, as the present vehicle and being depreciated on the same basis, but the qualifying period to exercise the option reduced to two years.

The Opposition has been made aware of concerns held by some members of the Port Adelaide council about the legality of these arrangements. There are questions about whether they amount to avoidance of tax obligations. I understand the Minister has been approached about some of these concerns. However, in a letter dated 20 January this year her ministerial assistant advised the member for Price (Mr De Laine) that the Minister is reluctant to accede to the honourable member's request for a meeting to discuss their concerns. My questions are as follows:

1. What representations has the Minister received relating to the affairs of the Port Adelaide council?

2. Has she been advised specifically about the concerns of some members of council relating to the salary and other arrangements entered into on behalf of the Chief Executive Officer?

3. Does she believe the ratepayers of Port Adelaide are sufficiently informed about this matter?

4. Does she intend to take any further action?

The Hon. BARBARA WIESE: As indicated by the honourable member, when I was approached, I think some time last year, by representatives of, I believe, the Port Adelaide Ratepayers Action Association, for a meeting in order that they might outline some concerns they had about the employment of the Chief Executive Officer of the Port Adelaide council and questions of alleged mismanagement of council affairs, I indicated to them that I did not think that it was appropriate for them to outline their concerns to me but, rather, in the first instance it would be more appropriate for them to discuss the matter with one of my officers.

Indeed, the then Deputy Director of the Department of Local Government held a meeting with representatives of the ratepayers association to discuss their concerns. As I understand it, following that meeting all of the matters that had been raised by the association were responded to via the association president and secretary. One of the issues that was raised—

The Hon. M.B. Cameron: Will you table that documentation in the Council?

The Hon. BARBARA WIESE: I am not sure whether it was documentation or whether the matters were dealt with verbally.

The Hon. M.B. Cameron: Maybe you could inform the Council of what they were.

The Hon. BARBARA WIESE: Let me finish my reply and you may then be interested in asking further questions. Certainly the question of tax evasion on the motor vehicle that had been provided for the Chief Executive Officer was one of the issues raised. When inquiries were made about this matter, it was discovered that in fact there was no tax evasion relating to this situation. Customs tax was paid on the purchase of the vehicle. However, the vehicle is exempt from State sales tax, having been purchased for local government use and held for the statutory period of two years or 40 000 km, which I understand is the arrangement applying under the sales tax legislation. At that time concern was also expressed about the basis of employment for the Chief Executive Officer and whether or not he was entitled to salary increases under the local government award. Those concerns were being raised because the Chief Executive Officer was employed on contract.

When inquiries were made about that matter the situation was clarified to the extent that the Chief Executive Officer has a contract, but it is linked to the award and therefore the increases that he had received were deemed to be appropriate.

The Hon. M.B. Cameron interjecting:

The Hon. BARBARA WIESE: Certainly within the terms of the contract and therefore appropriate. Other questions were raised about, for example, the increase in rates, which has been a matter of some concern in the Port Adelaide council area over the past 12 months. A number of other issues were discussed at that meeting and I understand responded to. It is important to be careful about the issues being raised by certain people in the Port Adelaide council area because, from all I can gather, some of the issues being raised by people in that area are based on internal factional battles within the council, with people wanting to discredit others with whom they are working. There is certainly some animosity on the part of some members of the council about the appointment of the current Chief Executive Officer of Port Adelaide. I feel that to some extent some of the criticisms raised by various people in the Port Adelaide area are based on some of those personal differences and faction fights that have occurred from time to time in the Port Adelaide council. So, it is important to distinguish between those issues and issues of substance—

Members interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: —which are reasonable issues to be addressed. As each matter of concern has been raised with officers in my department they have been investigated and action taken where appropriate. I cannot recall correspondence on this matter, but certainly I shall seek a full report and bring back any further information that I think is important.

The Hon. M.B. CAMERON: I should like to ask a supplementary question. How many council remuneration packages have been raised with the Minister by ratepayers or others? What councils are involved? What are the specific issues that have been raised with the Minister by the people who have approached her?

The Hon. BARBARA WIESE: Off the top of my head, I can think of three occasions in recent times when remuneration packages have been raised with me, but to be absolutely accurate about the correspondence that I might have received, I shall seek a report.

TROUBRIDGE

The Hon. K.T. GRIFFIN: I should like to make a brief explanation before directing a question to the Attorney-General about the *Troubridge*.

Leave granted.

The Hon. K.T. GRIFFIN: In August 1987, a company called Aloren (No. 9) Pty Ltd began legal proceedings against the State Government. The company sought an injunction against the Government to prevent it from selling the *Troubridge* to anyone other than that company. It argued that it had had extensive discussions with the Government to buy the *Troubridge* and had entered into a binding agreement for its purchase. During the negotiations for the purchase of the ship, the Government had constantly and progressively required a number of matters to be attended to by the company, and they were all complied with. The Government purported to sell the *Troubridge* to another company, Gold Copper Exploration Limited, after the deal with Aloren (No. 9) Pty Ltd had been struck. As it turned out later, a subsidiary of Gold Copper Exploration Limited was the company to which the Government purported to sell the *Troubridge*.

The application for the injunction was not successful, but the company sued for damages for breach of contract, and that action is proceeding—or at least the plaintiff is trying to proceed with it. However, the Crown Solicitor has been involved on behalf of the Government in some incredible legal manoeuvrings which give the impression that the Government will go to any lengths to prevent the discovery of Government documents and papers relevant to the case and to stop the case from getting a full hearing in the Supreme Court.

In February 1988 the Government tried to have the company's claim struck out. That was unsuccessful. In May 1988 the Government applied to strike out parts of the company's statement of claim, and in December 1988 again applied to have the statement of claim amended. The Crown has not been successful in having the statement of claim struck out, but it is now appealing against a decision made by a Master of the Supreme Court in December.

Notwithstanding that, the company has paid $8 000 into court as security for costs and paid other costs which have been awarded against it, so the Government should have

no concern that, if the matter comes on for trial and the company loses, the costs will not be paid. All the manoeuvring so far initiated by the Crown relates to procedural matters and does not go to the substance of the claim. Discovery of all the Government's documents and papers in this action cannot be made until all of these skirmishes are out of the way.

The way in which this matter has been handled suggests that the Government has some interest in ensuring that those documents are not disclosed or that the matter never comes on for trial in open court. The whole saga has a somewhat Gilbertian flavour to it. The *Troubridge* still sits patiently at Port Adelaide awaiting a call to action while the *Island Seaway* flounders.

What has the Government got to hide that requires the Crown Solicitor to take every technical point and fight tooth and nail to stop this matter going to trial and having Government documents disclosed? Will the Attorney-General require this matter to be dealt with on a reasonable commercial basis and seek to have the matter go for trial at the earliest opportunity?

The Hon. C.J. SUMNER: The Government has nothing to hide. The Crown Solicitor, as is her responsibility, acts on the instructions of the department concerned with the matter and would be concerned to protect the Government's interest in it.

I am not aware that technical points are being taken. I would anticipate that the Crown Solicitor is doing her duty as she sees it as the adviser to the Government, but if in her view the statement of claim is defective she has every right, and the Government has every right, to attempt to have that statement of claim struck out or amended. That is not taking technical points—that is dealing with the matter on its merits. Personally, I am not aware of the circumstances that the honourable member has raised, except in the very general sense, but I have full confidence in the Crown Solicitor's handling the matter properly and in accordance with her professional duties.

The Hon. K.T. GRIFFIN: I desire to ask a supplementary question. Will the Attorney-General investigate the matter with a view to ascertaining the extent to which those procedural matters are being pursued by the Crown Solicitor and whether the instructions of the Minister of Transport require the Crown Solicitor to take those steps and, if so, for what reasons?

The Hon. C.J. SUMNER: I am not going to reveal what the instructions to the Crown Solicitor from a Minister or a Government department might be. That is legally privileged information, as the honourable member would know.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: That is the question the honourable member asked. However, I will have some inquiries made on the matter and, if there is anything further that I can add to what I have already said in the Council this afternoon, I will bring back further information.

SOUTH AUSTRALIAN LOGO

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Minister of Tourism a question about a tourism logo for South Australia.

Leave granted.

The Hon. L.H. DAVIS: Madam President, in February 1987 the strategic plan for tourism in South Australia was launched. It was the grand plan for tourism in South Australia for the triennium 1987-89. Heavy emphasis was placed on the need to develop a stronger State identity. The relevant documents stated:

> There is a general agreement that South Australia does not have a tangible and positive identity in overseas markets . . .

There was a need to 'consolidate an appropriate identity for South Australia in the domestic market'. It was announced that a new identity was to replace the 'Enjoy' logo theme. In September 1987 the Minister of Tourism (Hon. Barbara Wiese) said that she hoped a new slogan and logo to replace the old 'Enjoy' logo would be unveiled in about a month—that was in October 1987, about 18 months ago. However, on 5 October 1988, in opening the 1988 State Tourism Conference, she filled delegates with joy, Madam President, when she announced that there would be no logo 'until someone has a bright idea'.

None of the logos from top graphic designers market tested well enough. The Minister suggested that tourism industry members should have a try. Having suggested to the conference that tourism industry members should have a try, 12 days later the Minister announced that the move for a new logo and slogan for Tourism South Australia had been abandoned. The industry was given only 12 days to try. This is in sharp contrast to the five other Australian States and two Territories. All the other States regard a logo and slogan as important in underpinning their tourism efforts.

I have made inquiries of all States. Western Australia, with its logo of a swan, is currently reviewing its logo. The Perth central business district has a slogan. The Tasmanian logo of 'Be tempted' has a bite taken out of the apple. I visited Tasmania recently, and this was certainly a friendly, welcoming theme emphasising the pleasurable experience that people would have in Tasmania. It was on all literature and it built up a consistent theme of people visiting Tasmania and enjoying themselves. Hobart, as the capital city, as 'Australia's best kept secret', also has its own specific tourism theme.

Canberra is billed as 'Australia's capital' or the 'Heart of the nation' and is currently working on a new slogan. The Northern Territory has a magnificent and memorable symbol 'There is nowhere in the world like your own territory'. New South Wales has a distinctive logo with 'Discovery State' as its slogan.

They are working on a replacement for 'Discovery State' and a new logo will be launched in April. Victoria has pinched something very good from Canada from the early '80s, namely, 'Come on to Victoria', and Melbourne joins in with 'Live it, love it, come to Melbourne'. Queensland, with its slogan 'Beautiful one day, perfect the next', also has a memorable logo. Brisbane has a magnificent and distinctive logo. Alone of all six States and two Territories, South Australia has no logo.

I have spoken to persons in Tourism South Australia (the Minister's own department), the tourism industry and the design industry. There is a widely held view that it is pitiful and pathetic that South Australia has no logo—a visual image which reflects what the State is about. There is disbelief that the logo that was selected was taken to Cabinet for a decision. It was market tested—can you imagine the Hon. Roy Abbott looking at a logo? It has been described to me by people in the tourism industry and the design industry as a ludicrous management approach.

Leaders in the tourism industry believe that a logo is the most effective way of running South Australia up the flagpole of tourism, that it can be used to promote South Australia at the beginning or end of television advertisements, that it helps promote a consistent image, that it has a cumulative effect, and that it is cost effective. They also

claim that without a logo and slogan there is a real danger of there being just a proliferation of words and images that do not hang together.

Curiously, Mr Graham Inns (the Director of the Department of Tourism), in the introductory overview of his 1987-88 annual report, made the statement that the marketing signature has also guided the development of our corporate logo. That is curious, because there is no corporate logo. My questions to the Minister are, therefore: first, can the Minister advise who suggested that the logo should be market tested and taken to Cabinet? Secondly, why does she not have confidence in South Australia's graphic designers to produce an appropriate logo, given that many of them are known nationally and internationally? Thirdly, does she accept the widespread criticism from within her own department and the tourism industry that the absence of a logo and slogan detracts from the promotion of tourism in South Australia?

The Hon. BARBARA WIESE: Here we have another question from the member for recyling questions. I recall the same sort of question being asked by the Hon. Mr Davis a few months ago, but he would obviously like me to explain again the situation in regard to a logo.

The Hon. L.H. Davis: I didn't have all that information about the other States, or the benefit of talking to tourism leaders in the other States.

The PRESIDENT: Order!

The Hon. BARBARA WIESE: The honourable member did have that information last time he asked the question, as I recall.

The Hon. L.H. Davis: I didn't.

The Hon. BARBARA WIESE: If the honourable member did not have the information, he should have had it if he had any interest in or knowledge about, tourism in South Australia, or Australia as a whole. It is not correct that Tourism South Australia has abandoned the pursuit of a logo, as the honourable member has suggested that I indicated at some stage. I have never said that. What I did say was that the attempts—

Members interjecting:

The PRESIDENT: Order!

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order, Mr Davis! You have asked your question.

The Hon. BARBARA WIESE: The Hon. Mr Davis is very naive; he believes everything he reads in the newspapers. The fact is that I have said publicly to people involved in the tourism industry that, for the time being, Tourism South Australia will not devote any more resources to the pursuit of a logo, because we have already spent some time trying to identify a suitable logo for use by the industry in South Australia. One of the problems with doing that, as the honourable member outlined, is that the imagery for South Australia is very diverse. We do not have an Ayers Rock or a main feature such as resorts and sunny beaches, as have many other States and which make it that much easier for them to identify one specific image in promoting their State.

The Hon. L.H. Davis: Can't all the other States say the same thing?

The Hon. BARBARA WIESE: No, they cannot, and that is exactly the point I am making. That is the view—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: Mr Davis, that is held by people in the tourism industry. But you would not know that because you do not know many people in the tourism industry. It is very difficult for South Australia to find one particular image, and a number of attempts were made to identify an image. Those images were market tested, as it is important to test images of this kind with the consumers. In fact, all of the suggestions that came forward from the process that was pursued to find a logo were market tested, not only with members of the public (who are ultimately the best judges), but also people within the industry. None of them tested well.

For that reason neither I nor Tourism South Australia was prepared to recommend any one of them for use by the tourism industry. In order to promote tourism, logos are desirable but not essential. Instead of having a logo for South Australia we have got on with the job of promoting the State. That is exactly what people in the industry are looking for. They are interested in results.

They are not interested in the sort of clap-trap and peripheral issues that the Hon. Mr Davis raises from time to time with respect to tourism. What they are interested in is results. They are interested in accommodation being filled; they are interested in the visitor numbers; they are interested in dollars in the pocket; they are interested in the promotion of the State economy through tourism. That is exactly what we have been pursuing. As I have often said in this Chamber, we were successful last year in getting a very significant increase in our marketing budget. That has enabled us to embark on the biggest television advertising campaign we have ever conducted in Australia.

Members of the industry, who are the best judges of whether or not things are going well, say that this is the best advertising campaign Tourism South Australia has ever produced. What we are now finding is that all the feedback coming from the markets in which we are advertising demonstrates that the inquiry level and intention being expressed in travelling to South Australia for holiday purposes is better than it ever has been before.

During this last summer season many of the regions of South Australia have also reported record results. People in the transport sector are saying they have had the best summer for a long time, and the accommodation level is up. Every indicator to be considered is showing very pleasing results in this State. They are the issues that the industry is interested in. They are the measures which determine whether or not this Government and Tourism South Australia are performing their function and role in promoting South Australia as a tourism destination. By and large the people involved are extremely happy with the way things are going.

Members interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: To hark back again to this tired rerun of boring questions that the Hon. Mr Davis asks every two or three months is not at all helpful, and if he intends to become involved in being an Opposition spokesperson on tourism issues I suggest that he quickly educate himself.

ST JOHN VOLUNTEERS

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Health, a question about St John volunteers.

Leave granted.

The Hon. DIANA LAIDLAW: Last financial year, in South Australia the duties carried out by St John volunteers totalled 1 685 992 hours. Two-thirds of this work was undertaken in the metropolitan area, where union officials involved in the current dispute want to replace the volunteers with

paid staff. I understand the cost of having paid staff instead of volunteers is about $10 an hour, although it could be somewhat more with penalty rates.

This means that the additional cost of providing the current standard of ambulance services in metropolitan Adelaide will be well over $10 million a year if union officials get what they want. If, in fact, it is $10 million a year, that would be an additional cost of $10 for each man, woman and child in South Australia. Will the Minister ascertain whether the figure of $10 million to meet union demands to replace St John volunteers in the metropolitan area is correct?

The Hon. BARBARA WIESE: I will refer those questions to the Minister of Health and bring back a reply.

ME SYNDROME

The Hon. J.C. BURDETT: Has the Attorney-General a reply to the question I asked on 15 February about the ME syndrome?

The Hon. C.J. SUMNER: The Minister of Health has provided the following answer:

1. Recommendations regarding the funding of an electron microscope for the Institute of Medical and Veterinary Science will be made by the South Australian Health Commission in consultation with the medical equipment priorities committee as part of the 1989-90 budget process. The medical equipment priorities committee comprises representatives of major metropolitan hospitals, the IMVS and the Australian Medical Association.

2. The IMVS has agreed to allocate a scientific officer from other work within the institute, as well as funds for sundry consumables, to support research into ME. However, Dr Mukerjee has not yet taken up the offer.

MARINELAND DOLPHINS

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Environment and Planning, a question about the Marineland dolphins.

Leave granted.

The Hon. M.J. ELLIOTT: In the past half hour or so I have received a copy of a document entitled 'Ocean marine mammal reserve: Granite Island management plan, March 1989'. I believe that this is the result of quite an amount of work over approximately six months. My information is that the proposed Granite Island facility is the most humane and positive option, since the Marineland dolphins are familiar with each other and live in a loosely structured group.

Transferring them to another similar facility such as Seaworld would involve their adjustment to new social groupings with additional trauma resulting from the necessity to acclimatise, along with other changed conditions such as changes in temperature, and so forth. Also, the time involved in travelling is considered something of a hazard. I am assured that some temporary but perfectly satisfactory holding pens could be set up at Granite Island within two or three weeks. I make this comment in light of the fact that there is a report in this morning's *Advertiser* that work could commence at the present Marineland site within the next six weeks or so. I ask the Minister three questions:

1. Who at present owns the dolphins? I notice that in the document to which I have referred the assumption has been made that the dolphins and sea lions would remain the property of the Government. I presume that at this stage they are not.

2. What temporary measures is the Government entertaining for the care of the dolphins if there is an interim period between the closure of the Marineland facility and the setting up of the Granite Island facility?

3. Will the Government entertain the movement of the animals to interstate oceanariums or even to overseas oceanariums?

The Hon. C.J. SUMNER: I will refer those questions to the appropriate Minister and bring back a reply.

QANTAS

The Hon. J.C. IRWIN: In view of the South Australian Government's repeated calls to Qantas to increase international flights into Adelaide and, in particular, to give us more opportunity to benefit from the rapidly increasing number of Japanese and American visitors to Adelaide, will the Minister of Tourism support the move by the Prime Minister for partial, at least, privatisation of Qantas so that the airline can adequately service its capital needs and meet the rising demands for its services?

The Hon. BARBARA WIESE: It is of concern to me as Minister of Tourism and to any person in Australia who is interested in tourism that Qantas may have some difficulty in finding sufficient capital within a short time in order to purchase sufficient numbers of aircraft to service the routes on which it operates, to assist Australia in capitalising on the enormous growth in tourism to this country which has taken place during the past couple of years.

I have read the newspaper reports and other comments which I am sure the Hon. Mr Irwin has read and which lead one to believe that Qantas feels that, without a very significant injection of capital funding, it will be unable to keep up with the demand for aircraft and by people to visit Australia. Whether that capital should be found by way of privatisation or through some other means is not a matter on which I can make a judgment. I am not sufficiently informed about Qantas's financial situation. I certainly do not have the information that would be necessary for me to determine whether or not the Commonwealth Government is able to find the capital injection through other sources, but the Commonwealth Government says that it would not be able to find the sort of money it needs quickly in order to assist Qantas.

However, these are issues which must be negotiated between Qantas and the Commonwealth Government. I hope that some arrangement can be made as quickly as possible so that Qantas can get on with the job of bringing people into this country.

The Hon. J.C. IRWIN: As a supplementary question, does the Minister support the principle of privatisation?

The Hon. BARBARA WIESE: I refer the honourable member to the policy of the Australian Labor Party on the question of privatisation. As I understand it, the national conference of the ALP has decided that privatisation of Government owned airlines in Australia is not desirable. Whether or not that changes is a matter for the ALP to determine at future national conferences.

MIXED SEX SPORT

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Attorney-General a question about mixed sex primary school sport.

Leave granted.

The Hon. R.I. LUCAS: Members will be aware that the Bannon Government has been introducing a six year plan in primary schools to force girls to compete against boys in all sports in primary schools.

An honourable member interjecting:

The Hon. R.I. LUCAS: Was that an out-of-order interjection? Members will also be aware—

The PRESIDENT: Order! It is my responsibility to keep order, not that of individual members.

The Hon. R.I. LUCAS: I seek your protection, Ms President. Members will also be aware that on 2 February 1987 the Commissioner for Equal Opportunity (Ms Tiddy), in a letter to the South Australian Primary Schools Amateur Sports Association (SAPSASA), said:

> You suggested that events in each age group should be duplicated, that is, each event be offered to girls and boys separately. Organising events in this way would, in my opinion, breach the Equal Opportunity Act and the Commonwealth Sex Discrimination Act. It is my view that in doing so complaints could be lodged against SAPSASA if a boy was refused entry in a girls event and *vice versa.*

Again, members will be aware that recently the South Australian Tennis Association took this matter of policy to the Equal Opportunity Tribunal to seek an exemption for that association to conduct separate boys and girls tennis events. On 7 February of this year the Equal Opportunity Tribunal ruled, in part, as follows:

> Tennis is a competitive sporting activity in which the strength, stamina or physique of the competitor is relevant because whether the game is played by males or females or both together at any age level the physical attributes of the competitor are relevant to the outcome.

The Equal Opportunity Tribunal ruled in favour of the South Australian Tennis Association, and the practical effect of that decision is that at present, on that decision anyway, the association will be able to conduct separate boys and girls tennis events for under 13 year olds. On 6 March of this year Ms Tiddy, together with the Crown Solicitor, appealed to the Supreme Court of South Australia against the decision of the Equal Opportunity Tribunal. My questions are:

1. Has the Attorney-General had any discussions with Ms Tiddy or the Crown Solicitor on the matter of the appeal? If so, what was the nature of those discussions?

2. If there have been no discussions, does the Attorney-General support the expenditure of Government time, effort and money in fighting to defend this policy in the Supreme Court?

The PRESIDENT: Order! I think that the first question deals with a matter that is *sub judice* and should not be answered. The second question does not relate to the appeal—

The Hon. K.T. Griffin: It is a question of whether he had any discussions; it is not *sub judice.*

The PRESIDENT: The content of the discussion deals with a matter that is *sub judice,* and the specific question asked was were there discussions and what was their content. I rule that that is dealing with a matter that is *sub judice.* However, the second question does not deal with a matter that is *sub judice* and I invite the Attorney-General to reply.

The Hon. C.J. SUMNER: It is really a bit irrelevant whether I had discussions with Ms Tiddy or the Crown Solicitor about the matter. It is just one of those questions which the Hon. Mr Lucas seems to be concerned to ask but which never actually go anywhere. The substantive matter is the question relating to the Government's position on this appeal. The Commissioner for Equal Opportunity has acted on one interpretation of the Equal Opportunity Act and is supported in that interpretation by the Commonwealth Sex Discrimination Act.

It has always been assumed on this point that the outcome of the South Australian Equal Opportunity Act and the Commonwealth Sex Discrimination Act was the same, although the wording is not expressed in the same way. The Equal Opportunity Tribunal has cast some doubt on that interpretation and it is obviously in everyone's interests to have that matter clarified by the Supreme Court. Accordingly, the Commissioner for Equal Opportunity has taken these proceedings and the Supreme Court will have to adjudicate on the interpretation of the Equal Opportunity Act.

HOUSING ASSOCIATIONS' AUDITED RETURNS

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister of Corporate Affairs a question about the lodgment of housing associations' annual audited returns.

Leave granted.

The Hon. J.F. STEFANI: Yesterday, the Attorney-General tabled a report prepared by the Office of Housing within Sacon on the Port Adelaide and Hindmarsh housing associations. Page 11 of the report (item 7) acknowledges that some housing associations are late in lodging their annual audited returns with the Department of Corporate Affairs. The report states that the Hindmarsh Housing Association was late with its return because of a delay with its auditor. The Hindmarsh Housing Association has since lodged its return. Section 36 (3) of the Act provides that, if an incorporated association fails to comply with the requirements of the regulations, the association is guilty of an offence and liable to a penalty not exceeding $1 000.

The Department of Corporate Affairs has today confirmed that no returns have been lodged for the years 1985-86 and 1986-87, and that on Monday, the 1987-88 return was lodged some two months late. It is noted with interest that the South Australian Housing Trust, which has a representative on the board of the Hindmarsh Housing Association, has recently directed its chief internal auditor to examine the records of this association. My questions are:

1. What action will the Minister take in relation to the late lodgment of the outstanding annual returns of the Hindmarsh Housing Association?

2. Will he provide a copy of these returns when they are lodged, and in fact all returns by that association?

3. Who directed, and on what date, the examination of the Hindmarsh Housing Association's books by the internal auditor of the Housing Trust?

4. Will the Minister table his report?

The Hon. C.J. SUMNER: I do not have that information. Whether it is appropriate for prosecutions to be taken is a matter for the Corporate Affairs Commission, and I will refer the honourable member's question to the commission for the preparation of a response. These matters are not drawn to my attention as a matter of course; they are dealt with internally. If any particular issues of policy relating to prosecutions might need a decision, they are referred to me. So, while I am ministerially responsible for prosecutions, in general these sorts of matters are handled by the Corporate Affairs Commission, unless there are particular circumstances which would necessitate my involvement. To date, as far as I can recall, there have not been, but I will seek information and bring back a reply.

TOURISM

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister of Tourism a question about tourism performance in South Australia.

Leave granted.

The Hon. PETER DUNN: In the light of the Minister's remarks a few minutes ago in reply to a question asked by the Hon. Mr Davis, I wondered how this edition of the *Eyre Peninsula Tourism News* dated December 1988 and titled 'Operation Overlord', stacks up with what she said:

> As a result of some alarming visitation figures presented at the August meeting of the Eyre Peninsula Tourism Association, a $50 000 marketing campaign has been launched in an attempt to win back lost tourism markets . . . The data presented showed a contraction of visitor markets to Eyre Peninsula over the past five years, with significant decreases being recorded over the past 12 months . . . However, the lack of high profile marketing activity at the State level was also identified as a major issue.

The President of the Eyre Peninsula Tourism Association, in his editorial, states:

> The first was to lift the profile of Eyre Peninsula in all future State marketing and promotional strategies. That is, to treat Eyre Peninsula as an attractive holiday destination rather than an afterthought.

In the light of these facts, how does the Minister justify her remarks to the Hon. Mr Davis?

The Hon. Barbara Wiese: Which particular ones?

The Hon. PETER DUNN: All of them.

The Hon. BARBARA WIESE: On what do you want me to comment?

The Hon. Peter Dunn: On South Australian tourism. You said it was the best for the past five years. This seems to indicate that it is not.

The Hon. BARBARA WIESE: I did not say that the performance of tourism was the best in the past five years, but I did indicate that in some parts of the State the results have been better than they have been for a number of years. Certainly, the people on Kangaroo Island have been reporting their best results for the past five years, especially during the summer season. That is not to say that there are not regional differences in South Australia, with some parts of the State doing better than others. Although I cannot recall the figures for Eyre Peninsula, the last survey results there also indicated an improvement. That is very much due to the improvement being shown in one or two areas of the peninsula.

If we look at regions of the State and various parts of it, of course we will find that some parts do better than others. That is just one of the quirks of tourism, one of the factors in the industry with which operators have to deal. There are many reasons for that. It has to do with the nature of tourism facilities that a region may have to offer. It may have something to do with the standard of service provided by particular operators in certain parts of the State. It may have something to do with whether or not what is being offered in particular parts of the State meets the demands of modern-day tourists.

A number of issues will affect tourism results in various parts of the State. The point I made in responding to the Hon. Mr Davis was that overall South Australia's performance was better than it has been. We have seen significant improvement in the State's overall tourism performance using a number of different measures. The Hon. Mr Dunn is asking a different question, but the figures upon which the Eyre Peninsula Tourist Association newsletter was based are not the most up-to-date figures. When those up-to-date figures become available they will demonstrate an improvement on the last period of assessment.

MARINELAND

The Hon. DIANA LAIDLAW: Has the Attorney-General a reply to my question asked on 14 February this year about Marineland?

The Hon. C.J. SUMNER: I refer the honourable member to a response given by my colleague in another place on Tuesday 14 February 1989 to a similar question on this matter.

BANK TRANSACTION FEES

The Hon. DIANA LAIDLAW: Has the Attorney-General a reply to my question of 17 November 1988 about bank transaction fees?

The Hon. C.J. SUMNER: The honourable member states that the Commonwealth Bank will charge transaction fees on accounts holding less than $250 at the rate of $1.50 if a withdrawal is made during that month, on a quarterly basis from 1 December 1988. According to press advertisements by the bank, the transaction fee will apply on a monthly basis from 1 February 1989. The Department of Public and Consumer Affairs has obtained more detailed information from the Commonwealth Bank. The honourable member asks about the Government's view of transaction fees, and whether it has, through the auspices of the Social Justice Unit, the Department for Community Welfare or the Department of Public and Consumer Affairs, assessed the impact of transaction fees and annual fees for credit cards. The Social Justice Unit and the Department for Community Welfare are outside the jurisdiction of the Minister of Consumer Affairs.

Transaction fees imposed by banks for withdrawals of deposits in banks other than State banks are a Commonwealth responsibility. However, the State Government can, at present, see no justification for such fees. Where such fees are imposed bank customers are, in effect, having to pay banks for the privilege of withdrawing their own money. Furthermore, such fees impose particular hardships on some low income earners. For example, persons receiving unemployment and sickness benefits are not, according to the bank press announcements, among the exempt categories. It is difficult to see the reasons for this, particularly in view of the fact that such benefits are now paid into accounts with financial institutions. These people, other low income earners and many single income families are likely to find it extremely difficult to keep their deposits above the $250 threshold.

At present, as not all financial institutions charge transaction fees, consumers still have freedom to place their banking with institutions that do not charge them. The Government is concerned, however, that, if all institutions charge such fees, people who have their benefits or wages or salaries paid directly into accounts will have to pay a fee to get access to their own money. This clearly is unacceptable.

At the Standing Committee of Consumer Affairs Ministers (SCOCAM) meeting in July 1988, Consumer Affairs Ministers of the States, Territories and the Commonwealth considered the question of transaction fees in credit contracts. The South Australian Minister, together will all of his colleagues except the New South Wales Minister, supported the proposition that 'transaction fees be not allowed' and that credit providers absorb all of their costs (other than those authorised) within the credit charge. The South Australian Consumer Credit Act 1972 does not prevent banks from imposing annual fees on credit cards. However,

banks have not yet done so. This is because the Credit Act 1984 which is in force in New South Wales, Victoria and Western Australia (and similar ordinance in the ACT) allows credit providers to charge either a credit charge or an annual fee (as in the case of American Express). Banks have so far preferred to retain standarised procedures on a nationwide basis to taking advantage of the right to charge fees in particular States.

In July 1986 SCOCAM resolved to examine proposals by credit providers to introduce up-front fees for their credit card services in conjunction with interest rate falls. A consultant, Dr Dickey Damania, of Flinders University in South Australia, has been appointed to assist the SCOCAM working party on uniform credit legislation in this task. SCOCAM directed that this examination extend to areas such as the profitability of credit card services, cross-subsidisation between different groups of consumers, the form that credit charges might take and whether there would be any benefits to credit card users as a whole, or particular groups of credit card users, if up-front charges were introduced. Means of ensuring that any decline in interest rates that would accompany such charges would be maintained are also being examined. The SCOCAM working party, which is convened by South Australia, is also responsible for the drafting of new uniform credit legislation. A preliminary draft is currently being prepared by the Victorian Law Reform Commission.

REPRODUCTIVE TECHNOLOGY ACT AMENDMENT BILL

The Hon. R.J. RITSON obtained leave and introduced a Bill for an Act to amend the Reproductive Technology Act 1988. Read a first time.

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

That this Bill be now read a second time.

It is a brief Bill and, if passed, will have only one consequence, namely, that section 14 of the principal Act, now suspended, will come into force on the assent to this amending Bill.

In discussing this Bill I want to talk about the mechanisms for differential proclamation of parts of a Bill. I will talk about section 14 itself, and I will say why I think section 14 is capable of proclamation now and, indeed, has been capable of proclamation from the beginning.

Honourable members will know that, unless otherwise stated in a Bill, it becomes operative from the date of assent. Commonly, where a Bill would require the setting up of a large bureaucracy or, say, the purchase of specialised equipment, the Parliament may give the Executive Branch of Government the privilege and the flexibility of providing for the Bill to become law on 'a day to be proclaimed.' Such flexibility is, of course, not intended to allow the Executive to frustrate or contemptuously ignore the clearly expressed will of Parliament; it is intended to give it flexibility of a machinery nature.

Where a Bill has a mixture of provisions, some of which can easily be put in place with little infrastructure, or some which may urgently be required to be put in place, and other provisions requiring a large infrastructure, with a longer lead time, the Parliament often gives the Executive power to bring different parts of the Bill into force at different times.

That is what has happened in the case of the Reproductive Technology Act. Section 2 of the principal Act provides that it should come into operation on a day to be fixed by proclamation and that the Governor may suspend the operation of specified provisions of the Act until a subsequent day fixed in the proclamation, or on a day to be fixed by a subsequent proclamation. On 1 April 1988 the Governor proclaimed the Reproductive Technology Act and at the same time suspended section 14 of the Act. A year later section 14 has still not been proclaimed.

Section 14 deals with experimentation involving human reproductive material. Section 3 of the Act defines human reproductive material as meaning *(a)* a human embryo, *(b)* human semen, and *(c)* human ova. One can see that it deals with a variety of materials with different philosophical and ethical significance.

I emphasise that the section deals only with experimentation. It does not touch upon IVF, GIFT or AID, which are therapeutic for infertility. Controls over artificial fertilisation are in place, contained in those parts of the Act already proclaimed. But, in relation to section 14, the most contentious matter was the prohibition of embryo experiments to the detriment of the embryo. There was strong community feeling supporting the controls and there was a small scientific lobby against them by people who, in good faith, did not want the controls. The matter was debated extensively in this Council where the Labor members took a Government or Party line rather than a 'conscience' line, although the Hon. Dr Cornwall gave his personal account of his opposition to such embryo research. The Australian Democrats supported the amendment which had been moved by the Hon. Mr Cameron, so section 14 with subsection (2) *(b)*—the prohibition against detrimental embryo experimentation—was passed.

When the Bill reached the other place, section 14 was no longer contentious. The Government supported it in the form in which it reached the other place. There were no speakers against it and no division. The Parliament had spoken.

It is true that the will of Parliament included the granting of the power of differential proclamation, but none of us suspected that section 14 was a part that could not easily be proclaimed. After all, the infrastructure of creating and appointing the South Australian Council on Reproductive Technology seemed to me to be the most important prerequisite to proclamation.

I have made some inquiries through a Government officer, who need not be named, and it seems that the council has had great difficulty in agreeing on a code of ethical practice. That is surprising because the obligation to formulate the code in relation to this and other parts of the Bill is not contained in this section but is contained in section 10 of the principal Act already proclaimed; and it has presumably been applied for nearly a year to section 13 in relation to artificial fertilisation, because it has been proclaimed for nearly a year.

I cannot see why difficulties in agreeing to all the details prevents the proclamation of section 14 and the issue of licences. It was never envisaged that the code of practice would be a *sine qua non* or the linchpin of the operation of section 14.

Section 14 forbids experimentation on sperm, ova and embryos by an unlicensed person and lays down the conditions of licence as follows: first, a definition of the kinds of research authorised; secondly (and this was the contentious one in this House, although not in the other), a prohibition of research detrimental to an embryo; thirdly, a requirement to observe the code of ethical practice—which is in section 10 and already proclaimed—and, fourthly, any other such condition as the council may determine. Fur-

thermore, the section provides that if conditions of the licence are not determined at the time of issuing the licence but are subsequently determined, they can be imposed by notice in writing to the licensee and can be similarly varied or revoked.

Clearly, Parliament had in mind that all the conditions would not have been worked out. It had in mind that nevertheless the basic conditions of definition of the kinds of research and prohibition of research detrimental to an embryo should be put in place, and it envisaged that the conditions, including the code of practice, would be an evolutionary and ongoing thing—varied and revoked, added to and subtracted from, from time to time, as knowledge and wisdom grew, but not so as to overturn the prohibitions in the principal Act. For example, licences for research on ova and sperm could have been issued subject only to a condition requiring, say, a regular half-yearly or yearly lodgment of research protocols with the council. Licences to conduct research on embryos could have been issued subject to being limited to non-detrimental research on pre-implantation stage embryos. In each case, a condition of licence could have been that the researcher abide by the code of practice as and when it may be formulated. There was no need to leave the matter totally unregulated for a year just because some matters were not agreed upon by the council.

Even if the council has become faction bound—and that is only conjecture—and even if some members of the council would be pleased to avoid the consequences of the prohibition on certain research, the Government could have put the main conditions in place by proclaiming the whole Act, with the finer points, including the code of practice, being dealt with by the council in an evolutionary way.

Embryo experimentation is a subject of deep public concern, and there are in the community people who see the suspension of section 14 as a frustration—indeed, a contemptuous frustration—of the clear will of the Parliament and an abuse of the privilege of differential proclamation, a privilege given by the Parliament to Executive Government for machinery purposes and not to enable the Government to ignore the clearly expressed will of the Parliament.

That view is developing in the community. It may or may not have substance. I am not privy to the inner workings of the Council on Reproductive Technology. I note that its annual report is required by law to be in the hands of the Minister by 31 March—about two weeks from now—and to be tabled within six sitting days of that date, so we may get more information in April.

In the meantime, when I made inquiries through a Government officer, as I have already mentioned, I was told that the Council had nearly completed the code of practice and that section 14 would probably be proclaimed in about a month. However, that was a helpful but second-hand opinion that was obtained from someone whose identity is not known. It may be the view of a member of the Council; it may not be the view of the whole Council. So, it is certainly not an assurance. It is my intention therefore to pursue this Bill with the utmost vigour and the most numbers that I can muster in the Council. However, if the Government can give an absolute watertight undertaking to proclaim section 14 on or before 30 April 1989, I will leave the Bill on the table to expire when Parliament rises.

Clause 1 is formal. Clause 2 (1) deletes the power to suspend section 14. Clause 2 (2) brings section 14 into operation from the day of assent to this Bill. Clause 2 (3) causes the effect of this to lapse if the Governor has proclaimed section 14 before this Bill comes into effect.

The Hon. J.C. BURDETT: I support the Bill. Parliament has been conned. When the Reproductive Technology Bill was before Parliament the Hon. Martin Cameron moved the amendment to provide for a prohibition of research that might be detrimental to an embryo. That was lost, but it was lost against the background that the then Minister of Health moved an amendment which resulted in the present section 14, which wrote what the Hon. Mr Cameron was seeking to do into a licensing provision. It provided for the issue of a licence. Section 14 (2) *(a)* it provides:

> A licence will be subject to a condition prohibiting research that may be detrimental to an embryo.

It is astonishing to me that, in the light of that history, the Act was proclaimed to come into operation with only section 14 suspended. Every other part of the Act came into operation. I would like the Minister in responding to answer the question about whether there are any research programs going on at present, because I strongly suspect that that is the case. I strongly suspect also that that is the reason for the section having been suspended from the proclamation of the Act. If that is the case, Madam President, it is quite disgraceful. There is no administrative reason why it should have been suspended.

On inquiry, the reason given was legal difficulties in preparing the code of ethical practice formulated by the Council as referred in section 14 (2) *(c)*. However, as the Hon. Dr Ritson has pointed out, that is a no-no, because section 13 was proclaimed as part of the Act, and that has exactly the same provision. Section 13 (3) *(c)* provides:

> A condition requiring a licensee to ensure that the code of ethical practice is observed—

There is no code of ethical practice. There is none, for the purposes of section 13, any more than there is for the purpose, of section 14. So, that is complete nonsense. There is no reason why the operation of section 14 should have been suspended. The only reason I can think of (I hope there may be another one, but I do not know) is that there is no legal technical reason, because the same arguments that apply to section 14 apply to section 13, and that latter section has been proclaimed.

Only section 14 has been suspended. I strongly suspect that there may have been a program of experimentation proceeding which it was intended to proceed with. I hope that the Government will give an undertaking that section 14 may be proclaimed shortly and that, as the Hon. Dr Ritson has observed, would satisfy the situation. Madam President, recently I have been concerned about this situation of bypassing or misleading Parliament. This is one of the examples, as I have said. It was not expected by anyone in Parliament, I would suspect, that section 14 would be suspended from being in operation because there are no reasons why it should have been suspended.

Another parallel is another matter on the Notice Paper in respect of the Sexual Reassignment Act about which an amendment was moved to prevent the certified copy of the entry of birth from stating a fact other than the truth. In the original Bill introduced to the Council it was provided that a certified copy would show, say, in the typical case of a person having been born and registered as a male and having the sex reassigned to female, that person as having always been a female.

The Hon. Trevor Griffin moved an amendment to prevent that, but it was not accepted. The Attorney-General then moved an amendment to provide that the form of certification be provided by regulation. That was accepted by the Hon. Trevor Griffin and me as meaning that there would be some attempt to show the truth, instead of showing a lie. Yet the regulation, when it came in, provided exactly the same as the original Bill, namely, that the certificate would be as altered and would show a person who

was registered as being a male as having always been a female.

So, I am concerned about the subject matter, that research has not been prohibited as this Council thought it would be. I am also concerned about the matter of going behind Parliament's back and setting aside what Parliament has said and putting Parliament into contempt—that what we have been led to believe is going to happen does not happen, because the point was made very strongly in respect of the Reproductive Technology Act (the matter now before the Council) that there should be a prohibition on research that might be detrimental to an embryo. We were led to believe that the amendment which resulted in section 14 would provide for this. And so it does, but the Bannon Government, by an act of the Executive, has suspended operation of this section. It has set aside what Parliament decided—what was agreed in consultation and as a matter of conciliation. This is a serious matter.

In addition to this, as the Hon. Dr Ritson has pointed out, provision is made to add to the conditions of a licence so that a very simple code of ethics could be formulated, and could have been formulated long ago—certainly in less than 12 months. It could have been added to if this Council, after mature consideration, had decided that some more sophisticated measures could have been referred to.

I believe that Parliament has been conned, as I said. The section was passed as a result of debate in this Chamber and as a result of very strong points of view put by the Hon. Martin Cameron, the Hon. Dr Ritson and other members of the Council, yet it has not come into operation. I commend the Hon. Dr Ritson, therefore, for introducing this Bill so that we can do what we said we would do some time ago. I support the second reading.

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

INDEPENDENT COMMISSION AGAINST CRIME AND CORRUPTION BILL

Adjourned debate on second reading.

(Continued from 22 February. Page 2052.)

The Hon. I. GILFILLAN: I thank members for their consideration in allowing this matter to be brought forward on the Notice Paper. In concluding the debate it is appropriate for me to thank the Hon. C.J. Sumner and the Hon. Trevor Griffin for their contributions, and comment on the amazing quantity and substance of the contribution made to this debate by the Attorney-General. Upon reflection, I find it doubly remarkable that when this matter was being discussed at an earlier stage, the Attorney indicated that he would probably not bother to comment on my suggestion that such a commission be established. I do not intend to carp on this, because a lot of effort went into the contribution. I will refer to several aspects in it during the course of my concluding remarks.

Unfortunately, the speech by the Hon. C.J. Sumner showed a lack of understanding of the principles behind the measures in the Bill. Perhaps the greatest failure arose from the fact that he gave no weight to the educative and preventative basis beind the legislation. These issues are critical to the success of this type of legislation. Certainly, the Independent Commission against Crime and Corruption (ICACC) will investigate corrupt conduct and organised crime, and will demonstrate to public officials that corrupt conduct is unacceptable to the public whom they serve, by referring the results of investigations to other bodies for further action. But, more importantly, ICACC's educative role will make public officials, including members of the Parliament, more aware of their obligations to the people they serve. The commission's educational role is to advise on ways in which corrupt conduct may be eliminated and to educate and disseminate information to the public on the detrimental effects of corrupt conduct, and on the importance of maintaining the integrity of public administration.

I should like to make clear that the proposed commission is not a prosecutorial agency, a matter that seems to have escaped the Attorney's understanding. It is an investigatory agency. The independent commission will not be prosecuting people. At most it will be recommending to law enforcement agencies (and in particular the Attorney-General himself) that action be taken. If the particular law enforcement agencies hold a different view, they are not obliged to follow that recommendation. In exercising its functions the commission shall regard the protection of the public interest and the prevention of breaches of public trust as its paramount concerns.

There are important checks and balances in this legislation to ensure that the Commissioner will be accountable, and one of the accusations most strongly put by the Attorney in his speech was that the Commissioner would not be accountable. The Commissioner will be accountable to Parliament. There will be a parliamentary joint committee which will monitor and review the exercise of the commission's functions. The powers of this committee are based on standard provisions for the powers of parliamentary committees and, in fact, it is based on the National Crime Authority Act itself.

Any suggestion that this committee is merely a sham is wrong. The Bill provides that the committee is not to involve itself specifically in doing the very sorts of things that the commission has been set up to do. In other words, it will not be a *quasi* commission taking on the commission's role, and that provision, I believe, is entirely sensible and appropriate. The Operations Review Committee will be intimately concerned with the day-to-day operations of the commission. Its function will be to advise the Commissioner whether the commission should investigate a complaint, or continue an investigation of a complaint. The Attorney's concern about that committee and its personnel reflect, I think, a lack of appreciation that five of the members on that committee are by the specific appointment of the Attorney-General himself. If he cannot choose people whom he can trust and who can be effective on that committee, he has no-one to blame but himself.

Much was also made of the rule of law and the rights of individuals. However, what should be remembered is that corruption is a crime of the powerful. Where graft prevails the rich and the influential get an inside deal on justice. Also, if it ever comes to be widely believed that Government, especially the administration of justice, is not open to all on the same terms, then the very legitimacy of government itself will be called into question. There can be no justice flowing from a corrupt administration.

Much has been made of the power vested in the ICACC Commissioner to issue his or her own arrest warrants. But Australia-wide there has been little protest against the action of Commissioner Fitzgerald in Queensland, who had the same capacity to issue warrants in his own right. With this exception, the powers of ICACC at this investigatory stage will be similar to those of the police. Beyond this initial investigatory stage, the legislation provides for the exercise of royal commission powers.

The Commissioner or Assistant Commissioner conducting the hearing is required to state terms of reference at the outset, and in all other respects ICACC's powers are based on Australian legal precedents for commissions of inquiry. The powers of the commission are not, as alleged by the Attorney, unprecedented. The Commissioner has limited powers to arrest. These powers are restricted to bringing persons before the commission to be referred to the Supreme Court, if need be, in relation to matters of contempt. There is no general power to arrest people or hold people at will as alleged by the Attorney. The power exists for these specific purposes, and is clearly comparable to the powers of a royal commission.

In fact, the Commissioner has less power than a royal commissioner. The independent commission cannot punish people for contempt. The legislation in no way inhibits the powers of the courts to supervise the exercise by the commission of its jurisdiction and powers. The Bill in no way takes away the right of persons to a fair hearing in accordance with principles of natural justice, and the right to trial by jury. To suggest otherwise is a complete misunderstanding of the legislation. As far as the applicability of the legislation to the judiciary is concerned (which was also raised as a great concern by the Attorney-General), I remind members that the Bill only addresses serious questions, questions of corrupt conduct or organised crime, and is specifically not empowered to consider at large questions of general impropriety. I intend to comment further on some of these points.

The Attorney-General actually issued a press statement on 22 February, almost simultaneously with his giving a speech in this place. Certain points outlined in that press release in their own right warrant some comment. The Hon. Mr Sumner tried to imply that a minor dereliction of duty would be investigated by the commission. That is nonsense. The only conduct which would even be considered by the commission would be, at least, action involving grounds for disciplinary action under law. I refer to clause 3 (2) of my Bill. In other words, it is action which is downright illegal. The Hon. Mr Sumner was also concerned about the commission having hearings in public without criminal charges being laid.

That situation is exactly the same as royal commission legislation in South Australia. Further, the ICACC can control what is published in the same way as is provided to the Supreme Court in suppression orders. The Hon. Mr Sumner quite wrongly says in his press release and speech that a finding of criminal conduct would be made against a citizen without a trial. The commission is not empowered to lay charges against persons to try them. It can only advise the Attorney-General, as I mentioned before, and provide him with evidence.

The Attorney-General complains about there being no right of appeal. As no decision to prosecute is made by the commission, there is obviously nothing against which an appeal could be lodged. As I have said before, that emphasises the Hon. Mr Sumner's ignorance or misunderstanding of the Bill. He claims that rules of evidence which ensure natural justice are abolished. The commission can take information in any form which it considers helpful—and I defend that. This is the extra flexibility and effectiveness that a commission would have, and it is exactly the same as is contained in the Royal Commissions Act and the Ombudsman Act.

The Hon. Mr Sumner complained in his press release that there is no accountability to the Government of the day and no ministerial responsibility. I believe that it is imperative that the commission be detached from Government direction and overbearance. The commission is, however, specifically accountable to the Parliament with a parliamentary joint committee and annual reports to Parliament—the same situation as applies to the Ombudsman. As I said before, the parliamentary joint committee is based on the legislation for the National Crime Authority. The Hon. Mr Sumner was concerned about the issuing of search warrants. The power of the commission to issue search warrants is limited to the Commissioner and not, as the Attorney erroneously said in his speech, to other officers and an assistant commissioner.

The Hon. C.J. Sumner: That is not right.

The Hon. I. GILFILLAN: I have looked at my Bill, but you can point it out in due course. The Hon. Mr Sumner is interjecting that I am misinterpreting my own legislation. If he can show that I am wrong, I am perfectly willing to stand corrected. On my reading of it, it is limited. I defend the fact that the purpose of the searching is to root out corruption and organised crime, and that there is justification for the commission to have the power to issue effective search warrants when needed. The Attorney also criticised the power of the commission to issue a warrant to bring before the commission a person who, having been summonsed to attend, fails to do so. This power, again, is exactly the same as that provided to a royal commission.

The Hon. Mr Sumner claimed that the right against self-incrimination is abolished. This is incorrect, and reflects further ignorance of the Bill. Clauses 28 and 35 (7) of the Bill expressly provide that material which tends to incriminate the person producing it will not be admissible in proceedings against that person. That reflects exactly the same provision as section 30 of the NCA Act.

The Hon. Mr Sumner is concerned at the curtailing of legal privilege, and I argue that this is acceptable if the commission is to be effective as an investigatory body. It is quite fatuous to argue that the legal profession across the board will never be involved in corruption or in organised crime. In fact, it has been shown in other States that from time to time it has been. I believe that this power is necessary if we are serious about attempting to root out corruption and organised crime.

The Attorney is concerned that the judiciary can be investigated. There is nothing in either the Royal Commissions Act or the National Crime Authority Act which prevents the conduct of a member of the judiciary being investigated, and I claim that they should not be exempt. In fact, to back that, the Chief Justice of New South Wales (Sir Laurence Street) was quoted in a letter to the Premier of that State in relation to the introduction of an ICAC in New South Wales, as follows:

> Judges could not reasonably expect to be immune from a body established by the Parliament to investigate corruption, any more than they can expect to be immune from the Police Force in the investigation of crime.

In the light of the Chief Justice's comments, the concerns and arguments put forward on behalf of judges are ill-founded. Quite clearly, the Chief Justice of New South Wales accepted that judges are subject to the law in the same way as other public officials, and the same should apply to all public officials in this State. The fundamental point is that the legislation applies to all public officials equally. No-one has been exempted: no-one has been given special privilege.

The Hon. Mr Sumner is concerned that the commission could continue hearings in public while a matter is before the courts. He says further that a person could be acquitted by a jury but found guilty of criminal conduct by this commission. This, again, shows his ignorance of the Bill. The commission does not conduct trials to find anyone

guilty of criminal conduct. The Attorney has not read clause 100 of the Bill, which is specially designed to prevent interference with a trial before the courts. However, it is essential that inquiries or hearings by the commission cannot be stopped in their tracks by the tactic of obstructive legal action which could be initiated by guilty parties to stall the commission. The commission, therefore, must have the capacity to continue hearings which would be in private.

The Hon. Mr Sumner is concerned that there is no oversight of the commission by the independent courts or anyone else. As I said before, the commission is accountable to Parliament and prerogative writs from the courts still apply to the commission.

The Hon. C.J. Sumner: It is not clear.

The Hon. I. GILFILLAN: The honourable Attorney interjects to say that it is not clear. The fact is that it is not prescribed in the legislation, and my understanding is that prerogative writs are applicable to the commission from courts of this State. The Hon. Mr Sumner speaks of his concern at journalists or newspaper editors being forced to reveal their sources. This concern can apply equally to the action of courts or of Parliament itself, for that matter. A similar situation applies to royal commissions.

When this issue was raised, a Federal spokesman from the Australian Journalists Association (AJA) expressed concern, but it is interesting that the New South Wales branch of the AJA passed without dissent a resolution that:

> . . . the Federal secretary [who had made the comment criticising the commission] be called before the next branch meeting for his justification in criticising the proposed ICAC New South Wales legislation and that he be reminded that many New South Wales investigative journalists strongly support the ICAC as desirable to combat New South Wales corruption.

I pause to emphasise that the whole purpose of this legislation is not to prove bothersome, frivolous or intrusive into the normal processes of this State, but it is a move which has been designed to eventually prosecute people who are offending, are corrupt or are involved in organised crime in this State, and that the person who will be appointed—if we are fortunate enough to have this commission established—will, by virtue of being chosen by the Government, be expected to behave in a responsible manner.

I think that the Attorney-General's litany of criticism was determined to undermine the potential character of a person who would take this appointment holding the same status as a person who could be appointed to the State Supreme Court bench, and I think that that is a very unfortunate reflection.

I intend to go through some of the points that the Attorney-General raised in his monumental contribution (some 63 typewritten pages) to the debate. Although this may take a little while, I think it is important that it be done. The Attorney-General, from time to time, was most critical of my motives and attitudes, and I will make some response to those criticisms as we go through the points. He questioned why it is necessary to establish a new body, and I remind the Council that it took a long time for us to persuade a very reluctant Government to accept that a branch of the NCA should be established in South Australia. So, it is rather hypocritical to ask why I have been urging the establishment of an independent commission. My Bill was introduced before there was a decision to establish a branch of the NCA in South Australia.

The Attorney-General is very keen to portray me as having a complete lack of confidence in the South Australian Police Force and the National Crime Authority. I believe that the criticisms I have made have been constructive and specific. They are valid. They are not, of themselves—nor did I intend them to be—indictments of either those bodies. I have enormous admiration for the vast majority of serving police officers in South Australia, and I have considerable respect and admiration for the National Crime Authority, with which I have had continuing contact for well over 12 months now, and I continue to have that contact.

I believe that the way in which the Attorney-General presented his case was a gross misrepresentation and an attempt to besmirch my attitude to the law enforcement agencies in South Australia and Australia. He cavils about 'the proper accountability to elected Governments', and I repeat the point that I made several times: if there is to be a free, unfettered agency investigating corruption particularly, and even organised crime, it must be detached from the direct interference of a Government of the day. That is one of the major points of any body which is attempting to look impartially and fearlessly at these matters in this State. The Attorney-General applauds the restriction imposed on the NCA, and says that it can:

> . . . only exercise coercive investigative powers in the context of specific references initiated by the appropriate Government and approved by the inter-governmental committee (comprising representatives of all Governments—Federal and State—in Australia).

It is just that very restriction that is one of the major criticisms that I have of the NCA: not only can it be confined by a term of reference but that term of reference can be cancelled or varied at the whim of the Government of a particular State. I think that that is an unfortunate restraint on the character and *modus operandi* of the NCA.

The point I am making—and it was reflected throughout the Attorney-General's speech—is that the Attorney-General shows a complete lack of confidence in the integrity of anyone who would be appointed as the commissioner, and I believe that he portrays that person as a sort of larrikin who salaciously will be revealing rumour and scuttlebutt, and deliberately sabotaging any chance of successful prosecution through irresponsible and flagrant publication of critically sensitive material.

That is absolutely farcical. There is absolutely no way in which a Government would appoint a person with that degree of irresponsibility, and there would be no way that the Parliament of this State would tolerate such a person in that position—and the Parliament, I remind members, has the power to dismiss the Commissioner. The issue of revealing rumour and scuttlebutt was emphasised several times by the Attorney-General. It is, and was, the specific intention of Fitzgerald, when dealing with the material in Queensland, that rumour and scuttlebutt, and unsubstantiated damaging allegations, would not see the light of day; they would be kept either out of public hearings or not be dealt with by the commission at all.

The Attorney-General quotes Ian Temby QC in a matter of defence of the NCA, and I will read that quotation to members to remind them of what was said. In a speech given at the Sixth National Conference of the Australian Society of Labor Lawyers in 1984, he said:

> It is therefore a matter of great relief to me that the Act establishing the NCA requires concentration upon the gathering of admissible evidence, and that in discussion with members of the authority they have recognised the prime importance of my office—

that is, the office of Public Prosecutor, as he was then—

> being presented with briefs in a form that can be prosecuted.

The Attorney-General then went on:

> The proposed commission, on the other hand, would not concentrate on matters which would be prosecuted.

Bearing in mind that the legislation I have presented is modelled largely on that which was passed in New South Wales, it is important to note that the same Ian Temby QC

has now accepted appointment as the Commissioner in New South Wales. Quite obviously, he accepts that the legislation and the powers of the commission (ICAC) in New South Wales will be acceptable and not alien to the things that he was admiring in the NCA legislation.

In his criticism of the Bill the Attorney-General tried to indicate that it would not be involved in providing material in a form for legal action for prosecution. I remind him and other members who may not be familiar with the Bill that clause 13 (2) headed 'Functions of the commission', provides:

> *(a)* to assemble evidence that may be admissible in the prosecution of a person for a criminal offence against a law of this State in connection with corrupt conduct or organised crime and to furnish any such evidence to the Attorney-General;
>
> and
>
> *(b)* to furnish to the Attorney-General other evidence obtained in the course of its investigations (being evidence that may be admissible in the prosecution of a person for a criminal offence against a law of another State, the Commonwealth or a Territory) and to recommend the action that the commission considers should be taken in relation to that evidence.

If that is not a strict, clear function for the gathering of evidence admissible and useful in prosecutions, I do not know what is. The Attorney-General spent some time indicating that he had some misgivings about the operation of the parliamentary joint committee, and I have indicated that it is modelled on the NCA model. It is important to recognise that no other entity, not even a parliamentary joint committee, should be a second commission and a *quasi* commission in its own right. I believe that the question of what material it has access to is an issue that may, in all honesty, need to be sorted out as a commission of this type comes into effect.

I can understand that there may be misgivings by a commissioner to allow a parliamentary joint committee access to all material that comes before the commission. On the other hand, I can understand that a Parliamentary joint committee may see fit to enlighten itself on some material which is important for it to use in order to make a proper assessment of what the commission is doing and how it is proceeding with certain inquiries. So, I accept that there are grey areas in the legislation and if the opportunity existed for constructive amendment to it, I would be happy to consider it.

The Attorney made several other complaints or criticisms which can be equally levelled at the NCA. If there are reasons for criticising the means by which documents can be served, that is another area where reasonable amendments could be considered. I do not have any objection to conditions similar to those in the NCA Act being applied to the commission.

The Attorney made great play of the power of arrest of the commission. In earlier remarks I indicated that the arrest is for a specific purpose and is liable to writ, particularly a writ of *habeus corpus*, and that the commission would be most unlikely to exercise power of arrest or detention any more than for the purpose of bringing a witness before the hearing to either give evidence or answer questions. If there is a case for contempt, that must be dealt with not by the commission but by the Supreme Court.

The Attorney is very concerned about the question of self-incrimination of witnesses. He interjected earlier when I said that protections are contained in the Act. In his speech he stated:

> Royal commissions have traditionally been empowered to overrule the privilege against self-incrimination by witnesses before them. But royal commissions are established on a completely different footing from the proposed commission. As a starting point, royal commissions have strictly defined terms of reference and are usually set up as an extraordinary measure. The basic task of a royal commission is, and has been, to establish publicly the truth of a particular matter given to it to investigate and report upon.

That is a fair quote from the Attorney's paragraph in his speech. Surely what the Attorney has said is applicable word for word to the intention and capacity that should be available to a commission such as the one I am moving in this Bill. As with the royal commission, it is established publicly to ascertain the truth of a particular matter. The matters need to be referred and the hearings need specific terms of reference before the commission can proceed. We have a precedent already in royal commissions for the situation as it applies in my Bill, and I remind the Council that there are in the Bill clauses to which I referred earlier and which protect witnesses because the evidence they give cannot be used in criminal action against them.

The Attorney was rather alarmed that there seemed to be no relief or protection for people being subjected to improper investigation. I do not know what he meant by 'improper investigation' but, if there is cause for suspicion and that is the ground upon which ICACC can investigate, it must have reasonable grounds that there has been an offence.

The Hon. C.J. Sumner: It doesn't have to have reasonable grounds that there has been an offence.

The Hon. I. GILFILLAN: Yes, it does—it says so in the Act. The operations review committee which he has criticised has five members who are appointed directly on the recommendations of the Attorney-General. The operation of such a review committee can be discussed in more detail, if need be, in Committee. It is basically an advisory and consultative group to help the commission with its day to day work on a confidential basis. It will not be working in a public situation, unlike the parliamentary joint committee, which has the capacity to hold public hearings.

I have mentioned the question of appeal and the question whether the commission makes decisions on matters of law and determines guilt. I made clear that that was not its purpose. I repeat arguments that there was concern by the Attorney-General that concurrent hearings in court and before the commission could involve a travesty of justice. I point out that the commission is required in the legislation to be conscious of that and to have hearings in private. Although the Attorney may say 'as far as practicable', unless we appointed somebody totally irresponsible to the position, obviously that safeguard would be complied with.

The Attorney raised some horrific scenarios such as investigators entering the chambers of judges. I point out that clause 25 of my Bill makes plain that such action can be taken only on the express authorisation of the Commissioner, who must have very strong suspicions that there was an important need for such action to be taken.

The Hon. C.J. Sumner: Not just the Commissioner.

The Hon. I. GILFILLAN: I believe it is. The fear of Cabinet papers being opened to commission inspections was mentioned by the Attorney. Again, reasonable grounds of corrupt conduct or organised crime must exist before it can be investigated. So, good reasons exist to accept that these powers in the Bill are available only when extraordinary conditions prevail and extraordinary suspicions are mounted.

The issue of media privilege I mentioned earlier. The Hon. Mr Sumner mentioned that in his speech, although I do not have with me a copy of a useful quote that was made regarding media privilege. I will try to find it and refer thereto in Committee. If the media is not interested in anything else, it may be interested in that. However, I have a copy of what the Attorney said in relation to the police, as follows:

Police are particularly vulnerable to unsubstantiated attack. There is little doubt in my mind that criminal elements use misinformation to try to undermine law enforcement agencies in this country.

The Hon. C.J. Sumner: You don't accept that?

The Hon. I. GILFILLAN: That is exactly the reason why we should have an independent commission: to ensure that, in relation to these so-called criminal elements that are trying, to use the Attorney's phraseology, to undermine law through unsubstantiated attack, the police can have the relief and protection of an independent commission that can completely exonerate them through an independent hearing. That is why I have been arguing for the setting up of this commission.

At some stage in his address, the Hon. Mr Sumner referred to Bob Bottom, well known crime buster, and various other colourful phrases with which he was described on 5DN on 19 May last year when making a statement about how clean the South Australian Police Force is. I have no objection to that. But, while we are quoting Mr Bob Bottom, I should like to quote from an interview that he gave to Keith Conlon on 19 August last year when Keith Conlon was looking at the options available to South Australia. It was a long interview, and I do not intend to take up the time of the Council by going through all of it. Keith Conlon specifically asked for his comments about the commission that the Hon. Mr Gilfillan, for instance, wants—an independent commission against corruption. Mr Bottom is commenting after saying that the Anti-Corruption Unit, which was to be established by the police, is a very good step. He said that the Anti-Corruption Unit is:

> the minimum positive approach, but that doesn't mean to say that you should not also consider having a commission which would have Royal Commission powers to pursue matters beyond what the police can do, because after all South Australia may have a lot of faith in its Police Force, but they certainly haven't enough faith to give them the proper powers.

Further on in his comments he says:

> So I think there is great validity to have above this Anti-Corruption Unit access to a commission of the sort to have those higher powers. Now ideally Senator Hill's idea of an NCA branch is admirable, except that Gilfillan, I think you will find, is now proposing a combination of an ICACC, that's an anti-corruption commission, and a crime commission and the ultimate.

It is important, when quoting people who are drawn in as independent commentators on what is happening in South Australia, to note that Bob Bottom has put support behind the move for an independent commission against crime and corruption in South Australia.

I resent the scurrilous attempt by the Attorney-General to portray me as an enemy of the South Australian police and having a profound distrust of them. It is obvious to anyone that in the South Australian Police Force there have been, and may still be, a very small number of police officers who are, or have been, involved in illegal or corrupt activity. The evidence in support of that comes to hand periodically in such things as the results of the Noah phone-in and other activities where individual police officers are identified as having been involved in these activities. So it is ridiculous to portray any police force, and certainly the South Australian Police Force, as being perfect. Therefore, it is important that proper structures be put in place and there be an intention to root out any corrupt or illegal activity and officers who have been guilty of such activities.

Towards the end of the Hon. Mr Sumner's very lengthy speech—and I think that honourable members may by then have nodded off or failed to pay proper attention—we came to what I can only describe as the Sumner beatitudes. This follows a savage attack on my Bill to establish a commission to help maintain and protect the State from corruption and organised crime. This is the Sumner theory or proposal:

> Along with the institutional structures put in place attention should be given to reaffirming basic ethical values in our schools, training institutions (including police) and the institutions which I have mentioned as essential to the functioning of our democracy, including Parliament and the press. In a pluralistic society, these values are derived from many sources, not necessarily all religious or from one religion. Nevertheless, there is a core set of values which is accepted and, if reinforced by society, should lead to less need for investigation and punishment approaches to eliminating corruption. The challenge is to find ways to reinforce those values in a practical way.

That is beautiful stuff. I have no argument with it at all. But that in itself does not justify ignoring the fact that we need to have the structures in place on an ongoing basis to reinforce the presentation of those moral values and their protection in our community.

In the context of the Hon. Mr Sumner's speech, he has continued to harp on certain criticisms of my attitude to the police and accused me of never having provided substantial information to back the allegations that I have made over the past 12 months and my insistence on the need for an independent commission. I produced material, which provided the background to my original speech. I have always provided to the National Crime Authority every bit of material that I have received. Much of it will be confirmed as having been useful and constructive. I still receive material which I continue to pass on, and I shall continue to do that. I am complying with one of the obligations that the Attorney-General feels is necessary by not publicly airing unsubstantiated allegations. I do not intend to be goaded into revealing the information that I got in order to justify the moving of this legislation and the promotion of the commission. Whatever has happened since I introduced the Bill has not reduced my enthusiasm for the establishment of a commission. I do not see the commission as duplicating or conflicting with the NCA or as a duplication or a complication with the South Australian police.

I do not intend to go over ground that I have outlined on other occasions. There are reasons, in relation to certain accusations, why the South Australian police should not be directly involved, that is, where there are allegations about serving police officers. I urge the Council, and the Attorney-General in particular, to consider that in the fullness of time it will be important to have an ongoing, constructive commission which has an overriding overview of the matters which have been of concern to everyone in South Australia and which eventually resulted in the establishment of an NCA branch in this State.

I thank the Hon. Mr Griffin for his contribution. He outlined lucidly how stubbornly the Government has resisted pressure to set up effective measures to fight corruption in South Australia. I do not intend to go over that. I say, somewhat tongue in cheek, that I have some sympathy for the Government. No Government wants its State to be portrayed as having undesirable features. Corruption and organised crime are unattractive features, and the Government has been attempting to sweep them under the carpet. Now that facts have been brought out, the NCA apparently has its place here, so we have made up some of the leeway.

I am encouraged by some of the comments of the Hon. K.T. Griffin, in recognising the important position that he holds in the Liberal Party, that my Bill will have support in this place. He has indicated that he believes that the Liberal Opposition will support the second reading of the Bill. I should like to quote a sentence from his speech which gives me further optimism. He said:

> The Opposition is now reviewing that initial reaction to the Hon. Mr Gilfillan's Bill. If the Government believes that only the National Crime Authority office in Adelaide is necessary to address the issue of corruption and is not proposing any other

strategies to come to grips with allegations beyond the terms of reference of the National Crime Authority, then we—

I assume that 'we' means the Opposition—

must seriously consider the establishment of an independent commission against corruption in South Australia.

I am confident that the Opposition, having seen the wisdom and intention of the Bill, will support it through all its stages in this place so that it can get passage into another place and be debated there.

The Council divided on the second reading:

Ayes (12)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, Peter Dunn, M.J. Elliott, I. Gilfillan (teller), K.T. Griffin, J.C. Irwin, Diana Laidlaw, R.I. Lucas, R.J. Ritson, and J.F. Stefani.

Noes (9)—The Hons G.L. Bruce, T. Crothers, M.S. Feleppa, Carolyn Pickles, R.R. Roberts, T.G. Roberts, C.J. Sumner (teller), G. Weatherill, and Barbara Wiese.

Majority of 3 for the Ayes.

Second reading thus carried.

In Committee.

Clause 1—'Short title.'

The Hon. K.T. GRIFFIN: It is appropriate that at this point I indicate the Liberal Party's attitude to the remaining stages of the Bill. It may be remembered that on 30 November when I spoke on the Bill I gave a commitment to support the second reading because of a number of difficulties then current with respect to Government initiatives in the area of crime and corruption. I indicated when the Australian Democrats introduced this Bill on 5 October 1988 that I did not really see a need for yet another body to enter the arena of crime and corruption if the National Crime Authority worked effectively in South Australia and if other initiatives were taken to deal with the serious question of corruption and organised crime.

In the week of 29 November 1988, a number of matters came to a head. The Federal Minister, Senator Tate, refused to make available the terms of reference to be given to the NCA for its investigations in South Australia. The Deputy Premier tabled the terms of reference in another place but did not make all of them available to the media. They were amongst the events which prompted us to look again at the Australian Democrats' Bill. It may be remembered that at about 9.45 p.m. on 29 November, prior to the adjournment of another place, the Deputy Premier said that 56 South Australians were on the list referred to the NCA. That was well after he had indicated during Question Time on that day that maybe a dozen were the subject of that reference. It certainly gave the impression that he was endeavouring to clarify that answer out of normal media time.

On the morning of 30 November in the *Advertiser* the Deputy Premier was reported to have announced that the Government would no longer be proceeding with the establishment of its anti-corruption unit, which was promised in August 1988. Members will recall that previously it had been difficult to obtain from the Government any information about the nature of allegations of corruption in South Australia and the structure and terms of reference of the anti-corruption unit, which had been proposed several months earlier. It is against that background that on 30 November I spoke on the Bill, indicating that in the Liberal Party's view there appeared to be a lack of resolve on the part of the Government to deal with questions of corruption. As it was no longer proceeding with the anti-corruption unit recommended by the NCA we were required to rethink our earlier indication of our attitude to the Bill. I should say that it was out of a sense of frustration with the Government's behaviour that on 30 November I said:

If the Government believes that only the National Crime Authority office in Adelaide is necessary to address the issue of corruption and is not proposing any other strategies to come to grips with allegations beyond the terms of reference of the National Crime Authority then we must seriously consider the establishment of an independent commission against corruption in South Australia.

I went on to say:

I indicate that the Opposition is prepared to support the second reading of the Hon. Mr Gilfillan's Bill. We will not make our final decision on the third reading of the Bill until Parliament resumes on 14 February 1989. We want to assess what further initiatives, if any, the Government is now prepared to take in the light of our observations on the issue. However, we believe that the Hon. Mr Gilfillan's Bill is worthy of further serious consideration, that it ought to be considered in detail during the Committee stages and then we will make our final decision.

It is only the events of yesterday and today, which brought us to the end of a long line of frustration and diversion, that prompted the Opposition to review its position and to express a view that it may now be necessary to take further the proposition of the Hon. Mr Gilfillan.

Since those observations were made, the National Crime Authority has established its office in Adelaide and has advertised for information in relation to certain matters which are the subject of its terms of reference.

The Government, through the Attorney-General in this place, has indicated during the past two weeks that an anti-corruption unit will be established within the Police Force, and that an independent auditor, with responsibility for the general oversight of the operation of that unit, will be appointed. In the light of these events, the Liberal Party has concluded that it would not be appropriate to further support the Hon. Mr Gilfillan's Bill to establish yet another body to investigate crime and corruption. One can perceive a need for an agency such as the independent commission against corruption in Hong Kong, and the New South Wales organisation, which is modelled on the Hong Kong commission.

It may be that at some time in the future the initiatives which are taken in South Australia will need to be reviewed. However, the Liberal Party is of the view that, with two agencies now established in South Australia, with fairly wide terms of reference and responsibilities in relation to the investigation of crime and corruption, it would be inappropriate to establish yet another body where some legislative concerns exist about the scope of its authority, the way in which it will operate and its accountability.

I indicate that, although I previously gave a commitment on behalf of the Liberal Party to support the second reading (as we just voted to do), it is now appropriate that I intimate that the Liberal Party will not support the Bill at the third reading stage. Because of that, we do not see the need to take up further time in the task of exhaustively exploring the Bill clause by clause.

Clause passed.

Clause 2 passed.

Clause 3—'Interpretation.'

The Hon. C.J. SUMNER: The intimation given by the Hon. Mr Griffin as to the Opposition's attitude to this Bill has clearly obviated the need for a detailed, clause by clause analysis of it. However, some matters that the Hon. Mr Gilfillan referred to in his reply to the second reading debate were inaccurate, and I believe they at least should be corrected for the record. I would like to do that on one or two of the clauses as they arise.

I must say that the Hon. Mr Griffin has put the Liberal Party's attitude down. However, I cannot see what circumstances have changed between 30 November 1988 and the present time to justify that change. The National Crime Authority announced its intention to come to South Australia, and that was known to the honourable member on 30 November 1988, but in the interest of expeditious dealing with this Bill I will not pursue that matter at this stage.

The Hon. Mr Gilfillan maintains (and this is why I am speaking to clause 3) that ICACC would only have the capacity to investigate acts or alleged acts of criminality. That is clearly not the case. I refer to the definition of 'corrupt conduct' in clause 3. It is clear that 'corrupt conduct', as defined in the Bill, does refer to official misconduct. That may or may not be criminal behaviour. It has not been effectively refuted that the leaking of a document to a member of Parliament would be an action which could be subject to investigation by his proposed commission against corruption.

The Hon. I. Gilfillan: Does it break a law?

The Hon. C.J. SUMNER: No, it does not break a law, and it talks about official misconduct. It is not confined to the heading of a law.

The Hon. I. Gilfillan: Yes, it does.

The Hon. C.J. SUMNER: I am sorry, it does not. It refers to grounds for disciplinary action under law. That does not mean criminal action.

The Hon. I. Gilfillan: I said 'illegal', I didn't use the word 'criminal'.

The Hon. C.J. SUMNER: I am not sure whether it is illegal in those terms, either. In any event the circumstances I have outlined—for instance, a minor infraction by a public servant—come within the definition of 'corrupt conduct'. What I said was that the scope of the Bill goes beyond criminal conduct. It takes into account actions which are not criminal, such as actions giving rise to disciplinary action under the Government Management and Employment Act.

The Hon. I. Gilfillan: I didn't say 'criminal'.

The Hon. C.J. SUMNER: That is what I am saying. You said actions that were illegal. They are actions that are illegal in the sense of being contrary to the law. The substance of my argument is that the Bill proposes that ICACC can investigate actions of people that do not constitute criminal offences, and which may give rise only to disciplinary action under the Government Management and Employment Act: disciplinary action by the chief executive officer of the department. It certainly does cover—and the honourable member has not refuted it—the leaking of a document to a member of Parliament, for example, so the document that was leaked to the Opposition recently about the Cameron matter theoretically could condemn both the leaker of the document and possibly the Opposition to being investigated by ICACC.

The Hon. Mr Griffin could be called before ICAC in public and asked to reveal his sources. I do not believe that clause 108, which protects freedom of speech within Parliament, would apply to actions outside Parliament. It could call the whole of the Liberal Caucus before it.

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: It is not petty. I am not interested in the Bill and I am not—

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: I am certainly not interested in the Bill in its current form. I am not interested, in any event, in having a separate independent commission against corruption. It is not necessary, and it is certainly not necessary with the powers that this commission would have. I emphasise the point that it does cover the actions of public servants which are not criminal in any way, although they may be dereliction of duty, and there may be no criminal intent involved in what the public servant has done. All that is clearly the case from the definition.

The definition is very broad, and that was the point I wished to make. It could give the commission the power to investigate leaked documents—and I gave that example because the honourable member has received leaked documents from Government departments—to investigate him and where he got the documents from, and do this in public, as well as investigating the Hon. Mr Griffin, the Liberal Caucus or the Labor Caucus. That matter is not addressed, and I think it is serious. If the honourable member wants this legislation to cover leaked documents, that is fine, if he considers that to be corrupt conduct, but I would have thought that, if he did, he would never have made use of leaked documents—which he has. He does it regularly, yet it is a matter that is corrupt according to the definition within his Bill and leads to all those consequences I have outlined.

That brings me to another response to the honourable member's saying that I am somehow being critical of a future appointment and saying that the future appointee would behave unreasonably. The simple reality is that if the person appointed is unaccountable, as is proposed with this commission, then one runs the risk that that individual may behave unreasonably. One runs the risk because one cannot stop him doing anything once he is independent. There is no power: he is not accountable to anyone.

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: Which you can only do through the Parliament. There has been criticism of the Costigan royal commission, for instance. For all the good work that did, it happened to name Mr Kerry Packer as having been involved in a murder. That was a suggestion of Mr Costigan. When it went for further investigation by the DPP it was indicated that there was no evidence on the matter. That is the sort of thing we run the risk of doing with a body such as this. There have been criticisms of the NCA itself, yet it has fewer powers and, in particular, does not have the power to conduct trials in the open, which is what this commission would do.

The Hon. I. Gilfillan: It does have the power.

The Hon. C.J. SUMNER: It does, but it does not use it as a matter of policy, because it is concerned to get evidence, and not to conduct show trials. The only point I wished to make on this clause was that the definition of 'corrupt conduct' is incredibly broad. It certainly goes beyond criminal behaviour and would cover dereliction of duty by a public servant.

The Hon. I. GILFILLAN: I would like to comment on what seems a very pedantic argument by the Attorney. Because certain actions are disciplinary under a law (such as the example he cites of the leaking of a document), for that to be dealt with by a commission as corrupt conduct it needs to have been put in a context in which the commission believes that the corruption is such that it justifies its investigation. If we take the point that the Attorney is raising so incessantly, as I understand what he wants, we would remove from the area that could even be considered as corrupt conduct such actions as the illegal or improper release of information.

It means that insider trading and that sort of activity, depending on the circumstances, could become significantly corrupt, and therefore corrupt conduct on which the commission would act. I think that it is an insignificant issue and quite irrelevant to the overall theme and intention of the commission to be harping on this point.

Clause passed.

Clauses 4 to 8 passed.

The ACTING CHAIRMAN (Hon. T. Crothers): I am obliged to point out to the Committee that clauses 9 and 10 of the Bill are money clauses. That being so, they are in erased type in the Bill. Standing Order 298 provides that no question shall be put in Committee on any such clause.

The message transmitting this Bill to the House of Assembly is required to indicate that these clauses are deemed necessary to the Bill.

Clauses 11 to 18 passed.

Clause 19—'Delegation.'

The Hon. C.J. SUMNER: As I understand the position, in his second reading response the Hon. Mr Gilfillan said that the powers to authorise a search and entry of premises and the power to issue a warrant for the apprehension of a person could only be exercised by the Commissioner. It is quite clear from clause 19 that that is not the case and that those powers can be delegated to an assistant commissioner.

The Hon. I. GILFILLAN: I thank the Attorney for bringing that point forward. Dealing with search warrants, clause 39 (1) provides:

> Where there are reasonable grounds for doing so a justice or the Commissioner may, on the application of an officer of the commission, if the officer has reasonable grounds for believing—

be granted a warrant. The other powers—and I cannot find the specific clause—say that it must be with the approval or consent of the Commissioner. I accept that clause 19 as read appears as the commission may delegate that power, but I would need to seek advice from counsel as to how extensive that power is. My intention in the Bill is for those powers of the Commissioner to be restricted specifically to the Commissioner because of their seriousness.

The advice I have received indicates that in part there are qualifying factors in subclause (2) *(e)*, that that particular power of entry is only to public premises. I am advised that there is no need for a search warrant in that case. In subclause (3) it is highlighted that the delegation can occur only if the Commissioner is of the opinion that there may be a conflict of interest if the power or function is not delegated or that it is in the interests of justice to delegate it.

One assumes from that, that this is an area where there may be a conflict of interest from which the Commissioner feels it is proper for him or her to be removed. In fairness—and I have not had an opportunity to analyse the full effect of this clause—I accept that it is worthy of more attention than I have given it. I trust that the answer has at least in part allayed the Attorney's fears.

Clause passed.

Clauses 20 to 34 passed.

Clause 35—'Power to summon witnesses and take evidence.'

The Hon. C.J. SUMNER: Clause 35 deals with the power to summon witnesses and take evidence, and subclause (7) specifically abrogates the privilege against self-incrimination. I think I can probably respond to most of the other matters raised by the Hon. Mr Gilfillan in his second reading speech by discussing this clause and that particular matter. The Hon. Mr Gilfillan, in his reply, relied on the fact that the powers in his proposed commission are similar in many respects to those of a royal commission. One power that he said was similar was the power for a royal commission to insist on answers to questions, even though those answers might incriminate a person. It is true that royal commissions have those powers, and it is true that some of the other powers in this proposed Bill are also available under a royal commission.

However, what was not pointed out by the Hon. Mr Gilfillan (and this is the point that I emphasised in my contribution) is that a royal commission is set up for a specific identifiable purpose with specific terms of reference. ICACC has a very broad charter and a charter which does not have terms of reference, except this Act, and which is not set up for a specific purpose with a limited period of existence. I say that it has a broad charter and refer to the debate on clause 3, and clearly from the definition of 'corrupt conduct' it has an enormously broad charter as a proposed commission, and a broad charter that is now given the powers of a royal commission.

The point I emphasise is that those powers that the royal commission has may be justifiable where specific terms of reference are given for the royal commission, where it is established to investigate a particular issue and where, of course, it has a limited life. To then say that it is reasonable to translate those powers into a permanent body such as this, with all the problems of accountability that exist for it and with its enormously broad charter is, in my view, unjustifiable.

Therefore, it is unjustifiable to abrogate to a permanent commission such as this the privilege against self-incrimination which exists in the Royal Commissions Act. I say that because a number of things flow from it. First, the individual may be obliged to incriminate himself in public. Secondly, the hearing, where other witnesses may have been called, will be in public and not subject to the rules of evidence. Thirdly, a finding of criminal conduct may be made against that person, and it is not just true for the Hon. Mr Gilfillan to say that no finding of criminal conduct will be made against the person. The problem with the Bill—

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: It will report.

The Hon. I. Gilfillan: It says specifically that it won't.

The Hon. C.J. SUMNER: It doesn't say specifically that it won't. What it can do is conduct hearings in public, and it can issue reports.

The Hon. I. Gilfillan: Sure.

The Hon. C.J. SUMNER: Yes, and in those reports it will make comments about the witnesses that appear before it, and it will make comments and presumably findings about the individuals that appear before it, just as a royal commission does. I am saying that that finding against that individual will have been made without the individual having the usual rights that are associated with a criminal trial.

I am using this clause to try to emphasise what I see as being the central problem with the Bill that was put forward by the Hon. Mr Gilfillan. There will be open hearings, self-incrimination, and evidence called that is not strictly bound by the usual rules of evidence and natural justice—it can be hearsay (evidence which is not normally admitted in a criminal trial)—and the commission can then report adversely on an individual as a result of that hearing. That is tantamount to a finding of criminal conduct without the protections that are normally accorded to individuals in the courts in this country.

That I see as one of the major problems with the Bill that was introduced by the Hon. Mr Gilfillan. The National Crime Authority, by contrast, does not have its hearings publicly, and it cannot abrogate, except in very limited circumstances, the privilege against self-incrimination.

The Hon. I. GILFILLAN: If the commission were to have had a hearing and come to a conclusion from material that had been presented to it, that a witness was guilty—and this is expressed in the Bill—it would obviously be obliged to recommend a prosecution to the Attorney-General. If the commission were not to make that recommendation, it is obvious that, if there was an implication in the finding that there was an offence, it would be challengeable.

The Hon. C.J. Sumner: By whom?

The Hon. I. GILFILLAN: By anyone who is assessing the results of the finding. If the commission alleges misconduct and is prepared to accept that the evidence received is of that character, it is obliged to put to the Attorney the

recommendation for prosecution and then it is up to you to decide whether or not you proceed.

Going back on the point of self-incrimination, two clauses in the Bill specifically relate to it, namely, clauses 28 and 35 (7). I refer to the National Crime Authority Act, section 30 (5) of which states:

> (3) It is not a reasonable excuse for the purposes of subsection (2) [relating to a witness giving evidence] for a person—
> *(a)* to refuse or fail to answer a question put to him at a hearing before the authority; or
> *(b)* to refuse or fail to produce a document or thing that he was required to produce at a hearing before the authority,
> that the answer to the question or the production of the document or thing might tend to prove his guilt of an offence against a law of the Commonwealth or of a Territory if the Director of Public Prosecutions has given to the person an undertaking in writing that any answer given or document or thing produced, as the case may be, or any information, document or thing obtained as a direct or indirect consequence of the answer or the production of the firstmentioned document or thing, will not be used in evidence in any proceedings against him for an offence against a law of the Commonwealth or of a Territory other than proceedings in respect of the falsity of evidence given by the person and the Director of Public Prosecutions states in the undertaking—

So, precedent exists in the NCA Act for the type of limited protection from incrimination, but certainly I defend the power of the commission, if it is to be effective, to require witnesses to produce evidence or information. I remind the Council that we are dealing with a commission which will be headed by a person appointed by the Government of the day, and it remains at the approval or disapproval of the Parliament as to whether they continue in office. If that power is abused, a person can be removed.

The Hon. C.J. SUMNER: I will conclude dealing with these matters. There are a number of other matters that the Hon. Mr Gilfillan raised in his second reading reply with which I take issue. I have dealt with the principal ones, and there is little point in continuing to analyse the Bill, as it clearly will not be passed. I was, however, concerned to respond to some of the matters raised by the honourable member.

The only point I make in addition is one that I made in my second reading contribution, namely, that in a public hearing a person can be forced to answer questions which may incriminate him, even though the answers cannot be used in subsequent criminal proceedings. The commission in public can hear evidence that would not normally be admissible in a criminal trial, but the rules of natural justice are thereby abrogated and the Commissioner can make findings which are at least tantamount to findings of criminal behaviour against a person in a report, and that report can be made public.

Finally, no provision exists in the Bill for any appeal against any findings of the Royal Commissioner. It is quite astonishing that we have introduced into this Parliament a Bill of this kind where findings can be made that are adverse to individuals in our community, yet no rights of appeal to the independent courts are provided for. Indeed, the role specifically of the courts in clause 100 is downgraded. In that clause the Hon. Mr Gilfillan specifically provides that investigations can continue, even though a matter is before the courts. That, again is an unacceptable situation. The role of the courts in supervising this legislation has been limited and we have a situation where a finding can be made adverse to an individual citizen in the community with no right of appeal to a court. I do not think there is any need to comment further on any of the matters raised by the Hon. Mr Gilfillan. The Bill is doomed, as it ought to be.

Clause passed.

Remaining clauses (36 to 112) and title passed.

The Hon. I. GILFILLAN: I move:

That this Bill be now read a third time.

I thank members for their attention to the Bill. I am disappointed that there has been so much concentration on the Commission's role as a crime and corruption investigative organ with no other charter of activity. I encourage members and remind the Attorney of his beatitudinous look at an improved community. The commission can and should be playing an important role in general educative and preventive activities as well as playing an investigatory role. Unfortunately, the Council was not in a mood to concentrate on that and it is early days to see what role it will fulfil in New South Wales. I hope that time will show that we can benefit from a commission such as this in South Australia, that it will have a wide range of activities and that, in the fullness of time, it will be proved to be an excellent initiative by the Democrats and worthy of support by both the Government and the Opposition. I urge honourable members to support the third reading.

The Council divided on the third reading:

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

Noes (19)—The Hons G.L. Bruce, J.C. Burdett, M.B. Cameron, T. Crothers, L.H. Davis, Peter Dunn, M.S. Feleppa, K.T. Griffin, J.C. Irwin, Diana Laidlaw, R.I. Lucas, Carolyn Pickles, R.J. Ritson, R.R. Roberts, T.G. Roberts, J.F. Stefani, C.J. Sumner (teller), G. Weatherill, and Barbara Wiese.

Majority of 17 for the Noes.

Third reading thus negatived.

SEXUAL REASSIGNMENT ACT REGULATIONS

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

That regulations under the Sexual Reassignment Act 1988, concerning certificates and returns, made on 10 November 1988 and laid on the table of this Council on 15 November 1988, be disallowed.

The Sexual Reassignment Act was passed in 1988 to deal with a very small number of persons who underwent what in the principal Act are described as reassignment procedures. My recollection is that about four or five persons a year undergo those procedures. According to the evidence before the Joint Standing Committee on Subordinate Legislation, only two persons so far have availed themselves of the opportunity to apply to a court for a certificate of recognition, which is the formal certificate which recognises that a person has undergone a reassignment procedure and met other criteria.

The person who seeks a recognition certificate is one who believes that his or her true sex is the sex to which that person has been reassigned and has adopted the lifestyle and has the sexual characteristics of a person to which the person has been reassigned and has received proper counselling in relation to his or her sexual identity, as well as having undergone a reassignment procedure.

Under the Act a recognition certificate issued by a magistrate may be produced to the Registrar of Births, Deaths and Marriages, pursuant to section 9, and the Registrar must register the reassignment of sex and make such other entries and alterations on the register as may be necessary in view of the reassignment.

During the debate on the Act the Liberal Opposition sought to ensure by amendment that the birth certificate could not be so altered as to reflect an official lie. We were anxious to ensure that the original birth certificate could not be so amended as to disclose the reassigned sex only and that the original certificate, when altered to reflect the historical accuracy of the events, could not be used to cover

up the history and obtain benefits or a course of action which was not in accordance with the facts.

The regulations do not reflect the intention of Parliament. The fact of reassignment of sex may not be noted on a certified copy or extract of birth registration. In effect, the certificate, which may be issued as a certified copy, will reflect an official lie. That may cause significant difficulties under Federal marriage laws, among other things, because such reassignment of sex, which is recognised in the South Australian Act, is not recognised under Federal legislation, and a marriage celebrant may innocently marry two persons of the same sex. Other agencies and persons who may have legitimate interest to know that the person is not in fact male or female, as the case may be, may also be deluded, and access to the records is limited.

The Subordinate Legislation Committee has heard evidence from a number of persons on this issue. That evidence, which I have seen thus far, as a result of its having been tabled, indicates concern from Father Lawrence McNamara, a lecturer in moral theology at St Francis Xavier Seminary, and concern also arises from the evidence of the Registrar of Births, Deaths and Marriages.

Father McNamara expresses the concern which he has for marriage celebrants, in particular, who do not have access to the original birth records and who may be required to rely upon a birth certificate which is false and which bears a certification by the Registrar of Births, Deaths and Marriages that the certificate is a true and correct record of the matters in the register at the Registrar's office. He also indicates a concern that it may not be drawn to the marriage celebrant's attention that a person of the sex notified in the certified copy of the marriage certificate is in fact a person, under Federal law, of the opposite sex. Therefore, from both a practical and a moral position, the marriage celebrant will be placed in an impossible situation.

Of course, the onus is on the party seeking to be married to produce information that may be relevant to the responsibilities of the marriage celebrant and to the law which applies to marriages, but there is no guarantee that a person even being alerted to those obligations will draw them to the attention of the celebrant. It is quite clear that under Commonwealth law the reassignment of sex, which is recognised under the South Australian statute, is not valid for the purposes of marriage at least under Commonwealth law, and that has been confirmed by the Registrar of Births, Deaths and Marriages and by correspondence to the Registrar from the Attorney-General's Department at the Commonwealth level. It is therefore not legal for two males or two females to be married and the present regulations, whilst not formally recognising that, would provide a means for facilitating a deception of a marriage celebrant by a person intent upon such course of action.

There are also some other difficulties at the Commonwealth level, particularly in relation to passports, where a certified copy of the birth registration is required to be produced and, because the change of sex is not recognised at the Federal level, it could create some difficulties, if the birth certificate as altered does not disclose the history of the alteration of the sex of the person named in that certificate. The certificate which the Registrar gives on a certified copy of a birth registration is that the certificate is a true copy of the entry recorded in the birth register. That obviously is false and the Registrar expressed some discomfort at having to sign that certification. Of course, that is not covered by the regulations, and can be amended without any great difficulty but, even if it were amended, it would be attached to a typewritten certificate certified to reflect the current status of the person in the Register of Births at the South Australian registry.

It seems to me that there needs to be a recognition that the certificate presently provided of a person's birth, where there has been sexual reassignment, does not reflect the facts, could be misleading and could aid in the deception of a marriage celebrant in relation to a marriage ceremony.

Also, I have had some correspondence from the Anglican Archbishop of Adelaide expressing similar concerns to those of Father McNamara. He has particular concerns about the position of marriage celebrants in that church when confronted with a certified copy of a birth registration which does not reflect the accurate Federal legal position of the person presenting for marriage. For these reasons I move for the disallowance of the regulations. I believe that more work needs to be done on them to more accurately reflect the requirements of the principal Act and the problems which are likely to be presented if the current practice, as provided in the regulations, continues.

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

DEMOCRACY

Adjourned debate on motion of Hon. M.J. Elliott—

That this Council calls on the State Government to defend and extend democracy in South Australia by—

1. enacting freedom of information legislation;
2. enacting privacy legislation;
3. enacting citizens initiative legislation;
4. enacting legislation to allow a wider range of persons to have *locus standi*;
5. amending the Government Management and Employment Act, such that Government employees may speak freely as individuals except in narrowly prescribed circumstances;
6. amending the Planning Act such that there is true public involvement in the environmental impact process.

(Continued from 8 March. Page 2229.)

The Hon. M.J. ELLIOTT: Last Wednesday I talked about three matters which were important if people in South Australia were going to enjoy a full democracy. There are three more matters to which I wish to refer, and I will make them brief. All I want to do by way of this motion is to raise a number of issues which are important and which need to be pursued in much more depth at another time. Some of them have already been before us, particularly freedom of information and privacy legislation, but all the other matters that I raise in this motion also need far greater attention than they get at this time.

First, I refer to *locus standi*. Many people are currently refused the right to appear in court, and this matter is being addressed worldwide. I refer to the ninety-seventh report of the South Australian Law Reform Committee to the Attorney-General: 'General Rule of Standing in Environmental Matters 1987'. The committee comprises eight members, and, in the absence of one member, it finally produced a majority report with one dissension which gave strong support to the expansion of *locus standi* in environmental matters, and that is what it was looking at in particular. In fact, it went so far as to produce a draft Bill.

Unfortunately, since that report came out in 1987, it has simply gathered dust in the Attorney-General's office. I have been told that it has been circulated through some sections of the Public Service, but the Government's general attitude is that it does not want this to proceed. Therefore, despite the recommendations of the committee, it is hoping that

the issue will just fade away, or that certain public servants can be encouraged to voice opposition to it.

I quote briefly from the section titled 'Summary of Recommendations of the Majority':

> This committee is of the view that, if the environment is to be protected adequately, it is necessary to broaden the instances in which members of the public can become involved in environmental protection.
>
> The committee perceives that there may be dangers in allowing any person whatsoever to institute proceedings with regard to any grievance that he deems involves an environmental issue. As a result we have recommended that proceedings only be allowed to be commenced as of right, where the person claims that the environment has or is likely to be adversely affected in such a way as to detriment that person's pecuniary, health or recreational interests.
>
> Where a person wishes to institute proceedings to protect the public interest in the environment, he must under one recommendation apply to the Attorney-General for approval and, failing approval, apply to the court, or under the alternative proposal, apply directly to the court for an order granting standing.

Of course, they have looked at this matter in great depth, but what is important is that the committee, which was set up by the Attorney-General himself, has come out very strongly in favour of extending *locus standi* in relation to environmental matters.

I draw the Council's attention to another report, titled 'Administrative Justice: Some Necessary Reforms', which was produced in 1988 by the Committee of the Justice—All Souls Review of Administrative Law, United Kingdom:

> There are many instances where illegal conduct by persons in positions of power is not subject to the ordinary checks of civil action or criminal prosecution. Before moving the court for remedy against such conduct an applicant must show that he has 'standing to sue'; that is, that he has a sufficient connection with the matter in issue to qualify him to pursue the remedy.

It is really making the point that there are many cases of illegal conduct by people in positions of power, whereby a remedy from members of the public is not always available. The report continues:

> The question of standing may at first sight appear to be a matter of procedure and hence of less importance than issues relating to the substantive law. So to regard standing is, however, to underestimate its central significance. A generous approach by the courts to standing and a willingness by judges to accord standing wherever serious illegality is alleged are, in our view, essential if the rule of law is to be a living precept and not a rhetorical phrase to be rehearsed in ceremonial speeches. As Walsh J. said in the Supreme Court of the Republic of Ireland, it has been observed that 'restrictive rules about standing are, in general, inimical to a healthy state of administrative law'.

I had intended to take a number of other quotes from the report but, as I said, I will try to keep things brief. My final quote, also from this report, refers to the Australian Law Reform Commission Report No. 27: 'Standing in Public Interest Litigation' of 1985. Talking about this report, the Committe of Justice says:

> Under this proposed procedure . . . any person would be allowed to commence a public interest suit if *either* he had a personal stake in the subject-matter of the litigation *or* he had the ability to represent the public interest. The presumption would be in favour of standing unless the court was satisfied that the person was 'merely meddling'. They summarize their philosophy in the phrase 'an "open door" but with a "pest screen" '.

This report also refers to a number of other studies in British Columbia and elsewhere.

In summary, it is quite clear that there is a growing view in many legal circles that there is a need to widen standing in the courts, that is, make it available to more people. I think that, when we live in a participatory democracy, we must expect the individuals within the State to be given increased powers, not just to vote and to have laws put into place, but also to have the power to ensure that those laws are upheld. It is there where Governments repeatedly fall down. I believe it is necessary for that reason, for *locus standi* to be further extended.

I turn now to the need to amend the Government Management and Employment Act so that government employees may speak freely as individuals, except in narrowly prescribed circumstances. I believe at the moment the GME Act is unacceptable in a democracy. In particular, section 67c *(h)* refers to an employee who, except as authorised under the regulations, discloses information gained in the employee's official capacity, or comments on any matter, or business affecting the Public Service. Regulation 117 of 1986 21(1) *(c)(i)* provides:

> If the disclosure or comment is of such a nature or made in such circumstances as to create no reasonably foreseeable possibility of prejudice to the Government in the conduct of its policies . . .

I think there is an important point here. Does the Public Service belong to the public or to the Government? Certainly, the Government is responsible for the day-to-day running of the Public Service, but I believe that the public servant's first responsibility is not to the Government, but to the people. Governments have policies which may not be stated at elections. They may be carrying out decisions which they have made subsequent to elections and which are contrary to what the public wants. The public has a right to know what is going on. The State Government, for example, decided some time ago to dispose of a large volume of industrial waste which was held in ponds at Bolivar. It had already received a report which recommended a course of action, costing something like $500 000. This waste had accumulated for a long period of time, and it should have been expected that it would be an expensive operation to dispose of it. Some dimwit (and that is the kindest thing I can say about this person) decided the easiest way to dispose of it was to get a small pump, a small shed and a length of pipe and run it over into the settlement ponds at Bolivar.

To say the least, a decision to dispose in that way of industrial waste containing 900 tonnes of heavy metals was crazy, to say the least, but what angered me greatly was that the Government was going to do that without informing the public. That sort of behaviour is absolutely outrageous. I believe the public have a right to know such things. As it turned out, documents landed on my desk. I know not from where they came, but theoretically the person who gave those documents could have been in trouble. I do not believe that that person was doing the wrong thing morally. Whether or not they were doing something in a legal sense, I am not certain.

I believe that our public servants should be able to act on such information. I cannot understand what logic a Government would use which says that the people do not have the right to know about that. The Government hides many things behind commercial confidentiality. Obviously, it sometimes takes things a long way. It is currently planning to put a uranium enrichment plant at Port Pirie, but members of the public at this stage have no right to know that. The Government would argue—

The Hon. Diana Laidlaw: Do the people of Port Pirie know?

The Hon. M.J. ELLIOTT: The people of Port Pirie do not know at this stage. The Government would argue that, since it is talking with companies and a large investment is involved, it really cannot afford to let people know, but the Government has a very clear policy in that direction. It is working in that direction. The public do not have a right to be involved in the debate as far as the Government is concerned. I am not at this stage entering into the rights or wrongs of the placement of such a project. I am saying that

I believe that the public has a right to know and to be involved in such discussions. Whilst the examples that I have cited have been very much in the area of the environment, it is also true that it can occur in other areas. There are people, for instance, who work with the intellectually disabled and who are absolutely horrified by the sort of treatment received in some of the institutions. But, dare they raise those issues at a public level without being admonished? Certainly not!

I should have thought that in the long run it would be in the best interests of all if the public knew when things were going wrong. At the moment, if something goes wrong, the Government feels a need to cover it up, so those things continue to go wrong. If we had fully open government, we could be in the position where the public were fully informed. Then, the question could be asked why things were going wrong in some of the institutions for the intellectually disabled. They are largely going wrong because not enough money is going in. Whose fault is that—that of the Government or the community?

I would have argued in the long run that it was the fault of the community. On the one hand, the community wants to demand lower taxes yet, on the other, it wants to see services such as those run properly. The current push for the cut in taxes to some extent occurs in ignorance of some of the problems that still need to be remedied in our society. Those problems cannot be brought to the fore while they are being hidden from us.

The final matter that I wish to address is the Planning Act, which has been under criticism for quite some time in that it fails to give true public involvement. It is a failure not only of this Act but also one which the Government has replicated elsewhere when it talks about public consultation. The public consultation process under the current Planning Act is not true public consultation. As the process now works, a draft environmental impact statement is prepared by the proponents and then made available to the public. The public has a limited time during which it can read the document and make a written submission concerning any shortcomings they may see therein.

Their submissions are handed back to the proponents, and the public has no further input. The proponents examine the public submissions and decide what the public are saying. When they finally put out their supplement to the draft EIS, they summarise the public's complaints. They decide what the public complaints were and they address them as they see fit. If we are to have true public involvement, there must be the possibility that a viewpoint can be argued through.

Quite clearly, there needs to be some sort of public hearing process whereby the proponents can be questioned by a member of the public. After all we have many members of the public who are very well informed on particular matters contained in an EIS and can put a point of view to the proponents. The proponents can then respond, and the whole thing can be argued through. We do not know the final result, but the important point is that it will be argued through, one would hope, to some sort of logical conclusion. At the moment it is a one way process: the public simply puts in the information which then disappears. Nobody comes back to the public and asks them, 'What exactly do you mean by this? What other information do you have?' There is no true exploration of the public viewpoint, and the public are becoming extremely frustrated.

Many put in countless hours, days and, sometimes, weeks in preparing a submission, yet they feel that the submission is simply being passed over. It is not the matter of their being disagreed with that angers them so much; rather, it is the offhand manner in which the submissions are treated. Once again, there has been a Government report on this matter. Back in 1984 the Minister for Environment and Planning set up a committee to review the environmental impact assessment process. As I understand it, he received a draft report approximately 12 months later, and had the final report, certainly, by late 1986. But, he has not done a damn thing since then.

That report, as with the report before the Attorney on *locus standi*, has gathered dust. I fail to see the point in the Government commissioning committees to report and, when the Government decides that the report does not recommend what it wants, it lets it gather dust. The thread running through all the matters that I have raised in this motion is that at this stage we have not reached full democracy here in South Australia. We do not have a process which fully allows involvement of all citizens and which gives them full freedom. I urge members of this Council to support the motion.

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

BICYCLE HELMETS

Adjourned debate on motion of Hon. Diana Laidlaw:

That the Council take note of the petition presented on 14 February 1989 calling for the wearing of helmets to be compulsory for all bicycle riders.

(Continued from 22 February. Page 2037.)

The Hon. DIANA LAIDLAW: Briefly, I wish to conclude my remarks on this motion and thank both the Hon. Ian Gilfillan and the Hon. Carolyn Pickles for their well-researched and forward looking contributions to this motion, which noted a petition that I presented in this Council on 14 February calling for the wearing of helmets to be compulsory for all bicycle riders. As I noted at the time, the petition was the initiative of year 7 and year 8 students at Scotch College, undertaken following the death of one of their fellow students in an accident (He was hit by a car while riding his bike).

Since presenting that petition, I have received a large range of letters from private schools across the metropolitan area, and also from junior and senior Government schools in the metropolitan area. Briefly, I wanted to note their strong endorsement for a policy of mandatory wearing of bicycle helmets. All the private schools that responded to me indicated that they already had a policy within their schools of mandatory wearing of helmets to and from school but that the principals, staff and parent associations were worried about the practice of many children not wearing them after school hours.

The principals of Government schools, both senior and junior, have indicated that they all encourage the wearing of bicycle helmets but do not compel the practice, and they have outlined a range of options which they pursue to encourage the use of helmets.

I will note some of the practices that they highlighted in their letters and telephone calls—the periodic encouragement through school newsletters; the conduct of bicycle riding electives, at which time it is compulsory to wear helmets; the identification of wearers in school assemblies; the examples set by teachers who ride bicycles to and from school (all of whom wear helmets); the distribution of information that features motorcycle champion Wayne Gardner endorsing the use of helmets; and the adoption of schemes to sell helmets at discounted prices.

I will briefly note the issue of discounting of prices because it was mentioned by all people who contributed to the debate as being a factor that may be a disincentive or a more practical reason for not pursuing the mandatory use of helmets. I noted that a number of schools that have corresponded with me advised that their school welfare clubs had pursued schemes to obtain and sell helmets at discounted prices. This initiative I applaud, and I hope that, in time, we will see the practice become standard in schools across the State.

I was delighted to learn that a number of schools had participated in programs that had been initiated by Apex clubs a couple of years ago to encourage the use of bicycle helmets. Apex sought to distribute those helmets at cost plus the added factor of $1 or $2. During 1987, I understand that it was successful in encouraging the sale of 500 or 600 helmets to South Australian schoolchildren. Perhaps more initiatives like that could be undertaken.

I received a letter from Professor Donald Simpson, from the Road Accident Research Unit of the University of Adelaide, who drew my attention to the fact that a colleague of his, G. Brazenor, a Melbourne neurosurgeon, was working with F. McDermott on the protective value of bicycle helmets. I was informed that G. Brazenor expects to have some quite impressive evidence of the value of helmets in the near future.

That evidence will not only be important in terms of endeavouring to save lives (which is an important issue in its own right) but also significant across Australia in mitigating non-fatal injuries. I am very heartened to see that this motion has the support of all members of the Legislative Council because it is a vital road safety measure, and the wearing of bicycle helmets is in the best interests of children and, ultimately, of all South Australians who ride bicycles.

Motion carried.

CREDIT UNIONS BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to provide for the registration, administration and control of credit unions; to repeal the Credit Unions Act 1976; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

The purpose of this Bill is to provide for the registration, administration and control of credit unions; and to repeal the Credit Unions Act 1976.

As the financial system becomes less regulated, as a matter of prudence and for competitive equity, credit unions need to offer a greater variety of financial services to their members.

The 18 credit unions registered under the Credit Unions Act 1976, with total assets of more than $679 million, have expanded their roles over recent years to supply additional services by way of financial counselling, insurance and travel, etc.

In the present competitive financial environment amidst the continuing changes resulting from technological development, credit unions need to move with the times to remain viable. They must provide the financial services demanded by a public increasingly knowledgeable about available investment opportunities.

The formation of the Credit Unions Review Committee in 1985 to review the 1976 Act, was a reflection of the rapidly changing environment in which all financial institutions compete for funds. The committee recommended legislative changes that it considered necessary to ensure the continued success of the credit union industry by redrafting the legislation to take cognisance of developments in the deregulation within the financial sector. The Bill takes into account the submissions made by credit unions and credit union auditors and solicitors.

Underlying the framework of the Bill are the twin objectives of member and creditor protection. Prudential standards and controls in the Bill are intended to maintain and, in some cases, increase the current protection afforded to these persons. At the same time the Bill ensures that credit unions remain viable within the competitive environment. The prudential standards prescribed by the Bill all similar to those prescribed in other States, particularly New South Wales and Victoria. Credit unions in South Australia will not be at a competitive disadvantage to interstate credit unions which will be required to be registered as foreign credit unions if they trade in South Australia. The emergence of interstate trading by credit unions has also been reflected in the Bill by clarifying the power of a South Australian credit union to carry out its operations in another State.

The current legislation places minimal requirements on a credit union to achieve sufficient operating surpluses and has no requirement to achieve a certain level of reserves. Reserves play an indispensible role in providing a margin of safety for depositors and the Bill contains provisions for an adequate level of reserves. In this regard it is consistent with the recommendations of the Campbell Committee and Martin Review Group. The Credit Unions Review Committee recommended that credit unions attain 3 per cent reserves within three years of the commencement of the new Act and thereafter they will be required to appropriate a percentage of assets each year to reserves until 5 per cent reserves are reached. In acknowledgment of the force of the committee's recommendations the level of credit unions' reserves have increased since the publication of the committee's report. The industry has accepted the value of attaining the reserve levels prescribed in the Bill.

Under the current Act a credit union can invest funds up to 1 per cent of its defined liabilities in shares of individual companies or other body corporates. A provision in the Bill will limit this type of investment to investments in subsidiary companies whilst at the same time limiting the aggregate amount that may be invested to 5 per cent. This is intended to enable credit unions to supply additional competitive services to their members. Credit unions should be able to provide their services similar to other financial institutions whilst the unique cooperative nature of credit unions is maintained in the parent body and members are provided with a measure of protection due to the limitation of risks in the subsidiary.

The traditional business of credit unions and, in fact, their very existence has been as a consequence of offering a secure environment for members to deposit funds and to receive consumer loans. With the advent of deregulation the simple consumer loan is still their mainstay. However, negatively geared investment loans have been made available as have housing and low-equity loans. Following the success of these lending developments, credit unions have embarked on limited commercial lending. The Bill provides

controls which limit the amount of commercial lending in which a credit union may engage. The extent of commercial lending allowed is related to the level of reserves held by the credit union. The Bill also provides for a reporting mechanism to the Credit Union Deposit Insurance Board (formerly Stabilisation Board) in relation to large exposures.

Rationalisation through mergers has strengthened the credit union movement in South Australia. Some of the mergers have been at the direction of the Credit Union Deposit Insurance Board. The board has played and will continue to play an essential role in promoting the financial stability of credit unions. The Bill provides for streamlining amendments in relation to the board's functions and powers.

The accounts and audit provisions have been redrafted to be similar to provisions for a company including compliance with applicable approved accounting standards. Where credit unions have subsidiary companies, they will be required to prepare group accounts of the credit union and its subsidiaries. The commission and the Credit Union Deposit Insurance Board may inspect a subsidiary of a credit union or any other corporation with which a credit union has invested its funds. To maintain uniformity with the Companies Code annual general meetings are to be held within five months of the end of a credit union's financial year, and the annual return is to be lodged with the commission within six months of the end of the financial year. The present period of both annual general meeting and annual return is four months. The schedule of accounts to be prepared under the regulations will adopt such requirements of the 7th schedule under the Companies Code as are applicable to a credit union.

The proposals contained in the Bill have been discussed at length with the credit union movement and they are fully supportive of the Bill proceedings. The Opposition has been alerted over the past few months to the proposals. In summary, this Bill, in encompassing some deregulation as well as some reregulation, provides a basis upon which credit unions can continue to service their market niche by operating on a more competitive basis.

I commend the Bill to honourable members.

Clause 1 is formal.

Clause 2 provides that the measure will come into operation on a day to be fixed by proclamation.

Clause 3 sets out definitions of terms used in the measure.

Clause 4 provides that except as otherwise expressly provided by or under the measure the provisions of the Companies (South Australia) Code, the Companies (Acquisition of Shares) (South Australia) Code and the Securities Industry (South Australia) Code do not apply to or in relation to a credit union or association. Subclause (2) provides that the regulations under the measure may apply specified provisions of the codes to credit unions or associations subject to such modifications as may be prescribed.

Part II (comprising clauses 5 to 8) deals with administration.

Clause 5 provides that the Corporate Affairs Commission is, subject to the control and direction of the Minister, responsible for the administration of the measure.

Clause 6 requires the commission to keep certain registers and make them available for public inspection. Documents registered by or filed or lodged with the commission may be inspected and the commission is required to furnish certified copies or extracts from such records.

Clause 7 provides for annual reports by the commission and their tabling in Parliament.

Clause 8 provides that the commission's powers of inspection under the Companies (South Australia) Code extend to credit unions, foreign credit unions and associations of credit unions with such modifications, exclusions or additions as may be necessary or as may be prescribed by regulation. The powers of inspection also apply to a corporation that is a subsidiary of a credit union or with which a credit union has invested funds or to a body corporate prescribed by regulation.

Part III (comprising clauses 9 to 36) deals with the formation and basic features of credit unions.

Clause 9 makes it an offence punishable by a Division 4 fine (a maximum of $15 000) if a person or body carries on business as or holds itself out as being a credit union unless registered as a credit union or foreign credit union. The clause defines what constitutes carrying on business as a credit union and provides for a power of exemption and exceptions in the case of banks and building societies.

Clause 10 sets out the objects of a credit union. They are as follows:

(a) to operate as a financial cooperative;

(b) to raise funds by subscription, or otherwise, as authorised by the measure;

(c) to apply those funds, subject to the measure and the rules of the credit union, in making loans to members of the credit union;

(d) to provide such other services to its members as the credit union believes would be of benefit to the members.

Clause 11 provides for the formation of a credit union by 25 or more persons. The clause contains provisions governing the formation meeting, adoption of rules and initial subscriptions for shares.

Clause 12 provides for the registration of a credit union and its rules by the commission. Under the clause, a credit union is eligible for registration if its rules are not contrary to the measure, there are reasonable grounds for believing that not less than $500 000 (or the prescribed amount) will be held by it as deposits within three months of registration and that it will be able to comply with the requirements as to liquidity, reserves and future losses and there is no good reason why the credit union or its rules should not be registered.

Clause 13 provides that, on the registration of a credit union and issue of a certificate of incorporation, the credit union is a body corporate and has, subject to the measure and its rules, the legal capacity of a natural person and the power to sue and be sued in its corporate name.

Clause 14 sets out the general powers of a credit union. These include, *inter alia*, power to form or acquire subsidiaries for the carrying out of its objects and power to operate as a credit union in another State or a Territory of the Commonwealth (but in no other place) and for that purpose to secure registration or recognition as a credit union in such State or Territory.

Clause 15 provides that the commission must not register the rules of a credit union unless they contain the prescribed provisions and otherwise conform with the requirements of the measure.

Clause 16 provides that the rules of a credit union bind the credit union, its members and all persons claiming under them.

Clause 17 requires a credit union to furnish any member or person eligible to become a member with a copy of its rules on payment of the prescribed fee.

Clause 18 provides for the alteration of rules of a credit union and registration of such alterations.

Clause 19 empowers the commission to require alteration of a credit union's rules to achieve conformity with the measure or where it is of the opinion that an alteration

should be made in the interests of the credit union's members or in the public interest.

Clause 20 provides for an appeal to the Supreme Court against a decision of the commission to refuse to register a credit union or its rules or a requirement of the commission that a credit union alter its rules or an alteration made by the commission.

Clause 21 provides that the members of a credit union are those who sign a membership application on its formation or who are subsequently admitted to membership under its rules. The clause provides that a member incurs no liability by reason only of membership of the credit union.

Clause 22 provides that a minor may be a non-voting member of a credit union subject to its rules.

Clause 23 provides for corporate members of credit unions.

Clause 24 provides that members are entitled to one vote only.

Clause 25 provides for the joint holding of shares in a credit union and for the voting rights of joint holders.

Clause 26 deals with the share capital of a credit union. Shares in a credit union must be of the same nominal value and of one class ranking equally. Each member of a credit union is required to hold the same number of shares. Shares issued after the commencement of the measure are to be withdrawable. No shares in a credit union are to be sold or transferred at more than their nominal value or without the approval of the board of the credit union.

Clause 27 provides that a credit union has a charge over the shares of a member in respect of any debt due from the member.

Clause 28 deals with the names of credit unions.

Clause 29 makes provision in relation to the registered office of a credit union.

Clause 30 makes provision with respect to publication of the name of a credit union.

Clause 31 is an interpretation provision providing definitions of terms used in subsequent clauses relating to the amalgamation of credit unions.

Clause 32 provides for applications for amalgamation. Application may be made to the commission for an amalgamation of local credit unions, or local and foreign credit unions, under which a new local or foreign credit union is formed or an existing local or foreign credit union absorbs the other credit unions party to the amalgamation.

Clause 33 provides for the determination by the commission of applications for amalgamation.

Clause 34 provides for the transfer of property and rights and liabilities from a local or foreign credit union dissolved as part of an amalgamation to the amalgamated credit union. Under the clause, stamp duty is not payable in respect of any transfer of property pursuant to an amalgamation of credit unions.

Clause 35 provides for the transfer of members on an amalgamation of credit unions.

Clause 36 empowers the commission to grant conditional or unconditional exemptions from any of the requirements relating to amalgamations.

Part IV (comprising clauses 37 to 54) contains provisions governing the financial activities of credit unions.

Clause 37 provides that a credit union must not accept money on deposit from a person who is not a member of the credit union. The commission is empowered under the clause to grant an exemption from this requirement for a specified period.

Clause 38 requires a credit union to ensure that its total borrowings (disregarding money held on deposit) do not exceed 25 per cent of the sum of its reserves and its share capital and deposits not included in its reserves. The commission is empowered under the clause to approve borrowing beyond that limit. The clause requires that a credit union must not borrow money or undertake to repay money otherwise than in Australian currency. Credit unions are required to furnish the commission with returns as to their borrowings in accordance with the regulations and the commission is required by the clause to keep a register containing prescribed information in relation to the borrowings of each credit union.

Clause 39 requires a credit union to furnish a disclosure statement containing prescribed information to its members before or at the time of making any offer or invitation relating to the issue of securities whether or not being securities of the credit union. The clause excludes from this provision offers or invitations relating to the credit union's own shares or, subject to the regulations, money to be accepted by it on deposit and offers or invitations in relation to which a prospectus or statement is required to be registered with the commission under the Companies (South Australia) Code. Further exceptions may be made by regulation. The clause creates offences designed to ensure the accuracy of information provided in any such disclosure statement.

Clause 40 makes provision for civil liability for loss or damage suffered as a result of a false, misleading or incomplete disclosure statement.

Clause 41 provides that, subject to the other provisions of the measure, a credit union must not make a loan to a person who is not a member of the credit union.

Clause 42 provides that the Minister may, by notice published in the *Gazette*, fix a maximum rate of interest in relation to any loans, or loans of a particular class, made by credit unions.

Clause 43 provides that the Minister may, by notice published in the *Gazette*, fix a maximum for the amount that may be lent by any credit union, a particular credit union or credit unions of a particular class, either under any loan or under loans of a particular class.

Clause 44 provides that a credit union may, subject to its rules, lend money to any of its officers or employees who are members of the credit union. Where a loan is made by a credit union to a director of the credit union who is also a member, the director is not required to report the loan to a general meeting of the members except where there is a rule of the credit union requiring that the loan be reported to the next annual general meeting of members.

Clause 45 regulates commercial loans by credit unions. 'Commercial loan' is defined as any loan made for a purpose connected with a business conducted or to be conducted by a member or associate of a member of the credit union where the amount lent exceeds $30 000 (or a prescribed amount) other than—

(a) a loan fully secured by a guarantee or indemnity granted by an insurance company;

(b) a loan not exceeding $100 000 (or a prescribed amount) secured by a registered first mortgage over a dwelling house or a charge over authorised trustee investments where the amount borrowed does not exceed 85 per cent of the market value of the house or investment;

or

(c) a loan to a subsidiary of the credit union.

The clause fixes a maximum for the total amount of the principal that may be outstanding at any time under commercial loans made by a credit union and places a limit on the total amount that may be lent by a credit union to any member, or to members that are associates of each other. The clause provides that no commercial loan may be made by a credit union to an officer of the credit union. The clause provides that commercial loans may be made by a credit union only with the prior approval of a member of its staff who has successfully undertaken a course of instruction of a prescribed kind. Credit unions are required under the clause to make certain reports to the Credit Union Deposit Insurance Board in relation to commercial loans and loans to officers or employees.

Clause 46 provides that a member under 18 years of age is not entitled to obtain a loan from a credit union unless it is made jointly to the minor and his or her parent or guardian and so that they are jointly and severally liable on the contract.

Clause 47 prevents a credit union from making any loan if the credit union holds insufficient liquid funds according to the formula set out in the clause. Under the formula its average liquid funds over the month must not be less than 7 per cent (or a prescribed percentage) of the sum of its paid up share capital, its deposits and the total amount of its borrowings outstanding (disregarding amounts raised by overdraft).

Clause 48 provides for the maintenance of reserves by credit unions.

Clause 49 requires each credit union to establish and maintain an account making provision (at not less than a specified level) for doubtful debts.

Clause 50 prevents a credit union from acquiring real or personal property or carrying out improvements to real property except as reasonably required for the establishment of premises from which it will conduct its business or for the proper and efficient management of its business. The clause requires a credit union to obtain the approval of the Credit Union Deposit Insurance Board for any such transaction the cost of which exceeds a specified limit.

Clause 51 limits investments by a credit union to authorised trustee investments, deposits with an association of credit unions, withdrawable shares of a building society or investments of a kind prescribed by regulation. The clause requires the approval of the Credit Union Deposit Insurance Board before a credit union may allow the total of the amounts applied by it towards a subsidiary and in prescribed investments to exceed a specified limit. A credit union is required by the clause to notify the Credit Union Deposit Insurance Board before it directs money to a subsidiary or makes prescribed investments.

Clause 52 provides that any property to which a credit union becomes absolutely entitled by foreclosure, surrender or extinguishment of a right of redemption must, as soon as practicable, be sold and converted into money.

Clause 53 makes provision with respect to dormant accounts.

Part V (comprising clauses 54 to 61) deals with associations of credit unions.

Clause 54 provides that, subject to the regulations, no credit union may be a member of a body whose objects include any of the objects of an association as set out in clause 55 unless the body is registered as an association under Part V.

Clause 55 provides for the formation of associations of credit unions. The objects of an association are, under the clause, to include such of the following as are authorised by the rules of the association:

(a) to promote the interests of and strengthen cooperation among credit unions and associations;

(b) to render services to and act on behalf of its members in such ways as may be specified in, or authorised by, the rules of the association;

(c) to advocate and promote such practices and reforms as may be conducive to any of the objects of the association;

(d) to cooperate with other bodies with similar objects;

(e) to promote the formation of credit unions;

(f) to encourage the formulation, adoption and observance by credit unions of standards and conditions governing the carrying on of their business;

(g) to supervise the affairs of its members in accordance with the rules of the association;

and

(h) to perform such other functions as may be prescribed.

Clause 56 provides for the registration and incorporation of associations.

Clause 57 provides that the members of an association are the credit unions by which it is formed and any other credit unions admitted to membership in accordance with the rules of the association. The clause permits credit unions formed and registered in the Northern Territory to become members of a South Australian association.

Clause 58 provides that the share capital of an association must be divided into shares in accordance with the rules of the association. The clause limits the shareholding of any member credit union to not more than one-quarter of the total share capital of the association.

Clause 59 provides for the powers of an association to accept deposits from member credit unions, to borrow money and give security in respect of any borrowing, to lend money to its members, or its officers and employees or to the members, officers or employees of its members and to apply its funds in futherance of its objects. The clause contains a provision corresponding to that relating to loans to directors of credit unions. The clause requires an association to maintain liquid funds in accordance with its rules. The Credit Union Deposit Insurance Board is empowered by the clause to require an association to report details of its monetary policies from time to time.

Clause 60 makes provision with respect to meetings of associations.

Clause 61 applies specified provisions relating to credit unions to associations. These are the provisions of Part III relating to rules, appeals in respect of registration or rules, names and offices and amalgamation, the provisions of Part VI relating to management of credit unions (other than those relating to meetings), the provisions of Division III, Part VII relating to supervision of a credit union by the Credit Union Deposit Insurance Board, and the provisions of Parts VIII and X relating to winding up and miscellaneous matters.

Part VI (comprising clauses 62 to 99) deals with the management of credit unions.

Clause 62 provides for boards of directors of credit unions.

Clause 63 ensures the validity of acts of a director notwithstanding a defect in his or her appointment or qualification.

Clause 64 provides for the appointment of directors.

Clause 65 provides for the qualifications of directors and vacation of office as a director.

Clause 66 provides for disclosure by a director of a credit union of any direct or indirect interest in a contract or proposed contract with the credit union.

Clause 67 provides that an officer of a credit union must not, without the approval of a majority of the directors, engage in any specified dealing with a member of the credit union funded (in whole or part) out of a loan from the credit union and that an officer must not himself or herself borrow money from the credit union.

Clause 68 provides that a director of a credit union must not be paid any remuneration for his or her services as director other than such fees, concessions and other benefits as are approved at a general meeting of the credit union.

Clause 69 regulates meetings of the board of directors of a credit union.

Clause 70 provides that a person, other than a director, must not purport to act as a director of a credit union and that a director must not permit such a person to purport to act as a director.

Clause 71 creates offences with respect to dishonest or negligent acts or improper use of information by officers or employees of credit unions. The clause provides for recovery by the credit union of any profit gained by the officer or employee or loss or damage suffered by the credit union as a result of any such misconduct.

Clause 72 regulates meetings of credit unions.

Clause 73 provides for voting at meetings of credit unions.

Clause 74 makes provision for special resolutions at meetings of credit unions.

Clause 75 requires a credit union to keep full and accurate minutes of every meeting of the board of directors and every meeting of members of the credit union.

Clause 76 requires a credit union to keep the following registers:

(a) registers of its directors and its members and the shares held by each member;

(b) a register of all loans raised, securities given, and deposits received, by the credit union;

(c) a register of all loans made, or guaranteed, by the credit union and of all securities taken by the credit union in respect of such loans or guarantees;

(d) a register of investments made by the credit union; and

(e) such other registers as may be prescribed.

The registers must be kept in such manner, and contain such particulars, as may be prescribed by regulation.

Clause 77 requires a credit union to keep at each of its offices for inspection without fee by members of the credit union, persons eligible for membership of the credit union and its creditors—

(a) a copy of the Credit Unions Act and the regulations;

(b) a copy of the rules of the credit union;

(c) a copy of the last accounts of the credit union, together with a copy of the report of the auditor; and

(d) the register of directors or a copy of that register.

The clause requires a credit union, on request by a member of the credit union, to furnish the member with particulars of his or her financial position with the credit union and to allow the member to inspect registers and records kept by the credit union containing information required in connection with the calling and conduct of meetings of the credit union.

Clauses 78 to 86 contain provisions relating to the accounts of credit unions and their subsidiaries that correspond to the accounts provisions of the Companies (South Australia) Code that apply to companies incorporated under that code.

Clauses 87 to 96 contain provisions relating to the audit of accounts of credit unions and their subsidiaries. These provisions (apart from clauses 94 and 95) correspond to the audit provisions of the Companies (South Australia) Code.

Clause 94 provides for a final audit of the accounts of a credit union dissolved as part of an amalgamation of credit unions.

Clause 95 provides that the accounts of a subsidiary of a credit union must be audited in accordance with the same provisions as apply to the credit union notwithstanding that the subsidiary may be exempt from the audit requirements of the Companies (South Australia) Code. Under this clause, where a subsidiary has not appointed an auditor itself, the auditor of the holding credit union is to be also auditor of the subsidiary.

Clause 97 makes provision for certain returns to be furnished to the commission by credit unions.

Clause 98 deals with the form in which accounts and accounting records are to be kept by credit unions.

Clause 99 confers on the commission power to make orders relieving directors, a credit union or an auditor from compliance with provisions relating to accounts or audits.

Part VII (comprising clauses 100 to 122) deals with the Credit Union Deposit Insurance Board.

Clause 100 provides for the establishment and constitution of the board. Under the schedule to the measure, provision is made making it clear that the board is the same body corporate as the Credit Union Stabilisation Board established under the Credit Unions Act 1976, and has the same membership.

Clause 101 provides for the constitution of the board.

Clause 102 provides for the term and conditions of office as a member of the board.

Clause 103 provides for allowances and expenses for members of the board.

Clause 104 regulates proceedings at meetings of the board.

Clause 105 makes provision with respect to the validity of acts of the board and immunity of its members.

Clause 106 sets out the functions of the board. These are as follows:

(a) to establish and administer a fund to assist in maintaining the financial stability of credit unions;

(b) to encourage and promote the financial stability of credit unions—

(i) by providing advice to credit unions generally on matters pertaining to the business of credit unions;

(ii) by appropriate supervision of credit unions;

(iii) by assisting officers of credit unions to administer the affairs of the credit unions in a proper and businesslike manner;

(c) otherwise to advance the interests of credit unions; and

(d) such other functions as may be prescribed.

Clause 107 provides the board with a general power to require reports from a credit union.

Clause 108 provides for delegation by the board of any of its powers or functions to a member, officer or employee of the board.

Clause 109 makes provision with respect to the staff of the board.

Clause 110 provides for the establishment of the Credit Union Deposit Insurance Fund. Again, a provision in the schedule makes it clear that this is the same fund as the Credit Union Stabilisation Fund under the Credit Unions Act 1976, and consists of the same money as in that fund. Under the clause, each credit union is required to keep on

deposit with the fund the prescribed percentage of the aggregate of its withdrawable share capital and the amount held by it on deposit. The board is empowered to reduce that amount if there is a sufficient amount in the fund to meet all likely claims or demands on it. The board is also empowered to grant an exemption to a credit union from compliance with provisions of the clause. The percentage prescribed for the purposes of the clause may vary according to the size of a credit union or any other factor.

Clause 111 empowers the board to require additional deposits if the balance of the fund has diminished to such an extent that this is necessary in the opinion of the board.

Clause 112 provides that the board may, in its discretion, grant financial assistance to a credit union by making payments from the fund (by way of a grant or a loan), or by charging the assets of the fund as security for liabilities of the credit union. Financial assistance to a credit union may be granted on such security, if any, and on such terms and conditions as the board thinks fit.

Clause 113 provides that a member of a credit union is entitled to claim against the fund where the credit union fails, on demand of the member, to satisfy any liability to that member in relation to withdrawable share capital or money lodged on deposit with the credit union. Under the clause, where the board makes a payment out of the fund, the board is subrogated to the rights of the member against the credit union in respect of the claim.

Clause 114 provides for the borrowing powers of the board. Clause 115 provides for investment by the board.

Clause 116 provides for the accounts and auditing of the accounts of the board.

Clause 117 provides for an annual report by the board and its tabling in Parliament.

Clause 118 empowers the board to place a credit union under its supervision where—

(a) the credit union is unable to pay its debts as and when they fall due;

(b) the board is satisfied—

(i) that the credit union is financially unsound;

(ii) that the affairs of the credit union are being conducted in an improper or financially unsound manner;

(iii) that the credit union is recording revenue deficiencies at any time;

(iv) that the credit union has failed to maintain adequate reserves;

or

(v) that the credit union or an officer of the credit union has committed any other serious irregularity that indicates the desirability of supervision;

(c) the credit union has failed to lodge any document with the commission or the board as required;

or

(d) a credit union has requested the board to declare it to be subject to supervision by the board.

The clause also confers appropriate powers of inspection and powers to secure information required to determine whether a credit union should be placed under supervision.

Clause 119 provides that a credit union remains under supervision until the board releases it, either of its own motion or on the application of the credit union, or until the credit union is wound up.

Clause 120 provides for an appeal to the Supreme Court against a decision of the board to place a credit union under supervision or to refuse an application that it be released from supervision.

Clause 121 provides that where a credit union is under the supervision of the board, the board may—

(a) exercise the powers of the commission with respect to the credit union;

(b) supervise the affairs of the credit union and make inquiries from its officers, members and employees;

(c) order an audit of the affairs of the credit union by an auditor approved by the board at the expense of the credit union;

(d) require the credit union to correct any practices that in the opinion of the board are undesirable or unsound;

(e) prohibit or restrict the raising or lending of funds by the credit union or the exercise of any other powers of the credit union;

(f) appoint an administrator of the credit union (whose salary and expenses must unless the board otherwise determines be paid out of the funds of the credit union);

(g) direct the credit union to take all necessary action to amalgamate with another credit union or to sell to another credit union all or part of its assets and liabilities or direct that the credit union be wound up;

(h) remove a director of the credit union from office;

(i) exempt the credit union, by notice in writing addressed to the credit union, from all, or any of the provisions of clauses 38, 47, 48, 49 and 50 for such period as may be specified in the notice;

or

(j) stipulate principles in accordance with which the affairs of the credit union are to be conducted.

Clause 122 provides that an administrator appointed for a credit union has the powers of the board of directors of the credit union, may order any officer or employee of the credit union to leave, and remain away from, the offices of the credit union and must make reports to the board and the commission. The clause provides for the remuneration of an administrator and for termination of the appointment of an administrator.

Part VIII (comprising clauses 123 to 126) deals with winding up of credit unions.

Clause 123 provides that a credit union may be wound up voluntarily or by the Supreme Court or on a certificate of the commission. The clause applies Part XII of the Companies (South Australia) Code (relating to the winding up of companies) in relation to a credit union. Under the clause, the commission may issue a certificate for the winding up of a credit union if—

(a) the number of members of the credit union has fallen below 25;

(b) the credit union has not commenced business within a year of registration or has suspended business for a period of more than six months;

(c) the registration of the credit union has been obtained by mistake or fraud;

(d) the credit union has, after notice by the commission of any breach of or non-compliance with this measure or the rules of the credit union, failed, within the time referred to in the notice, to remedy the breach;

(e) there are, and have been for a period of one month immediately before the date of the commission's certificate, insufficient directors of the credit union to constitute a quorum as provided by the rules of the credit union;

or

(f) an inquiry pursuant to this measure into the affairs of a credit union or the working and financial condition of a credit union discloses that in the interests of members or creditors of the credit union, the credit union should be wound up.

The commission may not issue a certificate under paragraph *(c)*, *(d)*, *(e)* or *(f)* unless the Minister consents to the issue of the certificate.

Clause 124 empowers the commission to fill a vacancy in the office of liquidator of a credit union if in the opinion of the commission it is unlikely to be filled in the manner provided by the Companies (South Australia) Code.

Clause 125 provides for the remuneration of a liquidator.

Clause 126 provides for cancellation of the registration and dissolution of a credit union that has been wound up.

Part IX (comprising clauses 127 to 132) deals with foreign credit unions.

Clause 127 makes provision with respect to an application for registration as a foreign credit union. Under the clause a foreign credit union is eligible for registration by the commission if—

(a) the name under which it proposes to carry on business in South Australia is not misleading, undesirable or likely to be confused with the name of any other body corporate or registered business name and conforms with any directions by the Minister as to the names of credit unions;

(b) there are reasonable grounds for believing that the credit union would be able to comply with the same requirements as to liquidity, reserves and future losses as apply in relation to local credit unions;

and

(c) there is no good reason why the credit union should not be registered.

Clause 128 provides that a foreign credit union must have a registered office in South Australia.

Clause 129 contains requirements relating to the names of foreign credit unions.

Clause 130 requires a foreign credit union to notify the commission of certain changes affecting its operations as a foreign credit union in this State.

Clause 131 requires a foreign credit union to lodge its balance sheets for each financial year with the commission and, if the commission so requires, to furnish further information relating to its financial affairs.

Clause 132 requires a foreign credit union to notify the commission if it ceases to carry on business in the State.

Part X (comprising the remaining clauses) deals with miscellaneous matters.

Clause 133 is an evidentiary provision.

Clause 134 places a limitation on the doctrine of *ultra vires* in relation to credit unions and foreign credit unions.

Clause 135 abolishes the doctrine of constructive notice with respect to the rules of credit unions and foreign credit unions and documents registered by or lodged with the commission by credit unions or foreign credit unions.

Clause 136 provides that if before a credit union or foreign credit union is registered any person takes any money in consideration of the allotment of any shares or interest in, or the grant of a loan by, the credit union or foreign credit union, the person is guilty of an offence.

Clause 137 provides that a credit union that has continued for one month or more to carry on business after the number of its members has fallen below 25 is guilty of an offence.

Clause 138 creates offences relating to the taking of any commission, fee or reward in connection with a transaction with a credit union and provides for the recovery of any amount received in contravention of a provision of the clause.

Clause 139 provides that the consent of the commission is required to the issue of any advertisement relating to a credit union that is proposed to be formed or registered and that a credit union must submit the first advertisement proposed to be issued after its registration for approval by the commission.

Clause 140 empowers the Credit Union Deposit Insurance Board to require credit unions to insure against such risks and to such extent as the board stipulates.

Clause 141 provides that the commission may give directions—

(a) prohibiting the issue by a credit union or foreign credit union of advertisements of all kinds;

(b) prohibiting the issue by a credit union or foreign credit union of advertisements of any kind specified in the direction;

(c) prohibiting the issue by a credit union or foreign credit union of any advertisements that are or are substantially in the same form as an advertisement that has been previously issued;

(d) requiring a credit union or foreign credit union to take all practicable steps to withdraw any advertisement specified in the direction;

(e) requiring that in advertisements of any specified kind or invitations to invest in or lend money to a credit union or foreign credit union, there is included a statement giving any information stipulated by the commission with respect to the credit union or foreign credit union.

Clause 142 provides for offences relating to false or misleading information in documents required by or for the purposes of the measure or lodged with or submitted to the commission.

Clause 143 provides for offences with respect to the provision of false or misleading information by an officer of a credit union or foreign credit union relating to the affairs of the credit union.

Clause 144 confers on the Supreme Court special powers to prohibit the payment or transfer of money, securities or other property and to make other orders on the application of the commission in connection with misconduct or suspected misconduct related to the affairs of a credit union or foreign credit union. The clause corresponds to section 573 of the Companies (South Australia) Code.

Clause 145 provides for the obtaining of injunctions by the commission or any other interested person in connection with misconduct related to the affairs of a credit union. The clause corresponds to section 574 of the Companies (South Australia) Code.

Clause 146 creates a general offence for non-compliance with any provision for which a specific penalty is not provided or, in the case of a credit union or foreign credit union, for non-compliance with its rules. The clause also provides a default penalty for continuing offences.

Clause 147 provides that where a credit union or foreign credit union is guilty of an offence against the measure, each officer of the credit union or foreign credit union is guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

Clause 148 provides that in proceedings for an offence against the measure, it will be a defence if the defendant proves that in the circumstances of the case there was no

failure on the defendant's part to take reasonable care to avoid commission of the offence.

Clause 149 provides that offences against the measure are summary offences. The clause provides that a prosecution for an offence may be commenced by the commission, or an officer or employee of the commission, or with the consent of the Minister, by any other person, and that it must be commenced within three years after the date on which the offence is alleged to have been committed or such further period as the Minister may, in a particular case, allow.

Clause 150 provides that where a credit union or foreign credit union procures the issue of a policy of insurance over any property that provides security for a loan to that member, the credit union or foreign credit union must, within one month after the date of issue of the policy, forward to the member the policy, or a copy of the policy, or a statement of the risks covered by the policy.

Clause 151 provides for a special meeting of a credit union or an inquiry into the affairs of a credit union on application to the commission by not less than one-third of the members of the credit union or at the direction of the commission given of its own motion or on the recommendation of the Credit Union Deposit Insurance Board.

Clause 152 provides for the making of regulations.

The schedule provides for the repeal of the Credit Unions Act 1976, and contains necessary transitional provisions.

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

EVIDENCE ACT AMENDMENT BILL

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

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

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

This Bill seeks to advance a number of important amendments to the statute law of this State relating to the power of the courts to make orders to suppress the publication of evidence and other material. The present law on the topic is to be found in Division II of Part VIII of the Evidence Act 1929 and was enacted by the Evidence Act Amendment Act (No. 3) 1984, which came into operation on 20 December 1984. This Bill seeks to substitute a new section 69a of the Evidence Act 1929, which incorporates a number of reforms that are considered by the Government to be desirable.

In recent times there has been increasing media and public interest in, and concern regarding, the powers of the courts to suppress certain materials before them. It should be noted that, since 1984, the actual numbers of suppression orders made have been remarkably consistent and there is no evidence to suggest that their volume will, or is likely to, increase markedly. In the 1985-86 financial year the total number of suppressions made was 215; in 1986-87, 193 and in 1987-88 it was 207.

However, of primary concern to the Government has been the quality of some suppression orders made by the courts and the bases upon which they have been made. For example, there has been an instance of a court not only suppressing all evidence, including the name of a defendant, before it but also suppressing the very reasons for the making of the suppression order itself. To the Government this is quite unacceptable and inconsistent with the notions of open justice, and this Bill seeks to overcome these types of problems. The section 69a now proposed by the Bill has the following new features:

(i) It makes it quite clear that it is no longer merely a matter for the court to 'consider it desirable', upon enumerated grounds, to make a suppression order. Instead, the court must be satisfied on the balance of probabilities that an order ought to be made. In other words, the existing potential for subjectivity of a court's decision-making processes is to be removed and an objective, proof-based level is to be substituted. This amendment should ensure that the decision-making processes of the court are more readily and accurately assessable and, as a corollary, more open to public scrutiny and accountability. However, at all times, the court is to have regard to the desirability of dealing expeditiously with all applications.

(ii) It imposes a practical limitation on the length of time an interim suppression order will be allowed to operate. At present, interim orders can operate without any such limit, to the great inconvenience of the media and others. Instead, the courts are to regard their making of interim orders as a basis for the urgent final determination of the outcome or position. Wherever practicable, the interim suppression order will only operate for 72 hours, within which time the courts are exhorted to finally determine the application. Such a time constraint is, the Government believes, short enough to ensure deliberations are concluded expeditiously and long enough to ensure that they do not compromise their quality, while enhancing the efficiency of the disposition of relevant matters.

(iii) It recasts the grounds upon which a suppression order (other than an interim suppression order) can be made. At present, the law contemplates two grounds *viz* 'the interests of the administration of justice' or 'in order to prevent undue hardship to any person'.

If this Bill passes, the sole basis for the making of an order will be 'to prevent prejudice to the proper administration of justice' a formula that is similar to, though stronger than, that which obtains in nearly all other Australian (Federal, State and Territory) jurisdictions. The nebulous word 'interests', in the phrase, 'interests of the administration of justice' is to be discarded in favour of a demonstrable prejudice to the administration of justice. This change will ensure that the attention of the courts will be focused almost exclusively upon the assurance and promotion of the integrity, well-being, efficacy and effectiveness of its own processes and procedures. Any considerations that would be extraneous or merely peripheral to that mandate will therefore be excluded.

But there is to be a further assurance that any decision to make a suppression order on this single basis will not lightly be taken. That guarantee is provided by the fact that the court must

recognize, as considerations of substantial weight, the public interest in publication of the relevant material and the right of the news media to publish it. For the first time in relevant Australian legislation the right of the news media (i.e. a newspaper, radio or television station) to publish relevant material is to be accorded full recognition by the courts. Under the present law no such right is recognised.

Thus, the Full Court of the Supreme Court in *Heading v M* (23.12.87) has held that having regard to the long history of statutory suppression powers in one form or another, and the terms of the existing law itself:

> 'There is no fundamental principle of justice favouring publication of the names of [accused] persons and no presumption one way or the other as to whether an order should be made.'

This echoes an earlier observation of the present Chief Justice in *G v R* (1984) 35 SASR 349, 350-351:

> It is true, as Bray C.J. said in *The Queen v Wilson; Ex parte Jones*, that 'it is the policy of the law that justice should be conducted publicly'. It does not follow, however, that the law has any policy in favour of the dissemination of information by way of publication of an accused's name before conviction.

This Bill will change the emphasis of this situation by a conscious policy, expressed in law, declaring the right of the news media to publish relevant material. Therefore, the courts will only be able to make suppression orders if they are satisfied that grounds exist which justify subordinating the right of the news media (to publish the relevant material) to those grounds. In short, an applicant for a suppression order will need to satisfy two, onerous requirements before a court could be moved to make it.

(iv) An appeal will now not merely be available against a variation or revocation of a suppression order (as is presently the case) but also against a decision by a court not to vary or revoke a suppression order. In other words, courts cannot by mere inaction alone escape further scrutiny by an appellate court.

(v) To enhance and assist the public administration of the new provisions, courts will be obliged to forward a copy of any suppression order made (other than an interim order) to a central register. The Registrar will be required to establish and maintain a register of all suppression orders, made by all empowered courts, to which the public (including representatives of the news media) will have a right of access and inspection free of charge during ordinary office hours. It is contemplated that the Registrar will be the Director, Court Services Department.

(vi) Further to enhance the overall supervision of the new provisions, it is made clear by an amendment to section 69b that, regardless of where an initial appeal may lie from a primary court whose decision is subject to appeal, there will always, ultimately, lie an appeal to the Full Court of the Supreme Court. This will ensure that, irrespective of which jurisdiction is seeking to make a suppression order, the Full Court will be the ultimate arbiter of the law on this topic—a position that should encourage greater consistency and uniformity of decision making throughout all the courts of this State which can invoke the power to suppress.

(vii) When a suppression order is presently made, the court is required to forward to the Attorney General a report which sets out, among other things, 'a summary stating with reasonable particularity the reasons for which the order was made'. Too often, this summary is inadequate as the court merely repeats the statutory reasons available for making a suppression order (for example, 'interests of the administration of justice' or 'undue hardship'). For the better monitoring of the operation of the provisions by the Attorney General, it is proposed to require the court to forward 'full particulars of the reasons for which the order was made'. It will not be sufficient merely to reiterate the statutory basis. The court will need to address all relevant reasons specifically.

In nearly all other respects, this Bill restates the wording of the present law. It is only in the above crucial, highlighted areas that major reforms to the law are to be effected. A proclamation clause has been inserted in the Bill. This will allow some lead-time to the Court Services Department to establish the contemplated central register of suppression orders. I am advised that the lead time is not expected to exceed three weeks in duration from the date of assent to the Bill.

The Government believes that this legislative review is both necessary and timely. The present law has been in operation for just over four years during which period inconsistencies and anomalies have been identified. In preparing this Bill the Government has erred on the side of freedom of speech and publication and the right—at last to be the subject of express legal recognition—of the news media to convey relevant information to the public. But, at the same time, the Government believes that the rights of individuals who appear before the courts are not jeopardised if the courts remain at all times vigilant and endeavour to enhance the quality of the means and ends of their decision-making processes.

In effect this Bill seeks to insert in the equation, where the sensitive balancing of public and private rights occurs, a more clear-sighted recognition of the former without diminishing the vindication of the latter where they are genuine and well founded. The provisions of the Bill are as follows:

Clause 1 is formal.

Clause 2 amends section 68 of the principal Act which is an interpretation provision by inserting definitions of 'news media' and 'suppression order', being terms used in the new section 69a of the Act substituted by clause 3 of this Bill. 'News media' means those who carry on the business of publishing information by newspaper, radio or television. A 'suppression order' is an order forbidding the publication of specified evidence or of any account or report of specified evidence or the name of a party or witness or a person alluded to in the course of proceedings before the court, and of any other material tending to identify any such person.

Clause 3 repeals section 69a of the principal Act which deals with suppression orders and substitutes a new section. Subsection (1) provides that where a court is satisfied that a suppression order should be made to prevent prejudice to the proper administration of justice, the court may, subject to the section, make such an order.

Subsection (2) provides that where a court is considering whether to make a suppression order (other than an interim order), the public interest in the publication of information

related to court proceedings, and the consequential right of the news media to publish such information, must be recognized as considerations of substantial weight, and the court may only make the suppression order if satisfied that the prejudice to the proper administration of justice that would occur if the order were not made should be accorded greater weight than those considerations.

Subsection (3) empowers the court, where an application is made to it for a suppression order, to make an interim suppression order without inquiring into the merits of the application. An interim suppression order has effect, subject to revocation by the court, until the application is determined. If an interim order is made the court must determine the application as a matter of urgency, whenever practicable within 72 hours after making the interim order.

Subsection (4) provides that a suppression order may be made subject to such exceptions and conditions as the court thinks fit. Subsection (5) sets out who is entitled to make submissions to the court on an application for a suppression order, namely, the applicant, a party to the proceedings in which the order is sought, a representative of a newspaper or a radio or television station and any person who has, in the court's opinion, a proper interest in the question of whether a suppression order should be made. The court may, but is not required to, delay determining the application to make possible or facilitate non-party intervention in the proceedings.

Subsection (6) empowers the court that made a suppression order to vary or revoke it on the application of any of the persons entitled to make submissions by virtue of subsection (5). Subsection (7) proves that on an application for the making, varying or revocation of a suppression order a matter of fact is sufficiently proved if proved on the balance of probabilities. If there appears to be no serious dispute as to a particular matter of fact, the court (having regard to the desirability of dealing expeditiously with the application) may dispense with the taking of evidence on that matter and accept the relevant fact as proved.

Subsection (8) provides that an appeal lies against a suppression order, a decision by a court not to make a suppression order, the variation or revocation of a suppression order or a decision by a court not to vary or revoke a suppression order.

Subsection (9) sets out who is entitled to institute, or to be heard on, an appeal, namely, the same persons as those referred to in subsection (5). Also a person who did not appear before the primary court but who, in the opinion of the appellate court, has a proper interest in the subject matter of the appeal or proposed appeal may institute and be heard on an appeal with, and only with leave of the appellate court. Leave can only be granted if the appellate court is satisfied that the person's failure to appear before the primary court is not attributable to a lack of proper diligence.

Subsection (10) requires a court that makes a suppression order (other than an interim order) to forward to the Registrar of the court a copy of the order and to forward to the Attorney-General a report setting out the terms of the order, the name of any person whose name is suppressed, a transcript or other record of any evidence suppressed and full particulars of the reasons for which the order was made.

Subsection (11) requires the Registrar to establish and maintain a register of all suppression orders (other than interim orders). Subsection (12) provides that the register must be made available for inspection by members of the public free of charge during ordinary office hours. Subsection (13) defines 'Registrar' for the purposes of the section.

Clause 4 amends section 69b of the principal Act to provide a right of appeal to the Full Court from a judgment or order of an appeal court other than the Full Court itself.

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

CRIMINAL LAW CONSOLIDATION ACT AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Criminal Law Consolidation Act 1935. Read a first time.

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

That this Bill be now read a second time.

The provisions of this Bill clarify the rights of appeal of the Crown and defendants when applications are made for stays of proceedings on the grounds that they constitute an abuse of process. They also clarify the right of a court to reserve a question, relating to an issue antecedent to trial, for consideration and determination by the Full Court. An application for a stay of proceedings is made by motion to the trial judge. At present there is doubt whether either the Crown or the defendant has a right to appeal from the decision made.

If the accused claims that the trial judge has wrongly refused a stay he or she could, probably, appeal against any conviction on the grounds that the trial should not have proceeded. However, it may be inconvenient to force the defendant to wait until the trial is completed. If the Crown complains that the judge wrongly granted a stay it is doubtful whether there is any right of appeal. When the Crown complains of an acquittal the Attorney-General may, pursuant to section 350 (1a) of the Criminal Law Consolidation Act, require the court to reserve a question of law arising at the trial for the consideration and determination of the Full Court. It is doubtful whether a decision to grant a stay could be regarded as an acquittal.

Section 350 (1) empowers the presiding judge at a trial, in his discretion, to reserve a question for the Full Court. However, that power only arises if a question of difficulty 'in point of law' arises 'on the trial or sentencing of any person convicted on information'. Because of the manner in which applications for stay are dealt with it is doubtful whether a point arising on such an application can be said to be 'a point arising on the trial of the person accused'.

Section 50 of the Supreme Court Act deals generally with appeals to the Full Court. Until recently, there was doubt as to whether the Crown or a defendant could use this section to appeal against a decision in respect of an application for a stay of proceedings where it is alleged that the proceedings constitute an abuse of process of the court. However, in *Queen v Garrett* (1988) 141 LSJS 288, the court held that there was no right of appeal in such a case. The proposed amendments seek to address these issues.

Clause 5 of the Bill amends section 350 of the Act to empower a court of trial to reserve for consideration and determination by the Full Court any question of law on an issue antecedent to trial or affecting the trial or sentencing. The term 'issue antecedent to trial' is defined to include a question as to whether proceedings should be stayed on the ground that they are an abuse of process.

The Bill provides for a defendant on obtaining leave to appeal against a decision not to stay proceedings even though the trial has not commenced or has not been completed. Leave can only be granted if there are special reasons why it would be in the interests of the administration of justice

to have the appeal determined before the commencement or completion of the trial. The defendant has not been given an automatic right of appeal as the right to appeal might be used as a means of delaying the trial.

The right of the Crown to appeal against a decision of a judge on an issue antecedent to trial is also clarified. New section 352 (2) *(a)* gives the Crown a right of appeal on a question of law alone. In addition, the Crown may seek leave to appeal on any other ground. It is important that the rights of the Crown to appeal against a decision of a judge to grant a stay of proceedings, is acknowledged as the decision would put an end to the prosecution.

Section 357 of the Act dealing with the procedure for initiating an appeal has also been amended. Under the present provision a convicted person who wishes to appeal, or to obtain leave to appeal must do so within 10 days of the date of conviction. The Act does not prescribe a time limit for the institution of appeals by the Crown. The revised section 357 provides for appeals to be made in accordance with the appropriate rules of court. There is an increasing use of applications for stay of proceedings on the grounds that they constitute an abuse of process. It is important that the right of appeal by the Crown and the accused be clarified. I commend this Bill to members. 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 commencement of the measure on a day to be fixed by proclamation. Clause 3 amends section 348 of the principal Act which is an interpretation provision. Terms used in the new provisions of the principal Act inserted by this Bill are defined.

Clause 4 makes a minor consequential amendment to section 348a of the principal Act which empowers the Attorney-General to delegate powers under Part XI of the Act to a legal practitioner in the service of the Crown (for example, to apply for the reservation of a question of law, to appeal against sentence, etc.).

Clause 5 amends section 350 of the principal Act which deals with the reservation of questions of law. The amendment is designed to ensure that the court of trial is empowered to reserve for the Full Supreme Court's consideration and determination any question of law on an issue antecedent to trial or affecting the trial or sentencing. An issue antecedent to trial is any question (whether arising before or at trial) as to whether—

(a) an information or a count of an infornation is defective or should be quashed;

or

(b) proceedings on an information or a count of an information should be stayed on the ground that the proceedings are an abuse of the process of the court.

The amendment gives the court of trial power to stay the proceedings until the question has been determined by the Full Court. The amendment also enables the court of trial, on application of the Attorney-General (where a person is acquitted) to reserve a question of law arising before or at trial.

Clause 6 amends section 351 of the principal Act to give the Full Court power to quash an information or any count of an information or to stay proceedings on an information or a count of an information. The clause also makes some other minor consequential amendments.

Clause 7 repeals section 352 of the principal Act and substitutes a new provision. This section sets out in what circumstances there is a right of appeal in a criminal case. Subsection (2) deals with appeals from decisions on issues antecedent to trial. If a decision is adverse to the prosecution, the Attorney-General may appeal against the decision, as of right, on any ground that involves a question of law alone or, on obtaining leave to appeal, on any other ground. If a decision is adverse to the defendant and the trial has not commenced (or has commenced but has not been completed) the defendant may, on obtaining leave to do so, appeal against the decision. Leave to appeal before completion of the trial can only be granted if it appears that there are special reasons why it would be in the interests of the administration of justice to have the appeal determined before commencement or completion of the trial. Except as so provided, a defendant cannot appeal against a decision on an issue antecendent to trial but if the person is convicted, the person may (subject to subsection (1)) appeal against the conviction aserting as a ground of appeal that the decision was wrong.

Leave to appeal against a decision on an issue antecedent to trial, if sought before the commencement or completion of the trial, can only be granted by the court of trial (unless the effect of the decision is to prevent the trial from proceeding). Where leave is granted, the court can stay the trial until the appeal is determined.

Clause 8 amends section 353 of the principal Act which deals with the determination of appeals. The amendment sets out the powers of the Full Court where there is an appeal against a decision on an issue antecedent to trial.

Clause 9 repeals section 357 of the principal Act and substitutes a new provision. The new section provides that appeals to the Full Court and applications for special leave to appeal to the Full Court under the Act must be made in accordance with the appropriate rules of court. The Full Court may extend the time allowed for making such an appeal or application.

Clause 10 is a transitional provision. The clause makes it clear that the amendments to the principal Act do not apply in relation to informations laid before the commencement of this Bill. The existing provisions continue to apply as if the Act had not been amended. The amended provisions apply only to informations laid on or after the commencement of this Bill.

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

SUPPLY BILL (No. 1)

Received from the House of Assembly and read a first time.

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

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

The purpose of this Bill is to grant supply for the early months of the next financial year. Present indications are that the appropriation authority already granted by Parliament in respect of 1988-89 will be adequate to meet the financial requirements of the Government through to the end of the financial year. The Government will, of course,

continue to monitor the situation very closely, but it is unlikely that additional appropriation authority will prove to be necessary.

The 1988-89 budget provided for a net financing requirement of $226.1 million. While it would not be prudent to make precise forecasts at this stage. I can advise the House of some of the factors which will influence actual outcomes this financial year as compared with the budget estimates.

Recurrent Budget

On the receipts side, there are indications that total receipts may be ahead of budget. Commonwealth general purpose recurrent grants are expected to exceed budget mainly because higher than expected inflation has resulted in a higher indexed level of financial assistance grants. At the May 1988 Premiers' Conference, the Commonwealth agreed to index a base level of financial assistance grants by the actual increase in the consumer price index for the four quarters ending March 1989 over the preceding four quarters. The indexation of Commonwealth funding, however, needs to be viewed in the context of the significant cuts that were made by the Commonwealth in setting the base amount at the time of the 1988 Premiers' Conference.

Specific purpose recurrent funds from the Commonwealth are also expected to be above budget. Budgeted funding levels for specific programs were based on information prior to the release of the Commonwealth budget. Since that time, funding levels have been refined and, in some cases, significantly revised. In most cases, however, these higher funding levels are mirrored by higher payments so that the net improvement to the budget from this source is limited.

Higher than expected receipts from stamp duties, payroll tax, and gambling will be partially offset by lower than expected receipts from registration fees and drivers licences. The improved performance mainly reflects more buoyant economic conditions reflected in employment levels, property market activity and, to a lesser extent, motor vehicle activity.

An important area in which there will be an overall deterioration in receipts is royalties. Delays in the commissioning of the Roxby Downs plant, declining prices for minerals and liquids, and lower mineral production levels will combine to reduce royalty receipts below budget expectations. Overall, however, the expectation is that receipts may exceed the budget estimate.

On the expenditure side, the Government is maintaining its policy of tight control. As I have stressed in this speech for a number of years the need is for restraint and agencies have been given the task of achieving major economies in order to manage within their allocations. In general it is expected that these economies will be achieved. After allowing for variations in Commonwealth funded programs, it is anticipated that there may be some improvement against the budgeted end-of-year result.

It is anticipated that there will be a reduction below the budget amount for the Engineering and Water Supply Department deficit, largely reflecting higher than anticipated revenues from rates and other fees. These savings are offset by the net impact of increases in interest rates and additional costs associated with increased utilisation of the public health system.

Capital Budget

At this stage it is anticipated that there may be some overall improvement in the budget in relation to capital works. On the receipts side an increase of about $12 million is expected, mainly because of several large property sales which were not anticipated in the budget. The expenditure side of the capital budget is expected to increase by about $5 million largely through additional expenditure on property rationalisations including projects such as the relocation from Ru Rua and the development of Goodwood Orphanage.

Overall Budget Result

At this stage of the year, it is expected that the overall outcome on Consolidated Account may show some improvement in relation to the estimate. However, it is too early to estimate how significant any improvement might be. In relation to next year, notwithstanding any improvements in the present year, there is nothing to indicate that the Government will be able to relax its policy of maintaining firm control over expenditures.

Supply Provisions

Turning to the legislation now before us, the Bill provides for the appropriation of $750 million to enable the Government to continue to provide public services during the early months of 1989-90. In the absence of special arrangements in the form of the Supply Acts, there would be no parliamentary authority for expenditure between the commencement of the new financial year and the date on which assent is given to the main Appropriation Bill. It is customary for the Government to present two Supply Bills each year, the first covering estimated expenditure during July and August and the second covering the remainder of the period prior to the Appropriation Bill becoming law. That practice will be followed again this year.

Honourable members will note that the authority sought this year of $750 million is about 7 per cent more than the $700 million sought for the first two months of 1988-89. This is broadly in line with the increases in wages and other costs faced by the Government over the past year, and should be adequate for the two months in question.

Clause 1 is formal. Clause 2 provides for the appropriation of up to $750 million, and imposes limitations on the issue and application of this amount.

The Hon. L.H. DAVIS secured the adjournment of the debate.

MOTOR VEHICLES ACT AMENDMENT BILL (No. 2)

The House of Assembly intimated that it had agreed to the Legislative Council's amendment.

HOLIDAYS ACT AMENDMENT BILL (No. 2)

Received from the House of Assembly and read a first time.

ADJOURNMENT

At 6.20 p.m. the Council adjourned until Thursday 16 March at 2.15 p.m.