LEGISLATIVE COUNCIL

Tuesday 19 November 1991

The PRESIDENT (Hon. G.L. Bruce) took the Chair at 2.15 p.m. and read prayers.

QUESTION ON NOTICE

The PRESIDENT: I direct that the written answer to the following question, as detailed in the schedule I now table, be distributed and printed in *Hansard*: No. 16.

ULTRAMAN

16. The **Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage: Will the Minister detail the clear economic benefits to South Australia arising from the first series of *Ultraman* referred to by the Chairman in the SA Film Corporation's Annual Report 1990-91, recognising that the series has essentially bankrupted the SAFC, has prompted the Government to inject $2.4 million of taxpayers' money into the organisation to prop it up, has deprived the independent film sector of $500 000 from the Government Film Fund both last financial year and this year, has damaged the corporation's reputation with secret deals to buy out the contracts of former Managing Director, Mr Richard Watson, and former Executive Producer, Mr Jock Blair, and has led to a cut in staff numbers of 10 from 33 to 23?

The Hon. ANNE LEVY: The total cost of the *Ultraman* series was approximately $6.1 million which was funded by foreign investments (of around $4.2 million), SAFC investment ($250 000) and the South Australian Government ($1.65 million). Most of the expenditure occurred in South Australia on goods and services associated with the series. In particular, the series provided great stimulus to local employment within the film industry, with in excess of $1.7 million being expended on salaries and wages for South Australian cast and crew.

PUBLIC WORKS COMMITTEE REPORTS

The PRESIDENT laid on the table the following reports by the Parliamentary Standing Committee on Public Works, together with minutes of evidence:

Glenelg Sewage Treatment Works—Replacement of Aeration and Power Generation Equipment,

The Flinders University of South Australia Business/Law Building.

PAPERS TABLED

The following papers were laid on the table:

By the Minister of Tourism, for the Attorney-General (Hon. C.J. Sumner)—

Reports, 1990-91—
Accounting Standards Review Board;
Government Management Board;
Department of the Premier and Cabinet.

Workers Rehabilitation and Compensation Act 1986—Regulations—
Claims and Registrations—Mesothelioma.
General—Rise Exemption.

By the Minister of Tourism (Hon. Barbara Wiese)—

Reports, 1990-91—
Foundation South Australia;
Radiation Protection and Control Act 1982.

By the Minister for the Arts and Cultural Heritage (Hon. Anne Levy)—

Riverland Cultural Trust—Report, 1990-91.

Industrial and Commercial Training Act, 1981—Regulations—Automotive Servicing.

QUESTIONS

CORONER'S ACTIONS

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Attorney-General a question on the subject of the Coroner's actions.

Leave granted.

The Hon. K.T. GRIFFIN: The Attorney-General undoubtedly will be aware of at least two recent cases where relatives of persons who have died in motor vehicle accidents have not been told until very much after the deaths that organs (in these two cases, the brain) have been removed from the bodies. As a result, the two mothers have sought answers to a number of questions relating to the death of their son. Some of the information sought relates to the accidents and the police investigations, but that is not the focus of my question today.

Mrs Rosemarie Bungert's son died in a motor vehicle accident on 17 August 1991. She was not told of the death until 15 hours after the accident, by which time a *post mortem* examination had been conducted. She says that police claim there was no means of identification but the son did have a State Bank credit card on him. Mrs Bungert has since checked with the State Bank that a telephone call to the State Bank Card Centre by police 24 hours a day will gain access to addresses within a matter of minutes.

On several occasions after the death, including the day after the funeral, Mrs Bungert contacted the Coroner's Office to establish whether any organs had been removed. She was asked to request the information in writing, which she did on 3 September and again on 30 September, as well as by telephone on a number of occasions. On 7 October, some six weeks after the death, she was asked to go to the Coroner's Office and on 8 October she attended and was told that her son's brain had been removed.

Mrs Bungert has since established (but not from the Coroner's Office) that the brain was forwarded by the Coroner's Office to the Institute of Medical and Veterinary Science on 4 September, that all relevant tests were conducted on 5 September and that it was then sent for incineration. She is concerned that the brain was taken for examination when the cause of death was established at the post-mortem on 17 August. She is distressed that the consent of the family was not obtained (although legally that is not required), that she was not told that the brain had been removed and that her son's body was not buried with his brain.

In the other case, Mrs Christine De Laine has had similar difficulty in relation to the removal of her son's brain after he died in a motor vehicle accident. She also has had some concern about the extent of the investigations. However, as I said earlier, that is not the focus of my question today. Her son's accident was on 6 October 1990 and the autopsy was conducted about eight hours later. The brain arrived at IMVS on 11 October, was examined on 23 October and the report was completed on 30 October 1990. Yet the brain was not returned for burial until 6 February 1991, and then it was in 28 pieces, which suggested to Mrs De Laine that research, not examination for the purpose of determining

the cause of death, was conducted. The brain was interred on 8 February.

It was not until two months after the death that, through her family doctor, Mrs De Laine learnt that her son's brain had been removed. A week later she learnt that it had not been replaced in the body, because that information had not been supplied at the time to the family doctor. She was then told that a study was being undertaken on brain trauma and that brains from accident victims were being used for that purpose.

Another case was raised earlier this year—I think it was in April—which related to an accident in 1986. The brain had been removed in that case. The mother, Mrs Bennett, wrote to a newspaper saying she found it strange that she had to give written permission for her son's helmet to be taken for testing but her consent was not required for her son's brain to be taken.

I realise these are issues which must be dealt with sensitively but I suggest that in the cases I have mentioned that did not occur. Some relatives do not want to know what happened to the body but others do, and it is more difficult emotionally for a relative to deal with the situation if the relative wants to know but is not told, or is not told the truth, or is told only part of it. My questions to the Attorney-General are:

1. Will the Attorney-General consider amendments to the law, practice or procedure of the Coroner to require the consent of next of kin for removal of organs?

2. Will he examine ways by which organs removed can be returned for burial by the family?

3. Will he examine how next of kin can be informed at a very much earlier stage what has happened to the body and organs of a deceased relative?

The Hon. C.J. SUMNER: As to the last two questions, I think they have already been answered, including in correspondence which has been sent to at least some of the representatives of the family concerned in this matter. I have spoken with the Coroner about providing better information to people about the post-mortem procedure. In fact, in a letter dated 1 November 1991, my secretary Mr Handke wrote to Mrs C. De Laine to that effect as follows:

> ... the Attorney-General does consider that the availability of information in relation to the post-mortem proceedings should be improved to enable those people who wish to know about them to obtain the information and to make appropriate funeral arrangements if they so wish.

That aspect is currently being examined. I know that the Coroner is currently examining the preparation of a pamphlet. In fact, he wrote to my secretary on 30 October 1991 as follows:

> I confirm that measures to advise next of kin as to coronial procedures will be implemented as soon as possible. With this in mind I will, in conjunction with other people, prepare a draft short pamphlet containing essential information for next of kin. This will be disseminated by means of post to all next of kin in appropriate cases. It is, of course, not envisaged that the circular will be sent to the next of kin of every coronial subject, as many of those persons of course die from purely natural causes and a post-mortem examination is often not considered necessary.

So, the Coroner, after discussions with me and after this issue was aired in the public arena, has taken action, which has not concluded. Nevertheless, action has been taken to provide more information to the relatives of a deceased person about post-mortem examination. So, that deals with the question of information.

The question of the return of any parts of the body that are taken for post-mortem examination has now been, or will be, dealt with in the information which the Coroner is to provide. It may be that members of the family wish to delay a funeral until the necessary post-mortem tests have been carried out and the organs that had to be removed for the purpose of those tests have been returned to the body. So, that issue also has been addressed. I do not know whether that is satisfactory to the honourable member, but it is something that he might care to consider in due course.

However, the most significant issue is the first question raised by the honourable member and he has asked me whether I will introduce legislation to require the consent of the next of kin before organs are removed from a body for the purposes of post-mortem examination. The question could well be put to the honourable member whether he would support such a proposal. I say that, because it would represent a significant change in the coronial practice in this State and, as I understand it, the coronial practice virtually everywhere else in Australia and the general coronial practice everywhere in the world where such coronial procedures are in place.

In the letter that I have referred to my secretary, Mr Handke, said to Mrs De Laine:

> The practice of removing the brain as described, is in common use in all States of Australia, the United Kingdom, the USA and many other countries.

He also said:

> Owing to the importance of this particular examination the Attorney-General considers that it is inappropriate to fetter the Coroner's power in this area.

That is the decision that has been taken to date but, if the honourable member or his colleagues want to put to us argument to suggest that the coronial inquiry should only be carried out with the consent of the next of kin, then that could be considered. However, the honourable member, and all members of Parliament, would then have to consider the consequences of such a course of action. The obligation the Coroner has under his legislation is to investigate the cause and circumstances of certain events, including deaths, due to trauma.

There is power in the Coroner's Act and rules to enable the Coroner to direct that a post-mortem and other examinations be performed. In certain circumstances, including the ones outlined by the honourable member, this involves an examination of the brain tissue that can only occur by removal of the brain. I have had discussions with the Coroner and Mr Manock, the pathologist, and they have confirmed that that is the situation.

It might be said, 'Well, the cause of death does not need to be determined,' but that also would not be correct, as I am sure the honourable member would know because, in the case of road accidents in particular, subsequent legal proceedings may be taken in courts for damages and the like. If those proceedings are taken, it is surely critical that the cause of death be determined and, if those proceedings were taken in the civil courts—the Supreme Court and the District Court—and the case ended up before that judge and the Coroner was unable to say that he had adequately determined the cause of death or the pathologist who was called said, 'No, I did not conduct this particular test, because I could not,' then the legal proceedings could quite well be brought into question.

That, in turn, may not be to the benefit of the next of kin of the deceased person because obviously, if, for instance, the widow of a deceased person were to take a claim for damages in the court, that widow would have to prove that that deceased person was killed as a result of the negligence of someone else on the roads. If the Coroner and the pathologist have not carried out the correct procedures, that is, not determined the cause of death adequately, and some doubt is raised about the cause of death, then it may be that the next of kin's claim for damages—the widow's claim

for damages—could fail because of the inadequacies of the Coroner's inquiry or the post-mortem examination.

I am sure members would not desire that result, and I hope that it is not the result that would be desired by people who have been caught up recently in this debate. As I said in the letter to Mrs De Laine:

> The reason for the taking of certain tissue at post mortem, is because of the importance to ascertain whether a particular deceased person has taken any drugs prior to death, including of course alcohol. This latter aspect is of importance, particularly in relation to road accidents. Similarly, it is not unknown for persons such as those in charge of a motor vehicle or motor cycle to suffer the onset of a sudden illness which may not be apparent on autopsy. I refer of course in particular to some form of cerebral vascular accident, that is a stroke or aneurysm. The presence of this condition can have very important legal consequences, and it is therefore essential for the Coroner to ascertain whether such an event occurred.

Included in the letter was my advice that:

> This can only be done in the case of brain tissue by the removal of such tissue, and subjecting it to special examination.

Further, the letter says:

> This does unfortunately take three or four weeks from the time of post mortem.

That is the situation. I have taken longer than normal to explain it as fully as possible. However, the fact is that the cause of death may have legal consequences subsequently. If there is doubt about the cause of death that, in turn, may impact adversely on relatives, in particular widows or children, of a deceased person if they subsequently claim damages and a dispute arises as to the cause of death. That, amongst others, is the reason why we have a coronial system.

I am happy to receive any reasonable submissions about the topic, but members have to determine whether they want a coronial system of this kind, where the Coroner or the pathologists are obliged to examine issues and determine the cause of death by law, or whether they want a part-coronial system where next of kin can have some veto role over the sorts of examinations that might be carried out on a deceased person. However, if they decide on the latter as a policy objective, they must also understand that there will be subsequent legal difficulties, possibly for some people, and possibly some people will be deprived of their legal rights because the cause of death has not been determined adequately.

The latter part of what I have said deals with the first question raised by the honourable member. I agree with him that it is an important issue and that the matter needs to be dealt with sensitively in relation to those persons who are concerned and with whom I have had considerable correspondence over the past 12 months. That deals with the policy issue. If we decide as a Parliament—and it is up to the Parliament to decide this—that those powers should remain with the Coroner, then I agree. I have already set in train action that can be taken to improve the information given to next of kin about post-mortem procedures. I would be quite happy to let the honourable member have full details of the decisions taken in that respect and copies of the pamphlet and information.

I hope that greater information to the next of kin in these circumstances will overcome the problem, but obviously that critical issue of policy still has to be resolved. My view is that the current law on this topic ought not to change. If honourable members want to make submissions on the topic and can find alternative ways of dealing with it, whilst still achieving the objectives of the coronial system, I would be only too happy to listen.

ADELAIDE AIRPORT

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister of Tourism a question about the expansion of Adelaide Airport.

Leave granted.

The Hon. DIANA LAIDLAW: On 7 November the Premier, Mr Bannon, flew to Canberra to lobby for Federal Government support for infrastructure projects in South Australia, including new terminal facilities at Adelaide Airport. Since that time I note:

1. The Special Premiers' Conference scheduled for later this week has been cancelled, at which time infrastructure initiatives, such as the Adelaide Airport, were to be canvassed;

2. The Prime Minister's unemployment statement last week gave the green light for the third runway at Sydney airport, but made no mention of facilities at Adelaide Airport;

3. The Victorian Government last week embarked on a major campaign in partnership with the committee for Melbourne and a Taiwanese shipping conglomerate 'Evergreen' to secure a $300 million Melbourne-based international airline, recognising, according to the Premier of that State, that such an investment would boost employment and tourism; and

4. Last Sunday the General Manager of the Federal Airports Corporation, based in Adelaide, released plans for a $150 million expansion of Adelaide Airport, although approval for funding has not been guaranteed.

As the Minister well appreciates, tourism is a very competitive business. All four developments that I have noted in the past fortnight have important implications for the State if we are to be successful in increasing the number of visitors to the State and, in particular, in increasing our market share of visitors compared with what is occurring interstate, particularly from these developments in relation to runways, airports and airlines.

Therefore, I ask the Minister: as the Federal Airports Corporation Act provides for infrastructure to be developed in joint ventures with a State Government or private enterprise, is the Government prepared to explore and/or endorse, either in partnership with the FAC or involving the FAC and private enterprise, such a joint initiative as a way to help the FAC to fund a proposed expansion program at Adelaide Airport?

The Hon. BARBARA WIESE: Private sector funding in particular is a matter that has already been considered by the Federal Airports Corporation. In fact, some of the development which has taken place at the Adelaide Airport and which is additional to the airport facilities involves investment that has been made by various companies from the private sector. Part of the objective in doing that has been for the South Australian Federal Airports Corporation to improve its profitability and its case and standing to attract further funding for the development of the Adelaide Airport facilities.

The South Australian Government has been working very closely with the Federal Airports Corporation in the development of a master plan for the Adelaide Airport. There are four issues in particular for which the State Government has been pressing and which have been incorporated in the master plan. Those four issues are our stated priorities and they include a new four-gate international terminal; a new entrant domestic terminal, which would be a modification of the existing international terminal; a 500 metre extension of the main runway, which will be required for the future; and an expanded freight handling capability, which would

be one of the things that would be required if the proposal to establish Adelaide as a transport hub was to come to fruition.

These four issues have been clearly stated as the State Government's priorities for development and have been included in the master plan but, unfortunately, to our disappointment so far, the Federal Airports Corporation at the national level has not yet either endorsed the master plan for Adelaide Airport or made specific funding arrangements so that those things will occur other than to indicate that there will be a program of upgrading of the Adelaide Airport facilities to the tune of about $100 million by 1998.

We are not satisfied with that timetable, and work is currently proceeding with the Adelaide-based FAC people to encourage the Federal Airports Corporation at the national level to bring forward those plans so that we can see the sort of upgrading of the Adelaide Airport terminal that is needed for tourism expansion and other forms of industrial expansion for South Australia. At the moment, a working party meeting with representation from the State Government and the Federal Airports Corporation office in Adelaide is looking at alternative means for funding these upgraded facilities and, although I do not have the details before me of some of the proposals which they are currently looking at, I would envisage that part of their study would include the very matters that the honourable member raises, particularly private sector joint venture work. I am not aware of their views on State Government joint venturing, but I imagine that would be a difficult matter for the State Government to address at this time.

However, as I said, these alternative funding methods are being studied, and it is hoped that by February of next year a report from the joint working party may identify alternative funding sources whilst, at the same time, the work continues to encourage the Federal Airports Corporation to bring forward its proposals for its own spending at the Adelaide Airport.

SMALL BUSINESS CONFERENCE

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Minister of Small Business a question about the National Small Business Conference.

Leave granted.

The Hon. L.H. DAVIS: On Sunday and Monday of this week I attended the first National Small Business Conference with the theme 'A future in business'. The conference, which had been widely advertised across the nation, was held in Sydney and was sponsored by the New South Wales State Chamber of Commerce. It was attended by 170 delegates from all six States and the ACT over two days. There was a first-class line-up of participants, including Mr Eric Forth, the Minister of Small Firms in the United Kingdom, Mr Peter Friedman, the Executive Director of Small Business operating in the Ministry of Industry, Trade and Technology in Toronto, Ontario, Canada, the Federal Minister for Small Business, Mr David Beddall, Mr Robert Gottliebsen, the Chairman of *Business Review Weekly*, Mr Andrew Olle of the ABC, and many other distinguished speakers.

The conference was widely acclaimed by all present and received good media coverage. The importance of small business, which represents over 50 per cent of all private sector employment and 95 per cent of all firms, was recognised by the presence of representatives from the Prime Minister's Department, the Minister for Small Business, a Federal Liberal Party representative, and the Minister of Small Business in New South Wales. There were representatives from several Federal Government departments, four banks, local government and the national business media, and representatives, generally directors, of the small business units in New South Wales, Queensland, Victoria and the ACT.

Where were the South Australian Minister of Small Business or representatives from relevant departments of the State Government and, in particular, the Small Business Corporation of South Australia?

My questions to the Minister are: while the Minister is happy to swan around at national and State tourism conferences and awards, why is she nowhere to be seen in the vital small business sector? Why does the Minister show no initiative, interest in or understanding of the small business sector, which is fighting the toughest economic conditions it has faced for 60 years? Did the Minister know that the conference was on? While four Governments and the ACT sent representatives, why was the State Government not represented in any way at this first and highly successful national conference on small business? Was it a lack of money, because of the problems of the State Bank, or just a sheer lack of interest?

The Hon. BARBARA WIESE: Well the honourable member—

An honourable member interjecting:

The Hon. BARBARA WIESE: Yes, I am actually quite lost for words. The honourable member is just extraordinary in the line of questioning he pursues on these matters when he knows that the South Australian Government from time to time sends representatives of both the ministry and the public sector to attend conferences that have some relevance—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order! The Hon. Mr Davis asked the question; he would do well to listen to the answer.

The Hon. BARBARA WIESE: —to business activities in Australia and, as and when it is possible to do so, such representation takes place. I do not think that any Government in this country is in a position to attend every single conference that occurs in Australia—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: —on matters of particular interest to various sectors of the economy but, as and when we are able to, then we do. Of course, we also make judgments about which conferences have more relevance than others. I note that the honourable member indicates that Western Australia, Tasmania and the Northern Territory were not present at this conference either.

I cannot see very much point in the line of questioning that the honourable member pursues since, as I have indicated, the Government is represented at conferences as and when it is possible to achieve such representation, either by Ministers or public servants. We will continue to do so because, as the Government's actions over a number of years have indicated, we are very closely concerned with the matter of small business. We have been able to achieve numerous policy changes which are in the interests of business in this State, and we will continue to take up those opportunities as and when they become available.

The Hon. L.H. DAVIS: As a supplementary question, did the Minister know that the conference was on and did she discuss the possibility of a representative of the State Government, in particular the Small Business Corporation, attending? Would she be happy to accept a briefing from me on what occurred at the conference?

The Hon. BARBARA WIESE: As for the Small Business Corporation, very often the Director makes his own judg-

ments about conferences and whether or not he believes they will be of benefit to him. I would expect that, if he felt this was a conference he should attend, he would have made such arrangements, and I imagine he would have contacted me before doing so. I was aware of the conference in New South Wales. I was not in a position to attend that conference, but I do have three portfolios, and from time to time I must make judgments as to which conferences I can attend and which I cannot.

I attend some tourism conferences; I do not attend others. I attend some meetings relating to consumer affairs; I am not able to attend others. The same occurs with my small business portfolio. This applies to all Ministers in Government. We must make those judgments. The honourable member chooses to ignore those things and pursues this inane line of questioning in the small business area. Ultimately, the Government—

Members interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: —will be judged on its performance and, as I have indicated today and on previous occasions, the Government has taken many steps and enacted many measures that are to the benefit of small business in this State, and it will continue to do so. We do not need to attend conferences very often in order to know what is in the interests of small businesses. We prefer to speak directly with the people concerned and enact policies based on first-hand knowledge.

SCHOOL FIRES

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing the Minister of Education a question relating to school fires.

Leave granted.

The Hon. M.J. ELLIOTT: I refer the Minister to the destruction of a multi-storey wing of the Daws Road High School by fire on 7 November 1990. That fire took 12 classrooms out of service and the only work done since that fire has been to construct a roof over the building. No other restoration work has been done. From Government reports I understand that the Colonel Light Gardens area has been recommended for redevelopment and therefore increased student numbers are to be anticipated. People involved in the school community are wondering why it is taking so long to restore this wing and they want to know what the Government is up to—whether it has run out of money or whether it has something else planned.

My questions are: why have students of the Daws Road High School been disadvantaged by the failure to restore those classrooms to a standard suitable for use? When does the Government expect that these classrooms will be replaced? Have any of the other schools which have been damaged by fire since November 1990 been repaired sufficiently to allow reuse of the damged areas and, if so, which schools?

The Hon. ANNE LEVY: I will refer those questions to my colleague in another place and bring back a reply.

TRUANCY OFFICERS

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Minister representing the Minister of Education a question about truancy officers.

Leave granted.

The Hon. R.I. LUCAS: My office has been contacted by several people who are concerned about the apparent lack of resolve by the State Government in minimising truancy from school. Last August the Minister of Education announced a strategy aimed at combating this problem. Included in the package was a promise to appoint five more truancy officers—a significant increase in resources given there are only eight truancy officers to cover the entire State.

I note that in yesterday's *Advertiser* the Minister was quoted as saying that a new Education Department program aimed at truants would begin today; that is, Monday 18 November. It is interesting to note the Minister made no reference in that statement as to whether he would honour the promise—made with much fanfare last August—to appoint five extra truancy officers. Checks by my office with senior sources within the Education Department just a few days before the Minister's revelation that a 'new program aimed at truants would begin today', showed that no-one was aware of what had become of the promise to set up several pilot anti-truancy task forces in conjunction with other Government agencies. Neither were they aware of what had become of the Minister's promise to appoint five extra truancy officers, even though they were badly needed. In fact, one senior Education Department source remarked on how stretched existing staff were in meeting their obligations, with one truancy officer being responsible for around 130 schools. My questions to the Minister are:

1. Does the new Education Department program aimed at truants include the provision of five additional truancy officers and, if not, has he reneged on his promise outlined in the *Advertiser* in August of this year?

2. What action, if any, has the Minister taken to resolve the truancy problems highlighted by the Port Adelaide traders in the media during the past 48 hours?

The Hon. ANNE LEVY: I will refer those two questions to my colleague in another place and bring back a reply.

CHINESE INVESTMENT

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Attorney-General, representing the Premier, a question about Chinese investment in South Australia.

Leave granted.

The Hon. BERNICE PFITZNER: Recently, in response to a statement made by Mr L. Lee during the Marineland select committee that there was an investment ban by China on South Australia, the Premier put forward five investments in South Australia by China. Of the five investments only one was an investment by China in South Australia; the other four were investments by South Australia in China. Therefore, these examples do not refute Mr Lee's statement.

During private discussions with prominent Chinese businessmen, they stated that Mr Bannon is throwing a smokescreen over the whole Marineland fiasco. Definite guidelines need to be put in place and adhered to for investment by foreign and, for that matter, local investors. Further, the China International Trust Investment Group (CITIG), the trade arm of the Chinese Government, has invested in property in Melbourne, Sydney and Brisbane, involving approximately $100 million; in steel in Tasmania, involving $10 million; in aluminium in Portland, in Victoria, involving $100 million; and in paper recycling in Perth, involving approximately $10 million. South Australia does not appear to be on the agenda.

In addition, my recent invitation visit to China revealed a nation with vast investment opportunity and a political

will to encourage foreign investment. Before leaving for China I tried to obtain information as to the kinds of investment South Australia might be interested in so as to target my inspections. However, I was told by the State Development section that the best person to ask was Mr Dean Brown, a former Liberal member of Parliament. When contacting the Department of Industry, Trade and Technology, I was told that there was no China desk. My questions are as follows:

1. Does the Premier believe that the Marineland fiasco is not affecting Chinese investment in South Australia?

2. Other than the Shandong contract, are there any other Chinese investments in South Australia—as distinct from South Australian investments in China?

3. Will the Premier set up a China desk in the State Development section or other relevant department to facilitate communication with a country with vast untapped trade potential?

The Hon. C.J. SUMNER: I did not raise a point of order in relation to this question but, as I understand it, it is a matter currently before a select committee of the Parliament. Nevertheless, I will refer the honourable member's question to the Premier and see—

The PRESIDENT: Did the Attorney raise a point of order?

The Hon. C.J. SUMNER: No, I did not. The point is that it is a matter currently before a select committee.

The PRESIDENT: I looked at that and, for the Attorney-General's information, although we may not discuss the proceedings of the committee, it went public on this particular issue, so I let the question run.

The Hon. C.J. SUMNER: I know you did—the question was asked.

The PRESIDENT: That is why.

The Hon. C.J. SUMNER: I am not being critical; I did not raise a point of order, either. I was just saying I think it is possible that this matter is being dealt with by the select committee, although I am not aware of the extent to which the committee is going into this particular matter. Nevertheless, it was a matter raised in evidence before the select committee. So, potentially, there was a point of order in the matter. However, I did not take it, I merely raised it to say that it may be an issue upon which the Premier declines to answer because it is before a select committee. That is the point that I am making about the point of order. However, I did not raise the point of order to stop the explanation being made or the question being asked. I said it was a possible point of order because the matter is being dealt with by a select committee. However, I will refer the questions to the Premier to see whether he feels it is appropriate to reply at this stage.

SOUTH AUSTRALIAN CRICKET ASSOCIATION

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Attorney-General a question about Crown Law opinion on a recent by-law passed by the South Australian Cricket Association.

Leave granted.

The Hon. I. GILFILLAN: I have raised the issue of tobacco sponsorship of district cricket in this place before, in particular on 17 October this year when I asked a question. District cricket in South Australia is being funded largely through tobacco money. In fact, according to the South Australian Cricket Association (SACA), 60 per cent of total expenditure in district cricket comes from the Benson and Hedges company.

Earlier this year Foundation South Australia made an offer of $1.5 million to all 12 district clubs to replace tobacco money and actively promote an anti-smoking/pro-health message. Only East Torrens has taken up the offer, in line with its policy of the past 10 years not to use any tobacco funds and to carry a strong anti-smoking campaign. At the time of the foundation offer, at least four other clubs indicated willingness to take the offer.

However, shortly after that offer was made, the SACA grounds and finance committee passed a by-law which threatened any club with suspension from the competition if it accepted sponsorship from any source which held interests contrary to its major sponsor, Benson and Hedges. As a result, 11 of the 12 district clubs felt compelled to reject the foundation offer and stay reluctantly with tobacco money, rather than face the prospect of suspension.

An honourable member interjecting:

The Hon. I. GILFILLAN: No strings attached! The string attached was that the club would be suspended—they could not play cricket. I believe the SACA by-law contravenes the Tobacco Products Control Act because it prevents Foundation South Australia from fulfilling its role, as determined by the Act. Sports and Recreation Minister (Kym Mayes) gave me a personal undertaking in October to seek Crown Law advice for an opinion as to whether the SACA's action was in breach of the intention of the Tobacco Products Control Act. I have been assured that the Attorney-General has been asked to provide such advice, awaited eagerly, I am told, today by both the Minister of Recreation and Sport and the Minister of Health.

The future funding of cricket in this State hinges on the outcome of that opinion, and weeks have now passed with no indication as to when that opinion will be forthcoming. I ask the Attorney: does he have Crown law opinion on the matter and, if so, what is it? If not, will the Attorney undertake to ensure that Crown law opinion is presented to the Minister of Recreation and Sport and the Minister of Health, both of whom are eagerly awaiting it, at the earliest opportunity and as a matter of urgency?

The Hon. C.J. SUMNER: I do not know a thing about this matter personally. I will have inquiries made and prepare a reply for the honourable member.

COMMUNITY SERVICE ORDERS

The Hon. J.C. IRWIN: I seek leave to make a brief explanation before asking the Minister representing the Minister of Correctional Services a question about community service orders.

Leave granted.

The Hon. J.C. IRWIN: My explanation concerns an invalid pensioner, Mr Charles Tarling, who was asked by the Department of Correctional Services to give a person who was given a community service order, and I will refrain from naming that person, the opportunity to serve some of his order building a fence on Mr Tarling's property in the Paralowie area. Mr Tarling is confined to the house 24 hours a day looking after his wife. The Department of Correctional Services assured Mr Tarling that a certain person was suitable for the job and the person had a 240 hour community service order for nine counts of fraudulent conversion, with a suspended sentence.

Eventually, the person turned up to speak to Mr Tarling about the fence he was to build. He gave assurances that he was competent enough to do the job and that he was a registered fencing contractor. The person measured the fence and came to the same figure as my constituent in relation

to the amount of material needed to do the job. He told Mr Tarling he could get the material for the fence from Stratco, as he had an account there, and Mr Tarling unfortunately gave the man $750 for the materials.

The man brought back about a quarter of the required material which was of a substandard nature. He later had two mates help him with the job. He stayed for a short time, but left and was not seen again; nor was the remainder of the $750 that was given to the person to purchase the material.

Mr Ian Fiddian of the Fencing Industry Association arranged for the President of that association to inspect the job and report on it. The report is certainly not favourable but, briefly, some of the points in the report include the following:

Posts: Used original posts with badly welded extension on top. Not correctly spaced.

Rails: Second-hand rails used. 'G' rails were painted and full of holes.

Gate frames: Second-hand 50 mm tube. Rusty and shoddily welded. Note: Tied on with wire, etc.

Conclusion: The fence must be totally removed and reinstalled properly.

Mr Fiddian also states in his letter:

We believe several considerations arise from this matter. First, it would seem that, in a State Government environment in which any other person building fences where money changes hands must be licensed under the Building Licensing Act, we have a State agency deliberately promoting or at least authorising an unlicensed and hence illegal activity.

I have been dealing with this matter involving Mr Tarling since early in July this year and, as of today, the fence has not been completed. My questions are:

1. What supervision is expected of persons carrying out community service orders?

2. Why does the community service order scheme allow Mr Tarling, or anyone else being helped by community service orders, to hand over cash to a person on a community service order without any advice from the department?

3. Why was the person serving the community service order allowed to send two of his mates to help him with the work?

4. Will the department make good the mess now around Mr Tarling's house?

5. Is it normal practice for those on community service orders to do the job, in this case erecting a fence, without an appropriate licence?

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

DAIRY INDUSTRY

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister representing the Minister of Agriculture a question about the Australian dairy industry inquiry.

Leave granted.

The Hon. J.C. BURDETT: I refer to a letter which I think all members will have received from the South Australian Dairyfarmers Association Inc. Dated 12 November, it states:

As the dairy farmer representative body in South Australia, SADA wishes to register its grave concern at the possible implications that the industry Commission Report on the Australian Dairy Industry may have in this State. Although it can be held that the assertions of the Industry Commission Report are irresponsible, we must accept the process of these recommendations being reported to the Treasurer in accordance with section 7 of the Industry Commission Act, 1989.

The Industry Commission, while recognising Australia's status as a low-cost dairy producer by world standards has, nevertheless, made recommendations which would see the demise of the dairy industry. Recommendations that would result in a contraction of the industry, loss of jobs, loss of competitiveness in world markets, and quite probably, a cost to Australian consumers in both price and supply of dairy foods. Given Australia's current economic status how can this even be considered?

How can we afford to threaten an industry that is economically efficient, has an annual turnover of more than $4 500 million, directly employs 50 000 Australians and earns in excess of $750 million in exports each year. Isn't it enough that the Australian dairy industry already has to compete internationally with the unreasonable and unfair trading practices resulting from the northern hemisphere's extensive agricultural support measures?

If the recommendations of the Industry Commission are adopted then the ramifications for this State are enormous—dairyfarmers forced off their farms, loss of jobs within the industry and within associated industries, and a carryover to the whole commerical framework of our State which is already suffering heavily from the effects of the recession. The dairy industry has united to develop a plan—

and this is important—

to take it into the next century. A plan which will need Government support if the industry is to survive, both nationally and within this region, and a plan that considers the 'human element' as much as economic rationale.

That is as much as I intend to quote. I would add that it has appeared in the media that the adoption of the report would result in the loss of 6 000 jobs. My questions are:

1. Will the Minister make representations to his Federal counterpart that the recommendations be not implemented?

2. Will the Minister encourage support for investigation of the industry plan with a view to implementation?

The Hon. BARBARA WIESE: I will refer the honourable member's questions to my colleague in another place and bring back a reply.

MOTOR VEHICLE REGISTRATION

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister representing the Minister of Transport a question about the federal interstate registration scheme.

Leave granted.

The Hon. PETER DUNN: I have been contacted by some road train operators, and I think that is important, because it appears that under this federal scheme registrations are about to rise rather dramatically. These road train operators were told 12 months ago that rather large increases in the registration of their vehicles would commence at the end of this year or early next year.

These rises would be in stages. They have some idea what stage 1 will be and very little idea what stage 2 will be. The operators, as members would appreciate, need to budget for their requirements such as for new vehicles, maintenance, and for registration fees in particular. The rises are dramatic and, in fact, it appears that a road train registration will go from some $3 500 at the moment to $23 000. If that figure is multiplied by the number of road trains, that is a very high figure, and the increase would thus restrict their budget.

ROAD TRAFFIC (SAFETY HELMET EXEMPTION) AMENDMENT BILL

Second reading.

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I move:

That this Bill be now read a second time.

The purpose of this Bill is to amend the Road Traffic Act 1961, to provide for certain exemptions from the wearing of safety helmets on pedal cycles by members of the Sikh religion. Although no provision was included in the legislation to provide for exemptions, the legislation does contain a defence provision whereby a defendant is required to prove that there were in the circumstances of the case special reasons justifying non-compliance with the legislation. However, it has become evident now that the legislation has been in operation for a short time, that a specific exemption is required.

The reason why the Sikhs want an exemption is entirely based on their religious requirement that a turban must be worn at all times and must not be covered. Although in theory all members of the Sikh community are affected, in reality it is primarily the male children of that community who would ride pedal cycles. While any exemption to this road safety strategy will dilute its total effectiveness, this has to be viewed in the broader perspective of public acceptance of the law. Providing exemptions to members of the Sikh community should be seen as Government acknowledgment of the rights of religious freedom. 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 amends section 162c of the principal Act. Section 162c makes it an offence for a person to ride or ride on a motor cycle or pedal cycle (or any attached vehicle) unless they are wearing a safety helmet that complies with the regulations and is properly adjusted and securely fastened. It is also an offence to carry a child on a cycle (or any attached vehicle) unless the child is wearing such a helmet. In addition a parent (or other person having custody or care of a child) must not cause or permit a child to ride or be carried on a cycle (or any attached vehicle) unless the child is wearing such a helmet. It is a defence for the defendant to prove that there were special reasons justifying non-compliance with the section. The Governor can prescribe safety helmet specifications. This clause amends section 162c to add a subsection that exempts a person of the Sikh religion who is wearing a turban from the requirements of the section in relation to the use of pedal cycles.

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

STATUTES AMENDMENT (WATERWORKS AND SEWERAGE) BILL

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

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I move:

That this Bill be now read a second time.

The purpose of this Bill is to validate the water and sewerage notices which were published in the *Government Gazette* of 11 July this year. This action arises out of a recent Supreme Court decision declaring the water rates notices to be invalid. It is stressed that the problem does not arise out of any legal defect in the Waterworks (Rating) Amendment Act 1991, which was passed earlier this year. I emphasise this point, because it would appear that some concern still exists in the community in relation to the Government's right to set a rate for water already consumed.

The legal problem that has arisen stems from a long standing practice within the Engineering and Water Supply Department. Notices relating to water and sewerage rates have traditionally been published after 1 July each year, and this practice was continued after the passage of the new Act. However, the Supreme Court has now determined that the legislation does not allow for this practice to continue and, as a consequence, it has become necessary to further amend the Act.

The court's decision is of major significance to the State, because there is presently no authority to recover any charges for the water and sewerage services provided during this financial year. The potential loss of revenue to the Engineering and Water Supply Department is of the order of $220 million in water rates alone. It would be irresponsible for anyone to suggest that those rates should not be made payable. I am sure most members of the community would not wish to take advantage of this legal technicality in order to avoid paying quite legitimate charges for their water and sewerage services. The current situation is clearly untenable and needs to be rectified as soon as possible.

Ever since the water rating legislation was passed, Opposition members have argued that it was legally defective. The legislation has now been tested at law and, whilst the gazettal procedure has been found wanting, the legislation has been demonstrated to be fundamentally sound. It is now vitally important to rectify the gazettal procedure, so that the Engineering and Water Supply Department can continue to recover payment for services which it provides to the community. This Parliament has already passed legislation setting out the basis on which charges should be levied, and the Bill which I now introduce will give proper effect to that decision. I commend this Bill to the Council. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clauses 1 and 2 are formal.

Clause 3 amends the Waterworks Act 1932. Paragraph *(a)* brings section 65d into conformity with section 65c by requiring a notice to apply in respect of a specified financial year. This will enable the timing provision to apply to this notice. Paragraph *(b)* removes the power to vary the water allocation at any time. This power is no longer appropriate. Paragraph *(c)* inserts new section 68 which requires that notices fixing rates on residential land must be published on or before 7 December in the preceding year and that rates on non residential land must be fixed by the end of July in the financial year. Paragraph *(d)* provides that where base rates are fixed after 1 July they do not become payable on 1 July but on the date on which they are fixed. Paragraph *(e)* inserts a schedule that validates the notices published on 11 July 1991 and the rate notices sent to individual ratepayers under section 87 of the Act. The schedule makes it clear that it is Parliament's intention that the notices declared to be invalid by the Court will be taken to be valid. This provision is made retrospective to 1 July 1991 to be quite sure that the notices of 11 July will operate from the beginning of the financial year.

Clause 4 amends the Sewerage Act 1929. Paragraphs *(a)*, *(c)* and *(d)* make amendments designed to facilitate the provision as to timing of notices set out in new section 76. Clause *(e)* inserts new section 76 to provide that scales for sewerage rates and minimum sewerage rates may be fixed

at any time up to the end of July in the financial year to which they apply. Paragraph *(b)* amends section 73 (2) which at the moment provides that the capital value of land in force under the Valuation of Land Act, 1971 on the 1st of July preceding publication of the notice under section 73 (1) must be used for calculating rates. If the notice is published on the 1st of July this would require a valuation that was a year out of date to be used. The new wording provides that the valuation in force on the 1st of July of the year to which the rates relate will be used. It is made retrospective to 1 July 1991 to avoid any problem in the current rating year. Paragraphs *(f)* and *(g)* correspond to paragraphs *(d)* and *(e)* of clause 3.

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

PRIVACY BILL

Adjourned debate on second reading.
(Continued from 14 November. Page 1917.)

The Hon. K.T. GRIFFIN: The Government's Privacy Bill must be rejected. It is wide-ranging in its scope, dramatic in its potential consequences and not amendable. If passed, the Bill will be a significant impediment to investigative journalism and reporting. It will prevent much of the questioning in public and in private by members of Parliament in representing their electors. It will act as an instrument of suppression. It will adversely affect the opportunities for conservation groups to investigate those with interests opposed to the conservation of the environment. It will create significant potential for litigation. It will prejudice operations of employer groups such as the Engineering Employers Association, the Retail Traders and the Chamber of Commerce and Industry.

The Bill will outlaw checks on agents and potential agents as indicated by the Life Insurance Federation of Australia. It will create major problems for business by placing severe limitations on their ability to check on customers and potential customers to ensure they honour contractual obligations. The Bill will put obstacles in the way of historical and biographical research. Also, it will intrude into human relations to a totally unacceptable level.

Whilst being sensitive to the views of groups like the Victims of Crime Service, the Opposition sees no alternative but for the Parliament to tell the Government what the public thinks of the Bill—it is unworkable and risky and ought to be rejected. What started out as a frolic by the member for Hartley, Mr Groom, is now an embarrassing frolic of the Government.

Among the areas of concern which have come to the Opposition's attention are the following:

1. If South Australia alone passes restrictive legislation, undoubtedly there will be difficulty with material published interstate and constituting an intrusion into privacy also being published in South Australia, even if only by the newspaper being available in South Australia or the television program being shown here. If there is a concern about intrusions into privacy, they have to be addressed at a national level.

2. The responsibilities of members of Parliament could be compromised. Where a constituent seeks assistance from a member of Parliament and the member of Parliament undertakes research into the activities of another person about whom the constituent may have sought assistance, the member of Parliament would be committing an intrusion into privacy. In many instances the inquiries would not be in the public interest because the MP's research would be related to the inquiries of a particular constituent and not necessarily on behalf of the wider community.

3. Much of the work of members of Parliament separately or collectively involves 'keeping records of (another's) personal or business affairs'. Frequently this is necessary to build up a picture of an individual or organisation or issue before the matter is raised either in the Parliament or otherwise publicly. Examples of abuse under WorkCover, the shareholdings of Mr David Simmons or Mr T. Marcus Clark or Mr V. Kean or their directorships, and statements they are believed to have made on particular issues as well as research into bodies like State Bank and Pegasus, will be in breach of the Bill. The intrusion may not be able to be established as justified in the public interest in the early stages and, at least in the case of persons or bodies other than media organisations, an injunction could be sought to prevent the keeping of the information.

4. Recording comments made by persons on television and radio and keeping newspaper clippings could fall foul of the Bill.

5. The use of leaked documents by an Opposition or other member of Parliament will be in breach because the Opposition or other MP may have obtained confidential information as to another person's personal or business affairs.

6. The publication of visual images of another person when it is substantial and unreasonable in the circumstances of the case is an intrusion into privacy unless the person whose image is published has given express or implied consent. Under our law, except in specific identified cases, a minor does not have the capacity to consent, and this will mean no visual images of a minor can be published in circumstances where there would be an intrusion into that minor's privacy even if the minor says it is in order.

7. For years the names of victims of crime or accidents have been published generally after the relatives have been notified. There is a strong argument that this information will not be able to be published in the future.

8. Similarly, the criminal records of persons will not be able to be published if unrelated to an appearance in court.

9. The limited right of a commercial organisation or a person to carry out reasonable inquiries into the credit worthiness of a customer or potential customer will not allow such inquiries by, for example, life insurance organisations in assessing the worthiness of an applicant for appointment as an insurance agent or the monitoring of an agent for the purpose of managing the agents.

10. Surveillance in the workplace, time and motion type studies and monitoring work practices by an employer are all issues of concern to employer associations as activities likely to be prevented by the Bill.

11. The use of video surveillance of shoppers by retailers is a concern of retail traders because they assess that it is an intrusion into a person's privacy under the Bill.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: The Attorney-General interjects and asks whether I believe in this. I am outlining the concerns which have been raised in relation to the Bill.

The Hon. C.J. Sumner: They are not justified.

The Hon. K.T. GRIFFIN: They are justified. The scope of the Bill is broad. Clause 3 (1) establishes a new right of privacy and clause 4 (1) provides that the infringement of a right of privacy is actionable in tort. A new tort is born. The key clause relating to infringements is 3 (2). It provides:

A person infringes the right of privacy of another if (and only if)—

(a) that person, without the express or implied permission, of the other person—

(i) intentionally intrudes on the other's personal or business affairs in any of the following ways:

(A) by keeping the other under observation (either clandestinely or openly);

(B) by listening (either clandestinely or openly) to conversations to which the other is a party;

(C) by intercepting communications to which the other is a party;

(D) by recording acts, images or words of the other;

(E) by examining or making copies of private correspondence or records, or confidential business correspondence or records, of the other;

(F) by obtaining confidential information as to the other's personal or business affairs;

(G) by keeping records of the other's personal or business affairs;

(H) by publishing—

- information about the other's personal or business affairs;
- visual images of the other;
- words spoken by or sounds produced by the other;
- private correspondence to which the other is a party, or extracts from such correspondence;

(ii) the intrusion is, in the circumstances of the case, substantial and unreasonable;

and

(iii) the intrusion is not justified in the public interest:

Many of these are ordinary, everyday activities but in the context of this Privacy Bill they assume more sinister characteristics. I will look at these separately later.

The intrusion has to be substantial and unreasonable, but there is no guide as to what that may mean, and the intrusion must not be justified in the public interest. There are defences available in relation to these infringements, but I will deal with these later. It is interesting to note that, in relation to the last characteristic—that the intrusion must not be justified in the public interest—that results from amendments made to the Bill by the Government in the House of Assembly following concern about that issue being a defence rather than a matter of initial proof by a plaintiff or complainant.

I think it is appropriate to make some general observations on the concept of privacy. The Bill attempts not to define 'privacy' but only to identify intrusions into privacy. It may be that that is the only way that the concept can be identified. If one should endeavour to define in legal terms, or at all, the right of privacy, the lid of Pandora's box is likely to be lifted.

Lawyers, bush lawyers and many others will argue about the limits of a written definition. It happened with the debate on the Federal Bill of Rights and it will happen in relation to privacy and any other piece of legislation which seeks to describe and control human behaviour, relationships and rights.

The debate in the Federal referendum on the Bill of Rights several years ago reflected this. It was extensive and controversial. Having sought to enshrine certain rights or freedoms in a piece of legislation, the argument used quite powerfully against it was that the right was thereby limited rather than protected. Such will almost always be the case when rights or freedoms are sought to be defined.

Privacy in our age is a difficult concept to describe. The Federal Law Reform Commission in its 1983 report made this reference to privacy:

Privacy claims involve a number of aspects:

- that the person or the individual should be respected, that is, it should not be interfered with without consent;
- that the individual should be able to exercise a measure of control over relationships with others; this means that a person should be able to exert an appropriate measure of control on the extent to which his correspondence, communications and activities are available to others in the community; and he should be able to control the extent to which information about him is available to others in the community; . . .

Any claim by an individual to preserve his own integrity by ensuring respect for his privacy must be considered against similar, equally justified claims by other individuals. It must also be considered against the need to help society at large in its efforts to improve the lot of individuals within it by ensuring the efficient running of Government, industry, commerce, professional activity and research. None of these can be completely ignored. Privacy is but one of a number of human rights. Privacy protection should not ignore other legitimate interests.

There is, then, on the basis of what the Federal Law Reform Commission said in 1983, always to be a balance. As much as some may want to be, no person is an island living in isolation from the rest of the community. The difficulty is to identify what is a proper balance and the means to achieve that balance.

One should really start from the point that any right of privacy should be construed in favour of the citizen against the State. The citizen's interests generally should be put above those of the State; liberty and civil rights should be afforded priority. However, that is not absolute. In our society there are many areas in which privacy is protected or infringements are permitted. In relation to defamation, for example, one's privacy may be intruded upon, and an action for damages may lie for such intrusion. In South Australia, the person intruding on that privacy may have a defence. The statement that is defamatory may be true, so any attempt to protect privacy or take action for damages for breach of that right may fail in those circumstances. I should note that, in relation to this, in Queensland, Victoria and New South Wales there are proposals to amend that significantly. They are proposals which, I understand, are due to be introduced into those Parliaments in the not too distant future relating to defences for defamatory statements.

The common law of nuisance, noise control legislation, trespass, the Summary Offences Act—particularly in relation to squatters on property—the Fair Trading Act in relation to credit reporting, and the Commercial and Private Inquiry Agents Act all relate, in effect, to aspects of privacy. Telephone interception—or telephone tapping—or eavesdropping with a listening device is an infringement of privacy, but the State and Federal legislation under which such interception or eavesdropping may occur seems to balance the rights of the citizen against the rights of the community, particularly where criminal activity is suspected.

There are a number of persons or bodies from whom one can seek redress of official wrongs, some of which may be breaches of privacy. For example, the State and Federal Ombudsmen and the Police Complaints Authority at the State level are agencies which have wide powers including action to deal with breaches of privacy. The South Australian Fair Trading Act, in respect of fair credit reports, provides a regime of protection against some aspects of breach of privacy, although the Commonwealth Government got into the Act recently by amending its own Privacy Act. Privacy or civil liberty questions provoke debate and controversy. The debate about the Australia Card will, I think, be remembered by all members, and now there is a growing debate about the tax file number scheme and the extent to which that intrudes upon individual privacy, an extent which many would assess to be unreasonable.

The most recent amendments to the Federal Privacy Act were controversial. The Federal Privacy Act sought to deal initially with the privacy obligations of Federal Govern-

ments and agencies but subsequently was expanded to deal with issues of fair credit reporting, so it moved into the private sector and away from its original area, namely, Federal Governmental acts and omissions.

The most recent amendments to the Federal Privacy Act were controversial, and seemed to be promoted by one Federal Government Minister and opposed by a wide range of community opinion. In many cases it was almost as though the providers of goods and services were all ogres while those who sought improperly (even fraudulently) to manipulate the acquisition or use of goods and services or to not pay for them were to be regarded as something akin to angels. In this context, I think many of us hold a fairly simple view that, if individuals or other bodies seek to acquire goods and services and not pay for them in cash or if they seek to borrow money or otherwise seek a reciprocal advantage from the suppliers to other persons, they must expect that they will have to surrender, to an appropriate and not unreasonable extent, some of their privacy, particularly in relation to credit-worthiness and record of debt repayment in order to acquire the goods and services.

At the State level there has not been any call for State privacy legislation. It seems to have come into the mind of the member for Hartley, Mr Groom, that it would be a good thing to have the right of privacy protected. At the State level in the early 1970s, the then Dunstan Government introduced legislation for privacy protection, but it was not proceeded with after a great deal of controversy erupted over it. The current Bill is a reflection of that 1970's Bill in many respects and, as every member will know, has itself caused a great deal of concern. I suggest that it will have wide-ranging ramifications for the press and the business community as well as for individuals.

It is true that in the House of Assembly select committee evidence of a specific nature was given by families of victims of crime about what they claim to be reports which constitute an invasion of their privacy. This Bill will not address many of those complaints relating to private grief. The Liberal Party is concerned that families should not have their grief intruded upon, and that their grief should not be aggravated by outside influences. But the difficulty, I suggest, is how to address that by specific legislation or action without its having wide-ranging consequences. For example, the reporting of an event or incident in which a person died may be enough to cause a family grief. The reporting of an inquest may also do so. The reporting of the name of a road accident victim, the name of the victim of a workplace accident or the names of victims of natural disasters, similarly, may intrude. But, I suggest that this is a classic dilemma for the media to respect personal privacy on the one hand—which I suggest in most cases they do—or to report the event or incident and later the names of those involved. Such an issue is not capable of easy resolution by the law. I would suggest that, in many instances, it comes down to common sense.

While the Bill has wide ramifications for the whole community, the public focus has largely been on the rights of the press to report freely. We can spend a lot of time debating this issue, but all I want to do is say that, in a democratic society, it is critical that there be a free press, and that freedom to speak one's views publicly—subject to the laws of defamation—ought to be a right we fight vigorously to preserve. A press free to report, to criticise, and to expose is critical to a democratic society where the established institutions of Government may be self-serving and unwilling to act responsibly. While the power of the press is enormous, mostly it acts responsibly. It does help to keep Governments and other bodies and persons honest and to expose corruption in the community.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: Well, it must act responsibly, but responsibility is not something that can be legislated for: rather, I suggest that it is a reflection of community values. And now, in response to the Attorney-General's interjection I would suggest that, if one counted up the number of stories that were available to the media and which were prepared as stories, and those which were ultimately reported, one would find that there were not a large number of them. In fact, it is a very small number of the total where one might say that there is a responsibility, and in many instances it is a matter of judgment as to whether there has been irresponsibility. What to one person might be irresponsible might, to another, be perfectly responsible.

The Liberal Party has considered a number of those issues and I think it is appropriate that, in the context of the Bill, I outline the matters on which it took a position. First, the obvious one is that the Liberal Party agreed that the Bill, as introduced, be opposed, but then the Liberal Party expressed concern at lapses by the media from time to time where reporting was beyond normally accepted ethical standards. It noted that any attempt at the State level to legislate to impose standards on the media will not be workable, even if desirable, if they are not uniform across Australia.

It questioned the legal capacity of the State to legislate for ethical standards to be imposed on the electronic media, which is subject to Federal law. It noted the proposal of the South Australian branch of the Australian Journalists Association to have its Federal rules amended to provide for at least two lay persons on the branch's judicial ethics committee, and encouraged the branch to develop and adopt the proposal so that the public could have confidence that the committee would deal effectively with journalists who transgress ethical standards.

The AJA was encouraged to ensure that the lay persons are men and women respected within the South Australian community and that provision may be made for publication of findings. If the publication of findings is shown to be prevented by defamation law, we indicated that we would be prepared to consider any proposals for change. The Liberal Party recognised that for journalists to put their house in order dealt with only part of the issue. There are many in the media—the editors and owners—who are not members of the Australian Journalists Association, and the question is how to require them to act responsibly.

The Press Council relating to print media ought to be strengthened to ensure that it fulfils its role effectively, and the Australian Broadcasting Tribunal in relation to electronic media ought to ensure that standards are met but that reporting is not stifled. These are issues that we indicated we would be discussing with our Federal colleagues.

We also expressed the view that, if the Privacy Bill were allowed to pass through Parliament, rights would be restricted rather than strengthened and extensive litigation would ensue. We also recommended that representatives of the press consult with victims of crime through the Victims of Crime Service to endeavour to develop an understanding of the sensitivities of victims and their families, and that the Victims of Crime Service and the victims should be involved in presenting a view to trainee journalists as part of their course, just as they (that is, the Victims of Crime Service and victims) are involved in presenting views to police trainees. That latter proposition has proved to be of considerable value in relation to police training and would also be of similar value in the training of journalists.

It is now appropriate for me to refer to a number of the submissions which the Liberal Party has received on the Privacy Bill and the Government's amendments. I will not quote them in full, but certain extracts need to be put on the record. Nor will I refer to all the submissions. A number of submissions were made to the select committee of the House of Assembly and are now on the public record, and some were referred to in the committee's report, although they were all identified in the appendix to that report. I have endeavoured to extract those parts of the submissions which give a fair representation of the views of the various bodies which have written to me. First, I quote from correspondence from the Country Press Association, as follows:

The Country Press Association is seeking your assistance to totally oppose the Privacy Bill. The State Government's amendments do nothing to address one of the fundamental problems that a journalist can still find himself/herself having to prove 'public interest' under litigation.

The Hon. C.J. Sumner: What about the code of ethics point?

The Hon. K.T. GRIFFIN: That was not in the letter from the Country Press Association.

The Hon. C.J. Sumner: Maybe it wasn't. What I am saying is that the Country Press Association totally ignores the point that, if they are acting within their code of ethics, they are not touched by the privacy law.

The Hon. K.T. GRIFFIN: I am reading extracts from the various pieces of correspondence received by me. The Retail Traders Association made a submission to the select committee and made a further submission following the amendments announced by the Attorney-General prior to the Bill's being debated in the House of Assembly. That association states:

The proposed amendments have, in one respect, made a minor potential improvement to the Bill as it may affect the retail industry. However, the amendments do not go far enough in that they do not address the fundamental concerns raised by the RTA in its March 1991 submission, in evidence to the select committee in April 1991 and in the RTA supplementary submission of September 1991.

Notwithstanding this minor potential improvement, the Bill fails to adequately protect the legitimate business activities of retailers in deterring and detecting criminal activities in and around shops because it does not expressly exclude such activity from the right of privacy. The retail traders regard it as 'discriminatory for media organisations to be excluded from the remedy of injunctive relief but for other businesses to be subject to this remedy'.

The Law Society presented a fairly extensive submission dealing with the right of privacy and the defamation law but, in relation to this Bill as amended, it stated:

The Law Society remains of the view that the present Act is unnecessary as sufficient safeguards for protection of the interests of members of the public exist by way of existing procedures for breach of peace complaints, restraining orders and the common law of nuisance. Further protection is granted by statutory control of use of telephones and other electronic media and fair credit reporting Acts and the control of investigation agents.

The Law Society is also of the view that the Bill will encourage litigation by granting the extensive right of privacy contained in the Bill. Litigation will be available between members of the public, neighbours and competitors in business with far-reaching consequences many of which, in our opinion, are undesirable.

The Australian Journalists Association, which has been quite active in its representations on the Bill, has made a further submission and issued a press release. It states as follows:

After careful examination, the Anti-Secrecy Committee of the South Australian Branch of the AJA rejects the Government's amendments to the Privacy Bill. They do nothing to address the committee's fundamental opposition to the creation of a tort of privacy which impacts on the free press. The media will still find itself in court fighting unnecessary litigation. Putting the onus of proof on the plaintiff . . . that is, to prove that a report is not in the public interest . . . still requires the media's legal counsel to put up a counter argument that it is.

The committee is sceptical of an amendment which talks of safeguarding the free media and its dissemination of information. This is a far cry from enshrining freedom of speech as an inalienable right *vis-a-vis* the American Constitution. This noble-sounding amendment will not bind our courts in any way, as judges have the discretion to give it whatever weight they see fit. If the past is anything to go by, they will not give it much weight at all.

The Victims of Crime Service supports the Bill. In a letter to the Attorney-General, a copy of which was sent to me, the Executive Director, in reporting on a decision of the Victims of Crime Service Council, states:

As a direct result of our continued contact with victims of crime we are aware that the print and electronic media often intrude on their privacy, particularly that pertaining to their grief, in ways that are indefensible and damaging to the victim's recovery from trauma. We therefore particularly applaud the clauses of the Privacy Bill which relate to the accountability of the media, and consider that the 'in the public interest' clause is sufficient to encourage and allow high quality investigative journalism.

VOCS Council has also asked me to specifically state that we consider the Australian Journalists Association and its code of ethics to be a 'toothless tiger' and that the suggestion that the AJA Ethics Committee should include representatives of the community at large, and perhaps victims of crime in particular, is to be applauded.

So, quite obviously, with a direct interest in one aspect of the Bill, the Victims of Crime Service takes the view that the Bill should be supported. However, as I said earlier, in relation to some complaints made by the relatives of victims of crime to the select committee on this Bill, there are matters which would not be altered by the operation of the legislation.

The Life Insurance Federation also made a submission to the select committee and subsequently wrote in relation to the amendments as follows:

We do not have any particular concerns with the proposed amendments. However, it is disappointing that clause 3 (4) *(b)* has not been amended as we proposed in our letter of 4 October to the Attorney-General (and to yourself).

We re-iterate our view that insurers should have access to credit files held by credit reporting agencies for underwriting and claims management purposes. In this regard, we believe the additional words for the investigation of claims, after 'fraud' in clause 3 (4) *(b)* (page 2, line 31) is an essential amendment to the Bill. We also raised a number of practical issues in relation to the application of clause 3 (4) *(c)* and are also disappointed that these very genuine concerns have not been addressed.

Clause 3 (4) *(b)* provides that a right of privacy is not infringed by anything reasonably done by an insurer or other commercial organisation, or a person acting on behalf of an insurer or other commercial organisation for the detection of fraud. The concern is that the reference to 'detection of fraud' does not allow the investigation of claims or allow access to credit data to check on claimants before policies are written or claims made.

Clause 3 (4) *(c)* allows a commercial organisation to carry out reasonable inquiries into 'credit worthiness' of a customer or potential customer and LIFA is concerned that this does not allow it to have information about a person applying to be appointed as a life insurance agent or a person who is already conducting such agency business.

The Engineering Employers Association also made a submission to the select committee, and it, too, has written in relation to the amendments as follows:

They do not seem to address any of the issues raised in our submission to the committee, and expanded upon in our letter to you dated 20 September. Our concerns about the potential for breach in all the traditional visual management practices in industry, and the maintenance of employee records remain. It would appear that an aggrieved employee, or one involved in industrial disputation could seek redress by claiming an infringement of privacy, and a court would have to determine whether the infringement was 'reasonably incidental to the protection of lawful interests'. We would therefore maintain our position that the open-ended approach of the Bill renders it conceptually flawed and reiterate our belief that it should be scrapped altogether.

The South Australian Employers Federation expressed 'continuing concerns relative to the impact of this Bill'. The Australian Library and Information Association also commented on the amendments. It raised a concern about the extent to which information may be available for access to researchers, whether it be biographical or other information, and whether giving access to the documents, papers and records that may be held by libraries and other agencies, such as the Archives, might in itself be a breach of the provisions of the Bill. However, in relation to the amendments, the association states:

We wish to express a concern with the treatment of public interest in the proposed amendments. The onus of proof of public interest should rest with the defendant in any action for breach of privacy. It would be extremely retrograde if, as reported in the media, the onus will be on the complainant to prove that the breach is not in the public interest, since it would be difficult for ordinary people to prove and would deter action.

We also query the looseness of the new clause 4, page 3, line 7, paragraph *(b)*. Why not state 'in accordance with the Code of Ethics of the Australian Jounalists Association', rather than leave it so open? We are concerned that the amendments not remove protection against the media.

Further to our submission to the select committee, are we to assume that libraries can successfully argue public interest as a defence or can there be a further exemption for material which genuinely forms part of an archival collection in a libary?

In the summary of its position forwarded with the above response the association raises concerns about newspaper collections in libraries where a newspaper has breached privacy and asks: 'Would it then be an offence for a library to display or lend a newspaper which carries the offence?'

It is interesting to note that apparently the Crown Solicitor has given a ruling to the association that the collection, display and loan of newspapers carrying suppressed material is illegal in libraries. The association states:

Our concern is that this will also apply in the case of newspapers bearing material which breaches privacy.

The Australian Library and Information Association also raised the issue of availability of newspaper text through full text data bases, which can be searched on-line. It states:

The Attorney-General advised that the suppression [relating to suppression orders in the courts under the Evidence Act] applies to information in electronic form and that libraries should not provide access to it. It is not possible to block out items from the data bases, especially if interstate, and it is difficult to see how it could be controlled in the library at the user end.

The association continues to raise concern about the meaning of 'public interest' and whether under the amendment, library archival collections, material published in newspapers and other donated historical material are always available in the public interest, or whether a specific amendment is required to deal with this issue. I suggest that the issue is not addressed adequately in the amendments that the Government moved in the other place.

David Syme and Co. Ltd—the publishers of the *Age* newspaper—circulated a submission on the Bill to all members, but as far as I recollect not to the select committee. It has now circulated another letter, which addresses the amendments and which is in the name of the Editor. The Editor states:

I am still of the view that the supporters of the Bill have not adequately shown the need for wide-ranging privacy legislation in this country. In addition, I have attempted to set out some of the specific problems I have with the latest draft of the Bill.

It must be pointed out that David Syme and Co. Ltd acknowledges that the amendments proposed to the Bill are improvements. It makes the following points:

We reiterate our belief that participant monitoring should not constitute an infringement of privacy under section 3 (2) *(a)* (i) (B). The amendments also do not clarify the meaning of the word 'observation' in section (2) *(a)* (i) (A). This section fails to draw the vital distinction between observing others in public and private places. The words 'free inquiry and free dissemination of information and opinions' in section (4) *(a)* (i), require judicial interpretation. We remain uncertain about the status of people who conduct activities such as recreational photography or painting.

While far more attractive than the earlier section, it does for the first time, allow the courts to closely examine whether the media organisation and/or reporter has acted in accordance with the AJA Code of Ethics or any codes, standards or guidelines established by the Press Council. This is a significant move from what are largely now voluntary codes, to a statutory code.

We also pointed out in our submission that the previous Privacy Bill imparted vagueness and uncertainty by not defining 'public interest'. Although a definition of 'public interest' need not be exhaustive, we believe that its ambit needs to be outlined. The suggested amendment provided by section 4 (4) broadly refers to the 'importance in a democratic society of free inquiry and free dissemination of information and opinions'. This reform is welcome, but it will provide the courts with too much discretion in determining the parameters of 'public interest'.

We again reiterate our concern that the Bill fails to give individuals a right to access personal or business information obtained legitimately under section 3 (4).

Again we express our concern that there is no definition of 'personal or business affairs' in section 3 (2) *(a)* (ii) (B).

The Australian Broadcasting Corporation has circulated information to members about its special position in the television spectrum of the media being governed by its own Federal Act of Parliament and being specifically exempt from the provisions of the federal privacy legislation. In documents provided to me, the ABC states:

Paragraph *(b)* exhibits an implicit acceptance that the only relevant codes, standards or guidelines for media organisations are those prepared or adopted by the AJA or the Australian Press Council. If the proponents of the Bill continue to insist that the Bill is to apply to the ABC (which we will continue to deny) they should at least be prepared to accept that the board of the ABC has an obligation, pursuant to a federal statute (ABC Act 1983), to prepare or adopt such guidelines for the ABC. Therefore, we consider that these words should be added to the end of this paragraph:

or prepared or adopted in accordance with a statutory obligation, imposed by a statute of the Commonwealth, a State, or Territory.

The ABC does express concern that there is no recognition that it is subject to federal legislation and under the Commonwealth Privacy Act it has been given a specific exemption. The ABC argues that if 'the proponents of the Bill continue to insist that the Bill is to apply to the ABC (which we will continue to deny) they should at least be prepared to accept that the board of the ABC has an obligation, pursuant to the federal statute (ABC Act 1983), to prepare or adopt such guidelines for the ABC'.

The ABC questions whether determining public interest under clause 4 (4) (as amended) should be limited to material published by what appear to be official organisations and why other material by non-government agencies and individuals should not be considered. The ABC also says that it:

maintains that existing laws in the area of listening devices, telephone interceptions, defamation, contempt of court, trespass, confidential information and copyright adequately cover the area of privacy in relation to conduct of the media. Any privacy legislation should, like the Federal Act, concentrate on regulating the activities of State Government departments and agencies in the collection, storage and use of personal information.

The *Advertiser* newspaper has forwarded two letters, one from the editor, Mr Peter Blunden, which expressed the view that the Government Bill is still so widely drafted in relation to the media and left an area of such uncertainty that the Bill, even if amended, should be rejected.

In its other letter, it writes on behalf of the *Advertiser*, the *News*, *Sunday Mail*, *Messenger Press*, Channels 9, 7, 10 and all local radio stations. That letter, which was addressed to the Premier, states among other things:

The State Government's proposed legislation on privacy remains a major concern to media management in South Australia. The proposed amendments to the original privacy legislation remain totally unacceptable. Without question, they inhibit the free and democratic right of the media and provide avenues of legal protection for individuals and organisations who, under current arrangements, can be, and are, subject to proper and legitimate scrutiny by all arms of the media.

We do not accept this so-called watered down version of the legislation and remain committed to the belief that the legislation should be withdrawn. Legal advice provided to us is unqualified in the view that the rights created by the Bill, even if amended, will still create additional and expensive litigation.

The Bill will still encourage media bodies to avoid potential litigation over and above existing defamation and common law provisions by withholding stories. Uncertainty as to how a court might react and even the cost of successfully defending a claim which could not currently be instituted would lead to stories being suppressed. There is a major concern that these suppressions will be demanded by the people who have the resources to take legal action, even though they may be the people who deserve investigation by the media. Although the amendments place the onus on the plaintiff to show an activity is not justified in the public interest, the practical operation may be little different from the previous draft's likely result which the Government has seen fit to withdraw.

A plaintiff will assert there is no public interest in the activity complained of. The defendant will inevitably be required to produce evidence to show that there is a public interest. In cases where the arguments are finely balanced, a court may well lean in favour of the plaintiff.

The Australian Conservation Foundation also made an earlier submission and then, in relation to the amendments, wrote in a way which indicated a continuing concern. It reiterated its concern, along with other conservation organisations, about the possible unintended consequences of the legislation. It is worried that privacy legislation could restrict 'our activities in acting as a watchdog for the environment'. In relation to the definition of 'privacy', the Australian Conservation Foundation states:

We are not convinced that privacy cannot be defined with more certainty in the Bill. What is needed is a definition that limits the scope of the Bill to the matters identified as requiring protection in evidence before the select committee, that is, limit privacy to matters that are purely personal. This means excluding 'business affairs' from the definition.

In relation to injunctions, in its letter to the Attorney-General, the Australian Conservation Foundation states:

In the amendments you have seen fit to protect investigative journalism by, amongst other things, removing the ability of plaintiffs to apply for injunctions against media organisation defendants. If the Bill is to be consistent in its approach to people and organisations whose role is to investigate or publicise matters of community interest or concern, then protection from injunctions needs to be extended to groups other than media organisations.

The main environment groups may be regarded as media organisations, because they publish magazines and newsletters as part of their work, but smaller residents' action groups for instance, would not be regarded as media organisations, as many may never publish more than the occasional letter to the editor.

It is illogical that a multi-million dollar profit driven media operation cannot be the subject of an injunction, whilst a small conservation group whose motives are more likely to be inspired by genuine civic concern can be.

Although the issues of injunctions and the definition of 'privacy' stand out as most in need of amendment, there are other issues which still concern the environment movement. These are summarised in our position paper which is enclosed.

That position paper was the submission made, as I recollect, to the select committee. The final organisation which has made some representations in relation to the Bill and the amendments was the Australian Press Council. I will quote, in part, from the statement it has circulated to members. It states:

The South Australian Government has announced amendments to the Bill, which seek to answer some of the criticisms by a very wide range of interested groups in the community. The council welcomes the Government's moves, and acknowledges its attempts to mitigate many of the objections to the Bill as originally drafted.

However, the council regrets to state that, in its view, the amendments do not go far enough, nor do they address the principal serious problem associated with the storing of and trade in information about Australian citizens by Government agencies.

The council acknowledges that there are isolated instances of media intrusion into privacy, but it believes these are certainly not the norm. The more serious are mostly actionable under the law as it now stands; others can be and are dealt with by bodies such as the ABT, the AJA and the council, as well as the internal processes of bodies such as the ABC.

The Press Council elaborated upon the desirability of enshrining in both the Australian and State Constitutions a principle of freedom of the press and invited the Government to do that in this State.

I now want to address a few remarks to the Bill specifically. I am sorry that it has and is taking so long, but it is an important Bill that needs to be carefully considered. I will deal with the Bill in some detail. As I have said, the Bill proceeds on the basis of establishing a right of privacy, although it does not define that right. The Bill identifies infringements of the right of privacy and also identifies what is not an infringement. If there is an infringement of the right of privacy, then a tort is created and it is actionable by the person whose right is created, and it is actionable by the person whose right is infringed, provided the action is initiated within two years from the date on which the infringement is alleged to have occurred. Where an action for infringement of a right of privacy has been instituted, a court can grant injunctions, except against a media organisation, and award damages for injury, loss, distress, annoyance or embarrassment.

There are certain defences against an action for infringement of the right of privacy. The Bill will be a lawyers' paradise, and the Law Society even makes that point. Rather than analysing every word and paragraph, which has been done on a number of occasions, it is appropriate to touch upon only some of the matters which cause concern and about which questions can be—and, in fact, have been—raised. Subclause 3 (2) *(a)* (i) (A) provides that one infringes the right of privacy if one keeps another under observation, clandestinely or openly. That is not a breach if it is undertaken by a person vested by a statute with powers of investigation—perhaps, a licensed inquiry agent—but that in itself is not clear. More particularly if the watcher is seeking to protect his or her lawful interest or the watching was part of the conduct of actual contemplated or apprehended litigation, there is a defence.

Surveillance of persons claiming damages for injuries arising out of an accident is an obvious area where privacy is breached. However, it may be that that falls within the area either where it is exempted or there is a defence. If you have a car as security for a loan, you may clandestinely observe the borrower to determine the whereabouts of the car prior to taking possession of it, but can an employee do that, or can you watch the wife, husband or friend of the borrower in addition to the borrower? That is not clear.

In relation to subparagraph (B), at a party or function a person may be on the fringe of a group of persons and may be listening to other conversations. It may even be said that the person is eavesdropping, although not in the sinister context of that word, and the person may hear information. That information may not even relate to a person's personal or business affairs. The very act of listening may not have been with the express or implied permission of the person speaking. The act of listening is deemed to be an intrusion into privacy, whether open or clandestine. While it may be difficult in those circumstances for a person whose conversation has been overheard to establish any damage by virtue of the listening, nevertheless the right of action is given to that person where someone has heard his or her conversa-

tion, but it is possible to speculate that in some cases damage may occur if the information is passed on, perhaps, to the press.

Subparagraph (D) relates to recording acts, images or words of the other person. It does not matter that the recording, either by audio or video, is open or clandestine, or even if it occurs during the course of, for example, filming or photographing a group. It may be that the film shows a prominent person talking to an organised crime figure, or a person believed to be such, and the prominent person is caused embarrassment by such filming. This could even extend to some prominent person being annoyed at the press photographer photographing the person at either a public or private function. In answer to that I say, 'So what?' The film cannot be used for blackmail purposes because that is a crime. However, one may want to use it to build a picture of someone not to lend money to or do business with.

Difficulty can be identified in subparagraph (E). In that subparagraph reference is made to the examination or copying of private correspondence or records, but there is no definition of what is meant by 'private'. In the same subparagraph, a similar reference is made to confidential business correspondence or records. Does that mean that it has to be confidential to the person or the company of which that person may be a director or shareholder, or confidential in a way recognised by the law, for example, communication between lawyer and client?

There is no definition of 'business'. Also, it will be difficult to determine what is excluded by reference only to 'correspondence' or 'records'. Some documents and papers will not be correspondence or records, but there will be difficulty in determining what is or what is not included and what can be read with impunity and what cannot. 'Records' suggests documents or papers relating to a record of financial matters or a record of some proceedings such as a meeting. The mere reading of another's correspondence will infringe the right of privacy. If a person were to receive the Westpac letters between it and its solicitor from an anonymous source, the person receiving them breaches the right of privacy by even looking at them. If you receive a copy of a report which in its terms may be confidential and it is received in the same way as the Westpac letters and you look at it, that would be a breach.

Subclause 3 (2) *(a)* (i) (F) refers to obtaining confidential information about a person's personal or business affairs. The same questions can be asked as to the nature of the confidentiality as are raised in relation to subparagraph (E). It may be that information given by a customer to a bank in relation to an application to stave off foreclosure or legal proceedings would be regarded by the customer as confidential.

The bank in normal circumstances may even regard the information as 'confidential'. But, if the customer has defaulted, the bank may make that information available to a central credit information organisation as a warning to protect other creditors or potential creditors of that customer. Of course, the banker, in publishing that 'confidential' information, is immediately in breach of the right to privacy, as will be the recipient for obtaining the information from the bank, and probably this will be so even if the 'obtaining' is not initiated by the recipient. While the bank and the customer may regard the information in general terms as 'confidential' there is no criterion by which that objectively can be determined.

If lending documentation is so drawn that documents which are on the public register disclose certain information but not other information relevant to the transaction which is included in other documents (as with the ETSA power stations financing deals by the South Australian Government Financing Authority), then presumably the information on the public record is not 'confidential'. On the other hand, one can argue that the disclosure of information not in the documents on the public record may be the disclosure of 'confidential' information, and therefore obtaining it and disclosing it would be a breach of the right to privacy, even if it completes the picture of the scheme or transaction. A lender making information about the amount of a customer's loan available to a third party, the amount not being on the public record, would be in breach of the right of privacy.

Even the keeping of records of another person's personal or business affairs falls foul of clause 3 (2) *(a)* (i) (G), yet this is what members of Parliament and Oppositions do, what the press does and what libraries and archives do all the time.

There is, of course, no definition of 'personal affairs' or 'business affairs' as used in subparagraphs (E), (F), (G) and (H), but that would be necessary if the tort is to have some clear substance and citizens are to know their limits. There is no indication whether or not these descriptions are qualified for persons such as members of Parliament or judges or directors of public companies or others who have some public role in the community. What is 'personal' to one person may be 'public' to another. If a member of Parliament has a personal loan on a private motor car as a member of Parliament the loan may have to be disclosed under the disclosure of interests legislation, while another citizen in a similar position will not have to make that disclosure. What is for the member of Parliament not 'personal' for the other may be.

The provision in subparagraph (H), which refers to a breach of the right of privacy by publication of information about another person's 'personal or business affairs', is also of direct concern. The mere passing on of information about another person's personal or business affairs is a breach of the right to privacy. It should be noted that the publication of information which constitutes the tort is not limited to confidential information but extends to any information about another person's personal or business affairs. Presumably, even if information is on the public record such as bankruptcy, the publishing of that information is a breach of the right of privacy, but it would probably be argued that some express or implied permission to publish is granted from the very fact that the bankrupt person is bankrupt under a Federal Act of Parliament which puts that bankruptcy on the public record.

This really opens up Pandora's box because if one collects information from the Australian Securities Commission register or from the Supreme Court, the Local Court or the District Court, whether in relation to receivership, liquidation, litigation or otherwise or bankruptcy information or information about registration of motor vehicles, and that is published by one the right to privacy is breached. However, permission may be implied depending on the information published. This is one of the difficult areas where the Bill is not explicit, namely, dealing with information that is already on the public record.

It is interesting to note that, because the Bill binds the Crown in clause 5, this embargo could prevent any State agency from providing information about anyone to anyone else (other than for law enforcement purposes), particularly in areas such as motor vehicle registration (which is not a public register) and defaults by customers of the Electricity Trust of South Australia. So absolute is the prohibition in subparagraph (H) that, even if the information revealed in

legal proceedings or private correspondence was disclosed as exhibits in legal proceedings, there could be a breach.

In respect of all of those infringements the Bill provides that the right of privacy is not to be infringed by anything done by a member of the Police Force in the course of his or her duties or by any other person vested by statute with powers of investigation or inquiry in the course of exercising those powers or by a commercial organisation (which is a body of persons carrying on a profession, trade or business) in carrying out reasonable inquiries into the credit worthiness of a customer or potential customer or in passing on information relevant to that subject, on request, to other commercial organisations.

The latter exemption is of special interest to the business community. But the exemption only applies to a commercial organisation or a person (including a credit reporting agency) acting on behalf of a commercial organisation in assessing creditworthiness, although there is no definition of this characteristic. It should be noted that the exemption is only available to the commercial organisation or person in carrying out reasonable inquiries (not defined) and only when those inquiries are into the 'creditworthiness' (again, not defined) of a customer or potential customer or when that information is passed on to other financial organisations on request. Whatever the meaning of 'reasonable' inquiries, the question does have to be raised as to why other inquiries into other areas are to be excluded.

Obviously, the exemption to which I have referred does not extend to real estate agents and insurers seeking information about persons on matters other than 'creditworthiness'. An insurer or other commercial organisation does not infringe the right of privacy in relation to anything reasonably done to detect fraud, but this does not allow inquiries into matters to detect offences other than fraud.

Other exemptions against an action for infringement of the right of privacy are set out in clause 3 (4). The Government, I note, has met at least one area of concern, and that relates to breaches of privacy in aid of medical research. I do not wish to dwell upon that, except to say that the guidelines under the Federal Privacy Act are the guidelines which are to be taken into consideration under the State Bill.

An amendment made by the Government to attempt to address the concerns of conservation groups provides that the right of privacy is not to be enjoyed by a corporation. But, as the *Advertiser* points out, there will be nothing to prevent a director, officer or employee or consultant from arguing that a person investigating a body corporate and matters with which such persons may be concerned is intruding into personal or business affairs. The mere exclusion of a body corporate addresses the concern expressed not only by conservation groups but also by the media that business activities of companies should be open to public inquiry without the impediment of this Bill.

If a breach of privacy is alleged an action can be taken by a person claiming the breach and the court may grant any remedy, including an injunction (but not against media organisations). Damages may be awarded for injury, loss, distress, annoyance or embarrassment. The court must have regard to the effect of the infringement on the health, welfare and social, business or financial position of the plaintiff and other factors in determining the nature and extent of the remedy to be granted. One of those factors is the conduct of both the plaintiff and the defendant before and after the infringement, including an apology or an offer of amends or other action taken to mitigate the consequences of the infringement.

In relation to the media there are several matters which arise because no injunction may be granted against a media organisation, and such an organisation may establish a defence that it acted in accordance with reasonable codes, standards or guidelines dealing with the protection of privacy prepared or adopted by the Australian Journalists Association or the Australian Press Council.

It is interesting to note that, in this context, the court will have to determine ultimately what is a reasonable code adopted by the Australian Journalists Association or the Australian Press Council. So, the court will determine that issue, and of course that will have to be an objective assessment. It raises the question: what happens if the code is not regarded as being reasonable? The concern that has been expressed in relation to the provision relating to codes of conduct is that, presently, television is not under the watchful eye of the Australian Press Council, and many in the press—managing directors, editors and others—are either not members of the AJA or otherwise bound by such codes. In addition to that, we have the special position of the Australian Broadcasting Corporation under its own Federal Act of Parliament.

Therefore, whilst there is an acknowledgment that the Government has attempted to meet the criticism that codes of conduct would be promulgated by regulations, by putting the onus back onto the Australian Journalists Association and the Australian Press Council, the mechanism is not there for others who will be bound by the codes to have any say in the development of those codes of conduct.

The definition of 'media' as the press, radio or television immediately raises the question as to what is the press. As the Australian Conservation Foundation has asked, is its own magazine within the description of 'press'? Similarly, one can ask whether the South Australian Institute of Teachers Journal, the Law Society Bulletin, the Public Service Association Review or any of hundreds and perhaps even thousands of papers and journals of organisations come within the definition of the 'press'. Are these organisations within the meaning of 'media organisation' if they publish their views in their paper or magazine? In fact, if they prepare an article and publish it in the daily press, or if it is used on television or radio, does the organisation become a media organisation for the purposes of the publication of that article, or because they do it on occasions do they become a media organisation for all purposes?

The issue is not clear. One would normally take the description of 'publish in the media' context as the actual publication of the newspaper, television or radio program. One would expect the owner to be, in effect, the publisher. But I think that the drafting in the Bill throws doubt upon that, particularly because it relates to any person who publishes by means of press, radio or television, and that must surely at least raise the question whether such person is, in fact, the person who provides the article or program which is then published in the press, or on television or radio.

While the onus is on the plaintiff to establish that an intrusion was not justified in the public interest—and that takes a lot of pressure from a defendant—nevertheless, it still leaves an element of considerable uncertainty in determining whether or not to intrude into privacy. In determining public interest, the court may have regard to material published by responsible international organisations or Australian State or Federal authorities. It gives no weight to bodies such as the Australian Press Council, academic dissertations or material published by international bodies which are not Government-backed. Nor does it refer to material published by Territorial authorities. This is of some concern, because the bodies referred to in the amendment are

non-elected and non-accountable to any elected agency and, certainly, are not bodies in which our State Parliament has had any involvement. Therefore, that will mean that a court, having regard to these matters, will have regard to matters that are outside the control of the State Legislature.

In determining whether a particular act was justified in the public interest, the court must have due regard to certain principles relating to press freedom in a democratic society. I am sure that this is an attempt to pick up a proposal by the Australian Press Council for the Government to enshrine in the State Constitution a principle of the freedom of the press. This goes only part way towards that proposal. While I do not criticise the Government for including these principles, I remain to be convinced that it should be done or that, if it is done, the drafting will achieve the desired objective. Before rushing into this, I think we need to expose the concepts to a great deal of debate and close examination.

New clause 4 (4) allows the courts to determine the meaning of 'public interest' and gives them the role of determining what may be the importance of free inquiry and the free dissemination of information and opinions. The courts, not the elected representatives, will make the law. It may be that, to some extent, that must and does happen where the courts ultimately must make a decision on legislation passed by the Parliament. If this Bill becomes law, it will have the potential to significantly restrict rights. In relation to business, it will add further potential burdens; it will create hurdles for public interest groups; it is likely to create impediments for members of Parliament doing their duty; it will introduce unreasonable problems for the press; and, in fact, it will have wide-ranging repercussions which are likely to create more disadvantages than advantages to the community.

As I indicated earlier, there is no evidence that there is a clamour for this Bill; nor was there in relation to the amendments to the Federal Privacy Act. Even further legislation will unnecessarily complicate business and community life without providing any commensurate advantages to the whole community. The Liberal Party opposes the Bill.

The Australian Democrats are reported as being likely to move substantial amendments to eliminate most of the Bill and replace it with a scheme for data protection. That is an issue that the Liberal Party will consider. We do not yet have a view on it, and we have not seen the amendments, although the Hon. Mr Elliott says that they will be similar to the Privacy Commission Bill proposals that he introduced in 1988. Our preference is that this Bill be defeated and for the Australian Democrats' proposal to be introduced in a private member's Bill.

We do not think it appropriate to confuse two major issues which, although having some of the same descriptions, deal with different issues: on the one hand, a general right of privacy—a tort—and on the other hand, a scheme for dealing with the protection of information on databases. It is my view that the two are incompatible in the one Bill. It is interesting to note that, in 1989, when the Australian Democrats' private member's Bill on a Privacy Commission was being considered, the Attorney-General made a statement about information privacy principles that apply to Government and Government agencies. Those principles are administratively enacted, not legislatively enacted. The Attorney-General did not speak on the Democrats' Privacy Commission Bill, but the Hon. Gordon Bruce, then a backbencher in the Legislative Council, did speak on it, drawing attention to the privacy principles and urging members to reject that Bill.

When I spoke on that Bill, I indicated that Opposition members did not support it, although we expressed sympathy for the issues which were being raised. I hope that the comments we made drew attention to a number of problems we saw with that Bill. It sought to establish a privacy commission which was not accountable to Parliament. It would gazette information protection guidelines in compliance with OECD guidelines in the operation of private and public sector databases. They would not be subject to disallowance by Parliament. They would not even be subject necessarily to consultation with the Government of the day. The commission would not in any way be accountable to Parliament except through annual reports.

The statutory body was given power to investigate both public sector and private sector databases, and it could do that by entering premises without notice or without a warrant and gain access to any place occupied by the holder of the database. So, in those circumstances, the Bill would have provided for inspection and report but it would not have provided a guarantee of an opportunity for the body, the subject of the investigation, to make representations or even to challenge the validity of the conclusion that the privacy commission reached. That body would then have to suffer the public criticism which would follow the report's being tabled in Parliament, where again it would have no redress. I hope that that was constructive criticism of the Bill at that time.

I indicate that we are prepared to look at the Hon. Mr Elliott's amendments, but we are not prepared to be rushed into making a decision on them. As I indicated, because of the incompatibility of the two concepts—this Bill and the Hon. Mr Elliott's proposed amendments—we prefer that they be dealt with separately. Therefore, the Liberal Party opposes the second reading of this Bill.

The Hon. J.C. BURDETT: Like my colleague the Hon. Mr Griffin, I oppose the second reading of the Bill. In his second reading explanation, the Minister said that this Bill is based on legislation which was first proposed in 1973-74. That Bill was introduced by the then Attorney-General, the Hon. Len King. The explanation we have been given by the present Attorney-General states:

> The 1974 Bill foundered because it did not detail necessary exemptions for certain bodies.

That is not true. I voted against that Bill in 1974 and it was certainly not for that reason. It was not because of the failure to detail exemptions. I might add that the Bill was defeated. I will detail my reasons shortly: basically they were because of a lack of certainty in providing for a new statutory tort. I looked through the speeches and the majority opposed the Bill. The record shows that it does not justify the present Attorney-General's explanation as to why the Bill failed. If there was any one reason given by the 11 members who defeated the Bill—and, of course, there was not one: there were several—from a reading of *Hansard*, it was a reason similar to my own, and that is the lack of certainty.

In the debate on the Bill in 1974 (*Hansard*, page 1816), I said:

> So far, British courts have generally not expressly recognised a right of privacy as such, and neither have most British Legislatures. One reason for this is that our courts and Legislatures have recognised, although again not expressly, the competing rights of free speech and a free press. However, our common law and Statute law do provide many protections for the right of privacy. To quote a few examples, the law of defamation is probably the branch of the common law that comes closest to protecting the right of privacy. The law of defamation actually provides remedies in the case of certain injuries to reputation. Truth is a complete defence to a civil action for defamation, although not to a charge of criminal libel.

That was a correct statement of the law at that time. I continued to say:

The law of trespass offers considerable protection against infringement of privacy in cases of the use of listening devices, taking photographs, and other breaches of privacy after entry has been illegally effected. The Listening Devices Act 1972, referred to in the Minister's explanation, is an example of further protection provided by legislation and an example, I believe, of the kind of legislation which ought to be used in preventing violations of privacy. The common law has developed some remedies in the case of unauthorised use of a person's photograph, name, or life history, and this protection could readily be extended by legislation, or possibly even by the courts, without introducing such broad legislation as the present Bill. The law of nuisance affords considerable protection to the right of privacy. A complete and formidable list of existing protections is set out in the Younger report.

Further on, I said:

We have many rights: the right to freedom of speech, freedom of thought, freedom to choose our own way of life, and so on. They are not created by Statute. I believe that we have a right of privacy, but I do not believe that it is desirable to provide for it by one compendious Statute such as this. The Younger report recommended that a general tort of violation of privacy be not created. The majority report was a report of 14 of the members, with two members giving dissenting reports. The Attorney-General, on television, referred to the 'powerful dissenting reports'; I do not know whether they were 'powerful' because they agreed with his views, but it must be said that they were very much in the minority.

Further on, I said:

It is clearly the intention of this Bill to create a broadly defined tort by Statute and allow the detailed application to be worked out by the courts. In other words, it is the intention of the promulgators of the Bill to allow the common law system to operate on the new tort created—to feed the new tort, as it were, into the pipeline of the common law. One difficulty is that we cannot have much idea how it will come out of the pipeline. Certainly, there will be grave difficulties in the meantime. If a lawyer was asked to advise a client, be it a newspaper or a private individual, whether a particular act contemplated constituted an infringement of privacy under the Bill, he could have little confidence in the correctness of his advice when all he would have to go on would be the broad general words in the short Bill.

I refer also to portion of the contribution by the late Hon. Sir Arthur Rymill (at page 1853) when he said:

As the Hon. Mr Burdett said in his excellent speech on this Bill—

and I do like that—

it will take years and years for the courts to establish any kind of code. He mentioned a period of a century; I should think it might take far longer, because the courts will, as modern courts do, protect themselves from having their own decisions quoted back in their faces by saying, 'I wish to point out that I make this decision on the facts of this particular case and it is not to be taken as a precedent in any other case.' Then the law remains totally vague.

The late Hon. Sir Arthur Rymill went on to address a most important issue, one to which my colleague the Hon. Trevor Griffin adverted in part in his contribution. Sir Arthur stated:

One of the most objectionable things in this legislation is that it seems to give the advantage to people of wealth and substance. It is those people who can afford the luxury of taking a legal action based on an uncertain law, taking their chance on a successful result in relation to this imprecise law because they can afford to do so. It is something that stand-over people could take advantage of to intimidate other people. Here is an uncertain law. It is for the courts to decide what the law is. Therefore, if anyone wants to make himself a nuisance to someone else he takes action against that person for an alleged breach of the law of privacy.

We know that that kind of thing—the rich and powerful placing the poor or the less rich and powerful at a disadvantage—already happens, particularly in regard to the law of defamation. However, the law of defamation has been established by the courts. So, that is not as much a factor. A statutory tort of privacy has not been established by the courts and I suggest that it will take a long time before that happens.

I noted an agenda item at the last Commonwealth Parliamentary Association conference, which was held in New Delhi, concerning a workshop on freedom of the press—not expressly on the law of privacy, but on the freedom of the press. I read the report of that workshop because the Bill was before us and because I thought it was relevant. I found that there was no suggestion anywhere of this kind of Bill. There was talk about control of the press, particularly the British press, which it would appear has not been as meticulous as our press has been, generally speaking, in trying to preserve people's natural right of privacy. However, there was no suggestion of this kind of Bill.

The matters raised in the media concerning this Bill have largely related to the media. These matters are substantial and have been dealt with to a considerable extent by my colleague the Hon. Mr Griffin. Although worthy of consideration, they are not matters which particularly concern me. My concern is the lack of certainty in interpreting the new statutory right of privacy and the statutory tort which will follow from its breach. The amendments made by the Government—obviously partly as a result of statements made in the media—in no way allay my fears. In fact, they probably increase the degree of uncertainty.

In today's *News* (page 6), under the heading 'Hidden threat of Privacy Bill—industry chiefs warn of repercussions', it is stated:

Industry leaders have written to the Attorney-General warning that the new Privacy Bill has the potential to bring South Australian manufacturing to a halt. Employers warn that keeping factory employees under supervision is 'fundamental to running a successful factory'. but that such supervision may well infringe the privacy of individuals' provisions in the new Bill. Engineering Employers Association executive, Mr Bob Manning, said the EEA had lodged a submission with the select committee established to consider the Bill and had written to the Attorney-General, Mr Chris Sumner, and the Industry Minister, Mr Lynn Arnold.

'We have pointed out that the Bill has the potential to bring manufacturing to a halt in this State,' Mr Manning said. 'Supervision time studies, plant security and other "visual management" activities by which a business is run may constitute an infringement of an individual's right to privacy as defined in the Bill.' While there has been public concern expressed about the likely impact this legislation will have on the media and public interest groups, its possible dramatic effect on industry has been ignored.

'The uncertainty [and that is what I have stressed], complexity and potential for litigation [which has also been alluded to in this debate]' have not been judged as matters of consequence by commentators and politicians alike,' Mr Manning said.

'We have not been able to draw this oversight to the attention of Cabinet members and therefore not been able to explain to Government first hand that observing people is fundamental to factory management. We believe if the Bill is passed it could lead to some bizarre situations in the workplace and urge them to drop it altogether.' The Bill has passed the Lower House. It goes before the Legislative Council late today.

I turn to the provisions of the Bill, and I do so only briefly because they have been exhaustively, adequately and well dealt with by my colleague the Hon. Trevor Griffin. Clause 3 establishes the right of privacy and provides:

A person infringes the right of privacy of another if (and only if)—

(a) that person, without the express or implied permission, of the other person—

(i) intentionally intrudes on the other's personal or business affairs in any of the following ways:.

It then sets out the conditions and I shall refer to some of them. I acknowledge that subclause (2) *(a)* (ii) provides that one of the things that has to be established is that 'the intrusion is, in the circumstances of the case, substantial and unreasonable'. However, when one looks at the things set out under clause 3 (2) *(a)* (i), one finds it hard to believe that some of them are necessarily breaches of privacy. Subparagraph (A) refers to 'keeping the other under observation

(either clandestinely or openly)'. Is it necessarily a breach of privacy to keep someone under observation? I suppose the statement in the *News* is an instance of that. It can be necessary in industry to keep people under observation and one can easily think of other circumstances where it is justifiable.

Subparagraph (B) refers to 'listening (either clandestinely or openly) to conversations to which the other is a party'. In regard to subparagraph (A) and subparagraph (B), perhaps one can countenance the use of 'clandestinely'. However, is it a breach of privacy to listen openly to conversations to which the other is a party? Subparagraph (D) refers to 'recording acts, images or words of the other'. Subparagraph (G) refers to 'keeping records of the other's personal or business affairs'. Are all these things necessarily wrong or in breach of any fundamental principle of privacy?

The Hon. R.J. Ritson: They are now, or if it passes.

The Hon. J.C. BURDETT: They will be if the Bill passes. Once again, I acknowledge that clause 3 (2) *(a)* (ii) adds that the intrusion must, in the circumstances of the case, be substantial and unreasonable, but is there necessarily anything wrong with these things? Subparagraph (H) refers to publishing information about the other's personal or business affairs. If the information is correct, is that necessarily wrong?

Clause 3 (2) *(a)* (i) (H) refers to 'visual images of the other', which could be a photograph, something on videotape, or something of that sort and it refers also to 'words spoken by or sounds produced by the other'. I refer again to clause 3 (2) (ii) where it must be established that the intrusion is, in the circumstances of the case, substantial and unreasonable. I suggest that it will take (and this goes back to what I said about the 1973-74 Bill) a long time to establish what is particularly unreasonable. It may be less difficult to establish 'substantial', but what is unreasonable in the circumstances may prove to be more difficult.

In regard to another recent Bill, the Hon. Mr Gilfillan correctly made the point that the concept of reasonableness is known to the law; in the criminal law it is beyond reasonable doubt. We have the wellknown concept of a reasonable man and these days I think we ought to add 'or woman', but those concepts of reasonableness have been developed in particular contexts and in particular circumstances. In those circumstances, the courts have established a code, if you like, as to what is reasonable and what is not reasonable but not in this area of privacy. That is why I said in 1974, actually in answer to an interjection by the Hon. Mr Cameron, that it would take a long time to work out. He asked, 'How long?' and I said, 'I suppose about 100 years.' It will take a long time for the courts to develop a set of precedents that will establish what is unreasonable and what is not and all the other aspects of this Bill. I turn to clause 4 (1) which provides:

> The infringement of a right of privacy is a tort actionable (without proof of special damage) by the person whose right is infringed.

That is a term used in other parts of the law, particularly the law of defamation where, in regard to the tort of libel, special or monetary damage does not have to be proven. That part of it is clear enough in clause 4 (1), but I point out that it is creating a tort where, in order to establish the tort, it is not necessary to prove that there has been any special or monetary damage. Clause 5 (1) provides:

> This Act does not apply in relation to noise from non-domestic premises.

Obviously, the intention is to leave the question of noise from non-domestic premises to the Noise Control Act. I suppose that is fair enough, but I point out that, by very clear implication, noise from domestic premises is covered in this Bill as well as in the Noise Control Act. This Act does not apply in relation to noise from non-domestic premises, so clearly it does apply to noise from domestic premises.

Clause 5 (2) provides that this Act binds the Crown, and this is one aspect of the Bill that I commend. I think it would have been intolerable if it had not bound the Crown, but it does do that. Clause 6 in regard to privacy standards is interesting and worth looking at carefully. Clause 6 (1) provides:

> The Governor may make regulations laying down standards for the protection of privacy to be observed by organisations (in both the private and public sectors) that keep records of information relevant to the personal or business affairs of others.

I will refer to the special provisions later, but that is a fairly serious area which is able to be prescribed by regulations, and I would have thought that the setting of standards could better be laid down by Act of Parliament. Clause 6 (2) provides:

> Breach of a standard laid down under subsection (1) is evidence, but not conclusive evidence, of the infringement of the right of privacy created by this Act.

Clause 6 (3) is a further protection and it provides:

> A regulation under this section cannot take effect unless it has been laid before both Houses of Parliament—
>
> *(a)* no motion for disallowance is moved within the time for such a motion;
>
> or
>
> *(b)* every motion for disallowance of the regulation has been defeated or withdrawn, or has lapsed.

That is a better provision than we have in regard to most regulations, where they have the force of law as soon as they are made but may subsequently be disallowed. This subclause is at least an improvement in that the regulations cannot take effect until they have been laid before the Houses of Parliament and either no disallowance motion has been moved or it has been defeated, or withdrawn.

I think there is every reason why this kind of provision should be introduced perhaps in regard to all regulations, but certainly in regard to many more than is the case now. For the reasons which I have outlined, and particularly in relation to what I regard as being the uncertainty proposed in this Bill, as in the 1973-74 Bill, I oppose the second reading of the Bill.

The Hon. R.J. RITSON: I, too, oppose the second reading of this Bill, and I do so for many of the reasons already stated. My contribution will be brief, but I just want to touch upon some aspects of it from a slightly different perspective. I agree with all that has been said about its vagueness and the potential for unintended consequences. I think it probably will be used by the wrong people for the wrong reasons—used by people who have sufficient money to mount an action and perhaps withstand the loss of their costs, whereas the average private individual whose privacy is invaded probably will not be able to withstand the legal costs should she or he be unsuccessful.

I agree with the Hon. Mr Burdett when he says that a lot of time will be required for a body of case law to develop to clarify the meaning of many parts of the Act, and I forget whether it was Mr Burdett or Mr Griffin who referred to the Act as a lawyer's paradise.

The Hon. R.I. Lucas interjecting:

The Hon. R.J. RITSON: Having regard to the remarks made by the Attorney-General on lawyers and legal fees, I am surprised that he would want to enrich the legal profession further with something like this, which must surely in due course rival section 92 of the Federal Constitution in terms of the dollar cost per word in ensuing litigation. It does seem a little inconsistent to me that the Attorney,

having made the remarks about his colleagues that he has in the past, would now wish to feed the profession and guarantee employment for the next generation of law students.

I want to make the point that this Bill has been discussed largely in terms of the media, when in fact it is not a media Bill. A whole lot of different people will use the Bill for a whole lot of different purposes, but the Bill will not remedy some of the problems which the media have and which society sees them as having. I am not sure that there ought to be an attempt at a legislative remedy for the problems of the media. After all, the matters that are often complained about with regard to media reporting are concerned with accuracy and bias and involve the whole flavour of a newspaper as to whether it goes for sensationalism, conflict and human tragedy, whether it seeks to entertain vicariously in a ghoulish way or whether it seeks to lead and inform.

Those matters are not touched by this Bill, and I wonder whether they ought to be touched, except by encouragement and education. For example, in today's *News* there is story after story that is well-written, provides good solid information and does not offend anyone. We are told what goes on in our community. It contains useful feature articles, as well as information about the travel and sporting scenes. Given that hundreds of stories are written every day and that we are perhaps offended by lack of accuracy, bias or invasion of people's sensitivities only every now and then, given that percentage of stories to which one could object, our media do pretty well.

There is absolutely no doubt that people who may rightly have been deeply offended by a particular story at some stage in the past, perhaps with a fixation on getting some sort of restrospective justice or revenge, have wrongly seen this Bill as something which will sort out the very small percentage of newspaper, radio and television stories which offend.

The Hon. T.G. Roberts interjecting:

The Hon. R.J. RITSON: I give way to Mr Roberts, who has some sort of interjection. We will see whether or not it contributes to good sense.

The Hon. T.G. Roberts: Does that go for good racing tips as well?

The Hon. R.J. RITSON: It depends on whether it is before or after the race. This Bill does not solve and does not pretend to solve the problems people have in relation to objectionable reporting. The reporting that people find objectionable is a small percentage of the stories which inform and which entertain us daily. I do not see this Bill contributing anything to that.

If members of the community consider that newspapers should provide more information rather than entertainment, they will vote with their 50c pieces when they decide whether or not to buy the newspaper. However, some of those problems that occasionally crop up with the media might be ameliorated with more continuous management-funded in-service education so that a reporter would not perhaps just whet his appetite on road accidents and personal tragedies and continue to do the same thing for the next 35 years. However, those are management decisions: individual reporters can do nothing about that.

I would much prefer to see management seize the opportunity of this controversy to ask itself again to what extent it wished to inform, to manipulate the public, to lead, to follow and to give its staff the benefit of in-service continuing education—and we cannot do that in a statute. This Bill is not about the media. It is incidental that the provisions about which Mr Burdett spoke concerning recording of visual images, words spoken, and sound produced by people touched on some aspects of investigative journalism. However, by and large it will not remedy problems with the media—and I am not sure there is a legislative remedy. Having said that, I oppose this Bill vigorously because it will cause a great mischief.

The Hon. DIANA LAIDLAW: In its second reading explanation, the Government indicated that:

> This Bill seeks to give effect to what this Government regards as a significant and highly desirable reform.

I agree that it is a significant reform: I do not support the contention that it is a highly desirable reform. However, I do not deny that I have found this Bill to be taxing in terms of my decision on whether it should be supported, opposed or amended. I appreciate all the representations I have received, in particular from the media representatives and companies in this State and interstate. I also note that since this Bill has been introduced—more so than an earlier Bill simply being referred to a select committee—a desirable improvement in a number of practices in the media has occurred.

So, while ultimately I am not prepared to support this Bill, the very fact that it has been through the select committee process and has been introduced first in another place and now in this place indicates that people generally will be the beneficiaries of that action, even though the provisions in the Bill are not acceptable. A number of my friends have been the victim of not so much a crime in this State as of unsatisfactory attention from the media, hounding by the media on matters about which they quite rightly have claimed they should not have been so persecuted. Also, I have friends who have suffered enormous personal tragedies in their lives, and that tragedy has been reinforced by the insensitive behaviour of media representatives in this State.

I repeat my earlier statement. Since this Bill has been introduced, the reporting standards of a number of incidents which would have caused enormous grief to families have been much better. I refer to just two. The first incident concerned two people who were killed a few months ago in the north-eastern suburbs when their Government car ran off the road. The *Advertiser's* report of that incident specifically noted that the names of the victims had not been and would not be mentioned, at the request of the next-of-kin. I should like to see that sort of respect for the sensitivities of the next-of-kin practised more often in future.

The second incident relates to the terrible death of Alison Nitschke. At her funeral we saw not representatives of her family, but friends at school photographed in front of a wonderful mural that she had done there. In many respects, the reporting of her funeral celebrated her work and reinforced her contribution and value to the community and to her family rather focusing on the personal tragedy of that family. I think that also is an outcome of the debate on this measure. I do not think we would have seen such a show of sensitivity by the *Advertiser* or by other media journalists if this Bill had not been introduced.

I had some misgivings about what I thought may have been interpreted as letting the media off the hook if I did not support this measure or move to amend it. I have since changed my mind on that matter. I believe that the media know that if there is no continuation of the improvements to which I have alluded, and improvements generally, there will be measures which no-one in this place would wish to see implemented for control over the media or reporting standards in this State.

The Bill and the issues that it raises constitute a dilemma. It is important that we should have investigative journalism

in all forms of the media. I should like to refer to one instance when I was trying to help a small tyre retreading business in this State. The man who ran that business had won national awards for his product. It was clear that a change of policy by Pacific Dunlop to shred casings would put that company out of business. Pacific Dunlop's decision to shred casings was an unwise decision environmentally. I tried to plead a case on behalf of Pacific Dunlop. I know that the Motor Trades Association did it at both State and Federal level, and Federal members of Parliament were ultimately involved. However, it was only when it was threatened to be featured on the ABC program, the *Investigators*, and later was featured, that Pacific Dunlop conveniently changed its whole policy. I highlight the point that, no matter how important we think we are as members of Parliament in trying to achieve what is right in the community, the investigative journalism of the media can move mountains compared to what State and Federal politicians may be able to do from time to time.

I am keen to see the amendments to be introduced by the Hon. Mr Elliott, particularly in terms of databases. As most members may recall, a few years ago I moved motions which were totally opposed to the Australia Card. Ultimately the Federal Government decided not to proceed with that card. Today, by foul means, we are seeing similar practices by another name. These databases and the interchange of information without our knowledge are all invasive in society, and there should be some provision to look at this growing matter of concern. It may be, as the Hon. Mr Griffin argued, that it is not appropriate for databases and privacy to be addressed in this Bill and that that matter should form the subject of a separate private member's Bill. That is an issue for another day.

I should like defamation to be considered before we address privacy, and perhaps the guarantee of freedom of speech would be equally challenging before we sought to introduce a guaranteed right to privacy. I do not think we can look at privacy without looking at the right of freedom of speech, which is so fundamental in our society. I feel most uncomfortable about the manner in which privacy has been dealt with in isolation from the wider issue of freedom of speech, which is central to accountability and democracy.

I have had many discussions with victims of crime about this matter. As a strong advocate for the rights of victims of crime, I understand why they have been sympathetic to this measure. However, on this occasion I am unable to support their representations, but, through a number of other initiatives, I believe their concerns can be addressed without the aid of this Bill, which has so many other damaging repercussions.

Finally, and perhaps on a lighter note, I have had many discussions with journalists who have been opposed to the Legislative Council's remaining in existence in this State. I remind them that, if it were not for the Legislative Council on this occasion, those journalists would not have had a hope in hell of having their concern listened to or addressed, and the Bill that they so deplored would have gone through unamended.

The Hon. M.J. ELLIOTT: I support the second reading of this Bill, but I have extreme reservations about it in its present form. I shall refer to those matters later in my speech. I have been a long-time supporter of the need for legislation to protect the privacy of individuals, and this issue has become particularly important since the advent of computers and the application of complicated and powerful data storage facilities. My concern is on the public record, because in 1988 I introduced a private member's Bill on privacy which aimed to place controls on the collection, storage and application of data by Government departments.

The Hon. R.I. Lucas: And private?

The Hon. M.J. ELLIOTT: Yes, and private. However, my Bill looked nothing like what the Government and House of Assembly select committee have served up to us. Although I do agree that some of the issues raised in the committee's report require attention, the proposed Bill is overkill in relation to those issues and deficient in other areas. It lacks effective data protection provisions and contains no balance between the need to preserve free speech while protecting personal privacy.

Let me first deal with what I see to be the most important privacy issue, namely data protection. The size, scope and potential of the personal information stored by Government agencies is the privacy issue which affects all of us. Government computer databanks pose three dangers to personal privacy:

1. Inaccurate, incomplete or irrelevant information being incorporated into a file;
2. Possible access to the information by people who should not need to have it; and
3. The use of the information for purposes other than that for which the information was collected.

Recently, Karin Sowada, a Democrat Senator, revealed that the New South Wales Electoral Office had improperly given out personal details on voters in that State to the Liberal and Labor parties. The Minister for Administrative Affairs, in answering a question from Senator Sowada, admitted that the information had been passed on as an 'oversight' by the office, and it would attempt to recover the leaked information. That is an empty promise. In practice, full recovery of the information which was contained on computer tape would be impossible to guarantee.

One Party in New South Wales uses such confidential information on voters' age and sex—information which should never have been given out—together with residential address, to estimate whether voters are gay. Their computer searches for households containing two males with different names and less than 20 years age difference, in areas of high disposable income and then sends out an unsolicited letter targeted to the gay community. Senator Sowada has also said that the information is used by the Labor and Liberal Parties to track voters by allocating to them identification numbers so they can be followed despite changes in name and address. This would not have been possible if the relevant Party machines had had access only to what is legally available from the Electoral Office. In that case it was, in the first instance, a mistake, but a serious one.

There are many examples of information being used for purposes not intended when the information was collected. A 1983 Law Reform Commission report on privacy matters states:

> An officer of the Department of Social Security in Adelaide recently pleaded guilty to 13 counts of illegally providing information taken from departmental files . . . The officer is alleged to have been blackmailed into providing the information by an employee of a finance company . . . Approximately 400 checks of departmental files were made by the officer who supplied information which concerned people in receipt of social security benefits. He was allegedly paid $20 for each check made, and this money was sent off against his debt to the finance company. Computerisation can allow the mass movement of such information from contexts where there are less stringent safeguards for privacy than exist in the case of information held by social security departments.

Recently, in New South Wales the Independent Commission Against Corruption uncovered a major racket in information trafficking involving power utilities, finance companies, debt collectors, banks and Government depart-

ments. A recent report of about three weeks ago on the ABC television show, *Four Corners* (and if members have not seen it, I have a copy of it), said that members of this underground network met and exchanged business cards at specially organised functions and called each other to gather information on people of interest to their organisation.

However, what I am concerned about is not only the deliberate abuses but also the accidents which can be just as dangerous to an individual as a malicious abuse of information. One recent case that came to my attention involves an Adelaide couple whom I will identify only as Mr and Mrs X and the Department of Correctional Services. Mrs X is a recipient of sickness benefits from the Commonwealth Department of Social Security (DSS). In August this year she received a letter asking her to repay $1 753.78, because DSS claimed that she had not advised them that her husband had been in prison from 10 January 1990 to 25 May 1990, and she would have been entitled only to a single rate during that time. Mr X has never been to prison, and the couple was understandably distressed and outraged by the allegation.

After investigations by a lawyer and the Commonwealth Ombudsman, it was discovered that a match had been made on Mr X's name and birth date when DSS files were compared with South Australian Department of Correctional Services files, something which I believe happens three times a year. Apparently, Mr X's name had been used as an alias by a criminal. DSS has apologised, but that is little comfort to Mr X, who has applied, unsuccessfully, for several jobs. I know that he applied for one job with the Courts Department as a security officer. Any check of prison files which throw up his name and birth date, suggesting that he has been in prison, would deny him that job. He is afraid that his employment prospects are impaired by the existence of a prison record in his name. In fact, he has applied for several positions. Now, he has found out that there was a file about him which turned out to be one that was created by accident.

There are many occasions when we may have been affected and never have known. If it had not been for the Department of Social Security responding to his wife and saying that she was not entitled to full benefits, he would never have known about the mistake and he still does not know whether that mistake has spread to other departments or, indeed, whether it has had any other impacts upon his life. He may never know.

I once had an experience of the mismatching of data, and I still do not know where it ended. Some four years ago there was a knock at my front door at home. There were a couple of police officers there who asked if I was a Michael John Elliott. I said, 'Yes.' They said, 'Do you have a white utility?' I said, 'No.' They said, 'Thank you very much,' and they left. I was left scratching my head, not knowing what it was all about. About two years ago I arrived at work to find that several messages, stating that they had been looking for me, had been left for me by a sergeant at the Norwood Police Station, I telephoned the police station, and the sergeant was not there. I said, 'What is this for?' They said, 'Oh, there is a warrant for your arrest.' I said, 'What for?' They said that they could not tell me too much.

I went downstairs and spoke to the policewoman stationed in Parliament House. I said, 'Can you find out exactly what is going on? I know that I have not done anything. I would like to know what this warrant is for.' She telephoned the police station and said, 'You failed to show up in court following a traffic offence.' She then recounted my full name, address, date of birth—which was wrong only in year—when the offence was supposed to have happened, etc. Now, as I said, they were wrong about the date of birth only in its year, but they had the correct day and month. I knew and could prove where I was on that day—300 kilometres from the point at which the offence had occurred, and in fact I also had not been living at that address for some 18 months before the offence had occurred.

The Hon. K.T. Griffin: Someone else had used your name.

The Hon. M.J. ELLIOTT: Somebody had obviously used my name.

The Hon. K.T. Griffin: How do you overcome that?

The Hon. M.J. ELLIOTT: Well, the difficulty is that they are now coming to me, and not only are they using my name but also they have a birth date and an address. I do not know (and, of course, even under FOI I can never find out) but does a file look increasingly like a person as they start matching information? I do not exactly know how that information is being stored. I still do not know how the matter was resolved other than having been spoken to, and being told, 'That's okay.' I have not seen them for the past two years.

The Hon. T. Crothers interjecting:

The Hon. M.J. ELLIOTT: He would have to be.

The Hon. K.T. Griffin: Will this Bill rectify that?

The Hon. M.J. ELLIOTT: I think it will make sure that proper procedures are carried out in terms of how information is kept, that what is known to be correct and what is thought to be correct are seen and kept as two separate items, and that there is no possibility that a file can become more like a person as information is collected. What I am looking for (and I will get to it in a moment regarding the Privacy Commission) can, I think, help solve some of those sorts of problems.

As increasingly powerful computer facilities, such as the Justice Information System, are utilised by Government, the potential for things to go wrong increases. At present in South Australia we have a Privacy Committee overseeing guidelines covering privacy issues in relation to Government departments. The Attorney-General has been using the line that we do not need a Privacy Commission, because we have a Privacy Committee and, anyway, a commission would cost too much. I do not believe that an adequately resourced commission should cost any more than an adequately resourced committee. But the Privacy Committee in South Australia has complained that it is under-resourced to oversee the existing administrative guidelines on privacy. In its annual report for the year ending December 1990 the committee admitted that it did not know how one of the Government's main information storage systems functioned, and that it did not have the resources to find out. The report says that last year the committee had agreed to:

> . . . target one or two JIS applications in an endeavour to determine what data is used, who has access to it and whether information is being used for an alien purpose.

They are all important privacy issues. The report goes on to say that the committee approved the proposal but whether or not it could be pursued 'will depend upon the resources made available to the committee'. Resources are mentioned several other times in the report. The committee says that it will not be able to discharge its functions and that projects it wishes to carry out, may be impossible to achieve without additional resources. The report made it clear to me that, although we have a Privacy Committee and administrative guidelines in South Australia, the scrutiny of Government record handling is not adequate to ensure that breaches of privacy, either malicious or unintentional, are minimised.

The Attorney-General, in a ministerial statement earlier this year on the Justice Information System, went to some lengths to explain the existing structure for dealing with

privacy issues. I have visited the Justice Information System and was impressed by the attention given to the security of data in the initial set up of the system. This goes a long way to minimising—and I stress minimising—privacy problems later on. However, that approach is only as good as the people operating the system, the accuracy of the data stored within it, and the applications for which that data is accessed. The more powerful the technology available for data storage and retrieval, the more important it is to have safeguards in place to instil confidence in the public that the system is as secure as it can be, that its functions are monitored independently of Government and bureaucracy to minimise breaches of privacy caused by the mishandling and inaccurate recording of information. In the words of the Australian Law Reform Commission:

> . . . there are profoundly practical reasons for strengthening protection of privacy interests. Through technological change, breakdown of existing controls on invasions of privacy threatens grave injustices to individuals, particularly as a result of the misuse of information even where it is true. In criminal, health, employment, credit or other records, data banks may become the repository for wrong or misleading information about persons and provide the basis for incorrect, unfair or insensitive decision making. It is virtually impossible for an ordinary person to discover precise details of all the information stored about him, and of its use and abuse. Much vital decision making in both public and private sectors, affecting entitlement to welfare benefits, credit, economic advancement, educational placement and promotion at work takes place in secret. Decision making affecting individuals is thereby made more remote than once was the case.

I intend to move amendments to this Bill to allow for the establishment of a Privacy Commission in South Australia. The commission would have the power through legislation:

- to investigate complaints of breaches of privacy;
- to enforce information protection guidelines covering the collection, storage, transfer and use of data held by all Government departments;
- to promote compliance with OECD guidelines in the operation of databases; and
- to monitor the application of technological advances in the storage and retrieval of information.

It would report to Parliament.

Having talked about the Bill's deficiencies and my proposals for overcoming them, I turn now to what the Bill seeks to do. In my view, it seeks to deal with a problem affecting very few people by creating a major threat to elements of the democratic process. I acknowledge that there have been instances of the media invading the private grief of South Australians and abusing privacy in other ways. However, those instances are relatively few and far between, are frequently one-off situations, and the people involved are usually not of the kind who have the resources to exercise the tort created by this Bill. More than likely, the tort will be exercised in relation to the media by the rich and powerful to defend their own interests rather than their privacy.

The Australian Press Council has voiced concern that neither the Commonwealth Constitution nor the Constitution of South Australia has a provision guaranteeing freedom of speech and expression. That freedom is one which I feel Australians take for granted, and it is of some concern to me that it is not guaranteed anywhere but merely understood to exist. I believe that this Bill will threaten that freedom, despite the amendments incorporated in the Lower House. Exempting the media from injunctions does not remove the potential for threats of costly legal action to curb publication of sensitive material. The definition of 'media' inserted into the Bill is also flawed as it does not recognise the activities of freelance journalists. In fact, much investigative work is carried out by freelance journalists.

In its present form, the Bill will threaten the understood right of consumer organisations, environmental groups and other public interest lobby groups to monitor and expose activities to which they are opposed without the threat of expensive and time-consuming litigation, a difficulty they already face under defamation law. I have not been presented any evidence of these groups causing privacy related problems by the proponents of the Bill to warrant the tort being applicable to them when they are operating in the public interest. It is not good enough that the defence of public interest is available. We are talking about non-profit organisations, and the mere threat of legal action could be enough to curtail their activities.

The Bill as proposed would apply the right of privacy to a person's business affairs. I see no legitimate grounds for this protection. Other laws, including companies and securities and patents legislation, already cover—or should cover—this area. Privacy legislation should be very much about individuals, their lives and personal details. The notion of business privacy is wide open to abuse. I will move amendments during debate on this Bill to exempt the media and non-profit organisations operating in the public interest from the action of the tort and delete all references to business interests. Although these groups will be exempted from the operation of the tort, I believe that they should still be the subject of scrutiny by the Privacy Commission.

The commission would be able to receive and act on complaints from the public in relation to the operation of the media and other exempt groups, including those already granted exemption by the Government. It would be able to investigate the complaints and report to Parliament. It would not have the powers of a royal commission in dealing with the private sector; it would relate only to the public sector in relation to data bases. I believe that the privacy issues relating to the media can also be dealt with through other avenues, including self-regulation.

I understand that there is a willingness within the television industry at least to work towards a form of self-regulation through a code of industry practice. The Federation of Australian Commercial Television Stations (FACTS) already has in place a code of industry practice for violence which the Broadcasting Tribunal recently said was being applied successfully. I am told that FACTS is exploring the issue of similar measures in regard to privacy. I have had discussions with most of the television stations in South Australia with regard to that.

One of the Press Council's concerns with the Bill is that it would put South Australia out of kilter with the other States in relation to privacy provisions, a major concern given that so much media information flows around the country. The Attorneys-General of Victoria, New South Wales and Queensland have apparently been working towards getting uniformity in defamation laws in their States. As I understand it, it is proposed that truth alone will generally be a good defence to a defamation action unless publication relates to the plaintiff's health, private behaviour, home life or personal family relationships, in which case the defendant must, in addition to truth, prove either that the matter published was contained in a public record or that the matter was relevant to a topic of public interest. Should this proposal be successful, it would combine defamation and privacy into one measure.

I believe that this tort is unnecessary in relation to the media and what I have called public interest groups. It would place another potential block in the way of freedom of speech and expression, something which should be avoided at all costs. I believe that the public of South Australia will be better served by having a Privacy Commission oversee-

ing how their personal information is being handled than by being able to go to court if they know that a breach has occurred and have enough money. This Bill will provide some privacy protection to the rich and powerful but, I believe, nothing to the ordinary, trusting South Australian.

The Democrats support the second reading of this Bill. However, there are three fundamentals that must be observed before we support the legislation further: that is, the tort in relation to privacy should not apply to the media or public interest groups; business interests should not be a matter of privacy within this legislation; and there should be entrenched within this law an independent body to oversee data protection. With those matters properly addressed, the Democrats will support it.

The Hon. K.T. Griffin: You've changed your mind since the other day!

The Hon. M.J. ELLIOTT: That line has been consistent from the beginning. A failure to take up those issues will mean that the Bill will fail.

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

[*Sitting suspended from 5.55 to 7.45 p.m.*]

CORRECTIONAL SERVICES (DRUG TESTING) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 November. Page 1713.)

The Hon. K.T. GRIFFIN: The Opposition supports the Bill. It has been amended at the instigation of the Liberal Party in the other place to make one change, which might be regarded as a minor change, nevertheless it is important. The Bill seeks to address the issue of random sampling of urine for analysis for the presence of drugs and to provide a regime within which that may occur.

The manager of a correctional institution may require a prisoner to provide a specimen of his or her urine for analysis in the circumstances set out in new section 37aa. There is a potential for random selection for testing all prisoners in an institution or part of an institution or for the testing of an individual prisoner where the manager suspects that the prisoner has unlawfully used a drug.

The Opposition has been critical of the Government for having announced such an initiative over two years ago and not having done much about it. So, we are pleased to be able to support the proposition at last and not to delay it unnecessarily. It had been suggested that the Bill ought to be referred to the Legislative Council Select Committee on the Penal System in South Australia. If there had been more time, the Opposition would have supported that course of action. However, having been so critical of the Government for not proceeding with this, and generally accepting the need for such a system of analysis for the presence of drugs in urine, we have taken the view that it is inappropriate to delay the Bill further by referring it to the select committee.

Notwithstanding that, we still think that the Bill, even when passed, ought to be the subject of consideration by the select committee so that in its final report—which I understand might be tabled in about the middle of next year—the select committee may comment upon the operation of the Bill and also deal with its application to a broader range of testing for the presence of drugs. One has to acknowledge that this relates only to urine testing and that other methods of testing must be considered and that proper authority be available for those other forms of recognised testing. During the Committee stage I will ask the Attorney-General whether he can indicate when other forms of analysis might be considered for inclusion in this legislation.

Members in the other place made some observations on the extent of drug taking in prisons in South Australia and elsewhere. I do not think that I need to repeat what was said in that debate, except to say that an observation was made that contact visits are the way by which drugs are passed into the prison system and that there ought to be some way by which there can be closer monitoring of that means of drugs entering the prison system.

The Correctional Officers Legal Fund indicated that it supported the concept of the Bill, but that it was concerned that it was not wide enough to relate to other types of testing for the presence of drugs. It made one proposition that I think is worth considering, although it goes more to the offence provisions of the Act rather than to this Bill, which relates only to analysis. The Legal Fund believes that provisions will have to be included which make it an offence to have had an illegal substance in the possession of a prisoner as distinct from actual possession or use of a drug. It draws attention to advanced means by which drug traces on the body or clothes of a person who has handled drugs might be detected, particularly those methods being developed overseas, and it refers particularly to simpler forms of testing for drugs, which were considered at the International Association of Forensic Scientists' conference last year.

That is something that needs to be considered by the Government; that is, whether there should be an offence for having been in possession of an illegal substance where traces are found on the body or clothing of a prisoner, because the presence of drugs in a prison system is quite disruptive. Contrary to the views which have been expressed from time to time that drugs keep the prisoners quiet and, therefore, less trouble is caused to correctional officers, I believe that the presence of drugs ultimately causes more problems than they are worth and that drug taking in a secure environment like a prison ought to be virtually eliminated.

The Offenders Aid and Rehabilitation Service made the point that it was concerned about the collection of specimens by correctional officers and suggested that the whole procedure be carried out by medical staff. I gather the concern administratively is that the medical staff is already substantially overworked. They work long hours in a prison system and are just not able to cope with the sort of workload that might be involved in the administration of this Bill. In any event, a problem with the patient/doctor relationship has actually prompted the introduction of the Bill, as I understand it. Where a medical practitioner takes a sample of urine or some other specimen and it is tested for drugs, the medical practitioner generally regards the analysis as confidential in the sense that it relates to a patient/doctor relationship and, therefore, the prison authorities are not able to gain access to that information.

The Opposition has no difficulty with correctional officers taking samples, provided an appropriate procedure is set down in the guidelines or procedures for the operations of correctional officers, and provided also that those procedures are very carefully monitored by responsible people so that there cannot be seen to be and cannot be any abuse of the system, that it remains fair to all prisoners as well as ensuring that prison officers are beyond reproach. Therefore, the Opposition supports the Bill and hopes that when it has been enacted it will be implemented at the soonest possible opportunity.

The Hon. R.J. RITSON: I understand that the taking of samples is a management tool: it is not merely a research project or a gathering of useful information. It is designed to identify people who have transgressed the prison rules in this regard, with the purpose of exercising sanctions, withdrawing privileges. It has been put by some in the community that it may be counterproductive in that it will promote rather more devious practices to circumvent it, including the development of the use of drugs which are not easily detectable in the urine. I do not think we can know at this stage what will actually happen.

It was suggested that the matter be referred to the select committee. There might have been some value in that, had the Council not been under such pressure of sittings. I hope in due course that the committee will report its views on that aspect of the proposal. However, in the meantime I can see no other expedient alternative but to try out the system and see what happens. It would be worthwhile, as the committee continues to sit, to just watch the progress of it and see whether some of the practices of avoidance that have been talked about within the medical community do develop or whether the program is as effective an instrument of prison management as its proposers hope.

Whilst medical officers, like everyone else in the community, have obligations to report felonies, the medical officer is primarily there in the interests of the patient: he is not an employee of the prisons as such. Generally, medical officers do not feel that they have an obligation to act as an investigator or detective against the interests of their patients. That is different from being guilty of a misprision of felony. I am sure that doctors who undertake prison work do not want to feel that they are there as a detective investigating their patient.

The taking of urine specimens is simple and does not require a medical officer. I have not personally taken a urine specimen from anyone since I was in about fourth year medicine: it is always delegated in the ordinary course of medical practice to an allied health professional who does not even need to be a registered nurse. I do not think it would create a problem to leave the taking of urine specimens to prison officers. There are plenty of female prison officers who could take specimens from female prisoners.

I support the Bill, with the one proviso that the usefulness as a management tool, coupled with the withdrawal of sanctions, will need to be looked at scientifically to see whether drug-taking practices alter in response to this and to see what sort of tricks some of the inmates get up to. Some of my colleagues in the community have expressed the view that all one has to do is change to certain other undetectable drugs to defeat the system. Having said that, I believe this Bill is worth a try, and I would support its second reading.

The Hon. J.C. IRWIN: I support the second reading of this Bill, and I support the remarks made by my colleagues the Hon. Mr Griffin and the Hon. Dr Ritson. I will not cover that territory again. At the AIDS/HIV and Prison Conference in November 1990, the subject of drugs in prisons was addressed at some length. The communique stated:

> What happens now in the Australian prison system could materially influence whether the HIV epidemic will extend to the wider community in the future or will be contained. The future direction of the epidemic depends greatly on the extent to which the virus becomes established in those who inject drugs in the wider community. A high proportion of regular intravenous drug users pass through the prison system and back into the general community. With their incarceration they carry into the prison environment their dangerous risk behaviours which become even more dangerous inside prison.

This highlights just one of the problems associated with drugs in prisons. The spreading of infections and diseases is a concern and quite often is a by-product of drug use. Thankfully the Government is not following all of the recommendations of the communique, when in part it states that bleach should be available for those who engage in intravenous drug use, and all prisoners should have access to information which tells them how best to use it to disinfect injecting apparatus. I am not convinced, nor are many others, that the issue to prisoners of bleach and condoms is the answer to the spread of disease in prisons. It is the band-aid option. It is far better in my opinion to do everything to stamp out a problem rather than band-aid it, although one cannot dismiss that as an option.

There is an argument that more damage is possible from sharing a reduced number of dirty needles that may still be circulating within a gaol than allowing needles to be sterilised. The argument should be that drugs should not get into the prison in the first place. The question that must be asked is just how serious we are in ridding prisons of all drugs, reducing drug related crimes and reducing the spread of infections. I accept the argument and promulgate it myself that a major part of overcoming the prison drug problem is in reducing drugs in our society. Indeed, I use the argument that crime will only be reduced by correcting a range of problems starting in the family and going through schools, community standards, and so on.

Through a dogged push to ban smoking in buildings and so on, we have reduced the numbers of those who smoke. The same energy should be used to reduce those who use drugs which, if you like, is a different sort of drug habit. It seems that those who oppose the smoking habit do not oppose the drug habit: more often than not, they are the same people who push for the management option rather than the elimination option for drugs.

I have also said previously, that the reduction of death and injury on our roads has come about by attacking the root cause, even if this has been achieved with hefty legislative measures. We can see from figures available on a quarterly basis that that problem is being addressed in a positive direction by taking some unpalatable measures, which are now being accepted by the community. If the Minister of Correctional Services is convinced that the prison officers are not responsible for drugs entering prisons—and they do not deserve all the accusations that they have had to put up with in the past, although the possibility must not be ignored—then the main problem must be contact visits, although prisoners have found other ingenious ways to get drugs inside the prison walls.

I am sure that those who were on the select committee chaired by the Hon. Mr Gilfillan would be saddened to read in the *Advertiser* yesterday and the Melbourne *Age* of 7 November about the recent heroin seizure in the gaol rehabilitation unit at Jika Jika in Victoria, where 13 prisoners in the drug rehabilitation unit at Pentridge have tested positive for heroin after the discovery of what the authorities described as a considerable amount of the drug inside the unit. The Director-General of the Office of Corrections, Mr Harmsworth, whom we had the pleasure of meeting and having a submission from when the select committee was in Melbourne, confirmed that the drug had been seized and said that he was disappointed by the incident. The report states:

> 'It's totally disappointing to think that this happens in a drug treatment unit. It makes a mockery of the whole thing,' Mr Harmsworth said. He said the inmates who tested positive to the drug, 10 men and three women out of 18 men and nine women

tested, had been moved from that section . . . A condition of entering the special unit is that prisoners would be expelled if found to be using drugs . . . Mr Harmsworth said the drugs were found on Monday. They were believed to have been brought into the prison by two people on contact visits to K division, which houses the unit.

'What was seen on Monday was a male passing a syringe to a female through the fence and they were both apprehended,' he said. 'Following a search, a second syringe was found.

Prisoners then gave up some drugs—heroin—and prisoners in two units were urine tested . . . They will automatically be banned from contact visits for a set period, which increases for subsequent offences.'

The problem was raised by the Hon. Mr Griffin and was alluded to by the Minister in the Assembly. It is not just a matter of targeting the people who were tested to be positive to drugs as the ones who should have their contact visits removed, although that may still have to happen, but it may be that, as it seems in this case, other people were involved in obtaining the drugs within the prison and passing them through to those who were able to use them. Obviously it is very important if contact visits are to be stopped that the targeting must be spot on. The Minister of Correctional Services, in his second reading speech, said:

The Department of Correctional Services has implemented a wide range of measures designed to assist in achieving the goals of reducing the contraband entering the prison system and deterring the use by prisoners of illicit drugs—including prison perimeter security.

I wonder whether the perimeter security at Mobilong has been implemented to stop outsiders bouncing or throwing tennis balls full of drugs over the fence to prisoners inside. Whatever has been implemented so far, from the figures and from what we are told, is obviously not working. With the impending demise of the perimeter patrol at Mobilong, this prison may still be vulnerable, no matter how good the security fence and how well it has been or is being reinforced. In the 1991 Department of Correctional Services annual report we see that drug incidence has gone from 225 in 1989-90 to 311 in 1991—a rise of 32.8 per cent. That reinforces what I said earlier. Whatever has been implemented in the gaol system here is obviously not working, or those people involved in drug use in the prison are becoming more innovative in getting drugs to service their problems. What chance has a prisoner of rehabilitating if the temptation of using drugs is prevalent in the prison or if it is reasonably easy to get into the prison system. If we legislate to use every method possible to stop drugs entering our prisons, we then have a chance of getting habitual drug users off their addiction. It is reasonable to assume that this will in turn lead to a reduction in the crime rate for those hopefully going out of the prison system who would have been rehabilitated. That might be a forlorn hope, but we cannot knock it on the head or discount it.

The increased use of methadone in our prison system indicates that the methadone program has not fully taken up the demand of drug users, and the increase in crime in our society continues. Although prisoners are increasingly offered methadone in prisons, they are not all taking it up, indicating they are able to get the real thing and are not ever trying to kick the habit. I believe that the increased use of methadone should be considered very carefully before we hand it out too freely. I believe that there are indications that it can be a very long drawn out process to come down from long use of methadone—more so than from opiates. In an articule from Robert Batey, published by the *Medical Journal*, he states:

Continued community concern about crimes against property and the huge interest in Neighbourhood Watch programs also shows that our present efforts to decrease drug availability, to decrease the demand for drugs, and to provide therapeutic alternatives have failed as most of these offences are attributed to drug using individuals.

The figure that has been suggested for drug related crimes is as high as 70 per cent. There really is very little excuse for not clamping down hard on drugs within the prison system. Given the expense of placing these people in gaol, every effort should be taken to prevent them from getting anywhere near drugs and, through counselling and education programs, getting them 'off' drugs so that when the time comes for them to be released they are not having to go straight back in criminal activity in order to pay for their habit, starting the circle off again.

No prisoner should expect to keep a drug habit in gaol. This in itself should be a pretty strong deterrent. If it is not, then the prisoner should know he or she will have to go cold turkey and that may be another deterrent. If prisons are to rehabilitate this would be rehabilitation in its purest form—obviously with some pain. On 29 October the Minister in the other place during debate on this legislation said:

There is no doubt that contact visits are the prime avenue to entry of drugs into a prison. I do not think it would be a satisfactory solution to stop contact visits because most visitors do not bring drugs into gaol and most prisoners do not use them; so, we would be punishing all prisoners for the offences of a few.

I alluded to that sentiment previously. Right through the community there are examples every day of a few idiots whose performance causes laws, etc., to restrict everyone. Again I see a deterrent working if the majority demand that the contact visit system is not put in jeopardy.

Obviously visitors to known drug users will be under suspicion when they visit prisoners, and there should be a trace back system, but this will not stop other prisoners' visitors, who are not drug users, from being enticed into bringing in drugs and then having the 'clean' prisoners pass them on to other prisoners. As I have said, this is what happened recently in Victoria. I wonder how this new legislation will stop that sort of dealing. If contact visits are so important to prisoners, they should value those above a continuing drug habit. If ever we have a chance to help people kick drug habits it has to be in gaol. There is no doubt that prisoners are amongst the most ingenious in our society. If there is a way of getting drugs into prison they will find that way while contact visits are available to prisoners. If this new legislation does not rid our prisons of drugs completely or have a dramatic impact then stopping all contact visits must be considered.

I would have thought that the old rule of the jungle, boarding schools or army camps would still prevail. If a few are making life very difficult for the majority, then the majority soon let the minority know that their behaviour is unacceptable.

The Minister has acknowledged that legislation has been slow in coming, taking the past two years or so to look at other systems. I hope that once it is introduced it will not take as long to review the South Australian system to find out how it is working here after so many problems have been encountered in other States. Hopefully, some of those problems in the other States have been solved, and we can learn from that experience. I am slightly—

The Hon. R.R. Roberts: Optimistic.

The Hon. J.C. IRWIN: Yes, I am optimistic. I was going to say that I do not particularly like the two-tiered system that the Minister is expecting to bring in where, first, suspected drug users will be targeted, and that will then move slowly to some random system that has not been devised. If it has been devised, it has not been mentioned to the Parliament. I understand that it will take a long time to get from the target system to the proper random system. Therefore, I hope that does not take too long, and I will certainly

be keeping an eye open, as no doubt the select committee will, on how the system is working. The department's 1991 annual report stated:

> In the area of drug-related programs, the department is reviewing the need for and potential benefit of a specific facility to address the special needs of drug-dependent offenders.

I would certainly be interested in receiving advice from the Minister and/or the department on exactly what is in mind in regard to a special specific facility. I believe that it has merit, and I would be interested to have some more details about what is in mind in that respect. I support the second reading.

The Hon. I. GILFILLAN: In this Bill the Government proposes to amend the Correctional Services Act 1982 to include drug testing of prisoners by the taking of urine samples. It proposes to introduce this in two phases, first, through testing prisoners suspected of having used an illicit drug and, secondly, through random sampling and total population testing. There is no doubt that drugs are a part of prison life for some inmates, a fact confirmed by recent evidence presented before the Select Committee on the Penal System, of which I am Chairman.

Dr Robert Ali, the Director of Treatment Services at the Drug and Alcohol Services Council, recently told the select committee:

> . . . a study conducted in 1989 in South Australia looked at the use of injectables in our prison system and found that 38 per cent of prisoners admitted to using an injectable substance while in prison—

That quote is from the public evidence of that select committee. There are, however, a number of aspects of this Bill in relation to drug testing of prisoners that I find disturbing. The Minister of Correctional Services said in another place that measures currently used to control illicit drugs in prisons include strip searching of prisoners, comprehensive searches of prison cells and prisoners' property and the searching of visitors.

I am advised that visitors are asked to empty their personal belongings in front of a correctional services officer and must then pass through a metal detector. Authorities also use sniffer dogs in searches, and place a great deal of emphasis on prisoner observation and perimeter security. Despite the wide range of options open to authorities to combat drugs in prisons, the Government now wants to introduce drug testing of prisoners. It would be of interest to many people, I believe, to have the Government present to this House figures on the success rate of strip searches of prisoners for drugs. I understand that strip searching prisoners has been in operation for approximately the past two years, and in that time the incidence of finding illicit drugs has been negligible.

One of the problems that I believe could result from drug testing of prisoners is that it could force prisoners to use harder drugs. I say this based, again, on evidence presented to the select committee in which Dr Ali said:

> . . . the majority of drugs used injectively are heroin and amphetamines . . . those drugs do not stay in the body as long as drugs such as cannabis. One of the consequences of assaying drugs that are of short half life . . . is that it will potentially shift people towards using drugs that are more difficult to detect. The short half life drugs are more difficult to detect . . .

The most commonly used drug in prison is cannabis, but I fear the introduction of urine testing by authorities will actually force many cannabis users to turn to injectable hard drugs, such as heroin, because it is so much harder to detect by urine test.

I believe this matter should in fact be referred to the Legislative Council Select Committee on the Penal System, which has been working for more than a year and which has gathered a large body of expert evidence on the prison system, including evidence on illicit drug use in prisons. In fact, it is strange to see this piece of legislation introduced by the Government at this stage, given that a committee, chaired by the Department of Correctional Services with members of the Prison Medical Service and the Drugs and Alcohol Service, is currently exploring and reviewing all existing strategies in relation to drugs in prisons. That committee is expected to table a list of recommendations to the Prison Medical Service Review Committee early next year, but the Government has chosen to side-step the work of that committee and that of the select committee by introducing this piece of legislation now.

This matter should be considered by the select committee, and I indicate to members that I had intended to move, after the second reading of this Bill, that it be referred to a select committee. However, I will not be taking that option. There are two reasons for that. The first is that I have canvassed opinions of members of the Council, and it is quite clear that I would not get support for it, and I am prepared to accept that as a fact. The second reason is that it would be very difficult now for me to move it, and I would need to seek the suspension of Standing Orders. I do not see the purpose of attempting to put the Council through that exercise, as it has been clearly indicated to me that this measure would not be successful.

I refer now to a letter which I have received from Mr Greg Mead of Prisoner's Advocacy in relation to this Bill and in which he states that the issue of drugs in our society is a major community problem, not necessarily confined to prisons. He states:

> . . . the reasons for drug abuse in the general community are many, varied and complex. It would be wrong for the community to make scapegoats of prisoners.

The Hon. C.J. SUMNER: On a point of order, Mr President, we have allowed the honourable member considerable latitude, but he is in complete breach of Standing Orders, as is my understanding of the position. Standing Order 190 provides that one cannot refer to evidence before a select committee until that select committee has reported to the Council. No objection was taken earlier on so, if the point of order is not taken, the honourable member could proceed. However—

The Hon. I. Gilfillan: It is public evidence. It was a public hearing, and it is public evidence.

The Hon. C.J. SUMNER: It is irrelevant whether or not it is public. If it is evidence before the hearing, the Standing Orders prevent reference to it in the Council until the committee has reported. The very good reason for that is no doubt that we do not want daily debates about what is going on in select committees whilst the evidence is continuing to be collected by that committee, and before it produces its finding to the Council. If the honourable member looks at Standing Order 190, I think it will be fairly clear to him that what he is doing is in breach of the Standing Orders.

The PRESIDENT: I uphold the point of order. I am very concerned about the extent to which a lot of the information that has been before the select committee has been released by that select committee to the press on the authority of this Council. I understand that the honourable member, when giving evidence, could be referring to something that has gone into the press.

The Hon. C.J. Sumner: That doesn't matter.

The PRESIDENT: I know. I am very loath to say that he cannot do that. However, under the Standing Orders (and I take the point of order) no reference is to be made to the proceedings of the committee until the committee has reported to the Council. I am therefore prepared to

uphold the point of order. I was concerned prior to the Attorney's raising the point of order. I ask the honourable member to confine himself to the debate, without going into what is happening in proceedings before the select committee until it has reported.

The Hon. I. GILFILLAN: I would like to take the liberty of making an observation about your deliberation, Sir. I will not refute it but, with your permission, I would make the observation that I believe there is a distinction between reporting on the proceedings of a committee as distinct from public evidence which is given in a public forum before the committee and which I purely quoted verbatim, with no comment at all being made relating to the proceedings of the select committee. I indicate to you, Mr President, that I believe there is a distinction between proceedings and public evidence.

The PRESIDENT: Although I take the point of order raised by the Hon. Mr Gilfillan, I refer to Standing Order 398, which provides:

> The evidence taken by any committee and documents presented to such Committee, which have not been reported to the Council, shall not be disclosed or published by any member of such Committee or by any other person, without the permission of the Council.

Following on that, the Council has given permission for the press to be present and to publish certain comments. However, I still think that the spirit of the debate before us should not allow members who have access to that evidence and who have been at that select committee to bring that evidence before the Council and debate it, when other members of the Council do not have that information and cannot debate it. It seems to me that that is completely contrary to the spirit of the Legislative Council's Standing Orders. I therefore ask the honourable member to confine himself to the debate rather than refer to what has taken place in the select committee to this stage.

The Hon. I. GILFILLAN: With great respect, that matter begs further discussion at another point. For the sake of the edification of the honourable member who raised the point of order, I state that it obviously does not apply to Standing Order 190, so he can revise his knowledge of Standing Orders.

The Hon. C.J. Sumner: That's a reflection on the Chair's ruling.

The Hon. I. GILFILLAN: No, the Chair's ruling was very astute and erudite. It actually picked up the provision relating to the matter, whereas the Attorney's point of order did not do so. I also indicate to you, Mr President, that this quote relates to private correspondence and not to evidence given before the select committee. With your permission, I will continue with the quote. I refer to a letter I received from Mr Greg Mead of Prisoner's Advocacy in relation to this Bill, in which he states that the issue of drugs in our society is a major community problem, not necessarily confined to prisons. He states:

> . . . the reasons for drug abuse in the general community are many, varied and complex. It would be wrong for the community to make scapegoats of prisoners when the social conditions which lead to drug abuse in the general community need attention just as much as the drug abuse problem within prisons . . . it is unfortunate the prevailing culture within prisons is such that boredom, inactivity and long hours locked in cells provides a perfect climate to encourage the use of the artificial means provided by drugs to escape what is often the endlessly dreadful reality of prison life . . .

I share the concerns of Mr Mead and believe that random urine analysis of prisoners is in fact only a stop-gap measure and one that does not effectively address the real problem. The Government intends to punish prisoners found to be using illicit drugs; that is only one action for the Government to take. It would be more constructive if the Government allocated additional staff and resources to the Prison Drug Unit as part of a therapeutic program that would ultimately benefit prison authorities as well as the offending prisoner.

I believe the current methadone program should be extended. At the moment the methadone program that operates in South Australian prisons is available to people only for the first two months of their imprisonment. South Australia is one of only two States in the Commonwealth that operates a methadone program, the other being New South Wales. But, according to evidence before the select committee on the penal system, our program is much more limited than the New South Wales scheme and does not go as far as the national guidelines on methadone suggest.

Another concern I have with this Bill is the intention to make prison officers responsible for the collection of urine specimens. According to the Minister, the Government proposes that 'procedures will be adopted, in consultation with staff, to cover all occupational health and safety issues. Specialised training will be provided to enable staff to recognise the effects of drug usage, to collect samples, ensure infection control and document to maintain the chain of evidence'. There is a simple question whether correctional officers should be responsible for collecting samples and taking on the task of a so-called 'drug expert'. The role of officers as goalers cannot be consistent with the requisite degree of sensitivity and respect for privacy in the testing situation. At the very least, this procedure should be controlled and handled by qualified medical staff of at least enrolled nurse level.

As I have already indicated, I believe that this Bill should have been referred to the select committee, and I consider that it is unfortunate, for the benefit of the final form in which this measure would be introduced through appropriate legislation, that this has not been done. I believe that it is still appropriate for eventual deliberations of the select committee to be taken into consideration by a sensitive Correctional Services Department and Minister but, in indicating that I believe there is a role for urine testing in a penal system, I think there has been a wide range of experience, not just in Australia but world-wide, that should be taken into consideration and studied by this Parliament before we pass definitive legislation on how it should be implemented.

Although I will not oppose the second reading, because I believe there is a limited role for urine testing in our penal system, it is most unfortunate that it is being introduced prematurely and without the enormous benefit of the work which would have evolved from the select committee. I repeat: it is quite strange that this measure is being introduced while this committee, chaired by the Department of Correctional Services with a member of the prison services and Drug and Alcohol Services thereon, is currently reviewing the situation. Although I support the second reading, I indicate my protest at what I consider to be the undue haste with which this measure has been rushed through the Parliament before the committees that are capable of studying it and making recommendations have had a chance to report.

The Hon. R.R. ROBERTS: I rise to support the legislation on the basis that I believe we are seeing in this Bill the culmination of a long period of discussion between all the groups involved in the administration of prisons. Initially I did have some sympathy with the idea that this ought to be referred to the select committee, but I am persuaded by the arguments that—

The Hon. L.H. Davis: Persuaded by Caucus—tell the truth!

The Hon. R.R. ROBERTS: —after two or three years of discussion on this subject this legislation is warranted. I am reminded also by the contribution of Mr Oswald, the shadow Minister in another place, who actually chastised the Government for not introducing this Bill much earlier. If the Hon. Mr Davis had taken the trouble to read the *Hansard*, he would know that his own Party has supported this measure most strongly. To deny the Department of Correctional Services the opportunity to undertake a management process from day to day is a bit pretentious.

Mention has been made today of evidence that has been presented to the select committee, and I, too, was rather concerned that some of the references made to evidence presented to us were getting very close to the wind. I am persuaded more than anything else because the statement that the evidence presented to the select committee is complete is a fallacy. The list of witnesses is still rather extensive, and undoubtedly the select committee will take further evidence on this matter in respect of drugs in prisons. So, in those circumstances, we are faced with a proposition that we ought to make a determination as a select committee without having heard all the evidence that may be available. Also, it denies the expertise and integrity of all the people who have been involved in this discussion over the past two years.

However, I have sympathy with the fact that the select committee, in its responsibilities to the Parliament, needs to continue the debate, take evidence and monitor the operations of this new management tool that is to be introduced into prisons. Therefore, I have no alternative but to agree (regardless of allegations of Caucus bias), and am quite comfortable with the fact that, from the evidence I have received not only in this State but in a number of other States in Australia—and I will not refer to names—that there is a necessity for controls in this area.

I have not at any stage heard any evidence to say that this type of management tool is not desirable within our prison system. It has been made very clear to me that at least 60 per cent of all those incarcerated in Australian gaols have committed some drug-related offence. That statistic on its own should be sufficiently convincing to say that, this being the problem that gets 60 per cent of the prisoners into prisons, we need to do everything possible to eliminate the illicit use of drugs. I have no trouble in supporting the Bill.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. K.T. GRIFFIN: When is the Bill likely to come into operation?

The Hon. C.J. SUMNER: Mid December.

Claused passed.

Clauses 3 and 4 passed.

Clause 5—'Drug testing of prisoners.'

The Hon. K.T. GRIFFIN: Can the Attorney-General indicate whether there has been any planning to implement any other form of random testing for the presence of drugs in prisons in addition to the urine analysis provided for in this clause?

The Hon. C.J. SUMNER: No, there are no other plans. The only other test that is carried out is a blood test to determine whether or not a prisoner is HIV positive. That is a compulsory test, but there are no other plans to test for drugs.

The Hon. I. GILFILLAN: In his second reading explanation the Attorney stated:

> A prisoner who records a positive specimen will be liable to disciplinary action before a visiting tribunal. Failure to comply with a request for a test will result in disciplinary action that may be more severe than if the prisoner recorded a positive test result.

What is the envisaged penalty or disciplinary action that will apply, first, for the prisoner who records a positive specimen and, secondly, for the prisoner who refuses to take a test?

The Hon. C.J. SUMNER: Those issues have not yet been finalised and will be contained in the regulations made under the Act.

The Hon. K.T. GRIFFIN: I would like to pursue the question of procedure. As I understand it, a correctional officer will observe the sample of urine being given. Is it proposed that there be two officers present at the time the sample is being given to ensure that there can be no allegations by the prisoner that the sample has not been dealt with properly?

The Hon. C.J. SUMNER: Two officers have to be present and they must be of the same sex as the prisoner.

The Hon. R.J. RITSON: Because the Minister mentioned HIV testing, can he say what is the number of newly detected positive results in the prison system to date?

The Hon. C.J. SUMNER: The number is very small. There would be no more than eight to 10 in the system at the present time.

The Hon. I. GILFILLAN: In relation to training, again I will quote from the Attorney-General's second reading explanation, where he stated:

> It is proposed that correctional officers will be responsible for the collection of specimens. Procedures will be adopted, in consultation with staff, to cover all occupational health and safety issues. Specialised training will be provided to enable staff to recognise the effects of drug usage, to collect samples, ensure infection control and document to maintain the chain of evidence.

How many staff are currently trained to provide these functions? How many will be trained and by what date?

The Hon. C.J. SUMNER: No officers have been trained as yet. Discussions are under way with the PSA about training procedures and it is hoped that when they are resolved, the training process will be put in place.

The Hon. I. GILFILLAN: How many correctional officers is it envisaged will be trained for this work?

The Hon. C.J. SUMNER: The intention is that eventually all staff will be trained to the necessary level of awareness to carry out these tests. However, the authorisation process will be through senior officers.

The Hon. I. GILFILLAN: How long will it take to train correctional officers to do this work?

The Hon. C.J. SUMNER: It is not envisaged that there will be any problems with training. We do not know exactly how long it will take. However, the training is basic, and simple, and attempts will be made to train as many people as possible in the shortest possible time.

The Hon. K.T. GRIFFIN: If the procedures have not yet been agreed with the Public Service Association, and it is expected that the legislation will come into effect in the middle of December, does that mean that there is unlikely to be any effective testing program until the new year, or is it proposed to begin the random testing towards the middle or end of December?

The Hon. C.J. SUMNER: I anticipate that testing will be done before the new year.

The Hon. K.T. GRIFFIN: Section 37aa (2) provides:

> For the purposes of this Act, a prisoner uses a drug if he or she smokes or consumes the drug or administers the drug to himself or herself, or permits another person to administer the drug to him or her.

I am not well up on the means by which drugs may be taken, but the thought has occurred to me that maybe it does not address the issue of inhaling drugs. I suppose that it may be argued that inhaling is a form of consumption, but it is certainly not smoking; it may not be administering the drug, I am not sure. All I want to do is make sure that the Attorney is satisfied that all possibilities are covered.

The Hon. C.J. SUMNER: I am advised that that is the wording that is used in the Controlled Substances Act and it has been accepted, at least previously by Parliament, as covering all the possibilities, including that which the honourable member has raised.

Clause passed.

Clause 6 and title passed.

Bill read a third time and passed.

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 30 October. Page 1518.)

The Hon. J.C. IRWIN: The Opposition supports the second reading of this Bill. However, the Opposition has some problems with a number of clauses, and I will deal with them more specifically later. The Minister has made us aware that this Bill seeks to finalise a number of matters relating to the Local Government Act which have been developed in response to council requests over a number of years. In order to facilitate the smoother operation of council affairs, this Bill also seeks to rectify a number of anomalies and discrepancies which have arisen in recent years. Most members and I have no difficulty in accepting the Minister's explanation of the need for this Bill. Indeed it is usual practice, especially with the Local Government Act, to expect such amendments to be a finetuning exercise. For example, the Act was amended after the last two local government elections, which were two years apart.

I accept the need for the amendments to be debated separately from the major changes arising from the finalisation of the memorandum of understanding. I also accept what the Minister told us in her second reading explanation that since 1988 a working group on planning controls over outdoor advertising in the Department of Environment and Planning has been developing a comprehensive approach to such controls as are necessary. The Minister explained that consultation and negotiation on matters in the Bill before us have been going on for some considerable time. However, the Opposition had no consultation with any body or association on the substance of the amendments in this Bill until it was introduced.

Last year, at about the same time, Parliament considered amendments to the Local Government Act in relation to electoral provisions, parking regulations, standing vehicles in public places, and so on. I made the comment then, as I do now, that it is unreal to expect the Opposition Parties to carry out proper consultation on amendments to a Bill which has been introduced when the number of sitting days before the Christmas break is so limited. In fact, nine sitting days remained when this Bill was introduced, and only six days, including today, are left if Parliament rises at the end of November.

I believe that it is traditional to allow the Opposition Parties at least a week, which is equivalent to three sitting days, to do their consultation. According to my calculations, in this case one non-sitting week was involved. The final sitting days of a session always have a hothouse atmosphere because major Bills are debated. It is also my understanding that this Bill may well pass the Council but that there may not be enough time remaining for it to go through the other place. No explanation has been given to me as to why this Bill was not introduced soon after the session commenced in August. I know I am expressing an annual grouch from the Opposition, but I remind the Council that it was in the same atmosphere at this time last year that we debated and passed legislation relating to the parking regulations which incorporate the Australian standard signs. As members know, those parking regulations were promulgated finally to come into force on 5 August this year.

The Bill includes some fine tuning regarding evidentiary provisions to those same parking regulations. They could have been fixed up properly and debated and sorted out last year rather than needing to rush through legislation a year later to tidy it up, so to speak.

I turn now to some of the clauses on which I wish to comment. Clause 4 requires a council to take out and maintain insurance to cover its civil liabilities to the extent prescribed by the regulations. Regulations cannot be made except after consultation with the Local Government Association. I should have thought that was always the case. There may have been a loose agreement that that was the case, but I understand the Local Government Association is now demanding far more under the memorandum of understanding, as it moves away from the coat tails of the State Government and this Parliament, that it should be consulted and have the right to be consulted on the regulations which will flow from clause 4.

In South Australia, all but one council out of 120 are members of the Local Government Mutual Liability Scheme. That is a very commendable scheme and a commendable number of councils are part of it. These provisions will be relevant to those councils which choose to seek civil liability cover outside the mutual liability scheme. Some good argument is often put forward for the Opposition not to support compulsion, but the Ash Wednesday experience is fresh enough in our minds to see the damage that can be done to councils which are under-insured. At least councils will still have the freedom to shop around, so to speak, for their best cover.

Clause 5 proposes to make very clear that where there are two or more townships in an area there may be rating differences between the towns and between the towns and other land. This is almost going back to the rating provisions that existed before the Local Government Act sections were rewritten some time ago; that is, back to many of the provisions which existed when I was a councillor in the early 1970s.

Clause 6 relates to section 183, which seeks to ensure that if the name of an occupier is entered in the assessment book as the principal ratepayer of the land or if the land is held from the council under a lease or licence, the occupier will be the ratepayer. I should like to refer to a letter written to the Opposition by the South Australian Institute of Rate Administrators, which has signalled to us that it has a problem with this clause. I will not go through all of the letter. One needs to look at the Bill to see what I am talking about. The letter states:

> Subsection (2) *(b)* appears to provide that any tenant occupier of council property is the principal ratepayer and therefore liable for the rates.
>
> It is strongly suggested that this is totally inappropriate since the primary responsibility for the payment of council rates is governed by the tenancy agreement between a council and its tenants.
>
> In some cases, the tenants may pay a gross rent and, accordingly, it would not be appropriate for the tenant occupier to be the principal ratepayer in such a situation.

Furthermore, many tenancies in council properties are residential and, under the Residential Tenancies Act, it is not lawful to charge the tenant for rates.

It is understood that the purpose of the amendment is to provide for situations where either the rental is insufficient to cover council rates or where the tenant is not liable for council rates, such as in the case of the CFS.

It is submitted that, in the case of the CFS, it would not be appropriate or even legally sustainable to make such a body the principal ratepayer under the Local Government Act when under the Country Fire Services Act the body is clearly not liable for rates.

That is the advice from the South Australian Institute of Rate Administrators. It uses the example of the CFS. Wearing my other hat as Opposition spokesman on emergency services, if the CFS is the target, amongst others, for paying council rates—I may be mistaken, and I hope I am—it would be sad for that body to have to find more. It is a volunteer body which puts in great efforts in many areas.

Clause 11 will make provision to allow controlling authorities by two or more councils to carry out any project on behalf of the constituent councils. By striking out 'to carry out any project in any part of the areas of the councils', it would mean that the councils can engage in projects outside their combined areas. Another provision in the clause is the personal liability provision by members of the authority. The Opposition accepts that personal liability which is available to single authorities having been transferred should be available to constituent members of a joint council authority. I would like the Minister to give some examples showing why this wording needs to be taken out of the legislation. Very few have been given to me to justify giving the councils the authority to go outside their areas.

I am mindful that under clause 11 the Minister has power to bring in another council as a constituent council if two or more councils—for example, Mitcham and Unley—want to carry out a project in St Peters. I have no understanding why they would ever want to do that, but, if they did, the Minister has the power to invite St Peters to be part of that consortium and, therefore, three constituent councils would make up that authority. I would like some examples from the Minister of what councils have in mind—for example, cemeteries. One example given to me was libraries, but that does not make sense. Another example may be the Adelaide City Council, which has a rubbish dump at Wingfield, in another council area. If the situation with Adelaide and the Centennial Trust has worked well so far, the Opposition does not see any justification for allowing those words to be taken out of the legislation. If the Minister does not give the Opposition a satisfactory explanation, it intends to oppose the deletion of that clause.

Clause 13 has probably had the most public discussion. This clause provides for councils to make provisions to license moveable signs; interpretation of the words 'business', 'business premises' and 'moveable business signs'; and a penalty for non-compliance of $200. Conditions for councils allowing signs are part of the new clause. A licence will be issued for 12 months and a fee is payable. A separate licence must be obtained for each sign. If the sign is removed under subsection (12) and is not picked up by the licensee, it may be disposed of. The licensee is liable to pay a fee for the costs incurred in removing the sign. Councils must not grant a licence if it is contrary to the development plan or any regulations under the Planning Act.

As I have said, this is the most discussed clause of this Bill. I should say, first, that section 781 (1) of the Local Government Act also deals with the placement of advertising or objects on property under the control of council, and councils can allow or licence the above, pursuant to any reasonable conditions that it sees fit. The section provides for the placement of advertisements, and approval is required to fix the same in place. I accept that councils have been able to work under that provision so far, and I accept the LGA advice that there are a number of problems with liability which clause 13 seeks to address. But we have had discussions with some people who have consulted us, and I just precis some of them for the information of members.

The Real Estate Institute of South Australia supports the development of uniform standards to solve aesthetic and public safety issues. It also accepts that it would be unreasonable for councils to bear any legal liability. The Real Estate Institute protests most strongly at the way in which the Government has handled the matter. There was no consultation with this organisation. It classifies the measure as a revenue raiser.

The *Advertiser* says that it is concerned that it will be a criminal offence for anyone to place a movable sign outside premises without a licence. There will be an administrative burden on local councils and further tax on small businesses. Each council will have different 'rules'. 'Movable business sign' is not adequately defined. If the wording of a sign changes, is a new licence required each time? If a sign is hung from a hook, does that mean that it is in a public place? Council discretion could lead to discrimination for some businesses for all sorts of reasons. Discretion on conditions is open to abuse, and there is no control over the increase in cost of the licence from one council to another. It is contrary to current moves to deregulate, and it will be an administrative nightmare to businesses that will want a number of signs. Suing the person apparently in charge of the business is objectionable—it should be the proprietor. Councils should not be allowed to retain the excess of proceeds if they sell the sign after their removal costs have been taken out. Section 17 is far too wide. The *Advertiser* suggests that standards and conditions should be set down so that uniform conditions may apply to everyone.

Now, many things are said by the *Advertiser* in that precis list that I have given which I need not go over again, but some of the obvious comments are made. Some problems have been overcome by explanation from media comments in the *Advertiser* itself, in the *News*, and on air, but some have not yet been addressed adequately. The Small Retailers Association was not consulted on this matter. Most of the points covered by the *Advertiser* are in the submission of the Small Retailers Association. Some of its other points are that many of the signs that the council may remove and for which it may hold the person apparently in charge liable, do not necessarily belong to that business, that is, Streets ice cream signs, *Advertiser* signs, Balfours and Coca-Cola signs, etc. Those companies would not be impressed with the council selling their signs without their knowledge.

Once again, clause 17 highlights the autocratic manner in which councils conduct their business. The Local Government Association gave most of its advice to me in a press release of 13 November 1991 headed 'Councils support new sign legislation'. The release states:

South Australia's Local Government Association has attacked criticism of proposed amendments to legislation over footpath signs as 'ill-informed, irresponsible and in some cases simply wrong.' The Deputy Secretary-General of the LGA, Mr Tate, said that the Government and councils had been looking at the irresponsibility of footpath signs for many years and had attempted to accommodate small business and advertising concerns. 'There has been extensive consultation by the State Government. A working party convened by the Department of Environment and Planning sent copies of a discussion paper on outdoor advertising last year to many bodies including the Chamber of Commerce and Industry, the Retail Traders Association, the Small Business Corporation, South Australian Mixed Business Association and the Outdoor Advertising Association. The discussion paper included specific proposals to introduce a licensing system for sandwich board signs.' Mr Tate said, 'Many of the signs being discussed on radio this morning are simply not going to be

covered by the legislation.' In particular, the Government has bent over backwards to accommodate the real estate industry because of their concern about 'open inspection' signs. The situation with sandwich board signs on footpaths is not clear at present. Legal advice differs on the question of whether a council is able to grant permission under the Local Government Act or whether approval is required under the Planning Act. If planning approval is required, a fee of $35 already applies. The Bill before Parliament, in conjunction with proposed amendments to the development control regulations, will clarify the situation. The Bill makes it clear that councils will be able to grant licences for the placement of movable business signs on public property such as footpaths.'

The release goes on to finally state:

Without the licensing system, councils have two options:

1. To continue to turn a blind eye to the signs, as many do at present, exposing themselves (and the ratepayers) to public liability claims; or
2. To remove all signs from public property.

Obviously, neither option is acceptable. A licensing system is a better way to go.

I suppose it is of some value to include here some brief discussion about what is happening in one of the councils that is trying to come to grips with this situation. One council, which I will not name, held a meeting on 21 October to consider alternatives to sandwich boards or A-frame signs. In the council's proposal it states:

The placement of A-frame signs on the public footpath, even if changed to a secure mount, has not been legally possible because they cannot be regarded as being 'fixed' in place, stable and secure. A-frame signs constitute an uninsurable risk because councils could not legally approve such signs on footways and because of the inherent safety risks from them falling over . . .

The proposal also states:

Any advertisement constitutes development under the Planning Act and, accordingly, any proposed wrap-around pole signs would also require planning approval, other than where they met exemption or permit criteria. Council would be the planning authority when it did not receive any fees and thereby have an interest in the development. However, as it is likely that licensing fees would be charged by council, applications would need to be referred on to the South Australian Planning Commission for their determination.

That council was trying to find a way around the A-frame sandwich board problem by obviously looking at wrap-around advertisements on poles on the street.

As I have said, there has been a fair amount of public comment, and I have added to that by putting some comments on the record, but to the Opposition it is strange and illogical to have the provisions suggested in clause 13, in particular to have exempted signs. Persons can still trip over, be injured just as effectively and be hurt just as much by a licensed sign as they can by an exempt sign. Sometimes, as with land agents, these signs can be placed side by side. There is nothing to stop an approved sign being on a footpath on Unley Road when a shop premises is being auctioned, the exempt sign displaying the name of a land agent (with an arrow pointing to the property to be auctioned) standing right beside the sign that had to be licensed. We see that as being strange and illogical.

A blind person can be caught just as easily by a licensed as by an unlicensed sign. In relation to non-freestanding signs leaning against a building, one has only to walk up King William Street on either side to see the number of posters, billboards, or whatever, that are leaning against buildings. These can easily blow about, cause damage and be a problem to pedestrians, just as an A-frame sign that has to be licensed. I assume that councils' rubbish bins, of whatever kind and shape, are exempt, even if they display advertising on them. In many cases private rubbish bins have been purchased from councils. I would hope that these and other common street objects—and many of these points have been made to me by letter—are covered by insurance of one kind or another. Either they are covered by the personal insurance of those who own the rubbish bins or street objects, or they are covered by a council's liability.

I signal quite clearly that the Opposition will not support clause 13 as it presently stands. We have respect for the Local Government Association and the view at which it has arrived and which culminates in this Bill, particularly clause 13. Although I do not put the Local Government Association consultation process as the sole reason for rejecting clause 13, as an a political body, it should consult with the Opposition just as strongly and as fairly as it consults with the Government.

After all, this Opposition does represent more of the people of South Australia than does the Government, although it accepts it is not the Government. It would be fair for us, as an Opposition, to have this consultation and advice prior to this sort of legislation being introduced, and not after its introduction. Really, the consultation amounted to a telephone call to my office that everything was okay with the Bill. I thought that long and, at times, bitter experience by the LGA would have guided it in explaining the legislation for which it wanted support prior to its being introduced here, rather than a phone call, after the legislation had been introduced, saying that everything was okay.

What members are hearing from me now on behalf of the Opposition is an Opposition that is uneasy about the proposals in clause 13. We understand that conservative legal opinion is that sandwich-type boards are an unlawful structure on a public street, and we understand the insurance problem which has arisen. In the climate of the memorandum of understanding, it has been our view before that signing that local government should be responsible as far as possible for its own destiny, and the powers sought in this Bill are for local councils, not the Government, to take certain action. I am not sure what path the Bill will take when it leaves this place, but I hope that the Government and the LGA will be able to give more thought to clause 13.

I am also mindful of the fact that next year, in the autumn session, we are advised that major local government legislation will be introduced enabling it to stand alone rather than being tied to the State Government. As I have already said, we accept that these clauses need to be passed prior to next year when the other major legislation will be discussed. However, I indicate quite clearly to the Local Government Association that this Opposition would appreciate major discussions with it on the way to the formulation of that legislation and for an in-depth briefing prior to its introduction. Otherwise, we will find ourselves in exactly the same position that we are in now, where we will not be rushed into blindly following what is put before us. If people in the community raise problems, we have a responsibility at least to look at them.

Clauses 14, 18, 19 and 20 all deal with parking provisions and are supported by the Opposition. As I said previously, they are the fine tuning of the parking regulations that we put in place this time last year. It is a pity that 12 months later we are doing more fine tuning so that those regulations can work properly.

The Hon. R.R. Roberts: Why didn't you fine tune it properly last time?

The Hon. J.C. IRWIN: That is what I am saying. Maybe we just keep on fine tuning until we fine tune it out of existence altogether. Clause 15 relates to councils giving notice to owners of land affected by a scheme to dispose of septic tank effluent. The intention of the amendment is to apply new arrangements that do not require the involvement of the South Australian Health Commission. Regulations will be prepared to act as guidelines to councils

which undertake such schemes. Regulations cannot be made except after consultation with the Local Government Association, and I have already commented on that demand and accept it.

I would like to know from the Minister where is the tie-up with the Department of Environment and Planning in relation to planning for the disposal of septic tank effluent. I have not been able to follow this right through. The Minister may be able to help me as to why the South Australian Health Commission, which would naturally have an interest in the septic tank effluent, will now no longer be involved. Obviously the Department of Environment and Planning must be involved somewhere, but I am not sure exactly where.

Clause 16 empowers councils to make by-laws relating to the slaughtering of certain animals in urban and suburban areas. It takes up the private member's Bill introduced by the Hon. Dr Eastick in the other place. Both Dr Eastick and I acknowledge that the Government has taken up the matters raised in that Bill, and he is happy with the way that they have been transposed into clause 16. I, too, thank the Government for taking up that matter. I am sure that many country people who have some dealings with the slaughtering of certain animals in the urban and suburban areas will be pleased that this matter is now being addressed in legislation.

This clause also provides an ability for councils to limit the number of cats that are kept on a premises. I did not think there would be any great problem with this provision. I will not go into it in any depth, but I did find in the Salisbury Elizabeth Gawler *Messenger* of Wednesday 13 November the headline, 'Councils caution on plans for tougher control on cats', although I will not read the article. I take my consultation from the LGA. I assume that in its consultation process it takes a majority decision. I am well aware that some councils are cautious on the ability they will now have to control the number of cats. Many people would see this as a very good direction to take.

I am happy to take the debate through this week in this place. If the Bill is delayed in the other place for the Christmas break—that is only conjecture; I do not know whether it will be—I hope that that delay will give us time to consult further. I hope that the Local Government Association and the Government can also have a look at the proposals in the light of the comments made in this debate tonight by both the Opposition and the Democrats and that, as is usually the case at the end of the day, when the two Houses have had their discussion, the best arrangements will result.

Finally, in relation to the contentious clause, I am sure that there is the will to make the right arrangements, and I hope that the consultation process and the Committee discussion of the two Houses will address the matter to the satisfaction of the Local Government Association, small business and the people using the streets of Adelaide. Generally, the Opposition supports the second reading of this Bill.

The Hon. I. GILFILLAN: I support the second reading of the Bill, but with some substantially critical comments of certain aspects of it. The consultation process left a lot to be desired. I wish to express appreciation to those officers of the department who briefed me on the Bill yesterday. However, the LGA has made virtually no overtures to the Australian Democrats about the content of the legislation and, in that respect, I echo the comments of the Hon. Jamie Irwin that the character of the ingredients of this Council requires that organisations wishing to get support for legislation need to approach all the political Parties involved.

This Bill proposes a number of wide ranging amendments to the Local Government Act, and some, such as the new section 370—Moveable business signs—have already caused wide spread media interest and public debate. The Local Government Association confirms the Minister's second reading explanation claim that the LGA has sought the inclusion of this section for the past five years. Its argument is based on claims that stricter controls are needed on sidewalk sandwich boards, because according to Jeff Tate of the LGA:

> ... legal advice differs on the question of whether a council is able to grant permission under the Local Government Act or whether approval is required under the Planning Act ...

I believe there is a certain amount of confusion over signage laws and regulations for councils and therefore support the LGA in its desire to control properly and regulate the placement of sidewalk signs. However, I will not support councils licensing or charging fees. I believe the control of moveable signs should be placed in regulations and by-laws. In addition, I cannot accept the way in which the Government has drafted its section 370 amendment on moveable business signs. It contains a definition that states in part:

> ... a moveable business sign means any free-standing sign designed to promote a business or any part of a business or to attract people to business premises.

Yet the Government claims that this provision will not include the likes of open inspection signs for real estate firms because it does not promote a business but simply directs members of the public to a specific location where the sale of a property is taking place. I cannot accept that a sign which contains the name of a real estate company placed on a footpath directing clients to a property sale, which is the principal business of a real estate company, is not promoting that company. This definition of 'moveable business sign' actually offers all sorts of bizarre possibilities. It may well be the apron that a butcher is wearing while standing on the footpath outside his shop encouraging people to come and buy meat.

The Hon. R.R. Roberts interjecting:

The Hon. I. GILFILLAN: The honourable member is accusing me of having a somewhat unusual imagination. I think that even his imagination could stretch beyond the bounds of what one would normally see as an A-frame by looking at this definition. The definition is not clarified any further in the Bill. So, it is open to our interpretation or, eventually, the interpretation of a court—

An honourable member interjecting:

The Hon. I. GILFILLAN: Well, a tie that may have 'UTLC' on it.

An honourable member interjecting:

The Hon. I. GILFILLAN: Perhaps I am being drawn into a ludicrous area. However, it is tempting when one is talking to people like—

An honourable member interjecting:

The Hon. I. GILFILLAN: To return to my contribution, I do not believe in the Government's interpretation of this clause and believe that, if passed in its current form, the Bill will create significant problems for many councils because of the wide interpretation that could be placed on what is a business sign.

The State Government claims to have undertaken wide spread consultation with groups and organisations likely to be affected by this provision. Indeed, the Minister stated in her second reading speech that:

> ... since late 1988 there has been a working group ... in the Department of Environment and Planning developing a comprehensive approach to such controls ...

In a media statement issued by the LGA on 13 November this year it said that the Government's working party had

sent copies of a discussion paper on the issue of controls on outdoor advertising to many bodies and 'in particular, the Government has bent over backwards to accommodate the real estate industry because of their concern about open inspection signs . . .'.

However, in a copy of a letter dated 12 November, the Chief Executive Officer of the Real Estate Institute of South Australia, John Munchenberg, writing to the Minister for Local Government Relations, the Hon. Anne Levy, stated:

> . . . Real Estate Institute protests most strongly at the way the Government has handled this matter. There has been no consultation with this organisation, one of the largest groups in the community who use sandwich boards for open inspections.

This is an incredible disparity in a statement of fact by the LGA and the Minister on the one hand and the Executive Director of the REI on the other hand. Mr Munchenberg labelled the Government's approach to this matter as '. . . heavy handed, bureaucratic and anti-business'. He also said that the institute acknowledges the public safety issue raised by the Government in relation to this matter but did not believe a system of charges would solve the problem nor help struggling businesses in the current economic climate. Again, quoting from his letter, Mr Munchenberg stated:

> . . . There is the potential for a whole range of different fees and rules throughout the State and metropolitan area to create further difficulties for those people struggling to run their own businesses which provide services and employment opportunities. It seems like another means of raising revenue.

The Government's proposed amendment would allow each council to set its own level of fees for moveable signs, a situation that could lead to a wide range of fees being charged across a wide range of council areas. There is no indication in the Bill as to the level of a fee. However, Mr Jeff Tate of the LGA has stated that currently, if planning approval for a sign is required, a fee of $35 applies. It would not be understating the matter to suggest that under the Government's proposal that type of fee structure would be followed and, given the large number of signs used by roadside shops in suburban areas, such as delicatessens, newsagents and petrol stations, councils could stand to gain substantial revenue from sign licensing at the cost of local businesses.

Mr Terry Sheehan is the Executive Director of the Small Retailers Association, and he has written to me about this issue. Mr Sheehan claims that the moveable signs proposal flies in the face of the Government's policy of less regulation for business and is an indicator of 'how out of touch' he believes most councils are with the small business community. He claims that:

> There is no doubt that this is a tax on small business . . . in our view this is not acceptable.

It is a view I share. Small business in this state is suffering major financial hardships, and this attempt by the State Government and the LGA to impose an additional cost on struggling small business is completely inappropriate in the current climate.

The Government and the LGA do have a point in raising the safety issue in relation to moveable signs, and the matter of liability is dealt with effectively, I believe, within this Bill. But I do not believe that adding a licensing fee will in any way reduce the problem of liability from potential damage caused by wayward sign placement. It is interesting to note the LGA has revealed that only two cases for damages caused by moveable signs have been dealt with by local councils in the past two years. Given the large number of sidewalk signs used in this State, this indicates that the perceived nuisance/accident problem with signs is marginal. Nevertheless, I believe councils have a right to seek proper clarification over sidewalk sign placement, and this could be handled effectively through regulation, not by licensing.

Under the heading 'Liability for rates', new subsection (2) *(b)* of section 183 provides that if the land is held from the council under a lease or licence, the occupier of the land (rather than the owner) will be regarded as the principal ratepayer. I believe this creates a situation of a council's becoming a landlord and therefore being exempt from paying rates, but in turn it forces the tenant to pay the landlord's rates, denying a commercial tenant the right to negotiate the full terms and conditions of the lease. Currently, a commercial tenant has the right to negotiate with a landlord on the issue of payment of rates, and there are cases where some commercial tenants do not pay rates but simply rent. The right will disappear under this amendment and I believe this will further impede the fortunes of struggling businesses.

New subsection (2) *(a)* of section 191 seeks to allow councils to keep overpayments made by ratepayers as a credit against future liability for rates. The council may also refund overpayments, but it would seem much more likely that overpayments will be kept by councils, despite the fact that the money overpaid does not belong to the council in question but to the ratepayer.

The Local Government Association, too, has some problems with this aspect of the Bill, despite the Minister's claim that all the provisions of the Bill are the result of lengthy negotiations between the Government and the LGA, which may or may not be the case depending on how parts of the Minister's second reading explanation are interpreted, such as:

> . . . the provisions of the Bill have been developed in consultation with local government, some over a number of years.

Consultation does not necessarily mean the provisions have been agreed to by the LGA, and indeed there are areas that remain in dispute between the LGA and the Government. So, I believe it is close to misrepresentation to put forward that, because consultation has occurred, one must assume that there is LGA support for Government measures.

The first area of dispute is contained in clause 4, which deals with the duty to ensure against liability. It provides that a council must take out and maintain insurance to cover its civil liabilities. The LGA believes the 'insurance' needs to be defined in the legislation—something the Government has not sought to do.

In addition, clause 11 of the Bill, which deals with controlling authorities established by two or more councils states in part that 'no liability attaches to a member of the controlling authority'. The LGA has indicated that it has problems with the undefined nature of the word 'member' and would like to see a definition included in the legislation; again the Government has not done so. As to the remaining clauses in this Bill I understand that most are clarifications of previously ambiguous parts of the Act, such as the repeal of section 704a, which the LGA believes is covered in another section, while others, such as that dealing with contiguous land, came as a result of seminars held last year.

I have indicated areas where I have concerns. I will, therefore, oppose councils using fees and licences to control movable signs, but I will support legislative measures to control movable signs with specific guidelines to be drawn up which clearly indicate legal liability and provide adequate penalties to deter infringements. I will also seek amendments to define the terms 'insurance' and 'member' in the legislation. I believe the right for commercial tenants to negotiate fully with landlords must be maintained (where the landlord happens to be the council itself) and I will

therefore seek to maintain that right in this legislation. The Democrats support the second reading.

The Hon. J.F. STEFANI secured the adjournment of the debate.

PAY-ROLL TAX (MISCELLANEOUS) AMENDMENT BILL

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

HOUSING CO-OPERATIVES BILL

Returned from the House of Assembly without amendment.

ABORIGINAL LANDS TRUST (PARLIAMENTARY COMMITTEE AND BUSINESS ADVISORY PANEL) AMENDMENT BILL

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

The Hon. BARBARA WIESE (Minister of Tourism): 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 Aboriginal Lands Trust was established 25 years ago, with the proclamation of the Aboriginal Lands Trust Act on 8 December 1966. The Aboriginal Lands Trust Act was the first land rights Act passed by an Australian Parliament, and since that time the Aboriginal Lands Trust has been able to provide some security of tenure to Aboriginal people by leasing out the land to Aboriginal communities and individuals.

Since the passage of the Aboriginal Lands Trust Act, two other land rights Acts have been passed by the South Australian Parliament, the Pitjantjatjara Lands Rights Act (1981) and the Maralinga Tjarutja Land Rights Act (1984). The Maralinga Tjarutja Land Rights Act included provision for the establishment of a parliamentary committee to review and monitor the operations of the Act. Following the effectiveness of this parliamentary committee, the Anangu Pitjantjatjara Council later sought the amendment of the Pitjantjatjara Land Rights Act to incorporate a similar provision. This Bill to amend the Aboriginal Lands Trust Act seeks to establish a similar parliamentary committee to work with the Aboriginal Lands Trust on the operation of the Aboriginal Lands Trust Act and matters which affect the interests of the Aboriginal people living on Aboriginal Lands Trust land.

It is intended that the Aboriginal Lands Trust Parliamentary Committee would work in a similar way to the other two Aboriginal Lands Parliamentary Committees, and have the same membership, powers and functions. The establishment of the Aboriginal Lands Trust Parliamentary Committee will provide an opportunity for the Parliament to become as informed about matters which affect Aboriginal people on Aboriginal Lands Trust lands as they are about issues which affect Aboriginal people on other Aboriginal lands in South Australia.

In establishing the Aboriginal Lands Trust, provision was made in the legislation to provide technical assistance for the development of the lands held by the trust. This Bill proposes a mechanism for providing such assistance with the establishment of a Business Advisory Panel. Members of the Business Advisory Panel would work with lessees of trust land on the management and development of business enterprises which are carried out on trust land.

Reviews of economic development programs both in Australia and overseas have consistently shown that a major cause of business failure is the lack of effective business advice to a manager once the business has been established. Members of the Business Advisory Panel will work with communities and individuals who either have a business proposal or are managing a business on trust land. Panel members will provide their time at no cost, and be available on the phone or in person to discuss ongoing management issues with managers.

The Bill provides for a seven member panel, including the Chairperson of the Aboriginal Lands Trust, the Chief Executive Officer of the Department of Employment and Technical and Further Education, and five other persons with experience in business areas, such as tourism, marketing, manufacturing, administration, and agriculture. The purpose of the panel is to be available to advise enterprise managers on trust land, and it is not intended that the panel would meet formally on a regular basis, but rather use their time directly with enterprise managers.

Clause 1 is formal.

Clause 2 provides for the measure to be brought into operation by proclamation.

Clause 3 inserts new sections 20a and 20b providing for business advisory panels and a parliamentary committee respectively.

Proposed new section 20a provides for the establishment of an Aboriginal Lands Business Advisory Panel. Under the proposed new section, the panel is to have the functions of advising and assisting Aboriginal committees and Aboriginal persons ordinarily residing on the lands in the establishment and management of business or community enterprises and in the development of skills required for the effective operation of such enterprises. The panel is to consist of seven members. One of the members must be the Chairman of the Aboriginal Lands Trust; five must be persons appointed by the Governor on the nomination of the Minister as persons with business knowledge and experience that will, in the Minister's opinion, contribute to the effective performance by the panel of its functions; and one must be the Chief Executive Officer of the Department of Technical and Further Education or his or her nominee. The Minister is required to consult with the parliamentary committee (to be established under proposed new section 20b) before nominating persons for appointment to the panel. The members appointed by the Governor are to be appointed for a term of office and on terms and conditions determined by the Governor. The panel is to conduct its business in such manner as it determines from time to time subject to any directions of the Minister.

Proposed new section 20b provides for the establishment of an Aboriginal Lands Trust Parliamentary Committee. The proposed new section provides for the duties and the constitution of the committee in terms that correspond to the provisions of the Pitjantjatjara Land Rights Act 1981 and the Maralinga Tjarutja Land Rights Act 1984 establishing parliamentary committees for the purposes of those

Acts. The duties of the Aboriginal Lands Trust Parliamentary Committee will be—

(a) to take an interest in—

(i) the operation of the Act;

(ii) matters that affect the interests of the Aboriginal persons who ordinarily reside on the lands;

and

(iii) the manner in which the lands are being managed, used and controlled;

(b) to consider any other matter referred to the committee by the Minister;

and

(c) to provide, on or before 31 December in each year, an annual report to Parliament on the work of the committee during the preceding financial year.

The committee is to consist of the Minister and four members of the House of Assembly appointed by the House of Assembly (of whom two must be appointed from the group led by the Leader of the Opposition).

The remaining provisions provide for the term of office of members and the procedures of the committee and are similar to the provisions governing those matters for the committees established under the other land rights Acts.

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

THE FLINDERS UNIVERSITY OF SOUTH AUSTRALIA (JOINT AWARDS) AMENDMENT BILL

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

The Hon. BARBARA WIESE (Minister of Tourism): 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 amend *The Flinders University of South Australia Act 1966* to allow the university to award degrees or other awards jointly with any other university.

Members may be aware that, since the beginning of 1990, Flinders University has enrolled students in engineering courses who would complete their studies at The Levels campus of the University of South Australia (the South Australian Institute of Technology in 1990). The ultimate intent with this innovation is for these institutions to cooperate fully in their engineering programs offering joint awards through a joint faculty. Engineering courses at Flinders University are important in expanding the range of educational opportunities at the tertiary level for people in the southern suburbs.

Unfortunately, advice has been given that the university's Act might not permit it to confer awards jointly with other institutions. Certainly, it could confer its own awards giving full credit for any work undertaken at the University of South Australia. The converse could also occur, but none of this would be consistent with the agreement between the two institutions. The intent is that the conferring of an award under this scheme be an act taken by the institutions in partnership. This Bill is intended to facilitate that process.

At the same time the Bill makes a number of minor amendments to recognise that the university is in the business of offering awards other than degrees.

Clause 1 is formal.

Clause 2 makes it clear that the university may make statutes for the conferral of diplomas and other awards as well as degrees.

Clause 3 clarifies that the power of the university to confer degrees, diplomas or other awards includes the power to do so jointly with any other university. Other consequential amendments are made.

The Hon. J.F. STEFANI secured the adjournment of the debate.

SUPERANNUATION (MISCELLANEOUS) AMENDMENT BILL

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

The Hon. BARBARA WIESE (Minister of Tourism): 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 make four minor benefit improvements, and to make a series of technical modifications to existing provisions of the Act. The technical modifications will clarify certain provisions and, in other cases overcome technical deficiencies that have become apparent in the administration of the two schemes covered by the Act.

The four benefit improvements being proposed for the scheme are in the area of benefits paid in the event of the death of a contributor.

The Government believes that where a contributor to either the old pension scheme or the new lump sum scheme dies, and the contributor is not survived by a spouse as defined under the Act, nor survived by eligible children as defined under the Act, the contributor has an entitlement as part of their remuneration package, to the superannuation benefits accrued to the date of death. The existing provisions of the Act do not provide for the accrued benefits to be paid to the estate of single persons. Accordingly, this Bill seeks to remedy the current situation through two proposed amendments to the provisions relating to benefits payable to members of the scheme who die without a spouse and eligible children.

The other two benefit improvements are in relation to the situation where a contributor dies and is not survived by a spouse as defined under the Act, but is survived by an eligible child or eligible children. The amendments will prevent the unfair application of the existing provisions in those circumstances where orphans pensions are paid for only an extremely short period of time. Under the current benefit structure, orphan children can be treated unfairly by the scheme. For example, a situation could arise under the existing provisions where a young person who has just started work at 17 years of age would receive nothing from the parent's superannuation while the brother or sister aged 16 and still at school would receive an attractive orphan's pension. The revised arrangements will provide the estate with an immediate refund of the member's contribution

account, and the accrued employer benefit will be used to meet the cost of income support for all dependent orphans. Under this revised arrangement all of a member's children would receive some benefit from the parent's superannuation, particularly where the member dies before retirement.

The four benefit modifications to the scheme are expected to cost the Government about $50 000 per year. I would like to emphasise to the House that these changes are not being made to provide assistance to any particular individual or beneficiary. The benefit enhancements contained in this Bill are part of the Government's desire to ensure that the scheme operates efficiently and fairly in respect of members and their families.

The technical modifications contained in the Bill will improve the operation and understanding of the scheme. Some of the technical modifications will also overcome legal difficulties or deficiencies in the existing provisions.

A much improved understanding of how benefits are calculated, particularly in those circumstances where a contributor elects to cease contributing to the scheme, will result from the modifications to the death, invalidity and benefit retrenchment benefit provisions of the Act. Apart from the minor improvements referred to earlier, existing levels of benefit entitlement under the scheme are not being altered by the more extensive provisions being introduced in this Bill. The revised provisions will provide improved clarity to the position that where invalidity, death or retrenchment occurs and the member was not actively contributing to the scheme, entitlements will be based on the benefits accrued to the date of ceasing service. The revised provisions will make it clearer that only members actively contributing to the scheme will have benefits based on prospective service to the age of retirement.

The existing provision relating to the suspension of pension payments and the delay in commutation rights where a retiring member takes his or her outstanding recreation leave as a lump sum has also been revised in the Bill. The revised provision will provide a clearer understanding that in such circumstances, for the purposes of the Superannuation Act, the member will be deemed to be still employed for the period of the recreation leave entitlement.

The Bill also revises the existing provision which is designed to prevent employees from ceasing their entitlement to workers compensation, by the conversion of the weekly payments to a lump sum, and then using the superannuation pension scheme as a means of replacing the loss of their income stream. The revised provisions will overcome some difficulties in legal interpretation of the existing provision.

An expansion of the regulation making provision is also proposed to enable special provisions to be promulgated in relation to lump sums transferred to the State scheme from some other Government scheme. In future many of the lump sums transferred will, in accordance with Commonwealth law, be required to be preserved until retirement. The amendment to the regulation making provision of the *Superannuation Act* will enable appropriate conditions to be prescribed.

The other amendments proposed in the Bill are for the purpose of overcoming technical deficiencies in the existing provisions.

Clause 1 is formal.

Clause 2 provides that section 15 will be taken to have come into operation on 1 July 1988. The reason for this is explained in the notes to clause 15.

Clause 3 amends section 28 of the principal Act. The amendment will improve the benefit payable to the spouse or the estate of a contributor who has resigned and preserved his or her benefits but has died before the age of 55 years.

Clause 4 amends section 31 of the principal Act to ensure that benefits in respect of a non-active contributor are based on accrued and non-extrapolated contribution points.

Clause 5 amends section 32 of the principal Act. Paragraph *(a)* provides for a lump sum benefit to the contributor's estate where he or she is not survived by a spouse but is survived by eligible children. Paragraphs *(b)* and *(c)* adopt accrued contribution points as the basis on which benefits in relation to a non-active contributor will be determined. Paragraph *(d)* provides for the amount of the lump sum to be paid to the estate of a contributor who is survived by an eligible child but not by a spouse.

Clause 6 amends section 35 to base benefits on accrued contribution points for non-active contributors.

Clause 7 makes a similar amendment to section 37 of the principal Act.

Clause 8 amends section 38 of the principal Act. Paragraph *(a)* provides for a lump sum benefit to the estate of a deceased contributor. Paragraphs *(b)* and *(c)* make amendments in relation to non-active contributions. Paragraph *(d)* inserts provisions that set out the amount of the lump sum to be paid to the contributor's estate.

Clause 9 amends section 39 of the principal Act to provide for a lump sum to be paid to the estate of a contributor.

Clause 10 amends section 40 of the principal Act. A contributor to whom section 38 (4) *(a)* or 47 (3) relates loses the benefit given by those provisions if he or she commutes part of his or her pension. The purpose of this amendment is to ensure that commutation factors may reflect this loss.

Clause 11 replaces section 43 of the principal Act with a provision that makes it clear that where a lump sum is paid in lieu of recreation leave the period of employment will be notionally extended for the period of the leave.

Clause 12 replaces section 45 (4) to make it clear that where a contributor receives a lump sum in lieu of workers compensation payments a pension will be reduced as if payments had continued.

Clause 13 provides a regulation making power to enable the transfer of an employee from another scheme into the State scheme where the other scheme imposes conditions in relation to the transfer.

Clause 14 makes a minor amendment to schedule 1 of the principal Act.

Clause 15 amends schedule 1a of the principal Act. Paragraph *(a)* is required because the STA, the Commissioner of Highways and the South Australian Health Commission are employers under this Act by virtue of the definition of 'employee' in section 4 and therefore do not have to enter into an arrangement under section 5. Paragraph *(b)* replaces the first lines of clause 2 for the purposes of clarity. Paragraph *(c)* adds subclause 2 to clause 2. The purpose of clause 2 is to enable benefits under superannuation schemes that are subject to Commonwealth tax to be reduced to offset the tax. The tax was payable from 1 July 1988 and therefore regulations reducing benefits must be capable of having effect from that date if necessary.

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

MOTOR VEHICLES (HISTORIC VEHICLES AND DISABLED PERSONS' PARKING) AMENDMENT BILL

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

ADJOURNMENT

At 9.43 p.m. the Council adjourned until Wednesday 20 November at 2.15 p.m.