HOUSE OF ASSEMBLY

Wednesday 13 November 1991

The SPEAKER (Hon. N.T. Peterson) took the Chair at 2 p.m. and read prayers.

PETITION: HILLCREST HOSPITAL

A petition signed by 29 residents of South Australia requesting that the House urge the Government not to close the Hillcrest Hospital was presented by Dr Armitage.

Petition received.

PETITIONS: WATER RATING SYSTEM

Petitions signed by 226 residents of South Australia requesting that the House urge the Government to revert to the previous water rating system were presented by Messrs S.J. Baker and Becker.

Petitions received.

PETITION: HINDMARSH ISLAND BRIDGE

A petition signed by 456 residents of South Australia requesting that the House urge the Government not to proceed with the construction of the Goolwa to Hindmarsh Island Bridge was presented by the Hon. Ted Chapman.

Petition received.

PETITION: SMOKING IN PARLIAMENT HOUSE

A petition signed by 50 members of Parliament House staff requesting that the House legislate to prohibit smoking in the precincts of the Parliament was presented by Mr M.J. Evans.

Petition received.

MINISTERIAL STATEMENT: SPECIAL PREMIERS CONFERENCE

The Hon. J.C. BANNON (Premier and Treasurer): I seek leave to make a statement.

Leave granted.

The Hon. J.C. BANNON: It is with regret that I inform the House that, after consultation with my colleagues, the Premiers of the other States, it was decided yesterday to cancel the proposed Perth Special Premiers Conference scheduled for next week. Mr Speaker, 12 months ago a new process for reforming the Australian Federation was commenced in Brisbane. This process sought to rationalise the financial relationship between the Commonwealth and the States; to rationalise functional responsibilities between the various levels of Government in order to minimise overlap and duplication of services; and to improve the economic efficiency of the country through the implementation of wide-ranging micro-economic reforms.

Considerable progress had been achieved in this process by the time the Prime Minister and the Premiers met again in Sydney in July of this year. At that conference, the States collectively demonstrated their commitment to economic reform by agreeing to a range of major initiatives aimed at increasing the efficiency of the Australian Federation. This included:

- The establishment for the first time of a truly national market for goods and occupations;
- The establishment of national supervisory arrangements for non-bank financial institutions;
- Agreement to establish a National Rail Freight Corporation;
- Agreement to establish a National Road Transport Commission for the development of uniform regulations and charging principles for heavy vehicles;
- Agreement to develop a National Grid Management Council to coordinate future electricity requirements for the whole country;
- Agreement in principle that a framework be established for national performance monitoring of Government trading enterprise in order to compare data and lift competitiveness.

These initiatives represented the willingness of States to put national interests over parochialism. Each of these initiatives involved major concessions on the part of the States. Since the Sydney conference, the States' credentials on cooperative micro-economic reform have been demonstrated through action. These reforms represented a substantial and tangible outcome of the new and more mature federalism that had characterised the Special Premiers' Conference process from the outset.

The reform of Commonwealth/State financial relations had been set down for decsion at the Perth conference. As the Prime Minister and the Premiers agreed in the Sydney communique, the Perth conference would:

> . . . consider the crucial and inter-related issues of reform of Commonwealth/State financial arrangements including reviewing the distribution of taxation powers to reduce vertical fiscal imbalance and a clearer definition of the roles and responsibilities of the respective Governments in the areas of program and service delivery . . .

In preparation for the Perth conference, the States collectively developed a position paper containing a range of proposed reforms. First and foremost, the States agreed on a 'shared national income tax proposal' whereby an agreed percentage of national income tax receipts would be returned to the States. This was to be achieved by a parallel reduction in financial assistance grants to the States. This meant no increased taxation burden for Australian taxpayers. This would provide the States with access to a growing source of revenue capable of guaranteeing our delivery of crucial services into the future but with no diminution in the Commonwealth's capacity to manage the national economy.

Secondly, the States advocated the establishment of a Council of the Australian Federation comprised of the Heads of Government of the Commonwealth and the States. This body was to provide a continuing mechanism through which the range of micro-economic reforms already initiated in this process could be sustained in the future. It was also to provide a means by which rational decisions could be taken on the future delineation of functional responsibilities between the two levels of Government. Most critically, this proposed council was to assist in lifting the vision of both the Commonwealth and the States above their own narrow and immediate interests and to concentrate instead on the pursuit of the national interest.

On Monday in the Commonwealth Parliament the Prime Minister stated that the Commonwealth Government could not support the States 'shared national income tax proposal'. In rejecting this option, however, the Commonwealth Government has not advanced any sound policy reason as to why the proposal is unacceptable. Indeed, a joint report prepared by the Commonwealth and the State Treasuries

indicated that proposals such as the one advocated by the States would result in a significant reduction in vertical fiscal imbalance without compromising the Commonwealth's legitimate requirement to maintain macroeconomic control and without violating the principles of fiscal equalisation. Furthermore, the same Treasuries' report notes that other successful federations (that is, the United States, Canada and West Germany) are able to manage their national economies with markedly lower levels of vertical fiscal imbalance than Australia.

Although the Perth conference cannot take place under the circumstances, the States nevertheless have themselves resolved to continue the process. The States have decided to meet in Adelaide next week in order to develop the range of micro-economic reforms initated in Sydney. As these reforms fall primarily within the province of the States, substantial progress can be achieved without the Commonwealth. The Adelaide meeting will also examine the formation of the proposed council of the Australian Federation and the crucial issue of employment and the economy. It is to be hoped that after reflection the Commonwealth will re-enter the process which collectively we began one year ago, to create a more efficient and responsible Australian Federation for the twenty-first century.

QUESTION TIME

ELECTRICTY TRUST OF SOUTH AUSTRALIA

Mr D.S. BAKER (Leader of the Opposition): Will the Treasurer explain why he told the House on 18 March 1987 that 'in order to set the record straight . . . all transactions undertaken by ETSA are conducted in conformity with all relevant finance and tax laws' and that there was nothing 'questionable' about ETSA's lease arrangements for the Torrens Island and Northern power stations? Media reports last night and this morning suggest that the Treasurer had personally approved an alleged tax scam at the expense of the Commonwealth involving the leasing of ETSA's power stations and that the Solicitor-General has stated that these arrangements are still being disputed by the Commissioner of Taxation.

The Hon. J.C. BANNON: This matter was raised in the royal commission and I am not sure of the extent to which it is in order, but, as it has been raised, I certainly welcome the opportunity to set the record straight. However, I am not sure about the extent to which I can transgress into matters which are before the commission. I notice the Leader of the Opposition has done so.

Members interjecting:

The SPEAKER: Order! Perhaps the Chair should clarify the *sub judice* rule. The *sub judice* rule, on the interpretation of the Chair, is that if it is likely to affect the outcome of a court case or a commission, it is considered by this Parliament to be *sub judice*. As a matter of fact, I have seen the evidence from yesterday and the comment by the judge, who considered this matter not to be significant at all in the matters before the royal commission. Therefore, I do not think it is *sub judice* at all.

The Hon. J.C. BANNON: Thank you, Mr Speaker. As I said, I welcome the opportunity to respond to this matter, which was reported in this morning's *Advertiser*. I have been advised that the reportage of that matter is arguably defamatory, and I shall be considering whether or not it would be appropriate for me to take action in the matter. If the Opposition has had a hand, as it seems to have had during the course of this commission, in presenting certain documents and interpretations to members of the media to gain the type of reportage that was gained this morning, then it is absolutely heinous and disgraceful. The follow-up question by the Leader of the Opposition today suggests that that is very much the case. It has certainly been observed in the commission—

Members interjecting:

The SPEAKER: Order!

The Hon. J.C. BANNON: —that the personal assistant to the Leader of the Opposition has been culling through the documents, marking passages that would seem to implicate the Government or me, even though they are not currently being discussed before the commission, and making those available in photocopied form to members of the media. It is disgraceful, and I am delighted to have the opportunity to express my protest about it here on the record.

Secondly, in relation to that article, the headline was disgraceful, and the opening paragraph was misleading and inaccurate and, indeed, that was raised by the counsel for the Government—the Solicitor-General—in the commission this morning. I spoke to him on the telephone at lunchtime and he advised me that he had raised the matter and pointed out the inaccuracies, the distortions and the unfair portrayal of me in that coverage. I understood that the Commissioner agreed with him. I am getting a copy of the transcript of that—

Members interjecting:

The SPEAKER: Order!

The Hon. J.C. BANNON: Here we have the Deputy Leader of the Opposition joining in this game. It is disgraceful.

Members interjecting:

The SPEAKER: Order!

The Hon. J.C. BANNON: I acknowledge that interjection that I am a tax scammer so that it is on the record. We will bear that in mind, too. If the Leader of the Opposition wants to climb up out of the gutter that he is making of his place in this Chamber and go outside and say that I am a tax scammer, he can do so. I wonder what his own colleagues think of this.

Members interjecting:

The SPEAKER: Order! The Premier.

The Hon. J.C. BANNON: This man is the Leader of the Opposition—the alternative Premier—and he sits there and interjects from his place at me, 'Tax scammer, tax scammer'; he laughs when I call him up on it. If I had done that, my colleagues would be ashamed of me, and I suggest that his colleagues should be ashamed of him.

Members interjecting:

The Hon. J.C. BANNON: I have already said that I have advice that the article this morning in its presentation was arguably defamatory. I will consider the transcript of the complaint before the commission, which the Commissioner upheld today, and decide whether or not it is appropriate. Of course, one is often in a no-win situation in these cases. I will have my time before the commission; I will give my evidence; and I will be judged on that. I will not be judged in this scurrilous and underhand way either by the Leader of the Opposition or by the media.

To get to the substance of the matter, the Northern Power Station financing proposal was a legitimate transaction, one that was typical of a number of transactions around the country. It had a specific, favourable ruling from the Taxation Commissioner to say it was not a scam. The Torrens Island Power Station transaction was constructed along the same lines. The assumption was made that, because the NPWS approval had been given, a similar financing

arrangement would obviously get the approval of the Taxation Commissioner. I am not aware of anywhere that I said it had his specific approval. I am aware that I said that the NPWS had specific approval, and indeed it did.

None of that can be discerned from the article. In fact, I did not give the approvals that were talked about on a specific type of information, as was suggested. I did—and I have said in this place—approve, and quite appropriately, both the NPWS and the TIPS transaction, the result of which was to improve the cost of borrowings to ETSA so substantially that it allowed ETSA to have major control of its tariffs.

It is part of a scheme of arrangement that was begun under the Tonkin Government, the predecessors of the Leader. Does he want to sing out that he was a tax scammer, too? No; he is silent now.

Members interjecting:

The SPEAKER: Order!

The Hon. J.C. BANNON: Do not let him compound it, Mr Speaker. He has already exposed himself sufficiently. So, to summarise, the report is inaccurate. This is another occasion on which I have been subjected to misrepresentation, a cobbling together of the facts, with no right of reply. I accept I will have my right of reply. While I have to cop that, what I do not have to cop is the Opposition's, under privilege, bringing these things into Parliament and behaving in this way. I suggest that the Leader of the Opposition grow up, become more responsible or be replaced.

Members interjecting:

The SPEAKER: Order!

HEALTH CARE FEE

Mrs HUTCHISON (Stuart): I direct my question to the Minister of Health. On 1 December 1991 the Federal Government changes to the general practitioner Medicare arrangements will come into effect. These will include a $2.50 fee for bulk billed, non-cardholders for GP consultations. Will the Minister indicate whether a similar fee will be introduced for public hospital outpatient and accident and emergency services in South Australia?

The Hon. D.J. HOPGOOD: This matter has been raised in the House previously and at that stage I indicated that the Government was not in a position to give a definitive—

Mr LEWIS: I rise on a point of order, Mr Speaker. There is nothing wrong; it is not a recording. Mr Speaker, my point of order is that I thought that in this Chamber it was customary to ask the question first and give the explanation second and not to proceed to explain the position being taken by the honourable member when the question is being put before it is put.

The SPEAKER: I take the point of order. It has been drawn to my attention, and I think the only way to overcome it is for the honourable member once again to ask the question and explain it. The member for Stuart.

Mrs HUTCHISON: I take your ruling on that. I direct my question to the Minister of Health. Can the Minister indicate whether a similar fee will be introduced for public hospital outpatients and accident and emergency services in South Australia given that on 1 December 1991 the Federal Government changes to GP Medicare arrangements will come into effect? These will include a $2.50 fee for bulk billed, non-cardholders for GP consultations.

The Hon. D.J. HOPGOOD: I thank the House for the opportunity to hear the question a second time. However, the answer will be the same as the one I would have given when I first rose to my feet. This matter has been raised in the House previously and on that occasion I indicated that at that stage the Government was not in a position to indicate an attitude. It is now in a position to do that.

First, I put it in some kind of context by saying that from the figures that I saw a week or so ago, it would appear that at least in the early part of this financial year the traffic through the accident and emergency departments of our public hospitals seems to have declined marginally. There is one hospital where there has been a quite considerable decline in business in A and E. From memory, the average might be something like a 5 or 6 per cent reduction.

The Australian Health Ministers Advisory Council (AHMAC), the meeting of officers, has met with Commonwealth officers to consider this matter, particularly in light of the fact that the State of South Australia and a couple of other States have indicated that they will seek compensation from the Commonwealth Government should there be a substantial increase in costs to us in the A and E departments as a result of the co-payment. So, the officers have agreed to write a report on the whole thing and to report early in the new year to see whether there is any basis for the States seeking additional compensation from the Commonwealth in relation to these things.

It may be that, for the most part, the bulk of the people who use the A and E departments for primary health care are pensioner cardholders anyway who would not be affected by the new arrangements and, therefore, it is unlikely that there will be an increase in activity. The situation at present is that we do not know, but it is agreed, in the light of the arrangement entered into by AHMAC, that no payment will be levied at the A and E departments, at least for the time being while the matter is being considered. My own position is that the entering into of any sort of charging arrangement should be a last resort.

STATE FINANCING ARRANGEMENTS

Mr S.J. BAKER (Deputy Leader of the Opposition): Can the Treasurer tell the House whether other tax schemes similar to the ETSA power station lease-back arrangement have been used by the Government and, if so, can he provide the details and advise whether any have been queried by the Tax Office? In the Treasurer's statement of 18 March 1987 he told the House that 'in addition' to the ETSA deal, 'we will explore other areas where such financing arrangements can be made which would lessen the financial burden on the State'.

The Hon. J.C. BANNON: Quite appropriately over a period that covers the previous Liberal Administration and, indeed, my Government, SAFA as it has operated has tried to ensure that the taxpayer of South Australia gets money at the lowest price, gets a maximum return for the way in which our money is managed and does so within the law of the land. That is the crucial point. There is no way in the world that SAFA or any Government body can be responsibly involved in what the Leader would like to call a scam. Does that mean that money authorities should expose themselves to tax that they are not legally obliged to pay? Of course not; that would be totally irresponsible.

My responsibility as the Premier of South Australia is to ensure that we get as much value out of our finances as we can, that the taxpayers of South Australia get the maximum benefit. That is my responsibility and, providing it is within the law, that responsibility shall be discharged by the experts whom the Government has to do that. All those things are fully set out and explained in the various reports that are presented to Parliament. For instance, with respect to the

Torrens Island Power Station, that issue has been dealt with extensively in SAFA's reports. There is nothing underhand, nothing hidden. It is upfront and it is appropriate. It is legal. It is disgraceful for the suggestion to be otherwise.

In this issue of trying to ensure that we get the best value for the taxpayers' dollar, it is about time that the Leader of the Opposition, if he wants to pursue us on this, followed it as well. I am talking about the royal commission and the fact that the people sitting there, whose aim it is to find out ways of discomfiting the Government and to distort the proceedings of the commission, are being paid for by the taxpayers of South Australia. Hundreds of dollars—

Mr D.S. Baker interjecting:

The SPEAKER: Order!

The Hon. J.C. BANNON: Hundreds of dollars a day are being paid by the people of South Australia to allow the Leader of the Opposition to be represented. That is appropriate. I do not back off from the decision we made that that should happen. What is not appropriate is that that representation be used in a blatant political exercise. It is disgraceful and if that continues—

Mr D.S. Baker interjecting:

The Hon. J.C. BANNON: No, that representation will continue. We will continue to provide taxpayers' funds for that representation. What I am suggesting is that the Leader instruct his counsel and his advisers to use their right of representation properly.

WORKCOVER

The Hon. J.P. TRAINER (Walsh): Will the Minister of Labour advise the House of the state of WorkCover's unfunded liability in view of the Opposition's prediction of a figure as high as $260 million as at 30 June 1991?

The Hon. R.J. GREGORY: I thank the honourable member for his question, because WorkCover's unfunded liability has fallen by $16 million from the last financial year to $135 million at June this year.

Members interjecting:

The Hon. R.J. GREGORY: I am very pleased that the member for Hayward agrees with me. The major drop in the number of claims, encouraged by the bonus penalty scheme, and improving administration has helped WorkCover turn around its performance. Claim numbers for 1990-91 were down by 11 per cent on the previous year and some have been quick to say that that is due to falling employment and the recession. According to Australian Bureau of Statistics figures, from June 1990 to June 1991, employment in South Australia fell by 1.2 per cent. While others have said that the increase in levies is responsible, the corporation recorded a $133 million trading performance turnaround, and the lift in average levies brought in an additional $55 million.

I have said repeatedly that WorkCover is an insurance scheme and that fewer claims mean lower costs in relation to the scheme and an improvement in the financial bottom line. Clearly, the bonus penalty scheme has brought home the cost of workplace injuries to employers, prompting action in the workplace. The actuary has acknowledged that as much as 90 per cent of the drop in claims can be attributed to the bonus penalty scheme. Claim drops such as the one that occurred in March have not been seen over this period in other States' schemes. The actuary indicates that further savings can be expected thanks to a range of initiatives introduced by management in the past year. This good result is a tribute to the staff of the WorkCover Corporation's board, and its Chief Executive Officer, Mr Lew Owens, and this good result is a disaster for members of the Opposition and their predictions. They should be cheering at the drop in the number of injuries in the workplace and the better performance of WorkCover, but they are not: all they are doing is whingeing.

WORKERS COMPENSATION

Mr INGERSON (Bragg): My question is directed to the Minister of Labour. Has the Government completed its long awaited actuarial report into the current liabilities of workers compensation in the public sector? If so, what is the total liability and, if not, when will the report be published? The Department of Labour's annual report, tabled yesterday, revealed that the cost of Government workers compensation blew out by 13.9 per cent last financial year and that the number of claims exceeding two years lost time was increased from 18 to 58. The report stated that, whilst this was not as bad as WorkCover's experience, the position 'requires close monitoring'. In his report, the Auditor-General said:

> The department had advised that an estimate of liability for current workers compensation claims should be available by 31 August 1991.

That was some time ago.

The Hon. R.J. GREGORY: The answer is 'No.'

TAFE FUNDING AND CONTROL

Mr HERON (Peake): Can the Minister of Employment and Further Education advise on progress achieved by Australia's Employment and Training Ministers when they met in Melbourne last Friday to discuss the future of TAFE funding and control and the expansion of training places?

The Hon. M.D. RANN: I thank the honourable member for his interest in this area. Despite some of the media coverage, Friday's meeting, attended by the Minister of Education and me, was a necessary first step towards establishing a constructive partnership between the Commonwealth and the States on a number of important issues, including TAFE, rather than blindly accepting an uncosted, hastily prepared takeover bid. At that meeting of State Education, Employment and Training Ministers, State and Territory Ministers unanimously asked the Federal Government to boost funding for new training places for school leavers. We asked the Federal Minister Mr Dawkins to go to Federal Cabinet to get a commitment for tens of thousands of extra TAFE places around Australia; we wanted to see the colour of their money. We hope he will be successful in securing a major commitment to training for Mr Hawke to announce tomorrow in his employment statement. Certainly, in doing so, Mr Dawkins has our support and backing.

Tomorrow's announcement by the Prime Minister will be the test of the Commonwealth's commitment to tackling unemployment and the crisis confronting school leavers. If unacceptable strings are attached which seek to pre-empt proper negotiations at heads of Government and ministerial level, the Commonwealth would have failed that test, and that would be a message to the States that the Commonwealth is looking for a back-door approach to a TAFE takeover by playing politics with the unemployed. Not only do we need the first instalment of the increase in TAFE places called for in the Finn report but also huge boosts to labour market programs are required to help directly those most affected by the recession, the unemployed.

Let us face facts. The main gain for Australia is to provide a future for school leavers who will be flooding onto the employment and training markets in the new year. Tackling this national recession will take considerable national resolve, and this week's Commonwealth announcement must provide us with a real and substantial response to the jobs crisis. We must help kickstart the recovery that we deserve. Friday's meeting was constructive. It involved compromises. Previously there had been 13 different options for TAFE's future. We narrowed that down to three to be considered at heads of Government level.

South Australia's position is that total Commonwealth control of South Australia's TAFE presents serious disadvantages for South Australian TAFE students and local industry. Of course, TAFE is vitally important to our regional economy. It must be industry driven, relevant and dynamic and not sunk in a bureaucratic blancmange from Canberra. We will certainly be pleased to secure extra funding from the Commonwealth for new TAFE places. We need new places and a massive expansion of those labour market programs. The answer to unemployment is not a panzer division of DEET officials running through our TAFE colleges.

The Hon. T.H. Hemmings interjecting:

The Hon. M.D. RANN: The member for Napier rather unfairly calls out, 'What about your own personal behaviour?', referring to Mr Dawkins' comments on my role at that meeting and the role of the Western Australian Minister. If insisting that unemployment be placed on the agenda of a meeting of Employment Ministers and calling for a Federal Government report on that is poor behaviour, then I can say that I am guilty as charged. Certainly if standing up for South Australia's interests in those meetings is anything to go by, I am sure that the Minister of Education and I will not be asking for remission.

My main concern is for the future of the tens of thousands of school leavers who will be looking for jobs, training and further education in the new year. I am sure that that is also the concern of all members of Parliament. A complete Commonwealth takeover of TAFE would mean that South Australia loses out. We have heard the story before: resources would be diverted to the bigger States to enable them to catch up and once again we would be penalised for being at the head of the pack. I hope that we can have a constructive partnership and not be turned into janitors for TAFE.

GOODSPORTS PTY LTD

Mr MATTHEW (Bright): Will the Premier order an immediate investigation into the practices of the company Goodsports Pty Ltd, which is 50 per cent owned by the Grand Prix Board and which has been selling Chinese T-shirts with the approved Grand Prix design as 'Made in Australia'? I have received a number of complaints that Grand Prix T-shirts carrying the 'Goodsports' label and a label stating that T-shirts are 'made under licence from the Australian Formula 1 Grand Prix Board' are made in China. I have purchased a number of the T-shirts and experts have confirmed they are Chinese made. I have also visited Goodsports Pty Ltd and spoken to a senior staff member who advised me:

> You won't find 'Made in Australia' labels on our T-shirts because this year they're all from China.

Compounding the seriousness of the problem, two of the shirts I purchased were labelled 'Made in Australia' and had the original label cut out, leaving remnants of it visible on both shirts. A third shirt has no label with country of origin marked on it. Section 31 of the South Australian Trade Standards Act provides, in part:

> No person shall in the course of trade or business provide any materially inaccurate information in respect of any goods or services.
>
> Penalty: Five thousand dollars.
>
> Where information includes:
>
> 'place or date of manufacture, packaging, distribution, origin or supply'.

The SPEAKER: Order! I ask the honourable member to draw his question to a close.

Mr MATTHEW: The sale of the T-shirts also appears to have breached regulations under the Commonwealth Commerce Trade Descriptions Act and the Australian standards for labelling of clothing. Those who have complained to me are concerned that, while this Government is urging people to give a mate a job and buy South Australian, a company 50 per cent owned by the State Government is selling Chinese T-shirts.

Members interjecting:

The SPEAKER: Order! The member for Hayward is out of order.

The Hon. J.P. TRAINER: On a point of order, Mr Speaker, the reference in Standing Orders to facts which may be offered by a member in support of a question involves the facts only so far as is necessary to explain the question and no further.

Members interjecting:

The SPEAKER: Order! The House will be aware that I called the honourable member to order to close his question. At the end of the question I was also calling order when the member for Walsh took his point of order.

The Hon. J.C. BANNON: I will have the matter that the honourable member has raised investigated. It is inappropriate and unacceptable for anybody to wrongly label or represent goods that are put on sale. I am not aware of the general commercial practice and I am also not aware of the circumstances of this case. I am a bit wary, in the light of some of the allegations that the honourable member has raised in the past, to accept them at face value. Therefore, I will obtain a full report on the circumstances.

EQUAL OPPORTUNITY OF ACCESS

The Hon. T.H. HEMMINGS (Napier): Will the Minister of Public Works tell the House what his department is doing to address the needs for equal opportunity of access for people with disabilities and the number of aged people in our community?

The Hon. M.K. MAYES: I thank the honourable member for his question, because it affects many South Australians and of course many visitors to this State who need to use our facilities or who need access not only to public buildings but also heritage buildings, schools and other buildings of community importance throughout the State. It is a good record and I am proud that I am able to report this to the House and to the community. Since 1979 SACON has paid particular attention to the provision of access to new buildings. In the past, it has modified many hundreds of existing buildings throughout the State to make them accessible to people with disabilities. The Australian Council of Rehabilitation of the Disabled has expressed its appreciation to SACON for its commitment and achievement in providing community access to public buildings. It has commended the development of the SACON Access Charter, which I believe is the first of its type in Australia.

As the honourable member was my predecessor and had a responsibility for this area, it is appropriate for him to

ask this question of me as he played a significant part in establishing the access charter and the unit that administers it. SACON has taken a leading role in this area in researching the building needs of people with different types of disability. This has resulted in the development by SACON of a number of Australian standards for access design. A number of those have been incorporated as world standards.

The work that SACON has undertaken has allowed children with wheelchairs access to schools; it has allowed people with disabilities and children access to many of our heritage buildings and historic areas that are important not only for their own education but also for their understanding of the history of this State and country.

Dr Armitage interjecting:

The Hon. M.K. MAYES: You have been looked after. It is also important that we consider numerous aspects in terms of the unit's development, where this particular—

Dr Armitage interjecting:

The Hon. M.K. MAYES: You have been looked after—and you will be looked after if you don't keep quiet.

Dr Armitage interjecting:

The SPEAKER: Order! The member for Adelaide is out of order, and the Minister will direct his remarks through the Chair.

The Hon. M.K. MAYES: Thank you, Mr Speaker, I will continue to do so. One feature that I want to acknowledge particularly is the development of our velodrome, which will now have—

Dr ARMITAGE: Mr Speaker, I rise on a point of order. In answering my interjection that there was no disabled access to my electorate office the Minister indicated that I had been looked after. Given that nothing has been done to my electorate office, I ask that he withdraw that.

The SPEAKER: Order! In the first place, the honourable member has admitted that he was out of order in interjecting. Secondly, whether or not the honourable member's electorate office was looked after is not a point of order.

The Hon. M.K. MAYES: Thank you, Mr Speaker. As I was saying, of particular importance is our new velodrome, which will provide not only viewing access for people with disabilities but also access to the central arena for sporting groups. That will be of significant assistance to people with disabilities in allowing them to enjoy not only being a spectator at the velodrome but also participating in the sports undertaken in the central arena. So, SACON has a unit of some significance, that is, the Disability Access Advice Section, which is believed to be the only full-time service of its type in Australia. It has provided an important service not only to councils and community groups but also to architects and developers throughout the State.

I am very pleased to report that the South Australian construction industry is progressing very successfully in providing access to public community facilities for people with disabilities. It is an excellent result, and I am delighted to be able to report that to the House.

SOUTH AUSTRALIAN SPORTS INSTITUTE DIRECTOR

Mr OSWALD (Morphett): Why did the Minister of Recreation and Sport allow the Premier's close friend, Michael Nunan, the Director of the South Australian Sports Institute, to go on long service leave for six months yesterday when there are so many outstanding questions about the operations of the institute such as illegal coaching contracts, misuse of funds and nepotism? Is this relationship the reason why the Minister has been so slow to deal with long-standing allegations of favouritism at the institute? Will Mr Nunan be returning to the position of Director when his long service leave comes to an end?

The Hon. M.K. MAYES: I have not enjoyed for some time such a disgusting question from the Opposition. I think that this ranks as one of the worst, so I really do not believe it deserves much time at all. However, I will answer the only part of the question that deserves an answer, and that relates to the Director's long service leave. That is not a matter for me to approve; it is the responsibility of the Acting Director of the department. It is a matter between him and the Director. The Acting Director approved the leave in accordance with the provisions of the award under which the Director works. I can assure the honourable member that the Director's position is there, and when he returns from long service leave he will take up that role again.

TEACHER LITIGATION

Mr M.J. EVANS (Elizabeth): I direct my question to the Minister of Education. What assistance with legal costs and in other respects will the Minister provide to parents and other members of the school community who provide evidence and information, on a confidential basis to or at the request of school principals, which relates to the competency of individual teachers and which may subsequently become the subject of legal dispute? With the current concern to identify teachers who may not be performing at a satisfactory level, it is essential for the protection of those teachers and all other parties concerned that the relevant information is properly documented. Where this is undertaken by a parent and confidential information is subsequently provided to a principal, it exposes that parent to legal proceedings, often at a cost that they cannot afford. The documentation process is usually undertaken at the request of the principal, and I am advised that there are no mechanisms in place to protect parents in this context.

The Hon. G.J. CRAFTER: I thank the honourable member for this important question. Although I do not believe that the circumstances he describes occur very often, I understand that there is some precedent in this area. I further understand that this matter was brought to the honourable member's attention by one of his constituents. I also met that constituent last week when I visited the school where the constituent teaches and discussed this matter with that person. I undertook to ascertain through officers of my department the background to this particular piece of litigation and how the department and, indeed, other Government agencies may assist the person who is going through this most unfortunate episode. I will be pleased to relay to the honourable member the advice when I receive it from my officers.

STATE BANK

The Hon. JENNIFER CASHMORE (Coles): I direct my question to the Treasurer. Why did the State Bank Group sell its SAMIC shareholding last month to interests associated with Harvest Corporation in preference to other potential buyers? It is understood in financial circles that interests associated with Harvest Corporation may be attempting to gain access to SAMIC's reported $7.6 million cashbox and that the State Bank Group may have unfairly facilitated the share purchase of SAMIC by these interests in preference to other buyers. Despite multi-million dollar losses by Har-

vest Corporation, the State Bank lent directors of the corporation at least $4.91 million in May 1989 to enable the company to be privately owned.

The Hon. J.C. BANNON: I will seek a report.

WEST LAKES REVETMENT WORK

Mr HAMILTON (Albert Park): Will the Minister of Marine advise the House of the latest developments with repairs to the revetment work at West Lakes? The repairing of the revetment work has raised considerable interest amongst most residents whose properties abut the waterway—

Members interjecting:

Mr HAMILTON: What does the dung beetle want?

The SPEAKER: Order! The honourable member will direct his comments through the Chair.

Mr HAMILTON: Thank you, Mr Speaker. I have been requested by residents in Nareeda Way to discover what progress has been made.

The Hon. R.J. GREGORY: The member for Albert Park has been very assiduous in assisting his constituents to make representations to me in respect of the revetment work at West Lakes. I agree with him that some parts are deteriorating markedly and are dangerous. Over a long period, in consultation with residents, the department has attempted to find suitable replacement material for the revetment work. At one stage the department replaced the original blocks because they were crumbling and dangerous. However, the replacement blocks were looked upon as being unsatisfactory. The department has conducted a number of tests in consultation with residents to discover what would be a suitable long-lasting replacement material for these blocks.

The other week I was in the Port Adelaide area and visited West Lakes to inspect the work in progress. In consultation with people living on Delfin Island, the engineers and workers from the department had installed a few metres of replacement revetment work which, I was advised, could last up to 90 years but would certainly last at least 50 years. However, I was appalled to find that the workers were working under water on this replacement revetment work. It horrified me to see that because we agreed that this repair work, for which we allocated $340 000 this year, could begin without lowering the lake.

Work is not proceeding as fast as the engineers would like and it was estimated that, if we lowered the lake, the repair cost could be reduced by 25 to 33 per cent over the cost of working under water. Seeing the work, I immediately informed the appropriate people that, in my view, the workers should not be required to carry out the replacement revetment work under water with breathing apparatus because it was dangerous. I then had discussions with the Mayor of Woodville and, as a result, the lake level will be lowered. We will then see how quickly the work proceeds. The Mayor indicated to me that the Corporation of the City of Woodville would bring on its annual clean-up of the lake earlier than planned because the council needs a lowered water level to do that work.

The department has given an undertaking that, should the quality of the water deteriorate during this period, the work will cease and the level will rise so that the water can be flushed out. It is our plan that the level will be raised on weekends so that the usual water sports that take place on the lake can continue. All I am asking is that the people who live around the lake put up with a minor inconvenience so that the far superior revetment work can be put in place. I stress that I was appalled by the conditions in which employees of the Department of Marine and Harbors were working. As far as I am concerned, the working conditions with the water level lowered are much better, and we will get more value for our dollar.

STATE BANK

Mr BRINDAL (Hayward): My question is to the Treasurer. How much of the $506 million of 'other abnormal items' which worsened the State Bank's loss last year was caused by taxation liabilities incurred by off balance sheet companies and the State Bank Centre, and does the Treasurer stand by his earlier answer that 'the off balance sheet companies have been structured in such a way as to provide the maximum taxation advantages which are legally available under the law to the clients of State Bank Group, State Bank Group itself and therefore to South Australia'?

The Hon. J.C. BANNON: All that information is available in the accounts of the State Bank. As I mentioned at the time of presenting the budget, the bank was able to prepare its accounts and statements in time for the budget but foreshadowed that it would also be issuing a further set of accounts in accordance with the new accounting standard. By so doing it will actually be the first bank to comply with that standard, and I expect those further accounts to be released shortly.

ENVIRONMENTAL TECHNOLOGY

Mr FERGUSON (Henley Beach): Will the Minister for Environment and Planning say how many grants have been received and at what cost for strategic research projects and environmental technology? Recently, I sent correspondence to the Federal Minister for the Arts, Sport, the Environment, Tourism and Territories seeking from her information as to how the Federal Government could assist in terms of the pollution of Gulf St Vincent, particularly in relation to the Patawalonga and Torrens Rivers. In her reply to me she indicated that, although most grants go to the CSIRO for research into the application of processing Australia's raw materials, other grants are available to State Governments in respect of research projects in environmental technology.

The Hon. S.M. LENEHAN: I thank the honourable member for his continuing interest in the quality of the water in Gulf St Vincent and, indeed, in the whole question of the cleanliness of the marine environment. Recently, the board has offered $3.4 million in grants for nine strategic research projects in environmental technology. These projects range from such processes as bleaching and deinking with hydrogen peroxide, which involved a grant of $318 000, through to such things as real-time monitoring of waste waters, which involved a grant of $557 000.

The Engineering and Water Supply Department, through the Australian Centre for Water Treatment and Water Quality Research, was a member of a project team that submitted an unsuccessful application for funding. The project's aim was to develop a cost effective method for the treatment of municipal solid wastes and sewage sludge so as to produce stable composts of high quality. It is my intention to ensure that the department, in concert with the Australian Centre for Water Treatment and Water Quality Research, continues to pursue the successful application of some moneys, and I hope that it will develop that project and apply, where appropriate, for further subsidy or funding for such a project.

BENEFICIAL FINANCE CORPORATION

Mr SUCH (Fisher): What advice has the Treasurer been given about the progress of the Taxation Office investigation into Beneficial Finance, which precipitated raids by officers of the tax office and Federal Police in March this year?

The Hon. J.C. BANNON: I have had no further information provided to me at this stage.

BUSINESS MIGRATION PROGRAM

Mr QUIRKE (Playford): I ask the Minister of Industry, Trade and Technology what progress has been made in the reintroduction of the program of business migration, and what implications are inherent for South Australia? Members will be aware of the termination of the previous program of business migration by the Federal Government some months ago.

The Hon. LYNN ARNOLD: Even though the former business migration program has been terminated, a residual effect is still working its way through the system, because all applications that had been registered before the end of August were still allowed for processing. Those applications for migration are being processed under the business migration program in various parts of Australia. Indeed, it is likely that those applications will continue to be processed even when the new scheme has been introduced, it is expected in February next year. It is anticipated that Federal Cabinet, in the next few weeks, will give final approval for the details of the business skills program, and that will enable a different type of business migration program to develop. At the State officer level we have been involved in discussions with Federal authorities on the design of that new program; indeed, I will be having discussions with my Federal ministerial colleagues indicating the South Australian Government's viewpoints on this matter.

It is pertinent that States have views on the matter of business migration. We said, when the previous BMP scheme was modified in 1988 or 1989, that we were unhappy at some of the modifications that had been made. At the time we said there was a real risk that States like South Australia might not get a fair share of the business migration applications. More seriously, we said there was a real worry that the delegation of powers to accredited agents might lead to some applications not being rigorously processed and the investigations not being undertaken as thoroughly as they should be. We warned of that at the time. The very failures that the Federal parliamentary committee identified in the business migration program picked up precisely those sorts of areas. If our concerns had been taken on board at the time, the scheme would have been more successful and we would still see it in operation at this stage.

We believe that there should be monitoring of what happens and would strongly recommend that all migrants under this type of scheme should be asked to show what happens after two or three years with respect to funds invested in this country. We will be watching closely to see whether this new scheme provides adequate coverage for those areas.

Regarding the previous program and the way it was designed, after an initial impressive growth in the number of business migrants coming to South Australia, we saw a sharp fall away. We believe it was because the accredited agents system was not operating fairly with respect to States like South Australia. Having reached a peak of about 8 per cent of business migrants coming to South Australia, that fell away markedly, and in the most recent 12 months it has fallen to below 3 per cent. We are very concerned that that should happen. We hope that the new scheme will provide better opportunities for States like South Australia to get their rightful share of business migrants. When all is said and done, good business migrants are very important for this country. They bring capital, business skills, opportunities and trade links. If the scheme is properly run, with proper evaluation and monitoring, they are a real plus to the economic activity of Australia.

REMM-MYER CENTRE

Dr ARMITAGE (Adelaide): Will the Treasurer explain the conditions under which the State Bank will become the owner of the Adelaide Remm-Myer Centre after March next year and reveal the bank's total exposure under these conditions? Has this contingent liability been fully accounted for in the current estimates of State Bank losses?

The Hon. J.C. BANNON: I will seek a report on those matters for the honourable member.

ENGLISH LANGUAGE

Mr HOLLOWAY (Mitchell): Has the Minister of Education raised with his Commonwealth and State counterparts the lack of support for English as a Second Language (ESL) teaching resources for the children of overseas students who are in Australia on temporary resident visas and, if so, with what results?

The SPEAKER: Order! The honourable member will resume his seat. There is far too much discussion in the Chamber. The Chair cannot hear the question. The member for Mitchell.

Mr HOLLOWAY: Because of the close proximity to Flinders University, a number of overseas students live within my electorate and send their children to local schools. One school has 13 such children. These children speak virtually no English, but they cannot be considered in the staffing formula for ESL appointments at the school because they are the dependents of temporary residents. Nor are they entitled to be placed in a language centre under the new arrivals program.

I have been told that the educational needs of these children are not being fully met and that ESL resources for other eligible students are reduced because it is impossible not to attend to the needs of the children of temporary residents who are at the school.

The Hon. G.J. CRAFTER: I thank the honourable member for raising this question, which is a good example of conflict between Commonwealth and State policy and programs in this area. Work is under way to try to resolve this issue, which unfortunately has placed increased burdens on a number of our schools which, as the honourable member has said, were in close location, for example, to tertiary institutions to which families come to access courses of tertiary education while their children attend local schools. The Commonwealth support for English as a Second Language (ESL) program comes in two elements:

(1) The general support element assists schools to provide services for ESL students who have reached a level of English language competence which enables them to participate in mainstream classes. The Commonwealth provides a fixed amount of funding for that, and the States provide an additional amount of money to support those programs.

(2) The new arrivals element provides assistance on a per capita basis for intensive programs for newly arrived students with minimal or no English language skills.

The eligibility criteria for the general support element includes the provision that students must be permanent residents of Australia, and therein lies the problem to which the honourable member refers. The guideline, however, states:

Students temporarily resident in Australia may, however, be included in programs/classes organised for eligible students if a school wishes.

The Commonwealth, however, provides no funding to cater for this group of students in our schools. The language ability of a number of these temporary resident students matches more closely that targeted by the new arrivals category, that is, those students having minimal or no English language skills.

However, the Commonwealth guidelines for funding the new arrivals program specifically excludes temporary residents, although the same proviso exists, that is, that such students may be included at the school's discretion in programs and classes organised for eligible students. In effect, the Commonwealth guidelines throw the responsibility for these students back onto the schools, without providing any extra resources to help the schools cater for that group of students who have specific needs.

The problem for these schools is that, of course, they will try to accommodate these temporary students and it is impossible for conscientious teachers not to assist them, but it means that the funding that each school receives for eligible students is spread more thinly, as it attempts to meet the needs of more students than it is funded for.

It is an anomaly in the Commonwealth guidelines that needs to be addressed, especially as the number of such students is likely to grow as a result of the Commonwealth's push to encourage more tertiary students to study here, as well as the potential numbers of temporary residents coming to South Australia as a result of the moves to encourage more overseas business and personnel to Australia.

Some of these issues have been the subject of discussion among Commonwealth, State and tertiary education officials throughout this year. Following a Commonwealth proposal to establish a nationally consistent school fee for the dependants of temporary residents who are enrolled in our Government schools, there have been meetings of offices to discuss this matter. These fees will enable some additional resources to be available in schools where these students are enrolled. However, as far as support for English as a Second Language is concerned, it was agreed that a separate fee be charged. The precise fee is yet to be decided.

I hasten to emphasise that the agreed national fees will not apply to dependants of all overseas students who are in Australia on temporary resident visas. For example, those who are in receipt of scholarships or sponsorship from the Australian Government, higher education institutions or approved non-government organisations will be exempted from paying the fee. These dependants will be offered places in our schools on the same basis as Australian students.

Mr S.J. BAKER: I rise on a point of order, Mr Speaker. This important subject should have been the basis of a ministerial statement.

Members interjecting:

The SPEAKER: Order! That choice is not a choice for the Chair. However, let me point out that there was one question today that was longer than this answer. I draw the attention of members to Standing Orders on questions, including comment. Several questions today involved substantial comments. Questions should be short and to the point, as should answers. I ask the Minister to complete his answer.

The Hon. G.J. CRAFTER: These new fee arrangements will apply to overseas students whose applications for visas are lodged on or after 1 March 1992. While these agreements will have some impact on the provision of ESL in our schools, the matter raised by the member for Mitchell requires further attention from the Commonwealth Government, which I am pleased to be able to pursue.

WHARF PARKING

Mr MEIER (Goyder): Is the Minister of Marine, through the Department of Marine and Harbors, intending to impose parking fees of $1 000 a year in respect of all vehicles parked on wharves by drivers wishing to purchase fish products from fishing vessels? A letter in my possession from the Director of Regional Ports to SAFCOL Holdings advises SAFCOL that in future, if they wish to park a vehicle on the wharf area at Robe, a parking rent of $1 000 per annum payable quarterly in advance will be required. Not only is the $1 000 parking fee identified but many other terms and conditions need to be adhered to. It has been put to me that this is a cynical revenue raising exercise by the Government.

The Hon. R.J. GREGORY: I thank the honourable member for Goyder for his question. I am not familiar with the matter he has raised, but I will get a report for him. However, I point out to the House that the fishing havens provided and maintained by the Government are subsidised from Government revenue to about 75 per cent. For a Party that talks about cost recovery, I think the member for Goyder, as a member of that Party, would applaud fees that are realistic.

PRISON LABOUR

Mr De LAINE (Price): I direct my question to the Minister of Correctional Services. Will the Minister tell the House what the South Australian Government's policy is on the use of cheap prison labour to compete with the private sector in the manufacturing industry? In August 1991 a trade union newspaper *'The Metal Worker'* carried an article about the Newcastle Trades Hall Council being angry with the NSW Liberal Government for approving a manufacturing venture between a private company and Muswellbrook prison, where prison labour was paid between $29 and $129 a week to do tradeswork.

The Hon. FRANK BLEVINS: I thank the member for Price for his question. I notice that over the past two or three weeks the Liberal Party has released its policy on prisons and I am very pleased to say that I think it is a forward step. The Liberal Party had a long way to go, but it has certainly gone part of the way and I congratulate it on that. However, there is still a long way for it to go.

One part of the policy raised my eyebrows, and that related to the suggestion that prisoners ought to be released to building sites to work as builders' labourers. I saw in the newspaper yesterday that 75 per cent of building workers in the State will be out of work by Christmas. I would imagine that putting several hundred prisoners into the jobs of those who are remaining would not be looked upon favourably by the community as a whole. I am sure that that part of the policy has not really been thought through very well. Nevertheless, there is a real problem and I give credit to the Liberal Party for at least starting to think about

it. It has not thought about it very well, but at least it has made a start. That problem relates to the use of prison labour in manufacturing and in other employment-related areas, and there is no doubt that it is horrendously expensive these days to keep people in prison and that the community expects a certain standard that we must deliver.

While some sections of the community would say we should throw them in a hole and throw away the key, immediately we did that we would have another section of the community yelling at us in relation to prison conditions. So, it is pretty much a no-win situation. The competition that prison labour is able to afford is very real. At least one company in South Australia has been severely disadvantaged by the use of Victorian prison labour. I am delighted to say that that company, which is in the electorate of my colleague the Minister of Housing and Construction, has been able to rise above that competition, but for a while it was a close thing.

Whilst the example given by the member for Price related to a union's complaining about competition from cheap prison labour, that article could equally have been written by the Chamber of Commerce and Industry and published in its journal because, immediately we use prison labour to compete against the private sector and damage an employer, everyone opposite would complain, and I would agree with them. So, it is a very difficult problem.

However, I have released a report and a discussion paper on the way we are looking at the problem here in South Australia. I commend that paper to the Opposition with a great deal of goodwill, because I can see in this State, to some extent, the development and emergence of a bipartisan policy on prisons and on the way in which we deal with offenders. I think that Parliament and both political Parties ought to be commended for that.

PERSONAL EXPLANATION: PREMIER'S COMMENTS

Mr MATTHEW (Bright): I seek leave to make a personal explanation.

Leave granted.

Mr MATTHEW: In his reply to a question I asked earlier today, the Premier reflected on my character by making the unsubstantiated claim that in the past I had provided Parliament with inaccurate information. The Premier's comments contravene Standing Order 127 and, accordingly, I ask your indulgence, Mr Speaker, to request that the Premier withdraw his remarks.

The SPEAKER: The Chair has two points to make. First, if a withdrawal was required, the honourable member should have taken a point of order at the time. Secondly, the Chair does not believe that this constitutes a personal explanation.

ABSENCE OF CLERK

The SPEAKER: I inform the House that, during the absence of the Clerk due to illness, under Standing Order 24 his duties will be performed by the Deputy Clerk, Mr D.A. Bridges, and I have appointed Mr G.W. Thomson, Clerk Assistant, to carry out the duties of Deputy Clerk and Sergeant-at-Arms.

GRIEVANCE DEBATE

The SPEAKER: I pose the question that the House note grievances.

The Hon. E.R. GOLDSWORTHY (Kavel): The Premier made one of the more interesting ministerial statements today, and it was a fairly important one. In fact, he is a fairly recent convert to this idea of Federal-State cooperation and he is following the lead of the Leader of the Opposition who suggested some time ago that there needed to be some rationalisation of the taxing arrangements between the States and the Commonwealth. Similarly, the Prime Minister is following the lead of former Prime Minister Fraser in seeking to hammer out a new deal in relation to federalism.

Unfortunately for old jelly back, the Prime Minister whom his colleague Senator Walsh described as needing a spine transplant, he is having great trouble with the heir apparent. It was all summed up more than adequately in an article in the *Weekend Australian* by McGuinness, who is one of the more enlightened writers on that paper. The headline reads, 'Keating's ambition drives stake into heart of reforms'. Before I read it, let me just say that I had some time for Keating. I thought he had something going for him, but when he is prepared to wreck probably the most important reform in this nation to satisfy his own ambition, I find that any respect I had for him dissipates very quickly. The McGuinness article is well worth reading. It states in part:

> Paul Keating's mindless drive for the prime ministership is likely to do irreparable harm not only to the economy but also to the very fabric of the Constitution, since in the pursuit of his ambition he is willing to abandon any commitment to economic reform and to sabotage the emerging consensus between the Commonwealth and States on cooperative constitutional reform.

It is a fact that, over the years, the Commonwealth has usurped many functions which belong constitutionally to the States. It has done it using all sorts of ruses, and the responsibilities of just about every State Government department have been duplicated in Canberra. This has led to one of the most bloated bureaucracies in the western world and I applaud any effort to reduce that duplication. That was the line that the Premiers were taking.

This action has been forced on the nation. The fact that the nation is virtually insolvent has forced rationalisation onto unwilling bedmates. We have a Liberal Premier and Labor Premiers on the same tram for the first time in living memory. It has been forced on them by the need to make some fundamental, rational, economic decisions on the way this country is run. Because poor old jelly back Hawke does not have the strength and needs to woo the left and the centralists in Canberra to defeat Keating, this great reform looks like foundering.

Why is it that the Labor Party and the centralists have taken more and more functions to Canberra: for the simple reason that there are more votes in it. Why is the conservation lobby so keen for the Federal Government to control all conservation issues: because it can focus its attention there. That lobby knows it can use every trick in the book to get the Government to legislate, using the device of a High Court decision in relation to an international treaty. That political decision on whether or not to give the power to Canberra was split 4:3. In my judgment it was unconstitutional, but such political decisions are being made by the High Court. It is leading to a concentration of power with the centralists in Canberra.

The history of dictatorships shows that, if you can centralise power and authority, you can dominate. The centralists fear the decentralisation of power, which is what our Constitution dictates. Any attempt to rationalise the eco-

nomic and tax-sharing arrangements must be welcomed. Keating says that we cannot do it. Fraser agreed to give a fixed percentage of income tax to local government, the third arm of government, the less influential arm of government. It got up to 1.75 per cent of tax revenue. It has since been whittled away by the centralists to about .75 per cent. What is wrong with that principle?

The SPEAKER: Order! The honourable member's time has expired.

Mrs HUTCHISON (Stuart): I should like to inform the House of the Port Pirie lead program. In March 1984, the Environmental Health Centre was established in Port Pirie and its objectives over a ten year period were to reduce the number of children with a blood lead level equal to or greater than 30 micrograms per decilitre, and also to decrease the possibility of further lead absorption by all the children living in that city. After five years, the achievements of the centre showed that there was a 20 per cent reduction in the blood lead levels of children up to the age of seven years and the proportion of children with a level above 25 micograms per decilitre had approximately halved. In addition, the blood lead levels had decreased in children whose homes had been decontaminated. It can be seen that the lead program is working very well in Port Pirie.

In November 1990 the Environmental Health Centre became an unincorporated health unit reporting to the Minister of Health. The person through whom it reports is Dr Kerry Kirke, who is the Executive Director of the Public and Environmental Health Division of the South Australian Health Commission. To October 1991, the biological monitoring has proven that 60 to 64 per cent of eligible children under seven years are currently participating in the program. That is a marked increase from the figure at the beginning of the program and even at the five year stage. There are also increased numbers of children under four years being tested and this is enabling the staff to identify potential health problems before they occur. The centre is being proactive in this regard.

The general decline in the lead levels of all children living in the city is being maintained and that is excellent testimony to the work done by the people at that centre. Not only are the lead levels in children being monitored, there is also environmental monitoring by the Environmental Health Centre. Approximately 1 850 sites throughout the city have been assessed and, because of the increased public awareness in the city, more people are seeking advice or random testing prior to initiating projects. In other words, before they do something on their land, they ask that it be tested by the centre. If it has something to do with children, in that way they can ensure that it is safe for their children.

There has also been domestic decontamination and, by the end of September 1991, 1 265 of the estimated 2 000 homes had been decontaminated with a further 94 sites having been actioned. That figure includes the acquisition and demoliton of about 100 substandard or condemned properties. A recent project with regard to one of those condemned properties has been to demolish the house and then establish an environmental garden on the property. That project is going quite well and it is proving to be quite a tourist attraction to people who come through the city.

The community services that are provided by the Environmental Health Centre include counselling, referrals and general support, which are an integral part of program intervention. Also, the centre has been working closely with other agencies to ensure that young children and their care providers receive a total care package covering other health issues, including diet, immunisation and so on. Mr Speaker, I think you will see that the children of Port Pirie are being looked after very well indeed.

There have also been continuing public education programs, involving students and women of child-bearing age, because obviously they are the ones who nurture the children and who need to have as much information at their fingertips as possible. Also, new home buyers and renovators have been targeted over this past financial year, so that they know what is actually provided at the centre and can check before they build.

Earlier this year a library was established in the centre's reception area for visitors and members of the public. Recent brochures cover health and safety and home maintenance. A number of decontaminated streets have received awards from the Tidy Towns judges, one of which would have been the site I was talking about with the environmental garden established on it. Overall, the Environmental Health Centre, which was established for that 10-year period, has been doing a wonderful job in Port Pirie. Not only that, the centre is establishing its name further afield for having been a leader in this type of decontamination.

The SPEAKER: Order! The honourable member's time has expired.

The Hon. JENNIFER CASHMORE (Coles): Like the member for Kavel, I would like to register my anger and dismay as a member of a State Parliament of Australia at the way in which the Special Premiers Conference has been torpedoed. The proposed conference that was to be held in Perth next week is the victim of ALP faction fighting and the megalomania of two men, Paul Keating and Bob Hawke. It is a tragedy that the citizens of Australia and the future of the States are the victims of this megalomania.

It is outrageous that members opposite and their Canberra counterparts have allowed this to happen. The overwhelming leadership ambition of this man ruined the May Premiers Conference when he mounted his challenge on the eve and on the very day of that conference, and now he has ruined another. This ruination by Paul Keating, and the craven capitulation by Bob Hawke to a Caucus which has exerted pressure because it loves centralised control more, it seems, than it loves its country, is threatening the very future of the States and, indeed, the political and economic reforms that are so desperately needed in Australia.

The Premier said that the Prime Minister stated that the Commonwealth Government could not support the State's shared national income tax proposal. He went on to say that the Commonwealth Government had not advanced any sound policy as to why the proposal is unacceptable. Indeed, there is no sound reason for opposing this proposal, which is entirely in accordance with the constitution of this country and also in accordance with the wishes of this country's citizens. We are well aware that the Premiers in the States have very little scope to meet the service needs which they are required to fulfil under the Australian Constitution. The only sources of income that the States can raise are pay-roll tax, business franchise, stamp duties and other narrow-based taxes, each of which is adversely affected in times of economic downturn, such as we are experiencing right now. The Government that is responsible for spending the money must also be responsible and accountable for raising the money.

This was the subject of my maiden speech, it has been the subject of private members' motions that I have moved over the years and it was the subject of part of a chapter in my recently published book *A Chance in Life.* On page 81 I said:

If you are not responsible for raising the money, you tend to be less responsible about spending it. Also, since those who pay the piper call the tune, the Commonwealth has ways of determining exactly how it wants its payment spent. In 1971-72, 10 years ago, special purpose payments as a percentage of general assistance from the Commonwealth to the States was 39.72 per cent of the total—

large enough, one will admit—

Ten years later, this year, those special purpose grants had increased to the point where they are greater than the total sum of general purpose payments.

Of course, under this system, the people of this State lose in three ways. Our priorities are subordinated to those of the Commonwealth. The effects of duplication on one hand and the effect of administrative costs of duplication on the other mean that we simply do not get the value of the tax dollar. On top of this, there is a complete failure of accountability.

Mr Malcolm Fraser, when Prime Minister, made substantial strides towards reform in this area. That momentum was totally lost when he lost Government. Liberals are committed to this, and indeed the Leader of the Opposition expressed that commitment virtually a year ago when he called for new arrangements for tax sharing. For Mr Hawke to say that he and the Caucus could not countenance a State tax is ridiculous. We are talking about a guaranteed State share of Commonwealth income tax, which would ensure that the States had the responsibility to spend wisely.

The SPEAKER: Order! The honourable member's time has expired.

Mr HAMILTON (Albert Park): You, Mr Speaker, like many other members in the House, are probably wondering why I have been so quiet, and why I have not interjected—and quite properly so. One of the reasons is what took place in this Parliament yesterday. After leaving here last night—at 12.1 I think it was—I went home, but I could not sleep. I could not sleep because of the revelation made by the Premier that a member of this Parliament uses something like 5.1 tonnes of filtered water every day of the year. That absolutely staggered me. Eventually, I went to bed, and I woke up—

Mr Lewis: You wet the bed!

Mr HAMILTON: Well, actually that's interesting: I almost did. I had this vision of flushing water, so I had to go to the bathroom. After coming from the bathroom, I sat down at the kitchen table. I thought, 'Kevin, you've got to work out how one could use so much water?' So I worked that out. It took me some time on the calculator, but I wanted to make sure that my calculations were correct. I worked out roughly—given that mathematics was not my favourite subject—that one would have to flush the toilet 12 000 times or drink 30 000 cups of tea each day (and I suppose if one has an investment in India somewhere, one can understand that)—

Mr Groom: How many showers?

Mr HAMILTON: That is interesting. Given that each shower would use 100 litres of water, that would equate to 50 showers a day, which would equate to about 18 250 showers a year. I find that incredible. The 6 million litre man! They ought to call him Mr Niagara. Seriously, I thought he must have had a wetland on his property. I know he is a duck shooter—and I will not ridicule him for that. I was absolutely staggered by this. The amount of 5.1 tonnes of water kept running per day is filtered water that is fluoridated at a nominal cost of 85c per litre.

An honourable member interjecting:

Mr HAMILTON: I am stunned by that. It has been put to me: where could one get a comparable commodity at 85c a kilolitre or a tonne? I know that one cannot get wood at that price; that is about $100 a tonne. We have this precious commodity, delivered all the way from the Murray, filtered, chlorinated and fluoridated. I was absolutely staggered, so members can understand why I could not sleep. I thought that I should try to go back to sleep and not upset the household, so I turned off the light and tried to get back to sleep. I tossed and turned and eventually I had to get up again, because this is a very serious subject.

I thought, 'What have we to do to assist this man?' I thought that when I did the washing I would work out how many litres of water I would have to use. Then my thoughts came around to having a shower. As an old bushman, I can have a wash in a gallon of water—no bull. I thought, 'Where is this man using this water?' That is what I want to know. The Minister is on the front bench. I appeal to the Minister to forget our politics and to take a bipartisan approach. I plead with the Minister to approach this gentleman and to offer him some counselling.

Members interjecting:

Mr HAMILTON: My colleagues laugh, but I am being serious. I believe that this man needs a bit of counselling.

Mr S.J. BAKER: On a point of order, Mr Speaker, I know that the honourable member likes having fun, but he is reflecting on a person in another place. Under the Standing Orders—

The SPEAKER: Order! I do not believe that anybody has been named in this debate.

Mr S.J. BAKER: Yes indeed, Sir. Earlier in his original contribution he did indeed.

Mr HAMILTON: I did not.

The SPEAKER: Order! The honourable member's time has expired. I listened to the debate. I will check *Hansard*, but I do not believe anyone was named.

Mr OSWALD (Morphett): This afternoon during Question Time I asked the Minister of Recreation and Sport about the Sports Institute. The Parliament and the people of this State have a right to know what is happening in the Department of Recreation and Sport and, in particular, the Sports Institute and the Recreation Institute. I should have thought that in the circumstances the Minister would have come here this afternoon at least with a ministerial statement spelling out clearly what has happened there.

Earlier this year we had the sacking of the Director of the Recreation Institute. I raised this matter in the Estimates Committees and was told that that was not correct; he was only shifted sideways administratively. The department does not use the terminology 'sacking'. I have had conversations with others in the department, and there is no question but that the head of the institute was shifted sideways by a deliberate executive decision. The administration of the Recreation Institute then fell into an acting capacity under the Director of the South Australian Sports Institute.

We and the sporting community have seen over the past 12 to 18 months to my knowledge—and I am told that it was gathering momentum before that—a usurpation of power by the Director of the Sports Institute in seeking to run the whole of the department. We have seen the continuing conflict that has gone on between the Director of the Sports Institute and the former Chief Executive who has now been allocated to conduct our bid for the Commonwealth Games. Conflict existed with that particular gentleman and there was conflict between the Director of the Sports Institute and the Acting Director, Mr Young.

We have also seen a continuation of the Director's using his authority to try to get his way and, when he has not got his way, going over the two Chief Executive officers directly to his friend the Premier. This has put the Minister in an untenable position. I have the greatest sympathy for the

Minister in trying to administer the department. In many areas the Minister of Recreation and Sport is a good Minister and I am not going to take away a lot of the good work that he has been doing. However, he has been hamstrung over the past several years in administering the department because the Director of the Sports Institute has chosen to go over his head and go straight to the Premier to get what he wants.

I raised some pertinent questions on this subject during the Estimates Committees and I received no replies. It really is a matter of my using Parliament to raise questions on behalf of the whole community. The sporting community knows that there is chaos in the department. Those involved in the Recreation Institute know that there are problems there and they would like some specific answers.

The allegations that have been put to Government and Opposition members of nepotism in the department must be answered. We raised questions in the Estimates Committees concerning the illegal coaching contracts and opinions that had been given by Crown Law, and we have not had answers to those. There have been continuous allegations of misuse of funds over the years and there have been no answers to those allegations. What we have is a statement in the *Advertiser* saying that the Director has been put on long service leave for six months. There is no indication as to what will happen at the conclusion of that period. The Minister in the House today, under some pressure, said that the Director would return to the Sports Institute, but we do not know that. We do not know what the final outcome will be.

We do not know whether this is the way that the Government is choosing to ease him out so that his friendship with the Premier and the relationships at that level can be placated. We know that every decision that has caused conflict regarding this gentleman as Director has been countermanded or helped on its way by his friendship with the Premier. The sporting community wants to know what is going on in the department. We would like a ministerial statement in this House tomorrow from the Minister spelling out exactly what is happening in the department, who is running it, who was responsible for decisions—

The SPEAKER: Order! The honourable member's time has expired. The member for Mitchell.

Mr HOLLOWAY (Mitchell): This morning I had the pleasure of going to the opening of a display by the Department of Road Transport of the plans for the first phase of the new third arterial road project. These plans are on display at the Mark Oliphant building at the Science Park within my electorate and they will be displayed there for the next four weeks, until 8 December. Members of the project team will be in attendance at that display to answer queries by members of the public who wish to look at those plans.

The third arterial project is important for people in the southern suburbs. The project is due to start in late 1993. It will be of considerable benefit to those people who live beyond O'Halloran Hill in the southern suburbs of Adelaide. The project will also be of great benefit to people in my electorate, particularly the first phase, which covers the area from near the Mitsubishi factory at the corner of Ayliffes Road and the Main South Road up to the intersection of South Road and Seacombe Road, and it covers many of the major intersections along South Road and Marion Road in that triangular area.

This project will be particulary beneficial to the residents of Bedford Park. There are two sections of Bedford Park which are affected by it. In the first part—the area bounded by the Sturt River and the Flinders Medical Centre and South Road—the residents have had a number of problems over the years with access to South Road. According to the plans that were revealed to the public today, a service road will be provided for those residents of that area. It will be particularly beneficial for those residents who live along South Road itself. It is extremely difficult for people who live on such a busy section of South Road to back their cars out into the traffic during the morning, particularly at peak hour. Those residents also have to put up with a great deal of traffic noise from trucks going past very close to the front of their homes. A service lane, which will be separated from South Road by a traffic island that will be suitably landscaped, will be of great benefit to the people of the area.

The plans revealed today will also be of benefit to the residents of another section of Bedford Park, that is, the small triangle bounded by South Road, Shepherds Hill Road and Sturt Road adjacent to Flinders University. Those residents have had a number of problems in gaining access to South Road as a result of traffic flow and there has also been much traffic using side streets because of the increasing number of students at Flinders University and also because of people going to Flinders Medical Centre.

I am pleased to say that the third arterial will take in some of the problems faced by those residents. In particular, it is proposed that the intersection between Sturt Road and South Road will be improved, and traffic lights will enable easier access onto South Road for traffic from Flinders University, and that will help to alleviate the problem of traffic in the side streets of Bedford Park. The widening of South Road through that point will also assist residents on that section of South Road to get into the mainstream of traffic, because a separate access lane will be provided. I am also pleased to say that the third arterial project will benefit the residents of Sturt and Darlington in the electorates of Hayward and Fisher who similarly have problems with access to such a busy area.

The display at the Oliphant Building over the next four weeks also provides details of some of the other measures that are part of this project. So far as pedestrians are concerned, I note it is proposed that a path will go under the main South Road bridge at the Sturt River to enable pedestrians to cross without having to deal with eight lanes of traffic at that point. It is proposed that there will be indented bays at most bus stops in order to maintain a continuous traffic flow past stationary buses. It is also proposed that bus priority be given for city bound buses turning into Ayliffes Road at its intersection with South Road. Right-hand turn arrows are proposed for signalised intersections.

The SPEAKER: Order! The honourable member's time has expired.

DANGEROUS SUBSTANCES (COST RECOVERY) AMENDMENT BILL

Returned from the Legislative Council without amendment.

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (NMRB) BILL

Returned from the Legislative Council without amendment.

EDUCATION (NON-GOVERNMENT SCHOOLS) AMENDMENT BILL

The Hon. G.J. CRAFTER (Minister of Education) obtained leave and introduced a Bill for an Act to amend the Education Act 1972. Read a first time.

The Hon. G.J. CRAFTER: I move:

That this Bill now be 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 Government proposes to amend the Education Act 1972 by this Bill in relation to the registration of non-government schools.

These amendments arise from the experience of the Non-government Schools Registration Board and are, with one exception, confined to Part V of the principal Act.

Several of the amendments will provide new powers to the board and have been found necessary in the light of recent legal experience. All amendments are intended to assist the board in better discharging its statutory responsibilities.

The Bill is the result of lengthy preparation and wide consultation with groups likely to be affected by it. Prominent among these are the South Australian Commission for Catholic Schools, the Independent Schools Board of South Australia, the Children's Services Office, the Association of Non-government Education Employees and the South Australian Institute of Teachers.

Under these amendments, the Non-government Schools Registration Board will be empowered for the first time to take account of standards in non-government preschool services. In addition to the likelihood of improved standards in these centres for the children using them, the recognition gained for these services through this amendment will also result in better industrial conditions for non-government preschool staff as they will now come under the appropriate industrial awards. The amendment will also achieve consistency between the definitions of government and non-government schools in Part 1 of the principal Act.

Further amendments will allow the board to take account of educational planning considerations when registering schools. At present only schools applving for Commonwealth general recurrent funding are subject to any assessment of whether they are a needed service and whether they will have an impact on existing schools. This assessment is exercised independently of the Non-government Schools Registration Board. Schools established for profit are ineligible for government funding. Such schools may have a serious impact on existing government and non-government schools as they can be located anywhere provided only that they comply with local planning requirements. The board under the proposed amendments would be able to take such factors into account when registering schools. A gap in existing educational planning procedures will thus be closed.

More realistic penalties will now be prescribed for both first and subsequent offences for operating an unregistered non-government school. These penalties were last revised in 1986. The amendments are realistic in contemporary financial terms, and complement penalties prescribed elsewhere in Part V of the principal Act.

Increased penalties will also be prescribed for failure to keep adequate records of student attendance or failure to furnish attendance returns as required and for hindering or preventing authorised board panel members from carrying out an inspection on a non-government school. These penalties have not been revised since 1980 and 1983 respectively.

From the date of operation of this Act, schools will be issued with a new certificate of registration by the board. Schools will be required to display a copy of this certificate on every campus. There is a penalty for failing to comply with this provision. The certificate will carry a description of the school which will include all locations at which it is registered to operate, the name of its governing authority and any conditions applying to its registration. The information thus publicly accessible, which must be correct, will benefit both the school community and the public.

The heading of Part V Division III of the principal Act is to be altered to describe more appropriately the purpose of the division and will become, simply, 'Review of Registration'. This division will also be amended so that, in future, there can be no difficulty over the service of notices in relation to a review of registration by the board and no likelihood of this provision not being fully and accurately complied with.

The amendments I have outlined above will not result in any cost increases save those associated with the printing and issuing of new certificates of registration. This small cost will be absorbed in the current budget. There is likewise no requirement for additional staffing.

Clauses 1 and 2 are formal.

Clause 3 amends section 5 of the principal Act by inserting in the definition of 'non-government school' in subsection (1) 'pre-school,' after 'in'.

Clause 4 amends section 72 of the principal Act by striking out from subsection (2) *(b)* 'one of whom shall be an officer of the Department' and substituting 'of whom one must be an officer of the Department or an officer of the teaching service'.

Clause 5 amends section 72f of the principal Act by striking out and substituting higher penalties. The proposed penalty for a first offence of operating an unregistered non-government school is $10 000 (instead of $1 000) and for a subsequent offence $10 000 (instead of $1 000) or $500 per day (up from $100 per day).

Clause 6 amends section 72g of the principal Act by striking out subsections (3) and (4) and substituting new subsections.

The proposed subsection (3) provides that where the board is satisfied on an application under section 72g that—

- *(a)* the nature and content of the instruction offered, or to be offered, at the school is satisfactory;
- *(b)* the school provides adequate protection for the safety, health and welfare of its students;
- *(c)* the school has sufficient financial resources to enable it to comply with paragraphs *(a)* and *(b)* in the future;

and

- *(d)* the registration of the school is not likely to have a substantially detrimental effect on the ability (including the financial ability) of an existing school to provide education of a satisfactory standard,

the board must register that non-government school for such period as it thinks fit.

The proposed subsection (4) provides that the board may impose such conditions on the registration of a non-government school as it thinks necessary—

- *(a)* with respect to the location of the school;
- *(b)* with respect to the safety, health and welfare of students at the school; and

(c) to ensure that those students receive a suitable education.

Clause 7 inserts a new section 72ga after section 72g of the principal Act that provides in the proposed subsection (1) that where the board registers a non-government school, the Registrar must issue to the school a certificate of registration in a form approved by the Minister that includes the following information:

(a) the name of the school;

(b) the address of each of the school's campuses;

(c) the identity of the governing authority of the school; and

(d) the conditions (if any) that apply to the registration of the school.

The proposed subsection (2) provides that where a registered non-government school has more than one campus, the Registrar must issue a sufficient number of duplicate certificates of registration to enable the school to comply with subsection (3).

The proposed subsection (3) provides that a registered non-government school must at all times display its certificate of registration, or a duplicate certificate of registration, in a conspicuous place at each of the school's campuses. There is a penalty of $100 for a breach of this subsection.

The proposed subsection (4) provides that the governing authority of a non-government school must, within 14 days after—

(a) a condition of the school's registration has been varied or revoked;

(b) any other change in the information recorded in the certificate of registration has occurred;

or

(c) the registration has been cancelled,

return the certificate of registration and the duplicate certificates (if any) to the Registrar.

There is a penalty of $100 for a breach of this subsection.

The proposed subsection (5) provides that on receipt of a certificate of registration, or duplicate certificate of registration, pursuant to subsection (4), the Registrar—

(a) must, if the school's registration has been cancelled, destroy the certificate or duplicate certificate;

(b) may, in any other case, alter the certificate or duplicate certificate or issue a new certificate or duplicate certificate in respect of that school.

Clause 8 strikes out the heading of Division III of Part V of the principal Act and the heading 'DIVISION III—REVIEW OF REGISTRATION' is substituted.

Clause 9 amends section 72j of the principal Act by inserting a proposed subsection (2b) after subsection (2a) that provides that notice in writing addressed to the governing authority identified in the certificate of registration of a non-government school and—

(a) left at the school with someone apparently over the age of 18 years;

or

(b) sent by post to the school in a pre-paid envelope addressed to the governing authority identified in the certificate of registration,

will be taken to be service of the notice on the governing authority of the school for the purposes of subsection (2).

Clause 10 amends section 72n of the principal Act by striking out subsection (3) and substituting a new subsection (3) which provides that the head teacher of a registered non-government school who fails to comply with the provisions of this section is guilty of an offence and liable to a penalty of $500. (The previous penalty for this offence was $200.)

Clause 11 amends section 72p of the principal Act by striking out subsection (2) and substituting a new subsection (2) which provides that a person who prevents the members of a panel from carrying out an inspection under subsection (1), or hinders such an inspection, is guilty of an offence and liable to a penalty of $500. (The previous penalty for this offence was $200.)

Mr S.J. BAKER secured the adjournment of the debate.

PRIVACY BILL

Adjourned debate on second reading.

(Continued from 12 November. Page 1800.)

Dr ARMITAGE (Adelaide): Last night the substance of my contribution was that a number of grave intrusions of privacy have occurred in the past, as acknowledged by a number of media outlets and certainly abhorred by members of Parliament. Equally, there would be a number of consequences of this Bill that most members of Parliament would not be happy to see. In effect, these consequences would see the end of investigative journalism in South Australia.

As I indicated last night, I have had correspondence with many media outlets, one being the Federation of Australian Radio Broadcasters. I asked a number of questions. The submission from the General Managers of 5AD, 5AA, SAFM, KAFM and 102FM states:

> One highly publicised aspect of the debate for the Bill is concern about intrusions by media upon individuals affected by personal grief or tragedy. However, these do not warrant the far reaching gag upon the media which would be achieved by this Bill. The Bill does not even achieve a right of action in some of the press examples attached to the select committee reports.

That is exactly the point I wish to make about a number of the examples that the member for Hartley and other members opposite, as well as members on this side of the House, have cited. No-one approves of that, but this Bill simply will not achieve all the ends to which it is dedicated. The letter further states:

> Surely educating the public as to their present remedies must be preferable to such drastic new legislation.

I agree.

The Hon. Ted Chapman interjecting:

Dr ARMITAGE: I am being quoted by the member for Alexandra. Indeed, I have said that and, as the member for Alexandra would know, having heard my comments last night, many remedies have been proposed by the various media outlets. Where should we go from here? There are obvious problems that have to be addressed by society in relation to an invasion of personal grief, and Parliament is an appropriate forum for those concerns to be addressed.

However, we ought not curtail legitimate expressions of investigative journalism or investigations by historians, geneaologists and so on. They should not be curtailed because of this Bill. I am optimistic, because of the suggestions put forward by various media outlets as to the way in which they individually deal with these problems, and because of the pressure under which journalists have found themselves in the past couple of months when the Bill has been the subject of public discussion, that the changes proposed by journalists will stop invasions into personal grief without stopping other facets of journalism.

I would like to quote from the AJA letter, which I am sure other members have received. The following motion was passed at a recent meeting of the South Australian branch:

That the branch propose a change to the union's rules to allow branches to appoint community representatives (who are not AJA members) to judiciary committees. That if a decision is made to appoint such representatives, at least two shall be appointed.

That is completely appropriate. The community is calling for these invasions of privacy to cease, and community representation on these committees is a good way to go. The AJA attached to its letter a photocopy of the front page of its most recent edition of its monthly journal *The Journalist*, and that paper quotes a number of initiatives proposed by the AJA. In particular, it seeks an independent Press Council, funding by a compulsory levy on advertising, adequate resourcing, equal representation of the publishers, the AJA and the public, and an independent Chair. I note, in particular, that each publisher would be required to publish in full, in a manner determined by the council, any matter affecting a particular application.

These are constructive suggestions that have been put to members of Parliament by the AJA. The media realise that they are on notice about this important matter, but I do not believe we ought to sacrifice the baby with the bath water. If we ask the media to address these issues I have detailed and to make constructive suggestions as to how the problems can be addressed, we will end up with the best of all worlds. However, I serve notice to the media that there are great expectations incorporated in my opposition to this Bill.

Mr SUCH (Fisher): This Bill concerns me because, on the one hand, I accept that people have a right to privacy and that there have been some gross breaches of privacy by a small element of the media; at the same time I do not wish to see the media constrained in what is a semi-democratic society from performing its very valuable role.

We need to keep in perspective intrusion into grief, for example, because, when we look at publications, articles, television programs and so on, we find that the number of bad examples is very small. In the overall context, I believe that is the case: the number of occasions on which the media offends against public taste and decency and invades privacy is relatively small. I have not been subjected to any gross intrusion. That is not to say that it will not happen, and I can understand members of Parliament and other people being angry when it does happen. I do not condone the actions of that small section of the media.

We should highlight some of the good work done in the media. A rather pertinent case was reported in today's Messenger Press *Southern Times* and it relates to the recent tragic death of a teenager in the southern suburbs—a lad by the name of Wesley Meconi. That newspaper within the Messenger chain is quite a significant and large one. The approach adopted by the journalist, Gordon Armstrong, in dealing with the family and reporting on what happened to that lad is an example of how the media can go about its task in a responsible way. That article states, in part:

The death of Hackham teenager Wesley Meconi at the Onkaparinga Gorge has struck a nerve with the southern community and, indeed, probably most parents of teenage children. The *Southern Times* Messenger shares the grief the Meconi family is feeling and appreciates their time in talking to the paper.

In conclusion, it states:

To David and Anna Meconi and daughter Jo, who made Australia their home when they left England just over a year ago, our thoughts are with you.

In the concluding paragraph of a second article, Mr Armstrong states:

Wesley's tragic death has touched so many people—and again hammered home the point that every minute on this earth is precious.

Gordon Armstrong is an example of a journalist who did not go in gung ho and upset the family, who were grieving: he approached them and has presented an article which is sympathetic and which does justice to a very fine boy. We need to keep grief intrusion in perspective. There has been an emphasis on the bad aspect of the media, but let us not forget that most of the time most journalists do the right thing. I certainly do not want to see them shackled so that they cannot carry out their function in our society, which is to inform, to expose and to provoke.

One of my concerns with this Bill is that I believe it would lead to a legal smorgasboard. In many ways, it is vague, and it would allow the legal profession to have a field day. I do not believe that that is something we should encourage. The Bill is cast in a very wide manner. I appreciate that it does not deal just with aspects relating to the media, but its vagueness would lead to extensive and frequent legal action. I accept that sections of the media need to lift their game, and I believe that the AJA really needs to put some teeth into its code of ethics and to impose meaningful sanctions. The member for Adelaide alluded to some of the possibilities in that respect, and I do not intend to repeat them. At the moment I do not believe that the code of ethics is adequate and it does not encompass proprietors and executives. It is essential that they be brought within the ambit of responsibility.

In some ways, rather than trying to shackle the media, we should be trying to encourage genuine and extensive investigative journalism in this State and in this country. There is a tendancy towards telephone investigations. In many ways, the media are rather laid back. They should be much more vigorous in pursuing those elements in society that need to be exposed. I accept that it is not easy for a group such as journalists to develop a binding code of ethics. Nevertheless, the challenge is there, and the raising of the issue in Parliament and the work of the select committee has put the media on notice that they must lift their game, particularly that element that is prone to adopt questionable and unacceptable practices in relation to intrusion into the privacy of individuals.

In many ways journalists are unelected members of Parliament. They are prone to some of the faults that we exhibit. Members of Parliament often misuse some of the privileges that accrue to them. For example, it has been known in this Parliament and in other Parliaments for members to go beyond the bounds of fairness in naming people under privilege, and I do not believe that is fair play. So, before we cast too many stones at the media, we should look at our own performance as members of Parliament. The media need to regain the confidence of the public, and I suggest that members of Parliament need to do the same.

In conclusion, as I indicated earlier, the process we have been through has indicated to the media that some of their behaviour is unacceptable and they need to do more; they can operate in a much more considerate and caring manner in respect of individuals. This Bill, as it is at the moment, is unacceptable. I hope that we can arrive at some mechanism that will not only provide the protection of privacy but also allow the media to vigorously pursue its role in a democratic society—an essential role. We should be aiming to have the best of both worlds. My concerns are with the wording of the Bill. I do not believe it is as good as it should be in terms of its being specific. I look forward to the next few days and weeks, when improvements can be made and procedures put in place to ensure that journalists and the media generally operate at a very high standard of ethics, protect the privacy of the individual and contribute to the workings of what is essentially a democratic society.

The Hon. TED CHAPMAN (Alexandra): Some 20 members in this House have addressed this Bill. I, too, want to put on the record my support for the Minister's efforts in drawing up this legislation, which has been promoted widely by the member for Hartley and over a fairly long period. During that time I have been the recipient of material from the Australian Journalists Association, in particular, and one or two other interested media related parties who claim to be encumbered by this proposition. I cannot recall a lobby as intense as the one that has been applied to members of Parliament in this instance.

A few years ago a group of container manufacturers with a vested interest in a piece of legislation got their hooks into members of Parliament over a period of a few weeks, but they were confined to merely a handful or fewer than a handful of actual operators. I must say that their lobby was professional and easy to follow. They were courteous enough to make themselves readily available, as have a number of lobbyists in this instance, to members of Parliament. They were open and prepared to answer questions about what was, in that circumstance, a piece of new legislation to cover a new industrial activity in this State.

However, this issue concerns the age-old practice of reporting, if the media's position is taken in isolation from other measures in the Bill. With respect to media reporting, associated with the provisions are the concerns of members of the community at large and members of Parliament in particular about the integrity and/or the accuracy of that reporting, especially as this Bill cites the measures to minimise privacy invasion.

A number of members of Parliament on both sides of the House—those who bitterly oppose the legislation and those who support it—have admitted grave invasions of privacy by journalists in this country and in this State in particular. They have acknowledged that there have been serious misdemeanours by certain journalists and, in some cases, they have even named those journalists. They have outlined a range of improper practices in which journalists or people connected with the media have indulged in relation to the privacy of members of the public and members of Parliament in particular. I find it very confusing to know where a lot of members stand on this issue.

Quite frankly, I cannot understand why there has been so much concentration on the privacy of a member of Parliament, because that does not worry me a damn. It never has. I could not care less about what the media say about me, how often they say it or whether or not it is accurate. Generally speaking, the paper on which they print their reports is used to wrap up fish and chips within a day or two anyway. Of the electronic media, what they say today is history tomorrow. The credibility of a number of these journalists who boast codes of ethics and great practices of propriety is just as low as that of parliamentarians and they are just as guilty for their misdemeanours. Accordingly, their rating in the community at large is no better than that of politicians, taxi drivers and a whole number of other occupations.

I am concerned with the invasions of privacy that have allegedly occurred in a number of families and within the lives of private citizens who have little or no defence. It is in that respect alone that I believe the Government's Bill is credible enough for me to support it. I recognise that we cannot address the content of proposed amendments and that it is improper to allude to those amendments. However, it is not improper to refer to reports in the media, for what they are worth, about suggested changes to the Bill as it has been introduced. Given the changes that have been signalled via the media, it seems to me that with those alterations the legislation will cover a situation long overdue for address in an effective way.

It is all very fine for the media, through the Australian Journalists Association, to admit that things have got a bit loose, that their code of ethics needs tightening up a bit and that they intend to introduce a code of ethics committee. The association's letter, dated 8 November, states:

> This committee has already flagged its intention to see an upgrading of the AJA's internal disciplinary procedures and, where unwelcome intrusions into private grief are committed by journalists or photographers, the union can deal with them.

It is a bit late for that sort of verbiage, as far as I am concerned. That is a Johnny-come-lately exercise, if ever I heard one. Journalists have been around since Jesus Christ played full back for Jerusalem, or almost that long. If they have not got their act together by now, it is a bit late, on the eve of the debate on this legislation in this place, for them to come along and say, 'We have a few rules. We are going to tighten them up and we are going to apply them now, even though we admit we haven't in the past.'

All that is a bit sick and I do not believe that the argument to justify internal discipline by people in this particular practice is any different from a claim that any other organisation may make in relation to how their behaviour shall be monitored or subject to surveillance, etc. It is about time there was some legislation to lay down the guidelines, provide penalties and carry out proper surveillance of the activities of the media, as applies to other organisations that participate under licence or registration or in the ordinary course of activity in the public arena.

There is no more public group than those who publicly report the activities, behaviours and, unfortunately in some cases, the private affairs of others. It is in that context that I put my position on this subject for what it is worth in this Chamber. It is pretty obvious to me that the Bill will go through this House and it would be a sign of weakness for one to withdraw from comment when one has a firm position, as I have on that singular principle, which is admittedly but a part of the total Bill before us.

One other matter that has been drawn to my attention during discussion on this subject in recent weeks is that the advertisements inviting witnesses before the parliamentary select committee inquiring into this matter clearly and openly invited, if not urged, representatives of the media to appear. The number of witnesses who ultimately did appear was minimal. Indeed, media representation was confined to a representative or representatives of the association alone. Individual members who have been bobbing out of the woodwork like ants in the past few weeks have come along at the last minute and did not show when evidence was being taken. It was only when the Legislature demonstrated that it was fair dinkum about proceeding in this direction that they even started their lobbying and my understanding is that they simply have not let up.

As recently as a day or two ago we in this place were still receiving correspondence urging us to back away from the legislation for all sorts of reasons, some of which are no doubt justified but many for which there is scant support. I believe it is insufficient to dissuade me from the steps that have been taken by the Government in this instance, as I outlined early in the debate, so vigorously and fearlessly supported by the member for Hartley from the outset.

Mr OSWALD (Morphett): It may disappoint some of my colleagues and friends on the Government side of the House to hear that I will not support this Bill. It is a subject on which my friend and colleague the member for Bragg spoke for about an hour and a half last night, and I will

not repeat all the arguments he put forward. However, I do wish to make a couple of points.

If one goes into public life—and that applies to Parliamentarians—one must expect to come under scrutiny, particularly (albeit a cursory glance) from investigative journalists of some time or other. Depending upon one's behaviour privately or publicly, those journalists may choose to investigate one more thoroughly, and Government members may come under even more scrutiny. However, if the Government changes, those in Opposition will have to accept that they will come under the blowtorch from time to time. It is all very well when one is not under the blowtorch: one can take the moral high ground on the Bill. However, the fact is that people who go into public life must expect to come under scrutiny and if they do not like it they have the option of moving on.

I have no problems with investigative journalists investigating my affairs. If I were to do something in the public arena at some time or other that was unsavoury or dishonest, it would come out. However, I do have problems with certain journalists within the profession who take to hounding and naming prominent citizens in this town before they have been proved guilty. Our protection in this regard is the Press Council's principles by which it will abide and which have been published in the newspapers. Adherence to those principles will give journalism more status.

I know the Government is saying that it is no good the Press Council's merely publishing 11 principles to which it will adhere in regulating its profession. The Government claims that this should be put into legislation, otherwise it would be worthless, but I do not believe that. I come from a profession which we believe we can self-regulate. I would like to give the AJA and the Press Council the opportunity to regulate their profession by the use of principles. However, I do believe there is a problem in our doing that only in South Australia, particularly with regard to the electronic media. The provisions in the Bill will create some grey areas and cause increased litigation from time to time. Many matters will come up which people will say should be included in this legislation. People do have a right to privacy. Those represented by the victims of crime organisation certainly have a right to be heard, and they certainly need protection from a prying media who overstep the mark in what they believe is a matter of public interest.

This debate on what is in the public interest will go on for many months and years, and it will end up as a matter for the courts' to decide. I know members are tired of individual journalists who have exceeded others' perceptions of what is a matter of public interest and who have hounded people—and, indeed, damaged those people's reputations—before the journalists in question have been found guilty. On the other hand, if we take away from the media the teeth of investigative journalism and ensure that an investigation can never really begin, certain activities in this community will develop and no-one will act as a watchdog for it. I refer to matters in which the police may not have an interest at the time but in which they may well become interested at a later stage.

If one read the history of investigative journalism here and in other States, at the end of the day one would see some pretty amazing things exposed which never would have been exposed if this Privacy Bill had been in place. My comments will not be all that popular with some of those who seek personal privacy in relation to those areas involving intrusions into grief. All I can say is that the Press Council's principles will be watched closely. If it does not adhere to those principles in the future, I expect that Parliaments across this nation will move smartly to close up this situation. At this stage, however, I for one am prepared to say to the Press Council that I am happy to stick by its word that it will follow those principles.

If individual journalists decide to test what is the public interest and hound individual prominent citizens unmercifully before they have been found guilty—and if it is ever proved that the matter is not in the public interest—Parties of all political persuasions will seek to do something about it. I place on record that the Liberal Party has been approached by many organisations. The member for Bragg has read into *Hansard* the submissions by those various organisations. I also have received detailed submissions from a wide range of organisations—not just the AJA. The implication has been made by some speakers today that only the press has been in contact with us, but that is not so: a number of my constituents have written to me, and we have had representations from organisations other than the AJA and the groups that it represents, including the Life Insurance Federation of Australia, the South Australian Employers Federation, the Australian Engineering Employers Association, the Retail Traders Association and the Chamber of Commerce and Industry. That is a pretty fair range.

We also have representations from the Law Society. On all the Bills which have been handled in this place and to which I have spoken, I have never known of such a contribution from the Law Society. Certainly, in respect of those Bills with which I have been involved it has never given me incorrect advice. I know that a legal opinion is a legal opinion, and perhaps it can be open to interpretation or other lawyers may have different views. However, the Law Society has never misinformed me yet. I have read its submission and found it to be true.

I oppose the Bill, and I am happy to let the AJA and the Press Council attempt to implement the principles which they have published. Indeed, if they are breached, I would expect that everyone concerned would move to enshrine them in legislation. At this stage I oppose the Bill and trust that the Press Council will adhere to its principles.

Mr BLACKER (Flinders): This Bill has aroused the emotions of many people, and in particular those in the media. I can understand some of the comments that have been made by members, on both sides of the House, because each of us as individuals has at some time or another experienced the abuse of the right that one has to privacy. The member for Hartley has put in a lot of work and effort in presenting this legislation to the House. Much of it is due to his own work, but the Bill is due in no small measure to the efforts of the select committee.

I can understand the sentiments that the member for Hartley has expressed, and particularly in relation to his outlining the cases where there have been abuses of moral rights by investigative journalists and where they have almost attacked innocent victims of an unfortunate incident in order to get a story. Likewise, I could relate to the House similar stories. When one of my constituents was the victim of a shark attack that person's family was subjected to this sort of abuse by journalists. At one stage people in the family had to block the door of the church during the funeral service for that person. Without going into any further details, that incident was close enough to me for me to appreciate how they can abuse the power that they have. I can certainly understand that it was through those sorts of sentiments that this legislation was brought into being.

There are some aspects of the Bill that have not been dealt with to any great extent. I refer to the other forms of invasion of privacy. Only recently a constituent came to

me and told me that he believed that there had been a transfer of information between two Government departments which had invaded on his privacy. It certainly looks as though information was transferred between those two Government departments involved. This person is now well into his eighties and in relation to making his regular quarterly payment of bills sent by one of these departments he has never missed a payment. Yet, by inference of a non-payment he was challenged by another Government department, because of that alleged non-payment. Quite clearly, the conclusion is that this could only have taken place through the transfer of information between the two Government departments, using a common database, or whatever it might be. I know that I am perhaps talking in riddles here, but I do not wish to explain in any more detail the individual case. However, this does raise a question in relation to the right to privacy. In this case I believe that the person's privacy was breached.

Mr Groom: Could he get damages?

Mr BLACKER: Yes, he could well get damages, if we could get information. There are certainly some good points in the legislation, and that must be acknowledged. I, like some other members on this side of the House, do not agree with some of the fears that have been expressed by other members on this side of the House in relation to the legislation. We know that other Governments throughout the world of a similar type have privacy legislation in operation. We know of Governments that are perhaps much more conservative than we have had in recent decades that have privacy legislation. So the political motivation is perhaps cancelled out by those facts. I do not intend to say any more. More than 20 speakers have now spoken on this legislation and I would only be repeating the comments that have already been expressed.

Mr BRINDAL (Hayward): The right to privacy lies at the heart of this Bill. Specifically, clause 3 (1) provides that a person has a right of privacy. Like my colleague the member for Davenport, I do not believe that any Liberal member of this Parliament would argue against that proposition. Privacy is a basic right of every citizen. So, we accede to that point, as provided for by this Bill, and it then seeks to qualify and quantify our right to privacy—and there is no alternative. We live in a very complex society, and to give everybody an absolute right of privacy would be to make society, in its present form, unworkable and untenable.

So, the Bill, quite rightly, seeks to achieve a balance between the right of the individual citizens in a society to enjoy the privacy to which they should be entitled and allowing the society itself to have access to information to which the public is entitled, in order that the society functions correctly and in the best interests of all its citizens. I concur in the sentiments just expressed by the member for Flinders, in his congratulating the members who served on the select committee, and in particular the member for Hartley, not only for the work and effort that they put into the Bill but also for their commitment, which they have shown in this place and certainly in the media in the debate leading up to presentation of this Bill.

Unfortunately, I find myself in the position of not being able to vote for the Bill. Whilst I believe that the sentiments it expresses are correct and admirable, I do not believe that the Bill adequately addresses the problem. However, in saying that, I take up a point made by the member for Hartley and by other speakers from this side of the House. Many of my colleagues and I have found ourselves in a great dilemma over this Bill. The member for Hartley and other speakers have in fact pointed, quite rightly, to a number of serious deficiencies in the matter of people's right to privacy in Australian society, and in this case particularly in South Australian society, in the year 1991.

The member for Hartley has spoken with me, as have some of my colleagues on this side of the House, and I have been privileged to see some of the evidence that was presented to the select committee. A lot of it was specifically concerning the infringement of people's privacy by members of the media, in two specific areas: the infringement of the privacy of people who may appear before the courts and in relation to intrusion into personal grief, especially as it relates to the families of victims of horrific crimes. I, like other members who have spoken on this matter, believe that that situation is intolerable and that it must be stopped. Therefore, I suspect, the real debate is far from concluded in this place and that in fact it is only just beginning.

Whether or not this Bill passes, whether or not the Opposition supports it and whether or not the Government has the numbers to get it through, I think this Parliament as a whole is quite clearly putting on notice the media, over which it has jurisdiction, and giving it a message not only from this Parliament but from the people of South Australia. It is a simple message and an old one, namely, that for every right there is an equivalent responsibility.

If the media, in its pursuit of truth and in its pursuit of matters in the public interest wants to exercise that freedom of speech which it holds to be sacred and which I hope every member of this place would equally hold to be sacred, then it must exercise an equivalent measure of responsibility. The evidence taken by the select committee that I have seen and the discussions that I have had with my colleagues on the select committee suggest very strongly that in respect of its responsibilities the media in South Australia has not always exercised them anywhere nearly as well as it might have done.

The media will continue to take the freedom that is conferred on it by this Parliament and by ancient tradition. Thus far, though, the media has steadfastly not been conscientious in the exercise of its responsibilities. It is important that that message, if no other, be given to the media from this legislature. If the media wants the freedom to continue to operate in as wide a form as possible, as a group of professional people they must exercise the responsibility that goes with the privilege.

The particular problem often relates to victims of crime. I think that not only in the area of privacy but in the area of compassion generally we, as a legislature, have to look more closely at all aspects related to the victims of crime, especially when they are associated with the other problem about which I spoke earlier—grief. Recently an elector came to see me. She has suffered considerably in bringing to justice somebody with whom she was associated. She believes that she was systematically seduced by a man who turned out to be a paedophile. She believes that her seduction was purely for the purpose of getting to the children. She caused herself considerable anguish by going through the court process.

Mr Atkinson interjecting:

Mr BRINDAL: I cannot ignore the interjection by the member for Spence. I know that he is a compassionate person and somebody who cares and I think the less of him for that sort of interjection. I would not raise the matter in this House if I did not think it was serious. I have never seen anybody who I believe was more a victim of the system. She has done everything that the law says she should do. She subjected herself to continual and persistent personal grief and hurt. She is now having counselling. She

believes that her life is in ruins and that her children's lives are in ruins. She sees herself very much as a victim of the process.

Mr Atkinson: Is this matter before the court?

The SPEAKER: Order!

Mr BRINDAL: No. The matter has been before the court.

Mr Atkinson: What was the decision?

Mr BRINDAL: I will answer the question that I heard floating in the air; I will not answer an interjection. The person concerned was convicted and sentenced to a gaol term. He has had the full measure of justice according to the law in this State. I agree that that is good, but that does not negate the fact that the woman still feels a victim, and so does the child. Our society rightly gives every chance to the person who is accused. Then, when convicted, it gives that person every chance of rehabilitation, but it does not do enough for the victims of the criminals. She feels that her privacy has been infringed in many ways, and not only by the media. In this case, because of suppression orders, the media were not involved.

However, the system itself infringes totally and continually on her privacy and her rights as an individual to enjoy a lifestyle in our community. She now feels like an underclass person. She feels that her life will never be the same. The society, which has done the right thing by her in terms of justice, continues to wrong her in that it gives her no redress or compensation. This is, therefore, related to the Bill because it is another aspect of privacy. As I said before, if there are two aspects for which every member of this House must have some feeling, it is intrusion into grief and intrusion into privacy in matters related to criminal actions.

The members for Hartley and Davenport have spoken eloquently on this matter and they are to be commended for their contributions. However, the proposition before the House is flawed. I do not believe that it adequately addresses the problem. I look forward to this Government, or our Government when we get into office, introducing perhaps another Bill if the media have not exercised the level of responsibility that they should.

Mr Atkinson: What would that Bill on your side say?

Mr BRINDAL: In that case, I would think very carefully about supporting it. I believe this debate has been valuable because it has highlighted the problems of privacy to the media and drawn the attention of the public to a problem. I believe that at present that may be adequate, but we will have to see what happens. As a result of that the Opposition may be forced to support measures similar to those outlined by the member for Hartley.

I commend the member for Hartley and other members of the select committee for the work they have done on behalf of this legislature, for the process they have gone through and for their leadership in this matter, and I regret that it will not therefore be possible for me to support the Bill.

Mr MATTHEW (Bright): Like other members on this side, I oppose this Bill. The Attorney-General has now introduced the Privacy Bill through his representative in this place following the report of a select committee which finally recommended a draft Bill. It is well known in this place that, as the member for Hartley said, the impetus for the Bill came from the concern that personal grief should not be the subject of intrusion by the media. I respect the sentiments of the member for Hartley and concur with those statements. Indeed, there is a need to look at the way in which the press reports on a number of issues. However, I do not believe that this Bill is the way to achieve that objective.

The right of privacy through this Bill is very broad. There is no similar right in any other State of Australia and there are a number of pieces of State and Federal legislation which have an impact on privacy matters. Members will be aware that Acts such as the Listening Devices Act, the law relating to defamation, freedom of information, the Fair Trading Act in relation to fair credit reporting, telecommunications interception legislation and the Federal Privacy Act impact in their own way on matters relating to privacy. However, this Bill is so broad as to impinge on every aspect of human relationships, as well as placing a substantial bar on the ability of the press to report freely on matters which might involve personal or business privacy. An essential ingredient of any democratic society is a free press and an essential ingredient of that is the principle of freedom of speech not only in the media but also for citizens.

The Bill is so wide that I and many others fear that it could be used as an instrument of suppression rather than as an instrument to protect those who in the past have been treated less fairly than many members in this Parliament would have liked to see them treated. I contend that if the Government is serious about privacy it should look at its own backyard first. One of the disappointing aspects of this Bill is that it fails to look at the Government's own backyard. By way of example, we have in this State a burgeoning of computer databases similar to those which are growing in other States in Australia and in other countries. Those databases are being looked upon by this Government as candidates for integration through the Information Utility that is being touted as being associated with the multifunction polis.

The Information Utility would centre on a number of databases to the extent that ultimately it would be possible from the one computer terminal to obtain an enormous amount of information on any one individual. For example, a citizen could find that from the one computer contact information could be stored about their contact with the Police Department, the Department of Correctional Services, land that they own, any dealings in which they have been involved with Government enterprises, information about their accounts through the State Bank, information relating to requests for information they may have made about other land transactions and information pertaining to vehicles they have owned, including dates of purchase and sale. Information on traffic infringement notices that have been issued, or each time they have lodged a complaint with the police and, in fact, any time they have dealt with a Government agency could be obtained from that one source. Before we integrate information on computer—and I am not criticising that—we need to address the privacy of the citizens concerned.

That is the sort of thing that this Bill needs to address if we are to look seriously at the way privacy and privacy of the individual is to be treated in South Australia. Regrettably, this Bill has focussed particularly on the treatment of individuals by the media without the Government first looking at its own backyard. By way of example, I bring to Parliament's attention a report produced in February 1983 for the South Australian Government on the Justice Information System. The report was prepared by Touche Ross Services Pty Ltd, a well-known reputable management consultant.

The report, 'Feasibility Study. A Collaborative Effort with the South Australian Government', made important recommendations relating to the growth of information collection in our State. In the section headed 'Fair and Secure Treatment of Data and Related Legislation', the report states, in part:

Experiences in other countries have highlighted the importance of supporting legislation and guidelines to deal with both the perceived and real issues related to personal data. Although this data is available currently in manual systems, automation typically raises some public concern.

In the current South Australian manual system there is a lack of data consistency, access and control. For example, a person may be able to access, and have rectified, faulty data on one system but he would be unaware that the same data was kept in another agency for a different purpose.

There has been a considerable amount of work undertaken on the fair and secure treatment of data within the JIS agencies by the study group working in parallel with this consultancy. The development and implementation of guidelines, standards, procedures and legislation in both the USA and UK will be helpful.

That consultancy was drawing to the Government's attention the mass of information it was collecting and the importance to ensure that the privacy of the individual is protected. It also stressed the importance of ensuring that individuals are aware of information kept about them by Government agencies.

The Information Utility that is being touted by this Government, while on the one hand being able to draw together that information and consolidate it in some way will, on the other hand, provide the alarming possibility for more information to be available at the press of a button or through a simple computer program. That sort of problem has not been explored in the detail required, despite the fact that reports as far back as 1983—eight years—recommended that something be done.

For some reason known only to the Government it has neglected to follow the recommendations of the consultants, who are professionals in their field. They have neglected to follow the line being adopted by countries overseas who have recognised these problems. Why has the Government not followed the advice of the consultants that it had placed before it?

In our society today we have a number of high tech devices that can be used in varying ways to threaten the privacy of the individual. We have seen the growth of new and inexpensive eavesdropping devices, growing networks of private and Government databases and increases in Government surveillance activities that are making it hard for the average citizen to fend off prying eyes and ears. I am aware of a case in Los Angeles where a woman who kept getting turned down in her search for an apartment finally discovered that, as a result of a prior legal dispute with a landlord, she was on a computerised tenant black list.

I have great fears that here in South Australia we are in danger of going down the same path. I am also aware of a case in New Jersey, where a junior high school student who wrote to foreign Governments requesting information discovered that he was on the FBI filing list. It kept a record of him as a curious student. That sort of information is also being collected and recorded by Australian Government agencies and perhaps, although I do not know whether or not it is, by State Government agencies.

Privacy experts across the world are probably in broad agreement that the greatest threat to the average citizen's privacy rights comes not from media surveillance or media reports but from data surveillance. Hotels in Australia keep records of who stayed where and for how long; video stores keep records of who rented what movies on what nights; and credit companies keep detailed records on financial transactions. Insurance companies have access to medical records that even some patients cannot see. The Government is the biggest storer of information or, as some have said, is the biggest information pack rat, keeping everything from military service at Federal level and tax records to social security information through to loan applications for student loans, housing loans, property transaction details and transaction details involving the purchase and sale of motor vehicles and so on.

This is the sort of information that needs to be tackled by any legislation that is put before this Parliament to deal with the issue of privacy. These sorts of things are not covered by this privacy legislation. If we are to draft serious privacy legislation and not simply legislation with which to beat the media over the head, the Government must turn to its own backyard and look at the way it is collecting its own information. It should look at who has access to that information and at how that information can be used and misused and do something about it.

These sorts of matters are far too broad for me to move simple amendments to during the passage of the Bill. These sorts of things mean a total rewrite of the legislation and total dedication to solving a problem that will get out of hand before too long. If this Government is serious about the benefits that could result from an information utility, it must first address the privacy issue surrounding it. Now is the time to do that, before that advancement moves too far down the track. Now is the time for something to be done about legislation for that particular body.

I contend that, if the Government were serious, it would withdraw this legislation and analyse seriously what it is that it wants to achieve. The Liberal Party has expressed a number of concerns about this legislation that need to be placed on the record continually throughout this debate. Certainly, we agree that at times there are lapses by the media, and a number of us who have expressed concerns in this Parliament are still concerned that the reporting standard by the media sometimes goes beyond that which would be normally accepted as an ethical standard.

We believe that any attempt at State level to legislate to impose standards on the media will not be workable, even if that is desirable, if they are not uniform across Australia. We also question the legal capacity of the State to legislate for ethical standards to be imposed on the electronic media which is, after all, subject to Federal law and not State law. That seems to have been overlooked once again during the drafting of this legislation.

We believe that if the Privacy Bill is allowed to pass through this Parliament rights will be restricted rather than strengthened, and extensive litigation will ensue. The real beneficiaries of this legislation at the end of the day could be the legal practitioners rather than the ordinary citizens of South Australia. We all know of the difficulties that the ordinary citizen has in accessing the law; we all know how expensive the process of litigation is, and the last thing this Parliament should want to do is establish a framework where we encourage more litigation, more legal wrangles and more hardship for the ordinary citizen.

All members of this Parliament have had extensive contact with organisations and individuals lobbying about this Bill. In all of that contact—be it written or verbal, in the street or by telephone—as a member of Parliament not one single person has advocated support for the Bill. Many people have said that they are concerned about the Bill and that there is something wrong with it.

I have been contacted by media organisations, private citizens and a number of reputable community organisations that are concerned about what this Bill may be imposing on the ordinary citizens of South Australia. I have had representations from groups such as the Australian Journalists Association, the Life Insurance Federation of Australia, the South Australian Employers Federation, the Australian Engineering Employers Association, the Retail Traders Association, the Chamber of Commerce and Industry, the Law Society and numerous individual citizens. They

all say that there is something wrong with this legislation, that it will not assist in protecting privacy and that, in fact, it will threaten it.

Even the Australian Conservation Foundation expressed initial opposition to the Bill and, while I understand it is a little happier with the amendments that have been put forward, the question still remains whether its own magazine and its authors could be regarded as media or media organisations and, indeed, whether other organisations such as the Public Service Association, the South Australian Institute of Teachers and professional and trade organisations that publish magazines and papers might be regarded as media. Will this legislation threaten their ability to communicate with their members?

At the end of the day this Parliament should be here to protect freedom of speech. The media plays an important role in that protection. The role of the press in our society has been that of a watchdog; it is an essential ingredient in any modern society. To play that role properly, our press must be free. It has a responsibility to the public to inform and to ensure that it reports accurately, and also to ensure that it is accountable. I do not argue that the press needs to be more accountable than it is at present. I do not argue that the present codes of practice put forward by organisations such as the Australian Journalists Association are perhaps not complete and not as enforceable as they should be. However, that is the area Parliament needs to tighten up and to ensure that those codes of practice that do exist are improved and that that goal is achieved through consultation and negotiation, and that, in so doing, the rights of the citizen are protected.

I acknowledge the right of the victim to be protected, and I encourage this Government to talk to reputable organisations such as Victims of Crime, which no doubt has some very real concerns about the way in which things are occurring at the moment. However, I have not heard even that organisation standing up to support this Bill. Certainly, that organisation has, in the past, quite rightly expressed concern about the manner in which the media report. However, this Bill is simply a method by which to hit the media over the head. It does nothing to address the manner in which the Government currently accumulates information and releases it. If the Government is to be serious about privacy, I repeat, it needs to look at its own backyard first.

This Bill will result only in extensive, expensive litigation and it will not assist in protecting the rights of the individual in the manner in which the member for Hartley would like us to believe. I believe the honourable member is genuine in his endeavours to put forward legislation to improve the present situation, but regrettably this Bill is misguided in its attempt to do that. Therefore, I have no alternative but to oppose the Bill.

Mr M.J. EVANS (Elizabeth): I rise to support the Bill before the House. I do so in contemplation also of the changes which may well be made to it in the course of its passage through this place. Indeed, the Bill before us is the product of a select committee process, in which I had the honour to serve along with the member for Hartley and other members of this House. I believe that the select committee process gave members of the public and, indeed, the proprietors of newspaper organisations, to name just one group interested in the measure, ample opportunity to come forward and place their concerns before members of Parliament who considered the matter in some detail.

It is therefore a matter of regret to me that many of the issues raised subsequently were not raised with greater diligence during the hearings, which took place over some considerable period. That is not to deny people the right to raise these issues subsequently when the measure is before the House, but I believe that the public and those who administer private corporations need to be very much more alert to the select committee process and the way in which this Parliament is now considering these issues, especially controversial issues, and to ensure that their views are placed on the record at the appropriate time so that Parliament can give them the very best consideration that they deserve.

This process is somewhat of an innovation on the part of the Parliament in recent years. Therefore, I suppose it is not unreasonable to expect that the public will take some time to adapt to it. I am sure that in the future they will take better advantage of the process itself, just as this Parliament is doing at the present time.

The Bill adopts an imaginative approach. Others have introduced privacy legislation into various Parliaments in the past, but each Bill has suffered from a number of defects. One of the defects that I believe this Bill does not suffer from is that of creating an overly burdensome bureaucracy to assist people in enforcing their rights of privacy contemplated by the legislation. I would certainly not support a Bill that establishes an extensive privacy commission or extensive bureaucracy associated with this new right. I believe one of the most important features of this legislation is that it enables individuals to enforce a right of privacy without establishing any burdensome bureaucracy that would only weigh down the process and subject the taxpayers to further loads on their pocketbooks and wallets.

It would also detract, in my view, from the very nature of the Bill. It is fundamental to the concept that the individual decides when, if and to what extent their privacy has been infringed by another. That individual then decides when it is appropriate to take action before the courts and what action they will take, what damages they will seek and what injunctions they will seek to obtain the appropriate relief that is relevant to their circumstances.

I believe it is a fundamental principle within the Bill that it is the individual who makes these decisions, not some outside group or commission making them on behalf of the person. Indeed, that is fundamental to the concept of privacy. Any other mechanism would get right away from the very nature of the right that we are seeking to create and I believe is almost a contradiction in terms. Therefore, I hope that those members in this place and in another place who support the concept of a right of privacy will look very closely at just what that right means and what it implies about the way in which the right itself is to be enforced. I believe that is one of the reasons why this Bill is to be preferred over other Bills that have come forward, both in this Parliament and in others.

The Bill is a very straightforward and simple measure and that is part of the beauty of it. Individuals are able to enforce that right in a very simple and direct manner and they are able to achieve remedies that are quite relevant. It is important to note that the Act especially binds the Crown. It has often been overlooked by those who would seek to address the question of Government databanks and Government files that this legislation does bind the Crown. As an example, there is the Justice Information System, and the Registrar of Motor Vehicles also has a databank.

I am sure there are many other examples throughout the Public Service where files are maintained for perfectly lawful and innocent purposes in this context but, if that were not the case, if a Government department or agency were to overstep the reasonable guidelines and boundaries which

are established, individuals would have the right to challenge the action of that bureaucracy in the local court and to seek injunctions against the Government agency or body. No shield of the Crown would be available to protect that agency from the operation of this Bill or, in this context, from the operation of a privacy Act.

Any consideration of this Bill and any derogation of the Bill in the light of its failure to address adequately the problem of Government databanks is ill-conceived. What we do not need are extensive rules and regulations which require the individual registration of databanks and computer systems because, while such activities were fashionable in England and Europe decades ago, they are entirely irrelevant and technically burdensome in the 1990s. Computers are an integral part of our society. Without them our society would find it very difficult to maintain the standards and lifestyles to which we have become accustomed.

Members can rest assured that they will continue to grow almost exponentially in their dominance of the way administrative procedures and systems are adopted. To require the registration of those systems on any kind of individual basis would be an absurd proposition. It was not absurd 20 years ago when the British Data Protection Act was contemplated but it would be absurd in the present context. Much more relevant is the concept of identifying an intrusion or invasion into our personal right of privacy and then pursuing that intrusion through the courts to seek the remedy that is desired. The individual has the right to exercise his own concerns and take to task those people who he believes have infringed his right to privacy. That is a much more efficient and effective mechanism than attempting to address it from the bottom up and identify and register individual databases and proceed in that way.

I have taken an interest in the question of computer databases and privacy because it is certainly the case that computers are extremely effective mechanisms for protecting privacy. They can secure and hold information, keeping it private in a way which no other filing system can contemplate. The encryption of data on computer systems and the use of security systems for access can mean that computers are a force for privacy the like of which mankind has never seen. At the same time, they can be a force for the intrusion into privacy the like of which we have never seen. Given the computerisation of credit card records, travel records, individual registration and when people move from place to place through passport control, there is a whole variety of ways in which computers can be used to invade an individual's privacy.

It is now possible to obtain a computer disk of every white pages telephone directory in this country and of the United States, and it is possible to search that directory in micro-seconds to find the name, address and telephone number of any given individual in the country. Such a task would have been impossible a few years ago when confronted with a library full of telephone books. It would have been a clerical impossibility to search through all those books in anything like a reasonable period. That is now feasible, in micro-seconds, thanks to computer technology.

We must acknowledge that computers have a split role in privacy. Therefore, I thought it was worthwhile amending the Bill during the select committee stage to recommend that 'records' includes records in electronic form to ensure that this Bill adequately addresses that aspect. When one takes that into account, along with the provision that requires the legislation to bind the Crown, it is obvious that the question of electronic databases and the way in which they offend against privacy is adequately addressed by this Bill. Any submission that that is not the case must be examined seriously to see whether or not it addresses the Bill as it has been introduced to this House.

Other members have canvassed most of the provisions of the Bill at great length and, as a member of the select committee, I do not wish to indulge in a special privilege and address the question on multiple occasions. I think other members have done that very well and I have had the opportunity of expressing my views on the rest of the Bill in the select committee. I believe that opportunity was more than adequate. I commend the Bill to the House. I believe that the amendments which have been foreshadowed will clarify and improve it, and I commend those also to the Chamber.

The Hon. B.C. EASTICK (Light): I want to make only a few observations relative to this measure because I believe that on an issue as important as this it is necessary for each member to state his or her case. If we were dealing with the Bill as introduced without alternatives, I would have no hesitation in voting against it because I believe, notwithstanding all the work that has been put into it, it is half-baked. It picks up a theme which needs attention and which has been around for a long time. It has not been handled satisfactorily anywhere and certainly it is not handled well in the document that the House is considering at the moment.

In amended form, it could be more acceptable than it is at present, but what that amended form will be is a matter which only time will determine. I believe that the rights of the parliamentary system should be taken to the their nth degree, that is, that any final decision relative to the measure ought to be taken at the third reading stage, not at the second reading stage. Therefore, the Bill has my support for that continued debate, whatever that debate might bring forward.

I will refer to two or three documents which represent but a few of the thousands which have appeared in the press and which have been forwarded to members in recent times. One of them is an article by Peter Ward which appeared in the *Weekend Australian* of 28 and 29 September 1991. The forenote to the article is quite interesting and states:

> The unique history of Adelaide in the past 15 years has led it to become the centre of debate critical to the whole nation—the individual's right to privacy versus the media right of inquiry.

That statement is attributed to Peter Ward. In the article he suggests that the Attorney-General (Hon. Chris Sumner) will crash or crash through. I do not think that is the right manner in which to bring legislation into existence. The right to introduce legislation and to engender debate on that issue is very definitely not a matter of crashing through. One must stand back, view the fruits of those labours and look at it again or pick up the arguments which might not get the opportunity of full consideration at the time. In that sense I am injecting into the debate an element of hesitancy. I suggest that we should take each step at a time. We should not jump in at the deep end before we can dog paddle, let alone swim.

Many claims and counterclaims have been presented to members of Parliament by media organisations, the Australian Journalists Association and by other organisations within the community which raise sufficient doubts in my mind about their various positions in this argument. I believe that the need exists for those doubts to be tested thoroughly. Through no fault of the select committee, those issues were not tested thoroughly because so few people came forward to offer their thoughts or doubts.

Another article appeared in the *Advertiser* of Tuesday 15 October 1991. It was on the features page, was written by David Hellaby, and had the heading, 'Stories you might

never have read.' The article refers to the headings, 'The untangling of the State Bank web', 'Ron the Con' and 'Unveiling SA Incorporated'. Those headings appeared in a strip-type presentation at the top of the article. What it does not go on to say—and this is the area I am concerned about—is that on a number of occasions stories not unlike these have been broken by the media ahead of police permission and ahead of time to allow proper investigation of all the facets. There was sufficient evidence to show that a number of those allegations subsequently foundered because of inadequate protection and prior information which was damaging to the investigation and prevented its being followed through to full effect.

There have been numerous cases, and I do not intend to try to identify them, other than to say that certain aspects of Operation Hygiene exhibited those elements where more might have been achieved with a lot less flurry and fewer sensational headlines, but with a much better result for the people concerned and the State as a whole. I make that comment against the other important issue that it is a matter of knowing the correct balance and how we arrive at the correct balance between the rights of the public and the rights of the individual. That is the area where we are really in difficulty, and I do not believe that the Bill addresses that area. I suspect (but I am holding fire on the final decision) that the end result of this debate on the amendments currently before us will not necessarily put that into proper effect.

There are two aspects of equal importance in this equation: at the end of the decision-making process, shonks must not be allowed to hide behind a situation and people who have already suffered or are suffering grief must not be exposed. Grief is not only the loss of someone dear or near; it is not only the loss of business. A whole series of factors need to be considered in relation to a clearer understanding of grief. An article that appeared in the *Advertiser* of Wednesday 9 October 1991, under the headline, 'Privacy laws "charter for fraud"' states:

> New Federal and State privacy legislation was 'a charter for people who want to commit fraud', the Australian Institute of Credit Management said yesterday.

In that case, the institute is putting a point of view, and I will not argue whether it is right or wrong. However, as a person who was involved in small business, albeit a professional business, I draw attention to the need, for the safety of the greater community, to obtain information relative to the credit rating of people with whom one deals. Invariably, one is unable to make a decision as to what services will be provided and what people accepted as clients (and in some professional organisations, my own being one, we cannot discriminate if the client is in real misery—other considerations apply under those circumstances), in the broader area of service, and the eventual cost to the community will be much greater. If we are not quite sure whether we can get funds for the work undertaken in the tendering or collecting process, the cost is greater.

Time and time again we see that: we could argue from the other side, where the person is a blue collar worker, such as a bricklayer, a plumber or a plumber's labourer. Those people would not be paid their dues, because the person to whom they were contracted had been unable to make certain that the person for whom they were building could meet their commitments. I am only just touching the edge of this matter. However, that is the magnitude of the problem. While the statement of the Australian Institute of Credit Management is certainly emotional, it goes part way towards the truth and is an element that must be considered in this total exercise.

An article in the *News* of Friday 25 October 1991, in the column 'Our view', and headed 'Second thoughts are often wiser thoughts' gives credit to the Bannon Government for making what appears to be very significant and positive changes to the Privacy Bill. It then states that a whole series of amendments are being offered.

I will go one step further to finalise my comments. The second attempt is better than the first, but I genuinely believe that the third or fourth attempt might be better in the long run than the Bill and the amendments we are being asked to support today.

The Hon. G.J. CRAFTER (Minister of Education): I thank all members who have contributed to this second reading debate. It has been an interesting debate, and I appreciate the work and interest that has been shown in this important measure. It is not often that so many members of Parliament contribute to a debate in such an interesting way. Comments and criticism of the Bill before us, indeed the conduct that we are trying to remedy to provide rights for people in the community to access remedies, have given rise to those most interesting and worthwhile contributions.

It is particularly interesting to hear members who have been in this place for many years recount their experiences and, indeed, their conflicts with the media in particular, which has dominated this debate—perhaps unfortunately so. However, that has been the case. Members have recounted their conflicts with the press and the ways in which they have been affected, personally in some instances, and the contributions in this debate have been quite emotional where people have been hurt very badly and have been left without satisfactory remedies. Other members have recounted how they have gone to court under defamation laws and so on and have been able to obtain some remedy, some relief and some compensation for the hurt that has been caused to them.

I want to go back a little further and consider why the measure comes before us in this form. It is not new to this House. There have been attempts previously to bring down law with respect to the provision of a right of privacy. Why has it come again? I suggest that there will always be these attempts, particularly in society as we know it now, to provide a range of supports or benefits to our community to give people relief from what is causing them hurt and distress in their daily life.

My view and understanding of the work of the select committee is that this Bill is not aimed at the press. Indeed, the number of people who will seek some form of relief for breaches of privacy as a result of actions of the media in this State will probably be very few; but I suggest that many more people will seek relief under this legislation for breaches of privacy which occur in many other circumstances in the daily life of individuals in this community.

The need for this legislation has come about because of the changing nature of the relationship between individuals and the relationship between individuals and institutions. We live in a modern, complex society, which is often seen as an impersonal society. We know that the nature of the family has changed quite dramatically. It is suggested that by the end of this decade six out of 10 children in this country will live with other than their two natural parents; 40 per cent of children in this country will live in reconstituted families and 20 per cent will live in single parent families.

We know that the role that the family plays in our community is changing very rapidly. Indeed, the nature of our communities has changed. The institutions which have tra-

ditionally provided support and protection and set values and ethical standards in our communities have also changed. The roles of churches, schools, community leaders, business leaders, and so on, have changed. We know that our own standing as members of Parliament has greatly diminished in the community, and so has the standing of others who in the past have been regarded as people of principle and capable of providing strong leadership—medical practitioners, legal practitioners, members of religious bodies, and so on.

Our society needs to be given the supports and the protections and, indeed, the cement that will bind and make our local communities stronger. They are based on individual rights and the ability of individuals to protect what is essential to the wellbeing of people and to strengthen relationships with each other in our communities. Because our society is changing so quickly, there is a need for us to review basic rights.

The right of privacy has been discussed in many forums and communities over many years. There has now been this second attempt in South Australia to bring down legislation to redress the current vacuum in our legal system because we do not have a right of privacy to which people can attach themselves and, indeed, to set a tone or example, a certain value system, in our community. It simply is not there. It is disappointing when members argue that our community does not need this right or that the rights of other institutions in our community override the right of individuals in this instance.

The right of privacy was known in the Roman law. Certainly it is a thread which has worked through the civil law countries, but it is a right which has not been well known in the common law countries. I refer members to an article in the *Adelaide Law Review* in 1968 by the former Chief Justice, the Hon. John Bray, who was a lecturer in Roman law at Adelaide University for many years. In that article he said:

> Finally there is one respect in which the Roman law of delict seems definitely superior. The Roman law evolved a generalised remedy for invasions of the personality, the delict of *iniuria*. Probably in our law there is in this field only a series of specific torts, assault, false imprisonment, defamation and the like and the area outside those specific torts is not covered at all. Roman law like ours began with the specific wrongs but generalised from them. The gist of the delict is a wilful unjustified insult or injury to the feelings of the plaintiff, whether by hitting him, defaming him or in any other way. The intention to insult is of the essence of the action. In our law if A writes B an insulting letter and seals it up in an envelope and drops it in B's letter box B has no remedy. There has been no publication and there has not even been a breach of the Post and Telegraph Act because the letter has not been sent through the post. In Roman law this would be *iniuria*. Truth was, of course, a defence in Roman law as in our law because a truthful accusation is not an unjustified one but, as I have said, the delict extends far outside the specific contexts of assault or defamation. It covers violations of the right to privacy which is probably not protected at all in our law in the absence of some incidental specific tort.

I interpose and say that that is precisely what we are attempting to do in this legislation, albeit in a very weakened form, I suggest, taking account of the processes that have occurred in the preparation of the legislation as it comes before the House and the amendments that have been foreshadowed. The Hon. John Bray continues:

> To follow a girl down the street may be an *iniuria* in Roman law if the circumstances are such as to lead to the inference that the defendant is suggesting that she is likely to be receptive to his advances. The case of the Balham dentist referred to in *Kenny's Select Cases on Torts* would have led to a successful action for *iniuria* in Roman law. In that case, it will be remembered, the plaintiff was a dentist whose surgery was visible from the garden of the defendants next door and the defendants installed large mirrors in their garden which reflected the execution being performed in the surgery to the edification and entertainment of their guests. It appears in *Victoria Park Racing and Recreation Grounds Co. Ltd. v. Taylor & Others—*

another well known case to lawyers—

> that there could be no remedy in English law: not defamation because nothing defamatory was said or written, not assault because there was no contact between the defendants and the plaintiff, not nuisance because nothing escaped from the property of the defendant on to the property of the plaintiff. Rather the defendants trapped the reflections that escaped from the property of the plaintiff but the plaintiff had no proprietary right in such reflections.

This was an issue concerning the coverage of a race meeting, as members will guess by the comments on that particular case. He says:

> Clearly this would have been an *iniuria*. The intention to insult would be irresistibly inferred from the circumstances and there was no legal justification possible. It is surely preferable that there should be some general principle under which acts of this nature can be comprehensively dealt with instead of leaving them without remedy unless that can be fitted into one of a limited number of pigeonholes constructed between the fourteenth and eighteenth centuries.

I comment on that article by the learned former Chief Justice who succinctly argues that we should enjoy in our community and receive the benefit from it those rights which were enjoyed in Roman law and which have been followed through in civil law countries.

Most Opposition members' remarks were interesting and informative and, as I said, contributed in a real way to the passage of this legislation in this place, but they concentrated almost entirely on the impact on the media and on criticisms of sections of the media of this measure. I suggest that the Bill goes much deeper than simply its impact on the media, and it is clear that there has been an emotional and less than rational contribution on the part of some sections of the media in commenting on this Bill.

The comments of the member for Mount Gambier and other members about the lack of evidence put before the committee on the part of the media—although it made up for that after the committee reported and after the legislation was introduced into Parliament, when the original debates took place on this measure—can only leave one to reflect on why the media did not make those representations at the appropriate time and why they did not participate in the committee processes, which is the appropriate forum.

One also asks why the select committee was denied the opportunity to examine witnesses and to call for people and papers and to exercise its proper authority to get to the bottom of the concerns that have been raised at this late stage. It is disappointing that those critics in the media who can occupy so much air and television time criticising the legislation were not prepared to appear before the committee and be subject to examination by it and to have their concerns put to the test.

I suggest that media transgressions in the areas of personal privacy and private grief are only a small component of our concerns in advancing this measure today. There is also the question of private nuisance, and the evidence before the committee canvassed the difficulties being experienced every day in our community that are left without a remedy. There is then the third area of information protection, an area of huge concern in our community and an area of great growth. It is an area we will address and probably continually attend to over the next few years.

I should comment on the concerns expressed on the part of the media. This Bill is centred around and has a commitment to the regulation of the media based on its own code of ethics. This matter was taken up in the select committee when the AJA appeared and tendered its code of ethics. It was examined as to the way in which the profession regulated itself. Indeed, it regulates itself only to

the extent of its paid-up membership, as there are many in the profession who are not members of that professional association. Opposition members in almost every instance acknowledged the manner in which the media has acted in order to gain newsworthy stories or a particular angle of a story, or to break a story to advance the causes of the newspaper by increasing circulation or readership within a group of people in our community or increasing viewer numbers during a television ratings period, and so on: members have acknowledged how that has trampled on the rights of individuals suffering grief.

Examples of family tragedies and so on were recounted by one member after another. Examples were given of the media invading areas of personal privacy for its own purposes. Many examples of that were presented vividly by members from both sides in their contribution to the second reading debate. It is interesting to note that almost every other profession has some form of regulation covering the whole of the profession, which is based in statute, although in part, on self-regulation, providing for sanctions that can, for example, see a lawyer or a doctor being struck off. In our community it extends right through the ranges of professions—not just doctors, lawyers, dentists, veterinary surgeons, and so on: it even extends to land agents, land brokers, bouncers at hotels and entertainment centres, process services, security guards, etc.

There is well accepted in our community a code of ethics of behaviour engulfing practices in various professions and sanctions that occur when those standards are breached. Yet that does not apply to the media, which is not subject to any statutory body. No sanctions can be brought down of that type that occur in other professions in our community, and it has been suggested at times that people who are prepared to go right to the edge or now and again over the edge in terms of ethical standards sometimes are rewarded for their daring and perceived courage in bringing notoriety to their employer's media outlet.

As members have said, media organisations in our community wield enormous power in shaping opinion in our society. People are influenced greatly by what those organisations say, and the codes of ethics provided within the AJA and the Press Council are very much piecemeal attempts to provide some redress for an aggrieved person or organisation in our community, but they are, and I think everyone would agree, substantially toothless tigers. At present no redress is possible for an individual who has suffered the attention of the media. Members are referred to the numerous and often horrific stories related during the debate—particularly last night—highlighting various areas of invasion of privacy and the short and long-term effect this has had on individual people and families and on our community as a whole.

Under this Bill, in an amendment I have foreshadowed, the media has a total defence to any action as long as it has acted within its own code of ethics. This is no different than for each other profession and in fact it brings the profession of journalism and associated professions in the media industry into line with the other professions in our community. For example, the United States for over 100 years has recognised that the right to freedom of speech enshrined in the First Amendment of the United States Constitution needs to be balanced with a right to individual privacy. The origin of the right of privacy within the United States can be traced back to 1890. Unfortunately, we do not have a Bill of Rights, nor does the United Kingdom.

Members interjecting:

The Hon. G.J. CRAFTER: We do not have a Bill of Rights in this country. Indeed, the Constitutional Conferences over the years that they have been meeting have been discussing this.

Members interjecting:

The DEPUTY SPEAKER: Order! The Deputy Leader is out of order.

The Hon. G.J. CRAFTER: The people of the United Kingdom do not have a Bill of Rights, either. The origin of the right of privacy in the United States can be traced back to 1890. The United States cases on privacy emphasise the private nature of the family and interpersonal relationships, and protection is provided against unauthorised uses of photographs, especially those showing people injured or distressed.

As I said earlier, because of the origins of the Civil War, Western Europe for a long time has also recognised a right to privacy against invasions by the press and others. In France and Germany the right is far wider than that provided by this Bill and even extends to a restriction on photographs which show an inattentive person in a ridiculous light. In Europe the right to privacy has been developed through the courts. I could go on to enunciate what occurs in other countries, but members have obviously done some research themselves on what is occurring in other countries.

The issue of private nuisance, which is more pervasive in our community than the concerns raised by this measure with its impact on the media, has perhaps been totally overlooked in the debate. The common law of nuisance is primarily concerned with the interference with use and the enjoyment of land. It is often said that our common law has been dominated by our concern about the protection of property rather than the protection of individuals. The Bill expands the instances in which a complainant can bring an action. Many neighbourhood disputes involve invasions of privacy that do not fit within the current confines of the common law of nuisance. I am sure all members would have had experience of that in their electoral work.

It is true that there are areas of the law that cover invasions of privacy, such as defamation, fair trading, listening devices and telecommunications legislation. However, these areas are very specific in their application and, indeed, many individuals with a genuine complaint in relation to an invasion of privacy are unable to obtain relief, as we all know well; that is why they come to see us. It has been necessary to create a statutory right of action to cover these gaps which presently exist in the area of breach of privacy.

The unamended Bill before the House contains a clause that extends the power to grant injunctions to all courts, including the small claims tribunal. Previously, complainants were able to gain an injunction only in the Supreme Court. So, where there was a remedy, it required people going to the Supreme Court, and that obviously deterred a great number of ordinary citizens from taking that course of action. This clause has now been removed by amendment and placed more appropriately in courts legislation, which will be debated shortly in this House. It is currently being debated in another place. However, this reform will apply to the Bill to allow relief for neighbourhood disputes in the lower courts. This aspect of the Bill was the subject of representations from community legal services to the select committee. Those who advocated on behalf of that group of people saw the importance of providing this access to the lower courts.

The third issue which I believe this Bill addresses and in relation to which there is great need for the relief that the Bill provides is in the area of information protection. Once again, the select committee heard evidence on this matter, and there have been ongoing discussions with the Government and various interest groups to provide for this meas-

ure in a form which is acceptable but which still addresses some of the concerns that are being expressed in this area.

This issue is receiving world-wide legislative attention at the present time. For example, the European Commission has issued a proposal for a directive to be adopted by the Council of the European Communities. That draft directive concerns individual protection in relation to processing of personal data. The directive provides for a prohibition on transborder data to States that cannot guarantee an appropriate level of data protection. The United Kingdom has also recognised the need for data protection legislation, and the Data Protection Act came into operation in that country in 1984. The Act sets up a Data Protection Registrar to maintain a register of data users who hold personal data. All data users must enter details of databanks and their purposes.

The New South Wales Privacy Committee has recently prepared a report entitled 'Privacy on Data Protection in New South Wales'. It is giving consideration to a proposal for legislation in that State. I understand that currently a draft Bill is being prepared by Parliamentary Counsel for introduction in the next session of Parliament of that State. In New Zealand, a Bill dealing with data has been prepared, and it is currently before the New Zealand Parliament. Therefore, one can see that this is very much a current issue in this country, in neighbouring countries and, indeed, in countries with which we have identified over many years.

So, this is not a novel concept; it is not something that is unique in any way. It is something that has been enjoyed by citizens of many other countries and, of course, it must be capable of being monitored and applied as not only our society changes but also in relation to the use of new communication technologies and new data storage technologies which occur and which can bring harm and hurt to individuals. The select committee heard evidence from a number of organisations that hold vast amounts of data on individual citizens. It was quite clear from the evidence received that there was a vast potential for misuse and exchange between various bodies. This is not just a possibility; it does actually occur. In New South Wales the Independent Commission against Corruption exposed what was known as the information exchange club. The common interest of this club included State and Federal public servants, private agents, banks and solicitors trading in personal, confidential information, which was provided in good faith by citizens of that State.

So, I suggest that this Bill attempts in a rational and reasonable way to address the concerns that have been brought before the select committee and acts on the recommendations of that select committee. Since the select committee brought down its report and the Government introduced a Bill, there have been further discussions with interest groups and there has been a series of amendments, which were announced some weeks ago and which have been filed for members to consider. I suggest that they go a long way to addressing the concerns that have been expressed by some interest groups about this measure.

Finally, there has been some discussion about a similar measure which came before the Parliament in the early 1970s. It is interesting to note that in the debate some members have said, 'Look, now is not the time to deal with this matter; it is too risky at this stage.' But, in fact, the same things were said in the debates in 1974; the same concerns were expressed; the same feelings were expressed for those whose rights had been trampled on in our community and yet were without redress or without recourse to a remedy. People said, 'No, now is not the time.' Nothing has happened as a result of the legislation being defeated that has improved the ethics, standards and values systems in our community.

It can be argued that individual rights to privacy have been eroded even further for the reasons that I advanced earlier. I suggest that the need is greater now than it was some 17 or 18 years ago. For those members who advocate that the time is not right now, I suggest that their argument really is that the time is never right, that Parliament should never grant these rights to our citizens and that we should always give greater weight to the vested interests in our community who believe that they should not be subject to the law in this regard, that they should be free to establish and enforce their own standards and ethics and apply their own values rather than have them put to any objective or statutory test. That stance is very hard to advance in our community at present and we now have an opportunity to do something about it.

It is true that we will always be unable to put this legislation in a form that will be acceptable to everyone in the community. It creates a tort—a right—and that means that it needs to be subjected over time to analysis by the judiciary, by the community and by Parliament. In that way, we will have tackled a difficult issue, one of fundamental importance to the well-being and strength of our community and to the strength of individuals in our community. We accept an ongoing responsibility to ensure that our legislation is appropriate.

By simply setting it aside and doing nothing about it, we would be letting down the people in the community who are hurting and who are without remedy unless we give one to them. We have that opportunity now. I commend this measure to members.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Interpretation.'

The Hon. G.J. CRAFTER: I move:

Page 1, after line 15—Insert new definitions as follows:
'media' means the press, radio or television:
'media organisation' means an organisation that publishes by means of the press, radio or television:.

These amendments have come about as a result of representations that the Government has received from the media in particular and from other organisations suggesting that it would be wise to provide for definitions of 'media' and 'media organisation' in this measure.

Mr INGERSON: The new definitions, particularly that of 'media', are exceptionally broad. Can the Minister explain where he considers that the Australian Conservation Council, for example, fits into these definitions? As the Minister would be aware, that body publishes a regular communication that is sent widely across the community. In its representations to me and other members, the council expressed concern as to whether it is covered under these definitions. The word 'press' has a very significant meaning. I have used the Conservation Council as an example only. All organisations that issue a publication would like to know where they fit within these definitions.

The Hon. G.J. CRAFTER: One should not advance the argument that any organisation which publishes a journal should be free to publish material that is not subject to some sort of accountability. Whatever is published by a body, whether or not it is incorporated and whether or not it is a major organisation, is subject to some definition or accountability, whether it is defamation, libel and so on. In this context, we need to look at what is the dominant purpose of the organisation, what its functions are and how it provides its services to the community. If it has a role to provide information to the community and does it through

its own radio station, through a regular television program or through a newspaper or some other publication, it needs to be determined on the circumstances whether it is a media outlet or organisation within the definition of this legislation.

Mr INGERSON: Is the Minister saying that an organisation such as the Australian Conservation Council, which publishes a document regularly, could be in breach of this legislation on the grounds that it may have committed an offence set out later in this Bill? I understand the argument about defamation and libel. That is very clear. However, where do these organisations come under this definition?

Progress reported; Committee to sit again.

[*Sitting suspended from 6 to 7.30 p.m.*]

OMBUDSMAN'S REPORT

The SPEAKER laid on the table the report of the Ombudsman for 1990-91.

Ordered that report be printed.

PARLIAMENT (JOINT SERVICES—PROHIBITION ON SMOKING) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 30 October. Page 1576.)

Mr ATKINSON (Spence): In a pamphlet entitled 'A counterblast to tobacco', James I of England referred to smoking and said it was:

> A custom loathsome to the eye, hateful to the nose, harmful to the brain, dangerous to the lungs, and in the black, stinking fume thereof nearest resembling the horrible stygian smoke of the pit that is bottomless.

I pay great attention to the utterances to James I of England because he was a Stuart, a member of the legitimate Royal Family of Great Britain. I am not a smoker, although occasionally I will have a puff. I must say that this Bill appears really to be about the refreshment room. I regard it as most unfortunate that smoking is not allowed in the refreshment room because it is certainly allowed in every other bar in this State. The Bill seeks to introduce an inconsistency in the application of the law between Parliament House and the rest of the State.

This Bill may well be unconstitutional because, if one looks at the South Australian Constitution, one sees that it gives the Parliament power to make laws for the peace, order and good government of the State. I submit that this is not a law. A law must be general and objective in its application, but the member who introduced this Bill can identify the people in this place to whom it will apply. Therefore, it is not a law so much as a Bill of attainder in order to victimise certain individuals who could well be named. ALP rules being what they are, I am conscripted to support the Bill and I do so.

Mr GUNN (Eyre): I have had the opportunity to be in bars in various parts of the world and I know of no bar where people are not permitted to smoke. No-one is compelled to smoke, and I recognise that it is not a very wise practice to pursue. On occasions I have the odd cigar, which I regard as one of life's little pleasures, and I do not think that it does any great harm to anyone.

We are reducing the role of parliamentary debate to something of a joke when we start debating these sorts of issues. It is rather unwise and unnecessary and we could talk about far more important things. This debate takes us into the realms of some sort of practical joke. It is more the sort of conduct that one would engage in at a fair or a pantomime but not in the Parliament. Therefore, I oppose the Bill.

Mr M.J. EVANS (Elizabeth): I thank those many members who participated in the debate last week and supported the measure. Indeed, their support was overwhelming at the time and took the full period allotted for this debate. A few members have expressed negative thoughts about the content of the Bill, even though some of them have then indicated their intention to support it. Of course, the Bill really has more than one purpose. It is not directed against any particular individual or individuals or any particular part of the Joint Services facility: it is a Bill of general application in this place.

As the member for Eyre said, it is unfortunate that it is necessary to take this kind of step. This House, another place and, indeed, the Joint Services Committee itself, resolved to take certain measures in relation to smoking in this place. They took that decision on the basis of overwhelming support from the majority of members of both Houses. Unfortunately, a few members—a very few members—have sought to disregard the wishes of the majority of members in this place, and that which has brought us to this sorry state—a most unfortunate situation.

This is not any ordinary refreshment room or bar in the land. Indeed, I can suggest to the member for Eyre bars where smoking is not permitted: for example, the one in the corner of my lounge room does not permit the consumption of tobacco. This is not a public premise; the refreshment rooms here are not open to the general public. It is much more akin to a facility with limited application. Of course, it is the majority of the users who must make that decision.

I also draw the House's attention to the petition I lodged this afternoon in this very place on behalf of many members of staff who work in this building. I think all members should take into account the views expressed in that petition, which was lodged formally in this place, and take note of the occupational health and safety considerations which are also applicable in this context. The overwhelming majority of staff members support the move in this context, as do the majority of members here. Members of staff do not have a vote in this place. In that context, their decision is not part of this process, and I raise it only in the context of the occupational health and safety decision which is implicit in this matter.

Also, this Bill is a statement to the broader community about what this Parliament regards as appropriate conduct in relation to workplaces, work premises and a statement about the needs of people with respect to public health. The right to consume tobacco is one which is available under the common law and statute law of this State, and I do not propose to change that where it does not inflict harm on others. There is no doubt that, amongst consenting adults in private, smoking is a habit which may be permitted to continue and, in that context, it is a reasonable situation with which to agree. Where it is not just a case of consenting people in a private situation, where others are involved, where their health is at risk, be they staff or members, alternative considerations should override other factors. This Parliament, as a representative of the public, must take a leadership role in this context and must set standards which all members are prepared to abide by. That is the purpose of the Bill.

The House divided on the second reading:

Ayes (41)—Messrs. Allison, Armitage, L.M.F. Arnold, Atkinson, D.S. Baker, S.J. Baker, Bannon, Blacker, Blevins and Brindal, Ms Cashmore, Messrs Crafter, De Laine, Eastick, M.J. Evans (teller), S.G. Evans, Ferguson, Goldsworthy, Gregory, Groom, Hamilton, Hemmings, Heron, Holloway and Hopgood, Mrs Hutchison, Messrs Ingerson and Klunder, Ms Lenehan, Messrs Lewis, McKee, Matthew, Mayes, Meier, Oswald, Quirke, Rann, Such, Trainer, Venning and Wotton.

Noes (4)—Messrs P.B. Arnold, Becker (teller), Chapman and Gunn.

Majority of 37 for the Ayes.

Second reading thus carried.

Bill read a third time and passed.

LOCAL GOVERNMENT (CONTROL OF SLAUGHTERING) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 September. Page 811.)

Mr De LAINE (Price): The Government supports the objective which the member for Light seeks to achieve in the Bill, which is to restore to local government the power to ensure that the occasional slaughtering of animals, such as pigs, goats, sheep and calves, for household purposes does not interfere with the amenity of urban or suburban areas. As the honourable member explained, it is not a widespread practice for families living in cities or towns to kill their own meat, but it does still happen, particularly in country towns and among people with farming or village traditions, such as ethnic groups. It is not subject to the provisions of the Meat Hygiene Act 1980 since 'once off' slaughtering cannot be construed as 'operating a slaughtering works' under section 20 of the Meat Hygiene Act.

If the slaughtering does give rise to an insanitary condition (for example, if the condition of the premises puts health at risk or offensive material or odours are emitted from the premises), it can be prevented and penalised under the Public and Environmental Health Act 1987. However, it is not usually the case that the occasional slaughtering of an animal creates an insanitary condition as such. It is better described as a practice which can cause offence to neighbours unless it is carefully handled. It is appropriate for local councils to have the power to regulate this activity so that they can balance the interests of people in their communities and allow the occasional animal to be slaughtered on properties which are suitable and in ways which do not cause undue concern to their neighbours.

In introducing his Bill the honourable member referred to the legislative history of this subject and drew attention to former section 552 (2) of the Local Government Act. It prohibited anyone from slaughtering cattle, sheep or swine in a council area, except at a licensed slaughterhouse. But the Act made an exception to that rule for persons slaughtering animals for the consumption of the family or employees on farms and residences 'situated within a district and outside a township' or 'situated outside any area and outside a township'.

It is clear from the Minister of Agriculture's explanation of clause 20, in his speech introducing the Meat Hygiene Bill in March 1980, that it was the intention to remove this restriction that primary producers could slaughter animals only for the consumption of persons resident or employed on the property. He states:

> . . . this restriction has always been anomalous in its application and instead the provision prohibits slaughter for sale.

I understand that the intention was to ensure that meat could be killed by primary producers and others for local charities and so on, provided it was not offered for sale. Perhaps it was not appreciated at the time that repealing section 552 (2) would open up the possibility of occasional backyard slaughtering in townships and municipalities, or perhaps it was considered that such instances would be rare and that there would be no harm in it if the meat was not offered for sale and if health legislation was observed. There was no debate on this point.

I understand there has been some consultation on this Bill between the member for Light and the Minister for Local Government Relations (Hon. Anne Levy). The honourable member has indicated he is happy for consideration of this Bill to be adjourned pending consideration of the Local Government (Miscellaneous Provisions) Amendment Bill 1991, which has been introduced in the other place by the Minister for Local Government Relations. The Bill contains a number of sundry amendments to the Local Government Act, and the honourable member's general proposal is covered by a provision which allows for councils to make an appropriate by-law regarding the control of backyard slaughtering.

In the framework for the Local Government Act which is now being developed, it is likely a number of miscellaneous Local Government Act regulatory provisions, which do not fit within the ambit of other primary legislation, will ultimately be expressed as by-law making powers. Expressing these controls in this way will have the advantage of flexibility in that those particular councils experiencing problems with backyard slaughtering can respond appropriately.

This general approach fits more comfortably with the new relationships being developed between the State Government and local government in South Australia, and the Local Government Association has indicated it is attracted to the idea of by-law making powers rather than an amendment to the Act. I look forward to further consideration of this matter when the House considers the Local Government (Miscellaneous Provisions) Amendment Bill 1991 in the near future.

The Hon. T.H. HEMMINGS (Napier): I take it from the comments of the member for Price that this Bill will be held over until amendments to the Local Government Act are introduced into this Parliament.

The Hon. B.C. Eastick: That's correct.

The Hon. T.H. HEMMINGS: That alleviates some of the concerns I have on this Bill. As a younger Opposition member of Parliament way back in 1980, I remember my old friend the member for Alexandra as one of the finest Liberal Ministers of Agriculture that I ever had the pleasure of dealing with in respect of the many agricultural problems in my electorate. The member for Alexandra, the then Minister, always had his door open ready to talk to me and counsel me. It was on that basis that we developed the strong friendship that we have today in this Parliament.

Certainly, it was a disappointment when I was not appointed to the select committee that looked at the question of meat hygiene and slaughtering. I am not criticising my colleagues, but I felt I would have improved my knowledge of agricultural matters and meat hygiene and slaughtering if I had had a chance to serve on that committee. Certainly, I was pleased with the resulting recommendations. I believe that the member for Light is trying to put certain areas of slaughtering and meat hygiene into perspective in relation to areas missed by the select committee

and the Minister, although I do not believe he has done so intentionally.

I was looking forward to an exciting debate on this matter. I am much happier, as a result of what the member for Price has said, that the Minister will look at the matter when amendments are made to the Local Government Act. I hope my concerns will be remedied by those amendments. I understand that my colleague the member for Henley Beach also has concerns in this matter.

Mr S.G. EVANS secured the adjournment of the debate.

RURAL COMMUNITY

Adjourned debate on motion of Mr Gunn:

That a select committee be established—

(a) to inquire into the reasons why many farmers and small businesses in rural South Australia are having difficulties in raising adequate finance to maintain their operations;

(b) to examine the operations of and funds available to the Rural Industries Assistance Branch of the Department of Agriculture to see if they are being directed towards those who have the best possibility of long-term viability;

(c) to examine the need for the Government to give protection to those facing foreclosure; and

(d) to give those people who believe they have been harshly treated by the financial institutions the ability to advise the select committee of the difficulties they are facing.

(Continued from 31 October. Page 1660.)

Mr BLACKER (Flinders): I have pleasure in supporting the motion. This select committee as proposed by the member for Eyre is designed to give all those persons who have been aggrieved through the present situation with the high cost of finance and Government inaction, together with the use and abuse by the banks and financial institutions of the various markets, the opportunity to present their case, and for the banks and financial institutions to present their case. This will promote some broad-ranging debate, and some assessments can be made of the dilemma that we are currently facing. It is hoped that we can provide some better legislation and serve the interests of the community in a more proficient way than has applied to date.

Implied in the select committee criteria is the fact that many of the problems have occurred through the deregulation of the banking industry and the implications of that, with the penalties and the prices being paid with the loss of farms, loss of income and loss of ability of people to remain in and maintain the rural industry as we presently know it. The select committee will provide the ability to bring together these historical aspects of the financial sector, in order that we may review the present position and, hopefully, recommend appropriate changes.

There is no doubt that the deregulation of the banking industry some eight years ago, together with the exorbitant interest rates that occurred because of an economy getting out of control, and because certain powers at the time decided that it was necessary to have a high interest policy so as to curb the over-heating of the economy which occurred following the deregulation of the banks, have caused the present situation. These two issues have had devastating effects on the whole community. They have brought businesses, farmers and any industry that has a high capital asset component and a commensurate level of borrowings to their knees.

Last Thursday I was fortunate to be present at a meeting organised by the South Australian Dairymen's Association of the Royal Agricultural and Horticultural Society at the Rothmans Theatrette. At this meeting these sorts of problems were discussed. It was opened with a paper from Dr Colin Rogers from the Adelaide University. He gave a very good paper and provided a very good view of the changing views of Government in relation to the various aspects of regulation of the financial sector. The old view, that is, pre-deregulation, was that the Government regulated financial supply by credit restriction through the Reserve Bank and through regulations on the banks themselves.

There was some thought at the time by some of the free thinking economists that freeing up and deregulating the financial interests would be of benefit to the community. Now we all know that that is wrong. We all know that the system with which we finished up was not in the best interests of the State and nation, and we all know that we as individuals have suffered heavily because of those changes. Now the economists have had a change of heart, and they believe that the original view was extremely naive. In fact, the deregulated market really put no moral restriction on banks in the advancement of funds. It created a moral hazard and in many ways it encouraged banks into reckless lending. The only restrictions on the banks was the limit to which their entrepreneurial skills were allowed to go unchallenged.

For banks to operate in a deregulated market, their rate of return is governed by two basic factors: the rate of interest that they are game to charge the public, which is offset by the increased probability of default by creditors. Where previously stability in the banking system depended on the Reserve Bank system, the position now is that banks have been encouraged, through high interest rates, to be more daring in their lending and thereby not employing such close scrutiny of the clientele to whom they lend.

This was done on the basis that, if all banks acted in unison and all banks got into trouble, the Government would have to step in and assist. That daring of the banks in their lending policies has been governed by the extent to which they believed that the Government would pick up the tab if they overstepped the mark. This produces an unfair bet against the Government. Banks will take high profits during the boom but then rely on the Government during a bust. Clearly, that is what has occurred since deregulation eight years ago. It has led to further problems, and our problems have been compounded because of a series of droughts.

The past three years on Eyre Peninsula have not been too bad as far as production is concerned, but they were preceeded by five years of below average yields, if not total wipe out droughts. The whole economic problem has been compounded because of that. People did not have the financial resources or the dollars in reserve to enable them to withstand the wide fluctuations in commodity prices and interest rates. It has meant that we have had a tightening of belts and a knuckling down by all sections of the industry. Although we hear stories of banks being ruthless in some areas, we also know that some of the banks themselves are in a dilemma.

They know that if they create forced sales they will be deliberately lowering the value of land in the immediate vicinity and therefore putting more people at risk. Therefore, it is not in the interests of the banks to force sales, and the banks are trying to meet that gap in between in a number of different ways. In some instances, however, they are saying that they will advance carry-on finance, on the basis that the farmer will voluntarily place his property on the market sometime in the new year. Technically they are not forcing the sale, but they are putting the farmer in a

hopeless position, a position that he has no way of getting out of.

The tragedy of high finance costs is affecting many people in the community, but the worrying thing is that it is affecting our best farmers and most entrepreneurial small businesses. Some of these involve people who responded to the Government's call to get big or get out. These were the ones who were leading the way in farming practices and who gave Australia the name of having the most efficient farmers in the world. It is these efficient farmers, these farmers who were expanding and who were creating job opportunities for their family members, so that they would not have to become recipients of Social Security benefits, who are paying the price. It is these people who were playing the entrepreneurial role and assisting their families in their development. It is a tragedy that they are now paying the price, because, as I say, in many instances we are losing our best farmers. They responded to the cry of the Government and they did get big, but they may indeed be forced out.

Other aspects of the situation will no doubt come before the select committee. I refer to the matter of high risk penalty interest rates. Effectively, this was usury. The banks and financial institutions determine that a farmer or a small business is in a position of risk and so they further add a penalty interest rate. We have documented evidence of one bank, an internal document claiming that it can advance up to 10 per cent additional interest over and above the standing rate.

Clearly, the implication of that is that the bank, having decided that the person can no longer be supported, increases the penalty interest rates, knowing full well that the farmer or small business person cannot meet that interest rate. They have deliberately artificially inflated the debt, to a hopeless position. The farmer can no longer meet that debt. Some two or three years down the track the bank forecloses on that farmer and there is a high debt write-off. The effect of that happening is that the bank, by increasing that penalty rate, is deliberately inflating the artificial or book debt on that property, so that it becomes a bigger tax write-off at the time of foreclosure.

Clearly, in my view there is a moral malpractice in carrying that out. One could well ask, 'Is this usury that we are talking about?' I venture to say it is. These issues need to come before a select committee and they need to be looked at in greater detail to ensure that people are getting a fair go. The terms of reference of the select committee refer to the availability of funds through the Rural Industries Assistance Branch.

That is another area that needs to be investigated closely to ensure that everyone gets a fair go. We are not looking to rural assistance necessarily to be a prop up, but everyone is entitled to a fair go. We need to be able to look at all these issues and all aspects of the industry—the lenders, the borrowers, and even the commodity organisations, which rely on a total package to put it together. I support the motion.

The SPEAKER: Order! The honourable member's time has expired.

Mr FERGUSON (Henley Beach): I am afraid that the first part of my address tonight relates to the remarks that were made by the member for Custance in this debate. When this proposition was put before the House, I understood that it was to be put in a bipartisan way with the aim of gaining the support of both sides of the House. Sir, you have been witness to the propositions that have been put forward from this side of the House in support of rural areas. I refer specifically to the motions moved by the member for Napier, which are still winding their way through private members' business. I would have thought that we would have a decision on that proposition by now. However, unfortunately we have seen an amendment that has politicised a proposition that would have drawn support from both sides of the House.

The member for Custance was most unkind in his remarks, and I refer to *Hansard* (pages 1658 and 1659). Unfortunately, we caught the honourable member unprepared. If my memory serves me correctly, he wanted to adjourn the debate, but the new rules regarding debates in private members' time so caught him by surprise that he was unable to produce a more statesmanlike effort in relation to this proposition.

On every occasion possible, we on this side have supported the rural community. There has been, and there is, an impression—and I am afraid that politics comes into it—that members on this side are interested only in suburban areas and are not prepared to support people in the country. We believe that those people are as much South Australians as anyone. Not only that: I agree with the proposition we heard yesterday that those people produce 40 per cent of the wealth of this State. Indeed, they are worthy of support. The member for Eyre—

The Hon. H. Allison: How patronising!

The SPEAKER: Order!

Mr FERGUSON: Once more, I am trying to produce a bipartisan approach to a very difficult proposition. What do we hear? We hear the member for Mount Gambier attempting to politicise this argument. It is against the very proposition that I have been talking about. The honourable member is trying to lead this debate along the wrong track. This is such an important debate that we should all be on the same side. I am surprised to hear the interjection of the member for Mount Gambier. I have nothing but high praise for the member for Eyre, who introduced this proposition. He has been noted over the years for supporting his rural community. If I may borrow a phrase from the member for Albert Park, he has been prepared to stand up in this Chamber without fear or favour and to support the rural community. Not only that: he has been prepared from time to time—when he has felt that it was the right time to do so—to tell his own community that people should stand on their own feet and produce their own solutions. One has to praise him for the stands he has taken, even though at times they have been unpopular in the area he represents.

In the last debate on this motion I expressed my ire about what was happening in relation to our so-called alliance. We have supported the American alliance without equivocation. When the Americans have asked for help, our people have supported them, our young men have died in support of that alliance. What do we now find? We find that the Americans are now undermining our agricultural products by selling subsidised wheat in our traditional markets. I find—

Members interjecting:

Mr FERGUSON: The present war between the European Common Market and America is the cause of this problem. Unfortunately, we are being caught up in it. I am afraid that those who are causing us the most pain are the Americans. It is the United States of America—

Members interjecting:

The SPEAKER: Order! The member for Henley Beach will link his remarks to the topic.

Mr FERGUSON: It is extremely easy to link my remarks to this proposition, because we are dealing with rural finances, and we now find that they are in dire straits because of what has been happening to the markets. If the

markets and the return on the product had been better, we would not be in the current situation.

I cannot find anything at all to praise in the way the banks have handled rural finance. One has to go back only a couple of years to find that gold medals were being handed out to bank managers who went out to country areas and lent more money than anyone else. Overseas trips, bonuses and other prizes were given to bank managers who, on behalf of their organisation, lent to farmers as much money as they could. When the rural crisis started to hit us, the banks withdrew their support as quickly as they possibly could, and they were very ruthless in doing it. In the first instance, before the rest of the population was aware of what was happening, they were foreclosing on rural properties without giving the owners the opportunity to work their way out of the problem.

It has got better although I know things are very difficult at the moment. The people who were first in were the hardest hit and the banks have a lot to answer for. In addition, the banks suggested to the rural community that they should take overseas loans. The banks were prepared to lend to farmers at what was then considered to be an advantageous interest rate. They did not warn farmers about possible fluctuations in currency values and, when the Australian dollar began to drop and the international money markets became less stable, it left many farmers in a desperate plight.

I am in agreement with the member for Napier that we have already discussed these problems. Private members' time is limited and, although we on this side of the House have made no decision on this motion, I find it difficult to support the establishment of another select committee to discuss the matter. Indeed, I do not know what a select committee of this State Parliament can do to relieve the financial difficulties of rural industry, because this matter should be handled by the Federal Parliament, which controls Treasury.

The SPEAKER: Order! The honourable member's time has expired.

The Hon. B.C. EASTICK (Light): I have a great deal of interest in the subject matter which my colleague the member for Eyre has brought to the attention of this House. I was heartened by the contribution of the member for Stuart, albeit that she pulled the rug and said that the Government was unable to support the measure. I was very interested to hear the member for Henley Beach say that we all ought to be on the same side and that the Government had not made a decision. I am quite sure that we will be able to accommodate the member for Henley Beach and other members because, in consultation with the member for Eyre, I find that we are in agreement on an amendment to this motion. That amendment would seek to delete all words in paragraphs *(a)*, *(b)* and *(c)*. If the amendment is accepted, the motion would read:

> That a select committee be established to give those people who believe they have been harshly treated by the financial institutions the ability to advise the select committee of the difficulties they are facing.

That would open the way for persons in the big metropolis of Adelaide to provide information to the House which I believe would be of inestimable value to the Government and the Opposition. It would also pick up the point made by the member for Henley Beach about the banks. The motion refers to all financial institutions, of which the banks are one body. We who represent the many people who are hurting badly appreciate that the banks have had difficulty in their operations. I look forward to this House supporting the amendment and the amended motion. In due course, I also look forward to an excellent report from the select committee. I therefore move:

> Delete all words in paragraphs *(a)*, *(b)* and *(c)*.

Mr HOLLOWAY (Mitchell): All of us have some sympathy for those members of the rural community who have had problems with the banks over the past few years. Many country people have been very badly treated by the banks and there are plenty of examples of that. I am well aware that the banks encouraged people to borrow as much money as possible to continue farming. A lot of farmers were pressured into taking out big loans, which they probably could not afford. However, in the days of high rural property values it was an easy thing to do. Many farmers could see their property values rising steadily and they were prepared to agree with the banks and take out large loans.

For many years the return on capital invested in farms has been very low—about 2 or 3 per cent. One of the real conundrums of agricultural economics is why the price of rural land kept rising when the return on that land was so low. Why would someone be prepared to get a return of only 2 or 3 per cent on their capital when that same money invested in bonds could return 10 or 15 per cent without any effort? Part of the problem was the large number of North Terrace farmers who were investing in land because the tax laws in those days were very favourable for such investment. A lot of such investment was tax driven. As a result, farm prices kept rising rapidly without return. That made it very easy for banks to encourage their clients to take out loans.

I heard stories that bank managers on the West Coast encouraged farmers to take out big loans on their properties and, after foreclosing on those loans, some managers resigned from the bank and bought farmland. That seems to be highly unethical, and I am sure other members have heard these allegations. They concern me. The question is, what can we do about it? While the banks deserve much of the blame for what has happened, the loans have already been made and they are legally enforceable contracts.

The other difficulty in terms of dealing with the matter is that the banks, with the exception of the State Bank, are under Federal control. A Commonwealth parliamentary committee is looking at the banking industry. Recently I read an interesting article in the new *Independent Monthly* magazine which made the point that, if farmers shop around to get a better deal, they may well do better than they have in the past. An example was given of the Primary Industry Bank of Australia. If farmers can show that they have been shopping around, negotiating a deal, they may get interest rates that are 1 or 2 per cent lower than those offered by the ordinary banks. Farmers are starting to shop around to get better deals, and so they should.

There is no doubt that we have had a fairly closed shop and, if deregulation of the financial industry is to mean anything and to have any benefits for the rural sector, it should enable farmers to shop around and get lower cost loans. Many problems are raised in this area. I would like to put on record what the Government has done in this area.

Mr S.J. Baker: You might as well just sit down.

The SPEAKER: Order!

Mr HOLLOWAY: That is totally untrue. I will put on record many of the things that this Government has done to assist farmers. One of the best things the Government did this year was to provide relief.

Debate adjourned.

At 8.30 p.m., the bells having been rung:

PRIVACY BILL

Adjourned debate in Committee (resumed on motion).
(Continued from page 1876.)

Clause 2—'Interpretation'—which the Hon. G.J. Crafter had moved to amend as follows:

Page 1, after line 15—Insert new definitions as follows:
'media' means the press, radio or television:
'media organisation' means an organisation that publishes by means of the press, radio or television:

The Hon. G.J. CRAFTER: Before the dinner adjournment, I was explaining to the member for Bragg that an organisation similar to the one to which he referred and which may be regarded as being in the business of publishing a journal or an organisation that is similar to that which would be anticipated from an organisation that comes within this definition of media organisation, as generally accepted in the community, would fall within the ambit of the legislation. I am not quite sure of the specific application the honourable member had in mind for this. It seems that the question is somewhat remote. As I said, there are already obligations on anyone who publishes a journal, an organisation, or a newspaper or, indeed, anyone who is involved in the electronic media in some way. I do not see that the specifics of the issue that the honourable member is raising will cause any concern.

Mr S.J. BAKER: That explanation is not satisfactory. Members of Parliament and members of the community receive a wide variety of information, and we presume that there is media involved in the relationship. Quite often a person with media skills is involved, perhaps a former member or member of the AJA. A few such organisations have posted material, such as Wheelchair Sports, Link, Red Cross, Community Aid Abroad, Freedom from Hunger, the Multiple Sclerosis Society, Bedford Industries, Helping Hand and the Royal District Nursing Society—they are the charitable orgnisations. Then there are such esteemed bodies as Australian National, Engineers Australia and the Local Government Association. Members of the community receive things such as the newspaper that is put out by the Local Government Association or the local government body to which they belong. In Mitcham, we receive them quarterly, and I think residents in Happy Valley receive significant material through the post every two months: All those organisations involve people who could be classed as 'media'; they are certainly classed as 'press'.

We have no clear definition of what is actually encompassed. The people who are encompassed by the definition become a privileged class, as we are all aware. Certain exemptions are available to them that are not available to other members of the community. Yet I find that the Minister has not clarified the situation and I would like him to be a little bit more forthcoming on how each of those people are placed, particularly those who write journalistic articles and those who have done research (and many undertake significant research—they are the ones who look into matters which may breach the privacy conditions under this Bill). I would like it clearly stated whether these people will be in a less privileged position than the members of the press, according to the Government.

Mr GROOM: I support the insertion of these new definitions; they are designed to bring about freedom of the press.

Mr S.J. Baker interjecting:

Mr GROOM: Just a moment: I've got the right to make—

The CHAIRMAN: Order! The Deputy Leader is out of order. He may ask whatever questions he chooses of any member, but each member of the Committee has the right to speak. The Chair is recognising the member for Hartley.

Mr GROOM: The fact is that I do support freedom of the press. These amendments are designed to insert and enshrine freedom of the press in legislation. If one does that, that will mean freedom of all people to disseminate information in the community, whether it be by means of the press, radio or television. It does not simply mean that there is freedom for the existing press as we know it, existing press proprietors, existing television channels and so on. There is the freedom for all citizens to disseminate information to other people in our community. That is what freedom of the press is all about, and that is why these definitions have to be couched in very wide terms to enable that to take place.

Obviously, I support the amendments. They are sensible, and they hinge on the amendments for freedom of the press. If a small organisation happens to publish a newsletter, that is its right. It is its right to disseminate information through the journal, the organisation of communication or whatever it wants. Likewise, it will be subject to the laws of the land, which include defamation and a right of privacy. Those organisations will be bound in relation to intrusions on people's purely personal privacy and private grief where there is no element of public interest and where that intrusion is substantial or unreasonable. The organisations that publish newsletters, trade journals, gazettes or anything else are subject to defamation laws in exactly the same way as are our traditional press proprietors, our traditional television stations and our traditional radio stations. If we want freedom of the press, we must have definitions that are as wide as possible.

The Hon. JENNIFER CASHMORE: I am truly amazed that a lawyer should feed up such pretentious nonsense to the Committee and expect us to believe it. He is likening the *Advertiser* to the Norwood High School newsletter, when he says that freedom of the press means freedom of all people to disseminate information. That is an absolute perversion of any reasonable definition of the word 'press'. Only yesterday in this place the words of Mr Justice Zelling, in the case of *Burnside Residents v. the Minister of Water Resources* said:

> ... I am not impressed by the sloppy draftsmanship because the subject is entitled to be told with precision anything which affects his—

and he might have added 'or her'—

> rights and with which he [or her] is expected to comply.

That the word 'media' means the press, radio or television leaves us not one wit the wiser as to what this legislation intends, because the words 'press', 'radio' and 'television' also have to be defined. If, as I said, we take the member for Hartley's definition of 'press', it extends to everything from corporate ownership of major newspapers to school newsletters and the newsletters of organisations such as the National Council of Women and other voluntary bodies that the members for Bragg and Mitcham have identified. It is patently clear that one cannot equate one with the other and that a more careful definition is required. The Minister has not given us that definition. It is simply not good enough for the member for Hartley to expect his words to be taken into account by any judge trying to determine his or her response to action taken in tort as a result of this Bill.

The Bill is so widely drafted as to be almost incapable of easy or accurate interpretation by the people to whom it will apply. When it comes to court cases, it will be virtually impossible to determine outcomes and make reasoned or reasonable judgments if the law is so sloppily drafted as not

to define the people to whom the Bill applies and the people who are excluded as a result of the definitions. Again, I implore the Minister to answer the question put to him by the member for Mitcham and by me and to define what he means by 'press'.

The CHAIRMAN: The member for Hartley.

Mr Ingerson: It's a farce.

Mr GROOM: I will tell you why it's a farce. It is a farce because the member for Coles, having been a member of Parliament since 1977, has told the Committee that she does not know what the press, radio and television are.

The Hon. Jennifer Cashmore interjecting:

Mr GROOM: You evidently do not know. I can go and turn it on now. I can pick up a paper and tell you what the press is. If members are having difficulty in knowing what the press, radio or television are, they watch it every night, they listen to it every night and they read it every day.

We have been seeking to make our legislation understandable to the community in a plain and ordinary sense. I suggest that the member for Coles should look at the United States Constitution, because all it says is 'freedom of the press'. People in the United States have no difficulty knowing what the press is, and I do not think they have any difficulty in knowing what the media, television or the radio are. If we are talking about freedom of the press, in the United States Constitution, and indeed in the State Constitutions of the United States, it is expressed in the widest possible terms. I am sorry to hear that, after 14 years, the member for Coles does not know what radio, television or the press are.

The Hon. JENNIFER CASHMORE: For the information of the member for Hartley, we are not debating the United States Constitution; we are debating the Government's Privacy Bill. The member for Hartley has also been a member of this place since 1977. Barely three minutes ago he defined 'press'—I quote verbatim what he said—as the freedom of all people to disseminate information. As a lay person, not a lawyer, my definition of the press would be those newspapers published for commercial purposes which range in this State from the *Advertiser* to the *Adelaide Review* to the local suburban papers, the Messenger Press, and the regional papers.

Mr Groom interjecting:

The Hon. JENNIFER CASHMORE: Precisely, but when I asked for a definition I did not get that. I got the words that the press means the freedom of all people to disseminate information. The member for Hartley then went on to include newsletters of all kinds. We have a distinction here between the definition that I would give to 'the press', and the definition that a member of the Government Party has given to 'the press', which embraces not only those newspapers that I and my colleagues would describe as the press and which are excluded from the definition in the Bill but which, in the words of the member for Hartley, also include school newsletters and newsletters of voluntary bodies.

The member for Hartley cannot have it both ways. He cannot say that under the United States Constitution the citizens of that country understand what the press is and leave that as sufficient guidance for this place in debating this Bill and sufficient guidance for the courts in determining judgments as to who is excluded from and who is included in the ambit of the Bill. It is interesting that the Opposition's criticisms of the scope of the Bill and the inadequacy of its drafting are apparent before we get past clause 2, and the member for Hartley has already confirmed our worst fears.

Mr ATKINSON: The Bill creates a new tort. I do not think that a new tort requires the kind of precision that the member for Coles is demanding. The term 'the press' has been judicially defined a number of times, and I do not think that South Australian judges will have any difficulty in interpreting what it means in this Bill. Furthermore, I point out to the member for Coles that it is improper for the judges to take *Hansard* into account in interpreting statutes. If the member for Coles was aware of that, why did she suggest that the contribution by the member for Hartley would not help the judges in interpreting the Bill?

Mr LEWIS: I would be pleased to have a much clearer exposition than the one that has been offered by backbenchers opposite. For God's sake, who is in charge of this Bill?

The Hon. G.J. Crafter interjecting:

Mr LEWIS: I do not believe that the Minister understands Standing Orders if he thinks that he has spoken three times. I have been in this Chamber since we began debating this clause. I wonder whether, for instance, a mass produced letter by someone about the personal but factual affairs of another individual or group of individuals—two or more—constitutes publication. Is it an act of the press? Without trivialising the debate, in my second reading contribution I mentioned that there are some bizarre people in our community who would stop at nothing if this legislation, narrowly interpreted in the way in which the member for Hartley—

Mr Groom interjecting:

Mr LEWIS: Narrow indeed. The definition of the print media and the electronic media broadcasting to the public as being the limit of the press is inane and inadequate. There are a number of instances where that can be found to be less than adequate. The definitions here are not adequate. What would be the situation if somebody were eccentric enough to take an aeroplane and skywrite on a calm day about another individual and to do so in terms which would be in clear breach of privacy according to the way that the member for Hartley would have us believe is the case now?

Mr Groom interjecting:

Mr LEWIS: Well, you may giggle somewhat. Methinks you have not thought it through. The Minister ought to be able to give some clearer understanding which he has of the meaning of the legislation and the terminology that it contains than he has been prepared to give thus far.

Mr INGERSON: The purpose of our continually bringing up this media definition is to make the point that this legislation is loosely and badly drafted. The definition could be properly drafted by the Government (and, in particular, by the member for Hartley, as he seems to have drafted the whole thing) to include the printed media, magazines, etc., or at least to clarify and define properly what 'the media' was meant to represent.

As the member for Coles, the Deputy Leader of the Opposition and the member for Murray-Mallee have pointed out, this definition of 'press' has a public meaning and that public meaning is very narrow. Many legitimate organisations, particularly the Australian Conservation Foundation, want to know whether their magazines or communications to their members come clearly under this definition of 'press'. I should have thought that that could be simply explained by the Minister. More importantly, as the Minister and the member for Hartley would know, what we say in this place is of no consequence in terms of interpretation. It should be, but it is not. In reality, we need to put down exactly what we mean. That is why it is necessary to expand the definition of 'press' if the Government wants it to take in all these other organisations, which I think it does. I ask the Minister whether the definition of 'press' is much wider than is commonly known to be the definition. If that is the

case, will he consider amending the definition in another place?

The Hon. G.J. CRAFTER: I find it a little unfair when the member for Murray-Mallee accuses me of not wanting to speak, yet he jumped up before I was able to speak and went on to make the most bizarre remarks that I have ever heard in explanation of a Bill, and then he expects to get a sensible answer. It brings debate in this Chamber into disrepute. Members are obviously seeking a way to discredit the Bill.

Mr Ingerson interjecting:

The Hon. G.J. CRAFTER: Every time the Opposition does not like a Bill it attacks the definitions. I have sat here while the definitions in Bill after Bill have been attacked as being imprecise or whatever excuse can be raised. The reality, as has been explained to members, is that these words have been judicially defined and obviously they will continue to be judicially defined depending on the circumstances. I would have assumed on the few facts we have been given that organisations like the Australian Conservation Foundation, which is one of the largest organisations in this country and which has a major function to diseminate information—it does it through well established publications—would come within the definition of 'media' as we commonly know and accept it; so would other organisations that fall into that function of being publishers of journals—as I said, newspapers and the like around this country.

The question is not so much whether one is covered, as they are saying, but whether an organisation has a defence that is provided under this Act as a media organisation. When one looks at the Bill and the foreshadowed amendments, one can see that many organisations would want to bring themselves under the provisions in the amendments and have the defence of the provisions of the legislation that they acted in accordance with the criteria laid down here and proposed in the amendments. This has come about as a result of representations received by us all over recent weeks and months in the lead-up to this debate.

I can anticipate that there will be others who will attempt to bring their work into this definition as well, and whether they fall within this definition really depends on the facts of a situation and the findings of the court. As has been mentioned, those findings are based on precedents and this is a matter not unknown to the law.

Mr S.J. BAKER: The Minister said that it will be judicially defined. That is what the debate is about: that Parliament is not determining the future of citizens.

The Hon. G.J. Crafter interjecting:

Mr S.J. BAKER: The Minister says that it is, but it is not. The Minister admits that we are letting the courts decide. Until we have tested the case, until someone has won or lost, we do not know what the boundaries of the legislation are.

Mr Atkinson interjecting:

Mr S.J. BAKER: The member for Spence talks about common law. We are putting something into statute. It does not mean that the judge goes back through 400 years of case history. The judge is required to look at the legislation on its merits and interpret it according to the legislation. He looks at nothing else: he cannot rely on common law—of course he cannot. It is the legislation itself that becomes all prevailing. We have had a number of examples where it has been the intention of this Parliament to achieve something by legislative charge, yet the courts have looked at the legislation and ruled against what the Parliament intended, saying that the wording was different from our intention. The courts rule on the wording and not on the intention, and tonight the Minister has admitted that it is not Parliament that controls the destiny of citizens—it is the courts.

Amendment carried; clause as amended passed.

Clause 3—'Right of privacy.'

The Hon. G.J. CRAFTER: I move:

Page 2—
Line 13—Leave out 'and'.
After line 15—Insert as follows:
and
(iii) the intrusion is not justified in the public interest;.
Line 19—After 'embarassment' insert 'and the harassment or interference is not justified in the public interest'.
Line 32—Leave out 'or'.

These amendments refer to the matter of public interest, which has been removed as a defence and made a part of the cause of action. This means that a complainant will have to go through five steps of proof in order to establish a claim for a cause of action. The first is lack of implied or express consent; secondly, an intentional intrusion; thirdly, an action within clause 3 (2) *(a)* to *(h)* including specific behaviour as outlined in those provisions; fourthly, that the intrusion is substantial and unreasonable; and, fifthly, that it cannot be justified in the public interest, or harassed or interfered with to a substantial and unreasonable extent so as to cause distress, annoyance and embarrassment, and actions not in the public interest.

It is clear that this amendment sets up those series of steps to establish a cause of action. It certainly makes it harder for a complainant to pursue a successful action and so, on the best interpretation, it is certainly a cautious approach that is being adopted in this legislation. It is one that cannot be held against the Government as being a radical approach to the provision of this right in the community.

It is certainly not a reckless introduction of this right: it is one which sets up a purposeful series of steps, a cautious approach to mounting a cause of action, and one which most certainly meets the strict criteria that would apply in order to succeed in an action of this type. It can be argued that this is so rigorous that it would deter many people from wanting to take an action, which is why this legislation needs to be monitored carefully. Perhaps the steps are far too rigorous or onerous and do not appropriately establish the procedure that needs to be followed in these matters. Obviously, in the initial stages a cautious approach is required.

The Hon. JENNIFER CASHMORE: Clause 3 establishes that a person has a right of privacy, and then goes on to attempt to define that right by identifying the circumstances under which that right is infringed. Before making my own observations on this clause, I want to read to the committee the observations of David Syme & Co. Ltd, proprietors of *The Age*—which is among the many organisations which have to give—

The CHAIRMAN: Before the honourable member continues in that vein, I point out that we have before the Chair at the moment the amendment to clause 3. If the honourable member is making general comments about the clause, it may be better to make those after consideration of the amendment.

The Hon. JENNIFER CASHMORE: I believe that I can link up my remarks to the amendment, Mr Chairman. As to the amendment concerning the intrusion not being justified in the public interest, intrusion being one of the offences infringing the right of privacy, I refer to these remarks made by David Syme & Co. Ltd, which relate to the matter of public interest. I recognise that an amendment is yet to be moved that will exclude the media; nevertheless, the remarks are pertinent. The author of this letter, Michael Smith, Editor of *The Age,* states:

We reiterate our belief that participant monitoring—

that is to say, the keeping of another under observation, listening to conversations to which another is party, and so forth—

should not constitute an infringement of privacy under section 3 (2) *(a)* (i) (B). The Law Reform Commission recognises that the private recording of telephone conversations by involved parties reflects contemporary practices and standards. The Commonwealth Attorney-General's Department Review of the Telecommunications (Interception) Act 1979, has recommended the removal of the existing restrictions (section 2.2) on participant monitoring. We recommend that section 3 (2) *(a)* (i) (B) should be amended accordingly.

The amendments also do not clarify the meaning of the word 'observation' in section 3 (2) *(a)* (i) (A). This section fails to draw the vital distinction between observing others in public and private places. The regulation of acts, images or words of another section 3 (2) *(a)* (i) (D) is similarly insufficient. We are uncertain if the amendment to section 4 (4) *(a)* (i) recognises the dichotomy between private and public surveillance and recording. The words 'free inquiry and free dissemination of information and opinions' in section 4 (4) *(a)* (i), require judicial interpretation. We remain uncertain about the status of people who conduct activities such as recreational photography or painting. There needs to be a more detailed explanation by Parliament as to the definitional ambit of these words.

I refer to these comments in response to the Minister's amendment concerning intrusion being justified or not justified in the public interest. Nevertheless, they are general comments that apply not only to this clause but that reinforce the remarks that the Opposition has made about the whole Bill and about the preceding clause. They highlight the extreme anxiety which is felt by the wider community about the impact of this clause and the manner in which people going about their daily business in what has always been a lawful fashion are now likely to be severely impeded in respect of freedom of information.

The Minister has said that there is a right to privacy, and none of us dispute that, but to attempt to establish that right in the way that the Government is doing by legislation without making any attempt whatsoever to establish an equivalent right of freedom of speech and freedom of information is to so unbalance the rights which we have inherited and which are upheld by common law as to create a situation that I believe would be untenable. I say that not without criticism of the media or indeed of anyone who intrudes on the rights of privacy of another, and when I speak to the clause generally I will address that specific question.

Mr Ferguson: You were supremely uncritical of the media.

The Hon. JENNIFER CASHMORE: On the contrary: if the member for Henley Beach had read my second reading speech or listened to it carefully, he would have noted that there was some quite serious criticism of the media towards the latter part of my speech; but one needs to look—

Mr Ferguson interjecting:

The CHAIRMAN: Order!

The Hon. JENNIFER CASHMORE: —in a balanced fashion at this whole question—which is a vexed one—and recognise that to attempt to move in the way in which the Government is attempting to move to establish a right of privacy without establishing a corresponding right of freedom of speech and freedom of information is to create an unbalanced statutory approach and one that is potentially very damaging.

Mr GROOM: I think the member for Coles has become confused with the general clause as a whole. We are dealing with just the amendment, not the whole clause. All that is being taken out is 'public interest' as a definition and it is being inserted up the top, so that the plaintiff has to prove that the intrusion is substantial, unreasonable and not justified in the public interest. This is not the 'public interest' that was being referred to in the way in which the member for Coles quoted from David Syme's letter. That was dealing with acts and observations of a private as opposed to public nature. The 'public interest' is the general definition. It is the existing definition in the law relating to breach of confidence actions.

Public interest has been quite clearly interpreted right throughout the law, in the area of local government, breach of confidence and intellectual property actions. There is no doubt whatsoever as to what public interest means. So, it is only the definition that is being taken out and the onus is quite clearly being placed upon the plaintiff, and a very heavy onus. I just remind the member for Coles that in her book *A Chance in Life* she devoted a whole section to money, power and the public interest. She had no difficulty, on page 83—

The Hon. Jennifer Cashmore interjecting:

Mr GROOM: No, it is a lovely book and I will say a bit more about it later tonight. However, she had no difficulty in writing a whole chapter on public interest. So, that is all we are doing. We have to deal with the amendments and then we will deal with the matters that the member for Coles has outlined, which I think relate to the clause.

The Hon. G.J. CRAFTER: I rise to correct the member for Coles's misunderstanding of the legislation. I am surprised at the statements that the honourable member made about the establishment in the Bill of some fundamental freedoms. The amendments that are before us, which relate to matters that have been so widely debated in the community, in fact do provide for that. I refer the honourable member to the amendments to the Bill that are on file which provide:

. . . in determining whether or not a particular act was justified in the public interest, the court . . . must have due regard to . . . the importance in a democratic society of free inquiry and the free dissemination of information and opinions; and . . . if the defendant is a media organisation—

and the letter from which the honourable member quoted was from a media organisation in this country—

. . . the importance of the media in eliciting information and disseminating information and opinions—

thus establishing that in this Bill as a fundamental right and function of the media and, secondly and further—

. . . the importance of safeguarding the freedom of the media to continue to do so.

I suggest that there could be no clearer definition of those fundamental rights than expressed in that proposed amendment.

It is very clear that media organisations simply do not want any restrictions at all on participant monitoring and intrusive behaviour. Obviously, the honourable member is advocating that very position on behalf of the media interests that have made those representations. One can understand the media not wanting to have restrictions, checks or accountability placed on them. That is a matter we debated during the second reading stage and we heard very graphic examples and personal testimony from members of this House about the great harm that can be done to individuals, families and the community as a result of the unfettered ability of the press to intrude into the lives of ordinary people.

Mr S.J. BAKER: I am definitely not satisfied with this Bill. I will relate it to an incident involving one of my constituents. It is probably a quite famous case in law. A lady who had been living in a *de facto* relationship left that relationship. The ex-spouse continued to harass her and the lady sought shelter in premises in the Hills. The ex-spouse shot the person with whom that lady was residing and was acquitted of murdering the individual concerned. I had to

organise the lady's transfer interstate so that she could avoid being harassed and possibly coming to some misadventure.

The interesting thing about that case is that at that time some tape recordings were made of threats. Because the person who could substantiate the timing of the telephone calls was dead, the court ruled that the tape recordings were out of order. There was a very smart brief. So, those recordings, which were critical to the whole case, were ruled out of order by the court. The interesting aspect is that that person had no right to tape the conversation of others. There is no right of defence and no right involving protection under this Bill. It is not only that case, because—

Mr Groom: Haven't you heard of the Listening Devices Act?

Mr S.J. BAKER: I am dealing with privacy. If the member for Hartley believes that there is a priority given under the Listening Devices Act, he may well be correct—I do not know, and I do not believe he is right, but he may well be. However, a breach of privacy is created if a person tapes a conversation. Under the circumstances I have related—which are quite true and members can check the record if they wish—that person has no right to keep a record of a conversation involving dire threats against the person concerned and the person harbouring her. That case was thrown out of court on a technicality—and we are dealing with technicalities tonight. During my second reading contribution I expressed some reservations about the process whereby we prove that the intrusion is not justified in the public interest. That is obviously an area that is not justified in the public interest but may well involve personal and private safety.

In neighbourhood disputes, when does it become in the public interest for a person to do a number of things to protect his or her rights? A breach occurs automatically under this legislation. There is a tort under this measure. Does a person not have a right? This does not have anything to do with public interest at all; it has to do with personal interest. A person has that right removed; it is a tort. What happens when a person goes to court? Perhaps that person has identified an individual who has committed an offence—

Mr Ferguson: You're drawing a long bow.

Mr S.J. BAKER: No, it is not a long bow. I am referring to everyday occurrences. If the member for Henley Beach does not have any neighbourhood disputes in his area, he must live in a marvellous place and we should all move down there immediately.

Members interjecting:

Mr S.J. BAKER: Yes, Paradise; we will send all of our constituents down there to sort themselves out. There are numerous occasions when people, in order to protect themselves and to discourage people who would cause them harm, breach the Act in two or three areas that we have outlined in clause 3. Members know that.

Members interjecting:

Mr S.J. BAKER: I am dealing with amendments: subparagraph (iii)—'the intrusion is not justified in the public interest'—does not solve the problem. This amendment is designed to give some relevance to the clause itself, to take away some of the problems which have been perceived by all members of the press and which have been the subject of vitriolic condemnation by the press, the Press Council and, indeed, everyone associated with the press. Let us be quite clear: the amendment has been introduced to save the Government's skin. If it still does not do the job, it cannot be condoned as a competent amendment to get away from the problems created by this legislation. The amendment is not competent in the areas in which the Government suggests it is.

Mr INGERSON: There are several submissions that talk clearly about the problem of public interest. One submission was received from the Retail Traders Association and states:

> The amendment qualifies the right of privacy established by clause 3 by providing that the intrusion on the personal or business affairs of another 'is not justified in the public interest' before the right of privacy is infringed . . .a related amendment is also proposed to 3 (2) *(b)*. Under the original Bill, and the Bill as proposed by the select committee, this public interest test was only relevant as a defence, and not an integral part of establishing the right of privacy. This will be a minor improvement to the Bill provided that it alters the onus of proof from the defendant to the plaintiff, i.e., provided that the person alleging an infringement to the right of privacy must prove that the intrusion 'was not justified in the public interest', rather than the defendant to proceedings having to justify that their conduct was in the 'public interest'.
>
> 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. In order to successfully withstand a challenge by a member of the public to an allegation of an infringement to a right of privacy based upon security surveillance, a retailer will probably need to rely upon one of three provisions of the Bill, all of which are deficient.

The other submission was received from the Law Society and states:

> The Bill places a very heavy onus upon the person alleging that a right of privacy exists. If a right of privacy is to be set up then the onus of proof ought to be more balanced between the parties. The present Bill by clause (2) requires the person alleging that there has been an infringement of right of privacy to establish:
>
> (1) an intentional intrusion on their personal or business affairs;
>
> (2) that the intrusion is in the circumstances of the case substantial and unreasonable;
>
> (3) that the intrusion is not justified in the public interest; and
>
> (4) that the intrusion was without the express or implied permission.
>
> The defendant is aided by a presumption of permission provided by clause 3 (3). It is very difficult for a plaintiff to establish a negative proposition and therefore at least the issues of whether the intrusion is justified in the public interest and the question of permission ought to be for the defendant to raise as defences rather than for the plaintiff to prove as part of the course of action.
>
> The same comments concerning the public interest question apply to an infringement under section 3 (2) *(b)*. It is noted that the question of permission does not arise in the case of an infringement under 3 (2) *(b)*. It may be that permission is not relevant to an allegation of harassment but permission may be relevant to an allegation of interference where the defendant may allege that there was permission for some action to be taken and the plaintiff then alleges that that permission was withdrawn and a complaint arises of conduct that was previously permitted becoming an interference.

That last matter is reasonably complicated, but the Minister would understand that the Law Society is saying that, whilst this clause seems simple on the surface, it will create some difficult problems particularly in this area of presumption of permission. That will have a significant bearing as to whether or not the intrusion is justified in the public interest. Will the Minister comment on those submissions?

Mr S.G. EVANS: I believe that the amendment is an improvement to the clause, and that is the first matter to consider.

The Hon. G.J. CRAFTER: I am not sure how the matter raised by the Deputy Leader is relevant, but he talked about a Supreme Court action relating to murder and referred to the obtaining of evidence by recorded message, stating that that evidence was not admissible in the proceedings. First, we would need to know the circumstances of the case. The law prohibits the recording of information in certain circumstances and, if the evidence to which the honourable

member referred was illegally obtained, that is, obtained without consent contrary to the provisions of the Listening Devices Act, that would be inadmissible evidence. Even if it were obtained legally but was not able to be corroborated in the court, that would also be inadmissible.

There must be stronger evidence of an offence having occurred before it can be accepted in a court and a person can be tried on the basis of that evidence. This Bill does not override those evidentiary rules or laws which relate to the collection of evidence. I am not sure whether I can take the honourable member's concerns much further than that.

The Retail Traders Association gave evidence to the select committee and I understand that its concerns were discussed at some length. It appears that retail trading businesses are not affected by this legislation. The surveillance they provide is a matter of consent. A person goes into a store and accepts that there will be surveillance. That is part of the contract of entering that store. I am not sure whether the concerns expressed by the honourable member are recent or somewhat dated.

The honourable member referred also to correspondence from the Law Society. I have not had the benefit of seeing that correspondence and, from the section that the honourable member read, it seems that it is a very obscure point. I will be most interested to look at that correspondence when it is received by the Government and I will give it due consideration.

Amendments carried.

The Hon. G.J. CRAFTER: I move:

Page 2, after line 37—Insert new paragraphs as follows:
(d) by any action lawfully taken for the recovery of a debt;
(e) by anything done in the course of medical research approved by an institutional ethics committee in accordance with guidelines for the protection of privacy in the conduct of medical research approved under the Privacy Act 1988 of the Commonwealth;
or
(f) by the making of any investigation, report, record or publication in accordance with a requirement imposed or authorisation conferred by or under statute.

These provide for an increase in exemptions to include action taken to recover debt, protection of legitimate medical research and the making of reports, etc., authorised by statute. These exclusions have been agreed to by the Government as a result of representations received from various concerned bodies in the community. It is clearly the intention of the Government that the Bill should not impede upon the legitimate acts that are exempted by these new paragraphs.

The Hon. JENNIFER CASHMORE: I make the observation that these three additional paragraphs simply highlight that, no matter how wide the Government spreads its statutory net, it is most unlikely that it will ever encompass all the valid activities which should be excluded from the provisions of this Bill. This Bill went to a select committee which sat for a considerable length of time. No sooner is the Bill introduced and members of the general public have a look at it than they start making representations because they are totally bewildered, confused and alarmed.

Mr Groom interjecting:

The Hon. JENNIFER CASHMORE: It was not the media. The voluble member for Hartley suggests that it was the representations of—

Members interjecting:

The Hon. JENNIFER CASHMORE: I see that the honourable member's colleagues agrees with me wholeheartedly. The voluble member for Hartley suggests that these three paragraphs were inserted as a result of representations by the media. If that is not the case, then I misheard the honourable member's interjection. If he were quieter, we would be able to proceed more quickly. The three paragraphs are the result of representations by, I assume, debt collectors, medical researchers and goodness knows whom. The Government should have recognised that the making of any investigation, report, record or publication in accordance with the requirement imposed or authorisation conferred by or under statute should have been an essential component of the Bill in the first place.

The insertion of three new exclusions from the requirements of this clause at this stage simply highlights that the Government does not know what it is doing with this Bill, how far it will go, who will be damaged by it and whose lawful functions will be impeded by it. I suggest that there are probably dozens if not scores of other provisions that should be included. I note also that one thing that is not included is a provision for biographers and official historians, even unofficial historians, to have access to records unimpeded by a law which virtually inhibits them in the proper function of their duties.

During my second reading contribution, I referred to the alarm of the Association of Professional Historians who, having read this Bill, believed it would have been virtually impossible for the Australian Dictionary of Biography Committee's work to have been undatable in any effective fashion, as it has been over the past 35 years, if this Bill had been—

Mr Groom interjecting:

The Hon. JENNIFER CASHMORE: The member for Hartley simply cannot contain himself. He does not have the floor, he does not have the call, but he will not stop talking and telling us we do not know what we are talking about. He made an observation that simply confirmed what I said last night—that the concern of the historians is linked not to this Bill but to an administrative act by the Cabinet, which issue I certainly want to raise because it is inextricably linked with this Bill. It requires those undertaking research to sign a confidentiality undertaking and to obtain consent to publish details from the person who is the subject of the research or, in the case of a deceased person, from a near relative of the deceased. That is already an administrative act of this Government: it has no power in law.

However, I am sure that you, Mr Chairman, and other members of the Committee would appreciate that the proper function of historians and biographers would be severely inhibited by this clause, with its limited amendment, which covers simply debt collectors, medical researchers and those who are already authorised under statute and does not protect historians and biographers who, at the moment, are the victims of a confidentiality undertaking imposed upon them by a Cabinet without any force of law. I ask the Minister what representation, if any, he has had.

Members interjecting:

The Hon. JENNIFER CASHMORE: Is the Minister capable of doing this on his own, I wonder, or does he need the assistance of the member for Hartley for every word he utters? I would like some clarification from the Minister and the Minister alone: I really do not wish to hear from the member for Hartley on this matter, because the Minister is in charge of the Bill.

Members interjecting:

The CHAIRMAN: Order! The member for Hartley is out of order.

Mr Ingerson: He gets so excited, doesn't he?

The CHAIRMAN: Order! So does the member for Bragg.

The Hon. JENNIFER CASHMORE: My question is directed to the Minister in charge of the Bill. I ask: has the Government had any representation from historians and biographers about the confidentiality undertaking, which is

a requirement of the Privacy Committee of the Attorney-General's Department, I believe, a committee that is so private that many historians and biographers had never heard of it until a public meeting was called recently? What is the scope of the Privacy Committee's requirement for historians and biographers to sign confidentiality undertakings before they release or publish details of anyone about whom research is being conducted? If representation has been received, what is the Government's response? If it has not been received, why is there no recognition of the important public role that historians and biographers play, and why is there no inclusion of historians and biographers in the amendments proposed by the Minister?

The Hon. G.J. CRAFTER: The honourable member knows full well that many representations have been made to the Government by those involved with genealogy, with the collection of local history, and so on. Those discussions have raised many issues and have been resolved amicably. I can summarise the situation: if a person whose history is being researched is deceased, the Bill does not apply: if the person is alive, the normal course of research would be to seek some consent from that person for the activity that is being undertaken. That is the normal courtesy followed in the community.

However, if consent is not obtained for one reason or another, in order to successfully mount a course of action, one would have to go through those steps that I outlined to the House in the second reading stage: if there was a lack of implied or expressed consent, there was an intentional intrusion, if it fell within the various sections of the Act, and if the intrusion was substantial and unreasonable. In many cases, the collection of historical information would clearly not be unreasonable and would not be a substantial intrusion. In the main, public records or other records that are freely available are the source of information. A final condition was that it was not justified in the public interest.

There is a series of tests, and that has been explained to people who have come to discuss this matter with the Government. Some have not had the benefit of knowledge of the amendments, although the amendments have been debated in the community over some time. They have not been introduced at the last minute: they have been the subject of discussion and scrutiny by many organisations in the community. Indeed, the whole select committee process has been filtering out these interests and concerns. It is of great concern that some organisations, either intentionally or inadvertently, did not seek to come before the select committee, despite the huge amount of publicity that this measure has received from the media. It is simply not true that these amendments have been dropped in at the last moment. As I have said, they have gone through a very thorough filtering process. Discussions with interest groups have occurred, and these matters have been worked through very carefully.

The honourable member cannot advance arguments of this type. I can recall the honourable member arguing passionately in this place about the right of privacy of one's spouse with respect to legislation before this Parliament. I commented on that matter in my capacity as representing the Attorney in this House at the time. People in our community want to assert fundamental rights of privacy, and we need to have some provision for the protection of the rights of the living in our community on matters which relate to themselves, their person, their family and things they do not want to have revealed. I think that anyone who has done any family research would have come across at least one person who was not prepared to participate or to give their consent freely, or who asked that no further research be done in a particular area perhaps until they died. The provisions in this legislation are appropriate. They are clearly enunciated, they are well thought out, and they have been discussed with the particular interest groups.

Mr GROOM: The select committee had a submission from the Australian Library Information Association, which looked extensively at the point raised by the member for Coles and by the researchers. Its problem was not with the Privacy Bill but with the information protection principles promulgated by the Attorney-General's Privacy Committee, which had the imprimatur of Cabinet, because its submission quite clearly outlined that it gets the consent of people, so the Bill provides it with an automatic exemption where consent is either expressly given or implied from the circumstances. We did look at that this matter, and we looked at it extensively. There may be a difficulty, depending on what regulations come out of this Bill. I have written to those organisations indicating that that is the proper place to address any concerns if there are information principles similar to the ones which they are having difficulty with and which are intended to be put into regulations.

For the benefit of the member for Coles, I want to quote a passage from Bette-anne Kelvin's evidence dealing with biographies, books, research and all the rest of it. She said:

> All of us, the Barneses, Langleys and Kelvins, fear having our tragedies appear in book form or film. We have been told that there is nothing we can do to prevent that.

She has quoted an article headed, 'South Australian murder may be book theme' published in the *Advertiser* of 1 March 1991. It reads:

> Julia Sheppard, Sydney journalist and author of a new book on the 1986 Sydney rape and murder of nurse Anita Cobby, is researching a South Australian murder she hopes to write about. In Adelaide to promote *Someone Else's Daughter, the Life and Death of Anita Cobby*, Sheppard isn't saying which of this State's murder cases she is looking at. 'I'm just having a look to see what it's about at the moment, so I can't say too much,' she said yesterday. She was a Sydney *Sun* crime reporter on the Cobby case.

Bette-anne Kelvin went on to tell the committee:

> So the fear of that sort of thing is very real to us and we have been told that we can do nothing about it.

Sadly, as a select committee, likewise we had to indicate that this Bill would not protect any of the victims of crime—the Barneses, the Langleys and the Kelvins—from being further exploited in book form. The Bill simply does not affect that area at all.

The Hon. JENNIFER CASHMORE: When I spoke in the second reading stage and in questioning the Minister, I did not mention libraries or the Library Association. The member for Bragg might have done, but I did not, and that was not the purpose of my question. I referred to the Association of Professional Historians. If the Minister believes that matters have been resolved amicably with that group, he is under a misapprehension. As recently as last night I spoke to the president of that group, who is of the firm belief that this Bill represents a restraint on scholarship.

Nothing that the Minister or the member for Hartley has said in any way reassures me on that point. On the contrary, something that the Minister said makes me even more anxious, and I should like him to clarify it. I believe I heard him say that, if the person who is the subject of the research or the biography is alive, that person would be covered by the provisions of clause 3, which require express or implied permission before the research or publication could proceed. I am almost certain that is what the Minister said.

The real point is that he then said that, if the person is dead, the legislation does not apply. That being the case, why has the Government issued a confidentiality undertaking which it requires historians and biographers to sign? It

says, 'In the case of a deceased person, I will obtain the consent from a near relative of the deceased.' As regards the *Australian Dictionary of Biography*—the entries are being updated and expanded continually—the research required is painstaking. It needs to be and has been done meticulously. If researchers and historians were required to get the permission of the nearest relative of those subjects of the *Australian Dictionary of Biography* who have died, the dictionary would never be published. The business of tracking down the relatives of people who are the subject of the *Australian Dictionary of Biography* would be a well nigh impossible task. The time-consuming work that is already undertaken would become just too difficult to contemplate.

The writing of history and of biography in this State could thus be severely affected. I do not believe that is in the public interest: indeed, I believe it is contrary to the public interest. Will the Minister explain why he told the committee that this Bill will not apply to dead people when the Government's Privacy Committee requires researchers to sign undertakings that they will consult the relatives of dead people?

The Hon. G.J. CRAFTER: I think that the member for Coles is confusing the purpose of this Bill.

The Hon. Jennifer Cashmore interjecting:

The Hon. G.J. CRAFTER: Then I think they need someone to clarify it for them, and perhaps the honourable member may like to refer them to the sources which are available to the Government and to which I understand all other organisations that have concerns have had access.

The Hon. Jennifer Cashmore: They had access but were even more confused.

The Hon. G.J. CRAFTER: They should have the opportunity to clarify those matters. The right of privacy in this legislation is vested in living persons in our community. As I explained earlier, this legislation is about the well-being of our community. The steps that I outlined are the steps that a complainant would have to take in order to mount a successful claim that there was a breach of privacy, for example, by a historian. They would have to show that there was not only a lack of implied or expressed consent, but all the other factors to which I referred.

There are other pieces of legislation and other practices that apply to the work of historians, researchers and so on, but the honourable member should not confuse those with whom she has discussed this matter with the structure and the supreme purpose of this Bill, which is to give rights of privacy to living persons and to provide defences against such actions on the part of those people who are accused of intruding on a person's privacy.

The Hon. JENNIFER CASHMORE: I must persist with this, because every time the Minister speaks he does nothing whatever to clarify the situation in my mind at least, and I believe in the minds of my colleagues. He persists in saying that only a living person can have a right of privacy infringed, yet the Government is insisting that historians and biographers sign undertakings that they will consult the relatives of dead people before they proceed to publish the results of their research.

The Minister cannot have it both ways. He cannot have the Government requiring the obtaining of consent from the relatives of those who are dead and at the same time say that is not necessary under this legislation. Either this pink slip should be torn up—and if that is the case the Minister should say so—or there is something in the Bill which is not clear and which does have an application to the dead. Nothing on the *Hansard* record will in any way reassure any scholar as far as I am concerned. I am not a scholar, but I do not believe that any scholar would be reassured by what the Minister said, because it is too confusing.

The Hon. G.J. CRAFTER: The honourable member might like to clarify the matter for me and show me where in the Bill it says that consent must be obtained from a relative in order to carry out research on a deceased person. I cannot find it.

The Hon. JENNIFER CASHMORE: We have an unusual situation with the Minister asking a member a question. It is nowhere in the Bill, but it is in the administrative acts of the Government. Is this administrative act of the Government to be rendered illegal by the passage of this Bill? If so, please tell the Committee and we will all be reassured.

The Hon. G.J. CRAFTER: I think that the honourable member has misunderstood. This Bill is about the rights of the living and their ability to assert their rights. The honourable member is talking about a different situation and set of circumstances and the practices and administrative guidelines which surround them with respect to public information. The two cannot be confused. We cannot apply one to this Bill. It is simply irrelevant.

Mr LEWIS: A good deal of the debate during the second reading stage and a good deal of the public comment on this measure was about protecting the grief of families of people who had died in some unfortunate way that might have attracted public comment. If the Government and the Minister are sincere, and if this Chamber has not been treated to a nonsense in the course of the second reading debate, why was it that we were told so much about how we would care for the Barneses and the Kelvins, the living people in this world, and how we would be able to do that under the terms of this legislation, if the legislation does not address their concerns? The Minister says that this Bill is about the living and not about the dead.

That seems to be in sharp and stark contrast to the substance of the argument in no small measure put by the member for Hartley and other members on the Government side about the reasons for having this legislation. Whilst I acknowledge that the Minister is distracted, I would like to know why we had all that in the second reading speeches only now to discover it was irrelevant. Is it relevant? Does the Government hold the view that the legislation addresses the problem to which members on both sides of the Chamber in the second reading stage referred and which we were told the Bill would address but has not? Without being guilty of undue prolixity, I seek the Minister's response, notwithstanding the intensity of his focus and attention on matters of private discussion. Can the Minister or the member for Hartley help me to understand that?

The Hon. G.J. CRAFTER: I was talking to the honourable member's colleague, who is obviously genuinely concerned about the issues she raised. I will undertake to ensure that that group of people is fully briefed on the implications of this Bill and its relationship to the privacy principle, which was the matter that the honourable member was alluding to as well, that is, privacy principles and the work of the Privacy Committee.

I note that the group the honourable member was referring to as having been consulted was not the group responsible for this measure before the Commitee, or explaining it, and it probably would not have been the best group to ask to perform that task. It is a matter that can be resolved through the sharing of information and discussing the concerns. I can assure the Commitee that no-one wants to see legitimate research curtailed, as it is an important part of the life of our community. It is something that is facilitated every day in Government service.

There is a substantial commitment on the part of this Government to the preservation of the history of this State, particularly family history in South Australia. It is something that I know many members are personally interested in and there would never be any intention to curtail the opportunities that are currently available, or the rights that historians have to research information. I would suggest it could be argued that this Bill facilitates that and provides some parameters to it that will be helpful to the overall community in this State.

Mr ATKINSON: I draw the Minister's attention to clause 3 (4) *(f)*, which provides:

A right of privacy is not infringed—

(f) by the making of any investigation, report, record or publication in accordance with a requirement imposed or authorisation conferred by or under statute.

That paragraph duplicates subclause (4) *(a)* (ii). One of those provisions could be deleted without detracting from the Bill. Both those provisions seem to duplicate clause 4 (3) *(c)*, which gives a defendant the defence of qualified privilege. It seems that the two provisions I just mentioned in subclause (4) are restatements of qualified privilege, and we are giving a defence in triplicate.

The Hon. G.J. CRAFTER: That is the interpretation that the honourable member places on it. It is a clarification of that area of the law and sets it out in the statute and clarifies it. In that sense, it repeats it.

Progress reported; Committee to sit again.

The Hon. G.J. CRAFTER (Minister of Education): I move:

That the time for moving the adjournment of the House be extended beyond 10 p.m.

Motion carried.

DIRECTOR OF PUBLIC PROSECUTIONS BILL

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

DISTRICT COURT BILL

Received from the Legislative Council with a message drawing the attention of the House of Assembly to clause 49, printed in erased type, which clause, being a money clause, cannot originate in the Legislative Council but which is deemed necessary to the Bill. Read a first time.

MAGISTRATES COURT BILL

Received from the Legislative Council with a message drawing the attention of the House of Assembly to clause 42, printed in erased type, which clause, being a money clause, cannot originate in the Legislative Council but which is deemed necessary to the Bill. Read a first time.

STATUTES REPEAL AND AMENDMENT (COURTS) BILL

Received from the Legislative Council and read a first time.

JUSTICES AMENDMENT BILL

Received from the Legislative Council and read a first time.

PRIVACY BILL

Adjourned debate in Committee (resumed on motion).

Amendment carried.

The Hon. G.J. CRAFTER: I move:

After line 39—Insert new subclause as follows:

(6) The right of privacy created by this Act does not extend to a body corporate.

It has now been made clear in the Bill that a corporation does not have a right of privacy and cannot bring an action for infringement. The Government recognises that a corporation should not have the same rights to privacy as an individual; however, a corporation can still infringe on an individual's right to privacy.

The Hon. JENNIFER CASHMORE: I would like clarification of the amendment in respect of the individual who may be acting for or on behalf of a body corporate. I can foresee, just off the top of my head, without being able to give specific examples, some of the directors of companies, in particular some of the statutory bodies that are now under scrutiny in this State, claiming that their individual right of privacy is being infringed when people are scrutinising the activities of the body corporate and in doing so having no option other than to scrutinise the activities of the individuals responsible for the body corporate. Will the Minister explain the distinction between the right of privacy applying to directors of corporate bodies and to the corporate bodies themselves? It seems to me that that distinction could be absolutely critical when it comes to public scrutiny of those bodies and of the individuals who are responsible for such bodies.

The Hon. G.J. CRAFTER: The short answer is that one would have to prove that it was an invasion of a person's privacy, not of a person as part of an incorporated body or part of something other than an individual's right of privacy that was being attacked in some form of course of action or other. So I think the definition is very much around the individual right of privacy, which this Bill is homing in on very carefully. So, I think that the honourable member's fears that somehow or other there might be a ruse established to in fact still bring a corporate body under that umbrella, on the face of it, would be eliminated.

The Hon. JENNIFER CASHMORE: Nothing that the Minister has said reassures me that the activities of individual directors cannot be scrutinised in the public interest, and I do not believe that anything he can say will reassure me—so I will let that issue pass for the moment. What is the application of this Bill to members of Parliament in the pursuit of their parliamentary duties? Is it assumed automatically that everything a member of Parliament does in the pursuit of his or her duties is in the public interest, or is it possible that a member of Parliament, in scrutinising the activities of any individual in the community, in what is claimed to be the public interest, may still be susceptible to action under this Bill, if it becomes law?

I ask the question for the obvious reason that, having scrutinised the actions of individuals who are directors of companies and statutory authorities in what I believe to be the public interest, I have no doubt whatsoever that those individuals could claim that the scrutiny by any member of this House, for example, was not a matter of public interest but an invasion of their privacy. The Minister will appreciate that such a viewpoint is entirely subjective, and

if members of Parliament are going to be brought within the ambit of this law in pursuit of their duties and have to justify the public interest aspect before a court, then I think that this legislation would be regarded by us all as being oppressive.

The Hon. G.J. CRAFTER: I would have thought that this legislation in fact gives us broader rights as members of Parliament, because it does define these areas of public interest. We are already subject to attack and to scrutiny, as many of us have found. We know that people will want to bring actions against us for what we say and what we do. We live, act and work in the public arena, and I think that the law as it is currently provided delineates fairly clearly what it is that we are allowed to say with impunity, where we are allowed to say it and that we need to be very careful in what we say and do. I think that came out very clearly in the debate last night. A number of members raised specific cases and concerns and I think saw the advantage and value that this legislation would provide—not so much in a personal sense but in the sense of establishing codes of ethics and patterns of behaviour regarded as acceptable in the community at large.

The Hon. JENNIFER CASHMORE: I think the Minister may be misinterpreting what I said. I was not asking whether members of Parliament would receive the protection of this Bill. As to the Minister's foreshadowed amendments to exclude the media from this Bill, we know that virtually all of the complaints that members on his side of the House and that some of my colleagues raised related to reporting by the media of what they regarded as their private activities, but which I for one would regard as valid matters for public scrutiny. I happen to believe that when one seeks and holds public office one's right to privacy is much diminished by comparison with the right of a private citizen. I believe that we should be open to scrutiny.

Even as a voter I want to know if the people I am voting for are sober in their habits, faithful in their relationships and upright in their personal conduct. If that is not the case, I certainly want to hear about it, and I respect the right of the media and I uphold the right of the media to examine those aspects of character, and indeed of health, which are relevant to a public person's private life. I was not referring to that; I was referring to the other side of the coin, the investigations that a member of Parliament makes in pursuit of his or her duties to scrutinise and examine the private lives of others in order to expose fraud, in one's belief, and, as I say, in the initial stages of investigation that may be hard to prove. Can any citizen take action under this legislation against a member of Parliament, requiring a member of Parliament to justify that his or her infringement of the right of privacy was in the public interest?

The Hon. G.J. CRAFTER: I think the honourable member's point is a valid one and it should be clarified. I will do that to the best extent I can. I think the legislation we have before us in fact enhances the member of Parliament's rights and indeed codifies the behaviour that is appropriate in the proper conduct of one's affairs, because of the steps that I have outlined a number of times, in relation to a person who complains about the acts of a public official such as a member of Parliament in carrying out a legitimate course of activity and in the prudent performance of that member's duty, in seeking information and investigating certain matters relating to that duty.

Of course, protections are provided: quite absolute and, I would have thought, very powerful protections about being justified in the public interest and about intrusions. It might be reasonable to intrude into certain situations in the public interest. There are specific clauses in the Bill that elucidate that behaviour even further. So, there are steps here—parameters, or a codification of the matter. I think that it is helpful to us as members of Parliament in the conduct of our duties. It is perhaps a grey area and it would be helpful to be able to point to this legislation and say, 'I am doing what I am able to do, not only in the public interest but also in accordance with the law.'

Perhaps not enough respect is paid to members of Parliament in the course of duties of that type which they perform in the community, often on behalf of others, so that information can be gained not only with respect to the preparation of laws and the conduct of matters in the Parliament—questions of public accountability and so on—but also within their own constituencies where they are seeking to provide information, to give advice and to be advocates on behalf of community groups. I think this very much helps, once again, to strengthen our community and to give status to people in the community, such as ourselves, where that perhaps has been absent in the past.

The Hon. JENNIFER CASHMORE: I want to place on the record that I simply do not accept what the Minister says, namely, that this Bill will assist members of Parliament in the pursuit of their duties. Everything he has said, the amendment that has been moved and the Bill that has been debated thus far, simply confirms that MPs can be caught up in the ambit of this Bill. I do not want any judge telling me what is in the public interest.

It is my belief that as a member of Parliament I am the best judge of what is in the public interest, as is every member of this Parliament. We are elected to make that judgment and I do not believe that we should be the subject of the courts in exercising that judgment. The Minister has as virtually confirmed that members of Parliament are caught up in the ambit of this Bill. I find that quite repugant and it is yet another reason for opposing the Bill.

Mr INGERSON: In relation to a body corporate, when there is a managing director of significance in any corporation, when does he or she become a private individual to whom this privacy Bill would relate when such a person is acting in their position basically 24 hours a day? I use the example of the Managing Director of the State Bank: when does that person's individual right override his position as Managing Director of the State Bank? There would be instances in which there is a cross-relationship and this officer's privacy may not be affected, depending on whether or not the person concerned is directly representing the body corporate. It is a very grey area as I see it. How does the Minister see this clause clearly defining when that individual is, in fact, not the managing director of the body corporate?

The Hon. G.J. CRAFTER: The situation to which the honourable member refers is the right, for example, of the Managing Director of the State Bank to himself take a right of action under this legislation against a breach of his own privacy. It certainly would not relate to the bank, because the bank itself does not have a right under this legislation. As we know, there have been substantial intrusions into that person's private life and affairs by individuals, the media and others in the community. Obviously, there will be a lot more during the next few months.

The legislation provides that there can be intrusions into that person's life and into other people's lives in similar situations in accordance with the requirements laid down. If that person were to mount a claim based on the right of privacy, then that would have to show those various steps that have been provided for in the legislation and in the amendments that are foreshadowed in the remainder of the

Bill. As I said, they are very substantial steps that must be taken and, of course, the final step relates to the issue of public interest. So, we have seen the extent to which perhaps that intrusion can be taken in that particular instance.

Mr LEWIS: For the life of me, in the past 10 minutes I have been more alarmed than at any other time during which I have contemplated legislation that relates to civil liberties. For the Minister to suggest that this House does not have either the obligation under the Constitution or the right to determine the meaning of 'the public interest', but that that should be left to a judge, is astonishing in the extreme. The Minister implied that the State is more important than the individual and that the agency of the State—the court—originally set up to protect the individual now does the opposite.

It protects the interests of the State—a larger and an indefinable body. The process of polity is to determine what policy shall be written into statute. That is our job as members in this place. If in the opinion of our electors we are getting it wrong, our services should be dispensed with and we should be replaced by another citizen willing to make the commitment to the duty of public life. It is not up to us simply to say that we have done our bit collectively as members of Parliament and then say to the court, 'Sort it out.' If we cannot place a concept into law or pass a statute in a way which states what we intend shall be the law, we do not deserve the confidence of the people.

Mr Ferguson: Hear, hear!

Mr LEWIS: I am pleased that the member for Henley Beach agrees with me. For the Minister to say that it is unnecessary for him to do that is to indicate to all of us, as the member for Henley Beach said, that he does not deserve the confidence of the people or of us in this place.

Mr Ferguson: I didn't say that.

Mr LEWIS: You did. In the course of the logic, the honourable member must agree that what the Minister said implies that he does not have confidence in his own ability or in the ability of this place to make a decision.

Mr Brindal: He said that about his Minister?

Mr LEWIS: The member for Henley Beach agreed with my comment about the Minister's logic. This is no trivial matter.

Mr Groom: Talk to the clause.

Mr LEWIS: The clause is about that very concept. The Minister's answer is disturbing for the reasons I have given. We have an obligation to define what is meant in terms which the ordinary citizen can understand.

The Hon. Jennifer Cashmore: Justice Zelling thought so.

Mr LEWIS: I would have thought that any reasonable, individual, law-abiding citizen would think so as well, not only Justice Zelling, as my colleague the member for Coles points out for our benefit. That is what making laws is all about and, when we are trying to do that in a way which defines what any one individual or group of individuals can do in the interference in the affairs of another, it is even more important. At this point, I beg the Minister to reconsider his view of our responsibility and the interpretation that he has placed upon the terms we are discussing in this clause so that we do not say simply that it is all too hard but nonetheless we will pass a law and leave it to the judges.

Mr BRINDAL: If the right of privacy created by this legislation does not extend to a body corporate, how would it be envisaged that one would proceed with an investigation similar to the one that is currently before the royal commission? A body corporate consists of component parts and, if as part of the investigation of a body corporate the director, the board of directors or other members can claim a right of privacy, how is it possible to examine the body corporate and not be granted the right to examine the component parts?

The Hon. G.J. CRAFTER: To the extent that I understand the honourable member's question, I advise him that a body corporate is a separate entity at law.

Mr BRINDAL: I understand that it is a separate entity in law but, if one is to examine the workings of a large group, surely one must be able to examine the workings of the components that make up that group, the integral part of it, the board of directors. It could be argued that, in the case of a large corporate entity such as SGIC, part of the examination could include the directorships held by the chairman of the board. Under this legislation, I presume that the chairman could claim an invasion of privacy and that could be used to stop an examination of the body corporate. I cannot see how we can separate the two.

The Hon. G.J. CRAFTER: I simply do not understand the circumstances put forward by the honourable member that would give rise to a breach of privacy. We are talking about an individual right, not a corporate right, as the honourable member seems to be inferring in some way. It relates to a breach of an individual right of privacy.

The Hon. JENNIFER CASHMORE: The Minister is obviously finding it pretty hard to reassure the Opposition in respect of this matter. Let me give a hypothetical example. As an MP, I am at a public function. The head of a statutory authority or a body corporate, about which my colleagues and I have serious doubts, is also at that function.

Mr S.J. Baker: State Bank.

The Hon. JENNIFER CASHMORE: No, I will not nominate any corporate or statutory body. I am in a position to overhear the conversation of the chief executive of that corporate body. Let us say that the chief executive is a woman and I happen to overhear her in the women's toilet. Someone in that situation could very readily claim the right of privacy. As a result of overhearing that conversation, I decide that I will pursue matters which have become known to me literally through eavesdropping. I regard what I have heard as being in the public interest and I pursue that through subsequent eavesdropping on that person. If that person decides that I am breaching her right of privacy, does she have the right to take action against me under this Bill? If that is the case, does the Minister really believe that that is in the public interest?

The Hon. G.J. CRAFTER: The honourable member delightfully leaves out the relevant information that was gleaned in that way.

The Hon. Jennifer Cashmore interjecting:

The Hon. G.J. CRAFTER: That is right. The honourable member said before that she believes it is in the public interest to know whether a person is faithful in his or her relationships. If without further inquiry the honourable member seeks to publish an article or make statements or allegations about something which one would regard as particularly private, I think an aggrieved person would want to avail himself or herself of the protections provided in the legislation. Whether that person could prove that depends on whether he or she can progress through the various steps in the legislation, one of which is whether a matter is justified in the public interest.

In this debate this evening, the honourable member has already defined what she believes is a matter that is in the public interest. It may be that in the conversation she overheard something is said that is fundamentally important to the well-being of this State in various aspects. As the honourable member has alluded, perhaps with respect to a corporation or a Government body, it is almost the duty of the honourable member, as a public officer, to do

something about that information and she should obtain the protection of the law for the dissemination of that information in some way.

However, members of Parliament are a privileged class of people in the community because we are afforded the privileges of this place in order to make statements to the community about information which comes into our hands in various circumstances and we do that according to the precedents of the House and the discretions that we apply to our own conduct in this place and how we use the privileges that are at our disposal. It is not simply a matter of saying that something does or does not apply. It depends upon the circumstances and the nature of the information that is gleaned in those circumstances and what steps are taken following the receipt of that information.

Mr BRINDAL: I can help the Minister to answer this type of question by being specific. I refer to a case of which the Minister would be aware and in which I was involved. If, for instance, I were to find out that a corporate body such as SGIC owned a series of properties that were owned in trust by private individuals, and I made statements which I believed were in the public interest concerning SGIC, might I now find by this Bill that those private individuals might regard their privacy as having been breached because it is the subject of a trust? Might they then take an action against me, given always that I did not make the statements in this Chamber but outside it? In other words, I am looking at a matter which I believe is in the public interest concerning SGIC, although it involves the business dealings of individual people, and they then go to the courts and say it is a breach of privacy. What is the Minister's opinion on this given, of course, that it is a hypothetical case?

The Hon. G.J. CRAFTER: The SGIC has no right to avail itself in this matter, because it is a body corporate and is not entitled to take up this matter.

Mr BRINDAL: I understand that SGIC could not claim a breach of privacy: I am asking whether the individuals, who are subject to the trust and not part of SGIC nor associated with SGIC, could take me to court for breaching their privacy?

The Hon. G.J. CRAFTER: Once again, it depends upon the facts and the circumstances.

Members interjecting:

The Hon. G.J. CRAFTER: There is a myriad of circumstances in which these properties can be held in all sorts of structures and incorporated bodies. So it is not simply a matter of standing up and saying 'Yes' or 'No'.

Mr S.J. BAKER: It has been proved unequivocally in this Committee tonight by my colleagues that the Bill is unworkable. This is a key section of the legislation. I appeal to members to look at the wording. A number of case studies have been provided which the Minister could not answer or to which he has said, 'It depends on the circumstances of the case.' He simply did not answer the questions in the way we expect of a Minister of the Crown responding to questions on his own Bill. I will read the relevant passages so that members clearly have it in their minds. Clause 3 (2) *(a)* provides:

> 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:.

So, if one does any of those acts, one has intruded. That is what the Bill says: nothing less, nothing more. Then follow the various ways: 'by keeping the other under observation . . .'

Members interjecting:

Mr S.J. BAKER: No, I haven't misunderstood it. The Bill continues: 'by listening . . . to conversations to which the other is a party', and examples have been provided to this Committee. Of themselves, those acts suggest immediately that a person has committed a tort. A co-joining provision refers to the intrusion not being justified in the public interest. Is that public interest deemed to apply after the event, or was it deemed to be a factor in the mind of the person before the event occurred? That is not made clear. We know there is a big difference as to what constitutes intent under the law, because intent under the law carries far more weight. Indeed, the extent to which a person intends to do something becomes important in the law, as the Minister would understand. This legislation does not make a distinction. I ask members to consider the Bill very carefully. The Bill states 'intentionally intrudes': that is assumed. Normally the law provides, 'If a person is proved to have acted with intent, that person is guilty of an offence.'

Mr Ferguson: Nonsense.

The CHAIRMAN: Order! The member for Henley Beach is out of order.

Mr S.J. BAKER: Exactly right. Under this provision it is assumed by virtue of doing any one of those things that that person has intentionally intruded. We have reversed the law. As I see it, under this Bill members on my side of the House and I have intruded many times this year and are guilty of a tort. We must then go through the process of determining or letting someone else determine whether that was in the public interest. Of course, in the event that the occasion precipitated some action being taken against the person we are observing, we would probably be deemed to be acting in the public interest. However, if we were doing something in good faith, we would then have to go through the process of being able to prove that we were acting in the public interest. That is what the law says, and that is what is in the Bill. What we have here is flawed legislation.

Mr GROOM: I think the Opposition would have been better to deal with the whole clause. The question of corporations and private individuals was considered extensively by the select committee. When the draft Bill was put before the select committee, it was silent on the question of corporations; it referred just to persons. There was evidence before the select committee that, if corporations were not included—

An honourable member interjecting:

Mr GROOM: There is plenty of evidence. If corporations were not included, a corporate body could infringe people's right of privacy and they would not be able to sue it. For example, you could hire someone who had been hired by a company and who infringed your privacy; they could disappear and you would have no remedy, even though your privacy had been infringed. With some unease we accepted a draft which said that it extends to individuals and bodies corporate. The reason for that is that, in every other privacy legislation, 'person' or 'individual' is defined as including a body corporate. Under freedom of information legislation cases, a body corporate does not have personal affairs.

One cannot observe, film or record a company because it is an artificial creation of the law. However, the cases show that a body corporate has business affairs, and there is an extensive line of related material in freedom of information cases. Mischief was made of that so we immediately, within a couple of days, announced that the legislation would be amended so that a body corporate could infringe a right of privacy. Even under the draft of the select committee, corporations got no greater rights than they had at common law.

The Opposition is mixing up the existing common law relating to intellectual property actions or breach of confi-

dential information actions, because a company at common law has a right of confidential business affairs. That was the action that Westpac took and, I understand, the State Bank, and there was also the famous 1980 Fairfax case: the company has common law rights. The Deputy Leader of the Opposition said, 'You're putting public interest in the law.' That is the existing law in relation to companies. In the High Court 1980 Fairfax case dealing with confidential information, they said that the company would not be able to keep its information confidential if it is not in the public interest to do so. Yet the Deputy Leader stood up and said how crook that was. It has been the law for two centuries, for goodness sake. We have actually restricted this provision because of the objections we have received so that the right of privacy created by this measure does not extend to a body corporate, so the element of privacy must relate to you as an individual.

If one were examining the SGIC, the State Bank or Beneficial Finance, one could go through the company directors and they would not be able to take an action under the privacy legislation, because it is not a matter of privacy that relates to them. However, I will tell members what they will do. Because we do not touch the common law rights of companies, because they still have their rights at common law, and because they cannot use this legislation, they will do what they have been doing for the past 100 or 200 years, as it has evolved in the law, and apply to the courts like Westpac did and like the State Bank and Fairfax did. There are hundreds of cases in the courts dealing with the intellectual property rights of companies. There is a textbook in the Library—Ricketson—which has a whole section on a company's rights to protect its confidential business affairs. Are members suggesting that a company has no right to protect its confidential business affairs, its trade secrets?

Mr Brindal: You are.

Mr GROOM: No, you are. You are saying that companies should not have any rights whatsoever and how dare they keep information confidential. They have rights at common law, because they are a creation, but they do not have rights under this Bill. A company director cannot indirectly protect himself by taking an action, because he will get short change from the courts. The courts will say, 'How does this relate to you? This is SGIC; this is what-have-you; there must be an element of privacy that relates to you.'

The select committee looked at this extensively. Even if we left in the original draft of the select committee, a company would have no greater rights under this legislation than at common law. Public interest in the Fairfax case is the very defence. If it is in the public interest to publish their confidential affairs, that can be done. That was in this Bill, but we have now eliminated companies entirely, unlike in most other jurisdictions. They have it under the right of privacy in the United States. The reason why other jurisdictions have extended the right of privacy to companies is that people do form family companies.

There is no justification, even in the Federal privacy legislation, for saying that because it is a family business all the bank statements should still be pushed out into the public arena. We have actually narrowed it right down to individuals. If it is a matter of privacy that relates to an individual, and if he has a company, that is bad luck for him; he will not be able to protect his company's business affairs indirectly using this legislation: he will have to go to common law.

The CHAIRMAN: The member for Coles has spoken three times on the amendment, but not on the clause, so she will have an opportunity in a moment.

Amendment carried.

The Hon. JENNIFER CASHMORE: This is now a very substantial and complex clause occupying the better part of two pages of the Bill. I want to canvass some general aspects of the clause and highlight those aspects which I regard as being unworkable and guaranteed to lead to extensive litigation that will have to take place for many years at great cost before the nature of the tort of privacy can be clarified.

In the first instance, I refer to subclause (2) *(a)*, which refers to the express or implied permission of another person being essential if the right of privacy is not to be infringed. I want to outline to the Committee the extraordinary difficulty that will be encountered when the test is applied to the words 'implied permission'. As we all know, even in personal relationships, what is explicit is clear; what is implicit is a matter of understanding—and understanding between two parties is very personal and subjective. It is open to a huge range of interpretation and misinterpretation.

I want to outline to the Committee one circumstances which I believe will demonstrate the difficulties of establishing implied permission. In outlining this to the Committee, I will be revealing what I regard as one of the grossest breaches of privacy that was committed by a journalist against me in my own home. Of course, under the exclusions from this Bill, as a result of amendment, that sort of thing could continue to occur, and that confirms my belief that the Bill will be of little use but of much nuisance to many people.

In August 1986, in a personal statement to the House, I explained the reasons for my change of name. That statement was reported quite prominently in the *Advertiser* the following morning. At about a quarter past seven that morning, two young men appeared on my doorstep. They did not identify themselves; they just stood there. I remember thinking that it was very early in the morning for Jehovah's Witnesses. However, when I asked who they were, they identified themselves as a journalist and a photographer, and they asked whether they could come in to interview and photograph me. I said, 'No, I have said all I intend to say on the subject of my change of name, and I do not wish to add to the statement that I made in the House yesterday.' The journalist asked whether they could take my photograph. Weighing up the balance between a headline 'MP slams door' and a simple head and shoulders photograph, I thought—

Members interjecting:

The Hon. JENNIFER CASHMORE: Wait and you will hear. I said, 'You may come in and take my photograph.' We had no sooner got inside the house than the telephone rang. I excused myself, went into an adjoining room and took a telephone call from my sister, who had not had the opportunity to speak to me subsequent to my announcement to the House of my change of name. This was before half past seven in the morning. We had an intimate and personal but brief conversation. I went back into the adjoining room, my photograph was taken, and the two left.

Later that day I was driving to my office when I saw a substantial banner headline outside a newsagency which read, 'My divorce. MP tells.' I thought that one of the Federal members had been talking about his divorce. I went into my office. A friend then rang and said, 'If you have not seen the *News*, read it and prepare yourself.' I opened the *News* to find that every word I had uttered to my sister in a telephone conversation had been reproduced as if I had given an interview to that journalist. My feelings on that occasion were indescribable: embarrassment, distress, anguish, trauma. It was a horrible experience. In a way, I

do not regret it, because another journalist reassured me that it would be wrapping up the fish and chips the following day. As a result, I do not believe that there is anything the media can do that will hurt me. I now come to the word 'implied'. Did my permission for that journalist to enter my home imply consent?

Mr Atkinson: No way.

The Hon. JENNIFER CASHMORE: The member for Spence says 'No way' and I say 'no way'. However, that journalist was allegedly acting in accordance with the AJA's code of ethics which, under point 9, referring to journalists, states:

> They shall respect private grief and personal privacy and shall have the right to resist compulsion to intrude on them.

I suggest that the words 'implied permission' could be the basis of an argument by that journalist: 'She let me into her home. She did not soundproof her telephone conversation and, therefore, her permission for me to overhear that conversation was implied.' I do not agree that it was. Members opposite do not agree that it was, but a case could be made in court that it was.

A multitude of other examples could be given to put to the test the judgment of what is explicit and what is implied. In speaking to this clause I make the point that clause (2) *(a)* is a rich field for litigation and it will be difficult to prove or disprove implied permission. I refer to the next provision which provides that a person infringes the right of privacy of another if (and only if) the intrusion is not justified in the public interest.

This question of the public interest will have to be fought through the courts and, if it is to be fought by members of Parliament, as the Minister has virtually confirmed, I say that the separation of powers between Parliament and the court is being adversely affected and severely breached by this legislation. It confirms my suspicion that the Act will be unworkable and that the role of an MP and of many other people who legitimately scrutinise, record and publish in one form or another the activities of the public will be severely affected, and affected in a way that is not in the public interest overall.

New subclause (2) *(b)* relates to harassment or interference not being justified in the public interest, and it is similar. Subclause (3) provides:

> If a person intrudes on another's personal or business affairs in a manner described in subsection (2) *(a)*, and the circumstances are such that it would be reasonable to suppose that the other permitted intrusion, the permission will be presumed.

What a rich field for argument, debate, subjective judgment and litigation. This Bill is a minefield. How anyone is supposed to make judgments even in good faith, let alone with malice a forethought, that would be in accordance with such wide open provisions is beyond my comprehension. I maintain that clause 3 is unworkable.

I hope that what I have said will demonstrate to members that I am as concerned about the right of privacy as they are, but I am equally concerned that, in attempting to enshrine the legislation in the manner proposed, members opposite are doing a grave disservice to the community. Possibly, they are doing a great service to the legal profession which, so far as I can see, is the only section of the community that can possibly benefit from this legislation.

Mr GROOM: I want to explain why the committee came down with that formulation in relation to clause 3. The first thing it does is to place in the law the right of a person to privacy. It is a fundamental human right and should be recognised by all members of this Parliament. It is recognised in the United States Constitution in the Bill of Rights. It is recognised in Canadian provinces and it is now recognised in varying forms in Australia through privacy legislation at the Federal level, through data protection and elsewhere. But it is a fundamental human right. I would have thought that the member for Coles would wholeheartedly endorse this Parliament's putting into law a fundamental human right of this nature. In her book, the member for Coles stated:

> We need to revive a sense of respect for the rights and responsibilities of the individual and for the importance of family, however we define it.

That was liberal radical stuff. Years ago the honourable member fought for her right to privacy for her spouse and herself in relation to the disclosure of interest Bill. She was in the papers demanding that she should not have to disclose information, because that infringed on her privacy. In her book, the member for Coles—

The Hon. Jennifer Cashmore interjecting:

Mr GROOM: It concerned the honourable member's family's affairs. She was not going to disclose it, yet this is what she says in her book. The honourable member speaks in this House in Thatcher-like terms, taking the hard conservative line—that she does not really care about privacy. That is the difference between what the honourable member writes in her book and what she says in this House.

The honourable member referred to the letter from David Syme. The reason why one cannot distinguish between public and private—and you have to define things in this way—is as Halbury says:

> You can use a telescopic camera to photograph activities in a person's bedroom and it will not meet the requirements of the tort of nuisance, and so it is not actionable.

At common law one can stand out on the footpath and, if they have a gadget, during the day or whenever, they can see into someone's house or into the backyard while that person might be swimming or sunbaking by the pool. They are on private property but that person is on public property. At present the tort of nuisance does not extend to that type of situation.

To place a listening device in a hotel bedroom in order to record the guests' intimate conversation affords no action in trespass to the guests, because they do not have possession of the room. That is a deficiency in the law. I gave an example of a woman being followed by a stranger in frightening circumstances. There are a whole variety of circumstances, but it should be recognised by this Parliament that a person has a right of privacy.

We did not define privacy, because other jurisdictions are clearly moving away from defining a right of privacy. In the Federal Act it is not defined. For example, it is not defined in the Data Protection Act, or even in the New Zealand Bill that has just been introduced. We chose to deal with privacy by specific acts, which effectively are definitional limbs, and that is why they are expressed in that way.

Members opposite have been reading the press—not the Bill or the evidence—which has never sought to argue this matter in a rational way but has sought to distort. Clause 3 (2) *(a)* outlines the various acts that constitute an invasion of privacy, but one has to read the rest of the Bill. This approach was endorsed by the Human Rights Commission of Australia. I read it out last night:

> May I simply indicate my personal support for the creation of statutory tort . . .

It then went on to say:

> The most frequent line of attack on statutory tort has been that privacy is nebulous and difficult to find. I regard this as a faint-hearted approach—

and this is the Human Rights Commissioner of Australia and now the Privacy Commissioner under the Federal Act—

which gives little attention to the many other seemingly nebulous terms that the courts have had to grapple with, for example, negligence, nuisance, misrepresentation . . .

We have a misrepresentation Act. One could make the same criticisms of that Act that this Parliament has passed unanimously. Also, in relation to deceptive conduct in trade or commerce under the Fair Trading Act one could make those same allegations, and that passed this Parliament without opposition. The Human Rights Commissioner said:

There is a tendency to trivialise privacy.

That is what the member for Coles is doing—trivialising privacy concerns with arguments such as that the innocent have nothing to fear and privacy protects only rogues and cheats. That is not the case at all. I want to quote not only the Human Rights Commission, which supported this formulation, but also the David Syme Faculty of Business at Monash University through Mr Greg Tucker, Senior Lecturer and Research Fellow with the Organisation for Economic Cooperation and Development in Paris. The European Council invited him to make a submission and help draft privacy legislation. He enclosed his 1988 report.

When he came to this clause of the Bill, what did he say? His response was:

It is noted that no definition of privacy has been attempted, unlike in the 1974 privacy Bill of South Australia. Rather, the right of privacy is detailed in the matter set out in clause 3 (2). This seems to be a sensible approach to this elusive concept.

So, that is another support from the Monash University and from a research Fellow for the OECD countries. It was also endorsed by the Attorney-General's privacy committee. Mr Ahern made a detailed submission. It was also endorsed by the various legal services commissions. I want to quote what Mr Maddison, a Liberal Attorney-General, in introducing a 1975 privacy Bill in New South Wales had to say. He said:

The concept of privacy being, essentially, a component part of freedom raised difficulties of definition. Academics, lecturers and textbook writers have put forward definitions of privacy on which to base their own remedial theories. Legislators have also attempted to define privacy in order to create a tort of breach of privacy or create some right of action where privacy is infringed. The more one studies the subject the more one comes to the conclusion that there is no all-embracing definition. One writer has said of privacy that it is more easily recognised than described.

I will not read further from that, because it will use up all my time. However, the fact is that, had the honourable member only taken the trouble to read not the newspaper stories but the evidence that was put to the select committee, and indeed the select committee's report, she would have found that there is widespread support for this approach. In other words, subclause (2) provides only the definitional limbs of this Bill. That is why they are set out in that way. It is the guidance for anyone who has to interpret this legislation, as to what acts constitute an invasion of privacy.

This clause provides that it has to be intentional, not negligent invasions of privacy. It has to be a deliberate act. The Disability Complaints Service gave evidence of elderly patients—and this was referred to in a news report—who had some impairment to their health or physical well-being having been left naked in showers, not being properly orientated, with doors open, in the full view of visitors, tradespeople and so on. It is true that the provision will not cover negligence acts, but it will cover deliberate acts. It will cover a variety of people who need to be covered by this legislation.

Mr Ingerson interjecting:

Mr GROOM: Well, the honourable member should be concerned about these sorts of situations. The member for Coles, in her book, pretends that she is concerned about the rights of individuals and she pontificates in this House. This does beg the question whether the honourable member speaks with a forked tongue.

The Hon. Jennifer Cashmore interjecting:

Mr GROOM: The honourable member should practise what she preaches. She is being a hypocrite if she does not. The honourable member has put this in writing in a book and pretends that she supports and has respect for the rights of individuals. When she comes to this House and makes a speech she lapses back from the Liberal radicalism—which I endorse in this book—and makes a Thatcher-like speech in this House.

The Hon. Jennifer Cashmore interjecting:

Mr GROOM: I know it is painful for the honourable member. What occurs is that there must be an intentional intrusion of privacy, and it has to be express or by implication. Not only that, a plaintiff has to prove that it is substantial and unreasonable. As the Human Rights Commissioner has said, those are terms that have been interpreted throughout the law for hundreds of years. They pose no difficulty in any other area of the law, no difficulty in any other statute that has been passed by this Parliament, without question. The courts have no difficulty in interpreting these matters.

We have now added another element of public interest. I refer to the Law Society's written submission—and this was without public interest being part of the plaintiff's case. This was not reported by the press; it only reported its concern over some of the terms. I notice also that in other matters the Law Society has no difficulty with the matter of public interest, confidential or private correspondence or personal or business affairs because of the integrity of its approach, but I will deal with those matters on another occasion. However, I refer to what the Law Society said, which, as I say, was never published in the media:

This clause appears to place the onus on the plaintiff to establish that the intrusion in the circumstances of the case was substantial and unreasonable. This will be a heavy onus to carry. It includes two parts—substantial intrusion and unreasonable intrusion.

So, it says it is too heavy, that hardly any plaintiffs will succeed. Now we have coupled that with public interest and toughened it up even further. We then come to paragraph *(b)*, which provides:

. . . that person harasses the other person, or interferes to a substantial and unreasonable extent in the personal or business affairs, or with the property, of the other person so as to cause distress, annoyance or embarrassment.

This was used as the basis of a Channel 2 program which tried to undermine this Bill. In fact we have toughened this up by adding 'and the harassment or interference is not justified in the public interest'. So, that paragraph *(b)* was used to attack the Bill. They said that we were doing a shocking thing, which involved annoyance, embarrassment and distress. However, this is simply a codification of the existing common law of nuisance, because this embraces nuisance principles. It is simply codifying the common law of nuisance involving, say, neighbourhood disputes. One has only to read Fleming on torts, again available in the Library, to find out that people did not understand the law. All this is is existing law. We have taken the law no further.

Mr Ingerson interjecting:

Mr GROOM: It has to be codified. If we are to solve neighbourhood disputes and give people a remedy, we have to set out what the remedy is for. It is wise to codify it.

Mr Ingerson interjecting:

Mr GROOM: If the honourable member does not want to solve neighbourhood disputes, that is his problem as a local member, but I do; I have plenty of them.

Mr Holloway interjecting:

Mr GROOM: Quite, they have no remedy. At present they have no effective remedy, and members opposite know it. That is why this received widespread support from the Legal Services Commission and the Norwood Legal Services Commission, which deal heavily with neighbourhood disputes. Every honourable member in this place knows how difficult it is when there is a neighbourhood dispute and one has to tell a person that their only remedy is in the Supreme Court. This gives them the right to resolve a matter in the local court of limited jurisdiction without lawyers. Of course we have to presume consent in certain circumstances. That is rational. The courts will have no difficulty with circumstances in which consent is presumed.

As to the member for Coles' example, she is a public figure.It may well be that the toilet example she gave runs parallel with her example, that it is in the public interest. The honourable member is a public figure. She herself said that she should accept the widest possible scrutiny. Indeed, Napier in a judgment in the 1930s said that public figures cannot be thin skinned, that they must be open to scrutiny. Dr Hewson found that out. I personally was repulsed by the allegations made by his wife.

The Hon. Jennifer Cashmore interjecting:

Mr GROOM: Well, I was, because one should respect the institution of marriage. Under the Family Law Act, these things cannot be published. And yet journalists reportedly paid her $50 000 to run the story against her former husband. When we said to the journalists in interviews, 'You tell us how much you paid Mrs Hewson,' they said, 'No.' We said that the public has a right to know and they said, 'No, they might jack up the price.' So they have double standards, make no mistake. We have already dealt with companies and so I will not go over that again.

But it is proper; the police should have an upfront exemption in the execution of their duties. These were the pitfalls that were there in Len King's 1974 Bill. This is not Len King's Bill. Only the tort of privacy is similar. The fact of the matter is that the police have an upfront exemption. The exemption provided for under paragraph *(c)*, dealing with the credit reporting agencies, is covered by Federal law. We cannot have them having to obey two laws. That is why they have that exemption.

We must remember that these exemptions are for their purposes only. They cannot data match; they cannot cross-match. In other words, if a person gives information to a finance company when obtaining a loan, that company has an upfront exemption in carrying out inquiries, but if a person goes for a job six months later and finds out that the employer has tapped into that data base and has all this personal information about the person and the person does not get the job, that is data matching. They cannot do that, because they would lose their exemption, and if they infringe privacy then they have got to suffer. This is the crunch clause of this Bill. The entire approach of this clause has widespread support, despite the rubbish that one reads in the media.

Finally, I refer to some of the articles that were written, and in particular to the article written by Malcolm Newell—although I should point out that some good articles were written in relation to this matter. Peter Ward's article in the *Australian* was one of the best articles. I did not agree with his lapse into the Dunstan era, but nevertheless it was one of the best and fairest analytical articles in relation to this Bill.

What did Malcolm Newell do? This is really journalism at its worst. I want this on the record because, if one is going to talk about sloppy drafting, this is sloppy journalism. When we put our draft out we said that the right of privacy created by this legislation extends to both individuals and corporate bodies. Because of the mischief that was made of that, we altered that within days to 'the right of privacy created by this Act can be infringed either by a natural person or a body corporate.'

The Bill was introduced into this Parliament on 12 September, including the clause saying that it can be infringed either by a natural person or a body corporate. In other words, it took away the rights of corporate bodies. But, on 12 October in the *Advertiser*, it was quite clear that Malcolm Newell was to do a job. He said that he had just picked up the Privacy Bill and, shock horror, 'the right of privacy created by this legislation extends to both individuals and corporate bodies'. He made that the centrepiece of his article and he went on to say that we are just protecting SGIC, the State Bank, all this covering up and so on. He wrote:

> Ask yourself why this Bill should be made equally applicable to individuals and corporations. Why? What has privacy to do with corporate behaviour as we have come to understand it in the rapacious 1980s?'

What a sloppy piece of journalism, because on 12 October the legislation had been changed for one month. So, he could not have picked up the Privacy Bill as he said. What he picked up was the select committee report and pretended that that was the Privacy Bill that was introduced into this Parliament. I believe this is one of the worst examples of sloppy journalism that I have come across, because it attracts letters to the Editor. There was no retraction. It was a very sloppy piece of work and it is to the discredit of journalists, who told me that they are embarrassed by that type of article. If someone is going to do a job on us, they should get their facts right.

Mr BRINDAL: I must oppose this clause for the very reasons that the member for Hartley has outlined.

Mr Ferguson interjecting:

The CHAIRMAN: Order! The member for Henley Beach is out of order.

Mr BRINDAL: I am most disappointed that the Government does not seem to understand, and I think that the Opposition has demonstrated tonight, that this clause probably creates more problems than it solves. As an ordinary member of this House, I have heard tonight a number of members who are solicitors by training telling us how elegant it is and how effectively and easily it will operate. It seems to me quite notable in this debate that on this side of the Chamber, at least, a number of people who have no legal training cannot see it as simple, but on the other side of the House a number of trained solicitors see it as the most wonderful thing since sliced bread. It does not define what is indefinable; it does not define 'privacy', because according to the member for Hartley it is indefinable. It leaves nice and loose 'the public interest'. This clause then calls on the person who is making the complaint basically to prove their case.

I think that the member for Coles adequately demonstrated that what we will arrive at, I am sure, is a person who believes that he or she is wronged going to a court and being tied up for months and months of legal argument as solicitors, judges, barristers and everyone else who makes a very profitable living out of this sort of thing turn around and define 'privacy' and 'the public interest'. They will have to, because that is the body of the law.

The member for Hartley can tell me that I am wrong, but the courts cannot arrive at a judgment unless in the course of that judgment they decide what is 'privacy' and 'the public interest'. They will have to do that. So, we will affect the very people whom this Bill seeks to protect—ordinary individuals. Under this Bill, those people will take

their cases to the court and lawyers will have a wonderful time defining 'public interest' and what is meant by 'privacy'.

I would honestly have thought that this Government was concerned about people. Everything that I have heard from members opposite suggests that this Bill is aimed at the media. But who has the money? The media will get into court with the best barristers, the best solicitors and reams and reams of argument that it will use. However, the Government is then saying that the ordinary citizen is better protected by this Bill. They will not be. No citizen will be protected until there is a simple law—

Members interjecting:

Mr BRINDAL: That may be the case, but one does not protect ordinary people by creating this situation. I would expect that every member in this House would realise that, if there is a problem with the law at present, that problem is that the law is not equal for all citizens. The law really does work for those who are wealthy enough to afford the lawyers, the legal cases and the time. If we in this House are passing a Bill that again protects the wealthy and the privileged, and in particular the media owners and moguls, by again allowing ordinary citizens to be tied up and to be virtually bankrupted as they try to pursue a case, I would say that this House is indeed wiser not to pass this legislation. Members opposite can treat this as flippantly as they like. I think it is quite simple. If we intend—

Members interjecting:

Mr BRINDAL: They are too poor; take their rights away. Is the Minister prepared to give this House a categoric assurance that Legal Aid will pay for this sort of action right through to its conclusion? Every time one of my electors goes to Legal Aid, they can get everything else apart from what they go for. This Government makes legal aid available to my electors who cannot afford the law—but in such a narrow range of categories that none of them ever seems to get it. It is that sort of thing that one can get down the shop: the Government says it is available for everyone, but it does not appear to be available for anyone. If this Government wants to protect its citizens, let it bring in simple, sensible laws that the citizens can afford to pursue through the courts. Otherwise, let it provide for the poor a legal service which they can access, which helps them and which is not the tokenism that characterises this Government's social justice policy.

The Hon. JENNIFER CASHMORE: The member for Hartley took me to task. I regret that he has left the Chamber, because I must respond to what he said. His speech was a real curate's egg—good in parts. I certainly want on the record my support for a remedy for nuisance—

Mr Lewis: It is like stale haggis in a bare larder.

The Hon. JENNIFER CASHMORE: That is a very good analogy and one that I hope is on the record. I do not think that there is much Scot in the ancestry of the member for Hartley, but the placing of a remedy for nuisance in a Bill of this nature is, in my opinion, inappropriate. It would have been better placed in an existing statute, where all members on both sides could have given it wholehearted support.

In any event, the member for Hartley chose to quote from my book. I am complimented by the fact that he read it, but I would like the context of his quotation to be placed on the record. He quoted me as saying:

> First, we need to revive a sense of respect for the rights and responsibilities of the individual and for the importance of the family, however we define it.

I went on to say:

> The best way to do this is by reversing the trend to concentration of power in central government. We must not only reform the taxation system to help and encourage family life and to make governments more accountable for the money they raise and the ways in which they both raise and spend it. We must reduce government interference in the lives of people and their businesses to an acceptable and justifiable level.

It is wrong of the member for Hartley to accuse me of inconsistency in alleging that I am concerned, as indeed I am, for the rights of the individual and to say that that concern is inconsistent with my opposition to this Bill. It is not inconsistent in any way. I believe it is quite consistent and my contribution to this debate has demonstrated that consistency.

The member for Hartley also said that Opposition members should read the report and the evidence, and we should, but the reality is that the judges who interpret this Bill will not read the evidence or the select committee report. They will base their judgment solely on the wording of the Bill and that is what we are debating. The member for Hartley says that it is very easy to prove in court words such as 'substantial' and 'unreasonable', and he may well be right. I venture to suggest that it will not be easy to prove words such as 'implied permission', which will be very difficult to prove. Nor will it be easy to prove 'the public interest', a matter which is always open to debate. It will not be easy to prove that 'permission will be presumed' in accordance with clause 3 (3). None of those terms will be easy to prove. They will all lead to lengthy litigation.

There is no inconsistency between my wholehearted belief in the rights of the individual, which include the right to privacy, the right to freedom of speech and free access to information, and my opposition to this Bill, which lacks definition and is nothing more than a hotchpotch of inconsistencies, vague notions and totally inconsistent aims.

The Hon. G.J. CRAFTER: It may be of interest to the Committee that there is similar legislation in a number of Canadian provinces and there has not been a rash of litigation following the passage of the legislation. I suggest that is likely to be the case here. It achieves some standards in our community which people can follow. They will know that, if they breach those standards, they may well be subject to litigation. So, the legislation itself acts as a deterrent to taking litigation and will have a beneficial effect for the community.

The arguments advanced by the member for Coles and other members who oppose this measure are really a litany of grabs of arguments which are without strong foundation, I suggest. To argue that well settled clauses in legislation, for example, the words 'express or implied permission' are so vague that we should not proceed with the legislation, would eliminate half the statute books which contain similar words which have been established, accepted and clearly understood for many years. Similarly, to argue that the poor in our community will not be able to assert their rights and so therefore they should not have rights established at law is so fallacious that it does not warrant further debate. This is the crucial clause of the Bill. It establishes a right or a tort of privacy, so it deserves the thorough analysis that it has received this evening.

Mr LEWIS: I wish to place on record in formal fashion the remark which I made by way of interjection. This measure as explained to us by the member for Hartley reminds me of the old Scottish saying about stale haggis in an otherwise bare larder. We face the prospect of starving unless some food comes along, that is, some other solution to our problem. The alternative is to eat something which will most certainly have such dire consequences as to be likely to kill us or to do without for the meanwhile. The way the member for Hartley has put it, the legislation is like that. It is a pity that he has confused what he discovered

in the course of his inquiries during the select committee with the substance of what is before us in this measure hoping, as has been revealed by some of the remarks that he and the Minister have made, that it will all work out in the end.

In addition, I draw attention to the remark made more often than once by the member for Henley Beach, who said that we on this side of the Chamber who oppose the measure are simply chasing the good grace of the media by arguing against it. We are doing no such thing and, by saying that, the honourable member demonstrates that he has political manners not much different from the table manners of a wart hog. If he cannot have one thing and he insists on taking another, he alleges that anyone else involved in the issue will take the alternative view as a matter of convenience. So he seeks to muddy the water and, more particularly, foul the food so that nobody can get anything. If he has chosen the wrong option, let him live with that. It is not my problem.

Clause as amended passed.

Clause 4—'Action for infringement of right of privacy.'

The Hon. G.J. CRAFTER: I move:

Page 3, line 7—Leave out paragraph *(b)* and substitute paragraph as follows:

(b) where the defendant is a media organisation or a person who acted on behalf of a media organisation—that the defendant 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.

The new paragraph provides for incorporation in the legislation of the defence available to the media to rely upon codes adopted by organisations such as the Australian Journalists Association or the Australian Press Council. It refers to the media's own established code of ethics which they claim regulates their behaviour. If journalists act within the accepted code, as they have attested to before the select committee, there is then an established standard which is well known to practising journalists and nothing to fear from this Bill at all.

Amendment carried.

The Hon. G.J. CRAFTER: I move:

Page 3, lines 12 to 14—Leave out subclause (4) and substitute new subclause as follows:

(4) In determining whether or not a particular act was justified in the public interest, the court—

(a) must have due regard to—

(i) the importance in a democratic society of free inquiry and the free dissemination of information and opinions;

and

(ii) if the defendant is a media organisation or a person who acted on behalf of the media organisation—

(A) the importance of the media in eliciting information and disseminating information and opinions;

and

(B) the importance of safeguarding the freedom of the media to continue to do so;

and

(b) may have regard to any material relevant to that issue published by responsible international organisations or Australian State or Federal authorities.

This amendment provides for the inclusion of a right to free speech and the freedom of the press in a democratic society. This is the matter that I raised earlier in response to the statements that were made in error, I believe, by the member for Coles. The Government does not deny that such elements are essential in our society. However, it also believes that these freedoms should be balanced against an individual's right not to have his or her privacy breached by the media or by anyone else in the community. In nearly every instance in this debate, Opposition members have acknowledged the danger of various types of invasion of purely personal privacy and private grief.

Proposed new subclause (4) *(b)* provides for the leaving out of subclause (5) and substituting a new subclause. The court, in looking at the issues of public interest, will be able to take into account the views of international, State and Federal authorities. This is something that it could do, anyway. The amendment clarifies it and stipulates that that is available in the collection of evidence to consider this important provision in the legislation. It will undoubtably assist the court in making its decision in matters before it.

The Hon. JENNIFER CASHMORE: I make the observation on this amendment to 4 *(b)* 'that the courts may have regard to any material relevant to the issue published by responsible international organisations or Australian State or Federal authorities,' imposes a burden of inquiry on the court which will almost be insupportable. The amount of material published by the Australian State and Federal authorities is, as all members know, monumental. To extend that—and I do not deny that any court would quite properly take into account in determining the public interest a whole range of publications—in statutory form to international authorities is to invite, once again, the most colossal litigation and equally colossal costs associated with that litigation in researching matters to prove the public interest in the way that the Minister has just indicated.

I must comment on this issue of international, Australian and State Government publications as being relevant. On the one hand, I cannot deny that such matters are relevant to the public interest. However, including these publications and not including others is to make an emphasis which I do not believe is necessarily appropriate. The further we go into this Bill and this clause, the more gargantuan the errors and the scope and the more draconian the nature appears to be and the more difficulties arise in the intrepretation. This reference to relevant material in Federal, State and international publications is just one more evidence of the enormous weight of oppressive material that will sink this legislation and the people who the Government obviously sincerely hopes to assist in introducing it.

The Hon. G.J. CRAFTER: I must explain to the honourable member that, if this were not in the legislation, it would be insisted on by her colleagues in another place, just as those same words were insisted upon in the Freedom of Information legislation which we passed in this House, and also contained in the Federal legislation. Because they were contained in the Federal legislation, the members' colleagues insisted that it be in our legislation. So, for the sake of consistency those words must appear in the same form in the Bill. I point out to the honourable member that the court may have regard to it. It does not have to have regard to it, so there can be an enhancement of the quality of the decision taken. I think the honourable member should know the history of why this provision is in this form.

Amendment carried.

The Hon. G.J. CRAFTER: I move:

Page 3, Lines 15 to 23—Leave out subclause (5) and substitute new subclause as follows:

(5) In any action for infringement of a right of privacy, a court may—

(a) award damages for injury, loss, distress, annoyance or embarrassment arising from the infringement;

(b) grant injunctive relief (but such relief may not be granted against a media organisation, or an agent or employee of a media organisation).

This amendment is in recognition of the fact that it may be hard to determine whether a matter is in the public interest in the early stages. The Bill has been amended to

acknowledge that fact and to remove a court's power to grant injunctive relief against a media organisation.

Mr INGERSON: The member for Hartley earlier spent some time pointing out how the Opposition had presented its case almost entirely on behalf of the media. If one looks at this clause, one sees that the Government is a group of hypocrites. This clause has been inserted purely and simply because of the pressure created over this Bill by the media. Every exemption, every point that has been added to make sure that the public intererst is well and truly defined, is geared to all of the comments that have been made by the media.

The last clause, the clause with which we are dealing at this stage, grants special relief for the media. If the Government is not being hypocritical about that, that is absolutely unbelievable because the thrust of the Government was to involve the media in all actions of privacy, yet there is an absolute backflip, a 180 degree turn, by the Government to make sure that the wee little bit of pressure put on by the Government by the media has been recognised in this clause.

In reference to some of the comments made earlier by the member for Hartley, I wish to note some comments of the Law Society, which states:

> 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.

In other words, the Law Society is admitting that this is a Bill for lawyers. It is saying that it is an Act which will guarantee that we will have widespread, almost uncontrollable litigation, and that is why we do not support this Bill.

Amendment carried.

The Hon. G.J. CRAFTER: I move:

> Page 31, lines 24 to 28—Leave out subclauses (6) and (7).

This amendment provides for the leaving out of subclauses (6) and (7). They have been removed from the Bill as these powers have now been included in the court legislation which is in another place and which will be debated in the next few days.

Amendment carried; clause as amended passed.

Clause 5 passed.

Clause 6—'Privacy standards.'

The Hon. G.J. CRAFTER: I move:

> Page 4, lines 6 to 9—Leave out paragraph *(b)*.

This is consequential upon earlier amendments.

Amendment carried; clause as amended passed.

Title passed.

Bill reported with amendments.

The Hon. G.J. CRAFTER (Minister of Education): I move:

That this Bill be now read a third time.

The Hon. JENNIFER CASHMORE (Coles): The Bill comes out of the Committee slightly less obnoxious but very much more confused than when it went into Committee. I oppose the Bill. The lack of definition in it makes it virtually unworkable. During the Committee stage we had a number of conflicting explanations on a range of matters from the Minister and the member for Hartley. We are still left in a state of uncertainty, for example, as to the definition and meaning of the word 'press', and that is central to the operation of the Bill. That lack of clarification went through the Committee stage of the Bill.

The application of the Bill to the work of members of Parliament has been confirmed. I find it totally abhorrent that we should be subject to the courts in the determination of the public interest in pursuit of our duties. I believe that should cause extreme anxiety to every member of this place, and that in itself is a very sound reason for opposing the Bill. I also believe that the uncertainty created by the legislation will adversely affect a wide range of people, and the very individuals whom it claims to protect may well be victims of that uncertainty. The Government's goals will therefore have been thwarted by its own actions.

The Hon. G.J. CRAFTER (Minister of Education): The House has taken a very important decision. I believe that this is very important and historic legislation for the wellbeing of the whole of our community. Whilst strong statements have been made by the press about this legislation, in fact it entrenches in legislation for the first time fundamental rights of the press in our community. I think that this Bill is very important for our community. In this day and age, with the intrusions that there are into people's lives, we need to grasp opportunities such as this to provide the basic strengths which individuals deserve and have a right to assume in the conduct of their daily lives in our community.

Bill read a third time and passed.

ROAD TRAFFIC (SAFETY HELMET EXEMPTION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 23 October. Page 1351.)

The Hon. P.B. ARNOLD (Chaffey): The Opposition is pleased to have the opportunity to support this legislation. We have been involved in this matter with the Sikh community for some time. I suppose it is fair to say that, as the member for Chaffey, I represent possibly the largest Sikh community in South Australia. The President of the Riverland Sikh Society has visited my office on a number of occasions seeking support in this matter, and I suggested that he should write to the Minister of Transport seeking the Minister's support.

Australia, particularly South Australia, has a long history of accepting various religious points of view. Many of our early settlers came to South Australia because of religious persecution in other parts of the world. For that reason, and the fact that the principle has been accepted in other countries, the Sikh community in particular, because of its religious belief, should be exempt from wearing safety helmets.

I will refer briefly to the letter which Baldev Singh Dhaliwal, President of the Riverland Sikh Society, wrote to the Minister of Transport. He said:

> We, the Sikhs of Riverland, are very much concerned about the compulsory wearing of helmets when riding a bicycle or motorcycle.

It is fair to say that the community has raised with the Minister its concern that the Minister has seen fit at this stage not to include motorcycles in the exemption. The letter continues:

> As you are no doubt aware, Sikhs keep their hair uncut and wear a turban on the head. It is important to understand that they wear a turban not for cosmetic reasons but as a fundamental religious requirement. There are important religious reasons for this and as a scholar one can dwell into the subject to great depths and indeed a great deal has been written on the subject by many scholars of both Sikh and non-Sikh origin.

The letter is quite lengthy, but it spells out why the community is seeking this action. I foreshadow that I intend to seek the support of the Minister and the Government for an amendment which I believe is reasonable, and I will

elaborate on that at a later stage. At this stage the Opposition is pleased to support this measure.

The Hon. FRANK BLEVINS (Minister of Transport): I thank the member for Chaffey for his contribution and for his support.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Safety helmets.'

The Hon. P.B. ARNOLD: I move:

Page 1—

Line 18—After 'religion' insert 'and is wearing a turban'.

Lines 19 to 20—Leave out all words in these lines and insert the following:

or

(b) is in possession of a current certificate signed by a medical practitioner and certifying that the person is, for medical reasons, unable to wear a safety helmet or that, because of the person's physical characteristics, it would be unreasonable to require the person to wear a safety helmet.

I believe this is a logical extension of the clause, and it can come into play with only a signed medical certificate from a medical practitioner.

Mr OSWALD: I support the amendment. I bring to the Commitee's attention the case of an old gentleman of 80 in my district who still rides a cycle around Glenelg. He admits to large ears and a hearing aid. It is a combination of his physical difficulty and his hearing aid that causes chafing from his cycle helmet. He rides around Glenelg with one hand on his cycle and the other up his helmet to protect his ear and his rash. His doctor has been in touch with me because of his problem. This amendment will address the problem and the Commitee should consider it. I have seen correspondence to the Minister from other members. This is a real issue for people with such a difficulty.

A problem could result from medical practitioners abusing the provision. It is a matter for the Government to tidy it up to ensure that a penalty applies if a medical practitioner abuses the provision by signing a certificate in a case that does not warrant it. This old gentleman is simply an accident waiting to happen. The amendment would solve his problem and would be useful for other people who encounterd similar difficulties.

The Hon. FRANK BLEVINS: I oppose the amendment most strongly. The difficulty with it has been pointed out by the member for Morphett because, if an exemption is available, it will have to be dealt with by medical practitioners. As someone who has been in the work force for many years, I can assure the Commitee that there are doctors who will sign medical certificates for anything at any time. That is a great pity, but anyone who has been involved with sick leave will know that that is the case. If the Opposition's intention is to sabotage the compulsory wearing of helmets, this is the way to do it, because the pressure on medical practitioners to comply with the wishes of individuals will be enormous, and history tells us that that will occur. We may as well then forget this measure. If that is the Opposition's intention, that is fine, because the Opposition is moving the amendment in that knowledge.

Further, the question of penalties against doctors is so laughable as not to warrant an answer, particularly not at this time. I draw the attention of the Committee to a media release by the National Road Trauma Advisory Council. I am happy to circulate copies to interested members, but the media release states:

The newly formed National Road Trauma Advisory Council has come out firmly in favour of the compulsory wearing of helmets by motorcyclists and bicyclists. The Chairman of the council, Sir Nicholas Shehadie, said that helmets had been shown to be the most effective countermeasure in reducing head injuries for motorcyclists The council strongly believed that any legal exemptions to the wearing of helmets should be removed immediately.

I understand that in one State it is possible to get a medical exemption from wearing a helmet, and there is legislation before that Parliament to remove that exemption. The media release continues:

The council strongly supported the view of the Neurosurgical Society of Australasia, the Royal Australian College of Surgeons and the Australian Medical Association that there were no medical grounds for allowing exemptions.

I do not profess to be a medical practitioner and I would welcome a contribution from the member for Adelaide, I can assure the Committee that this seems to represent the best medical opinion that we have before the Parliament at this time. Those experts state clearly that there are no medical grounds for allowing exemptions. The question of exemptions for seat belts is a valid one, despite evidence before us from members of those eminent colleges who say there are no medical grounds for exemption.

If exemptions are to be given, they should be given in a proper medical framework and not just on the say so of a general practitioner. I want those eminent colleges to develop guidelines similar to those developed by the colleges and the AMA, etc., for exemptions on medical grounds, for example, concerning the wearing of seat belts. The most obvious case involves pregnant women. That does not apply in respect of helmets, but there may be situations where, despite such experts telling me that that is not the case, it is possible. I have approached these people and said, 'Develop some guidelines if there are to be any exemptions. I do not want exemptions but, if there are to be exemptions, let us have proper developed guidelines, and not just the say so of a general practitioner who will be under enormous pressure from the patient to issue them. Let us have proper guidelines if they are to be done at all.'

I can assure the Committee that when I get a response from these people I will make it available to members. I am not qualified to judge whether or not the example cited by the member for Morphett is appropriate. The member for Morphett claimed that his constituent's doctor said there should be an exemption. The Neurosurgical Society of Australasia, the Royal Australasian College of Surgeons and the Australian Medical Association say that there were none.

I am not qualified to judge between those various opinions, but I will have the matter further investigated because I do not want this debate to come up all the time. I can see that it will come up all the time until we get something definitive in place. I can assure the Committee that I will advise it of the results. I oppose the amendment.

Mr LEWIS: I have something to say about that. It is a cop out on the part of the Minister simply to say—

An honourable member interjecting:

Mr LEWIS: We have had the warthog's manners here before and I invite him to rise in this place in his own time and in his turn to put his views. The point needs to be made that the wearing of seat belts is not compulsory for good medical reasons where sufficient evidence exists to provide a medical certificate exempting the individual from doing so.

Secondly, if it is rational for the Minister simply to say that he has letters from surgeons who say that there are no grounds whatever for giving anyone an exemption and that people have to be protected from their own folly, then it is just as rational and legitimate for the Minister and any other member in this place who votes for such a proposition to require everyone who engages in casual promiscuous sex to wear condoms and to put severe penalties in the law if

they do not, because the consequences for them in this day and age, the risk of hepatitis B and HIV (the AIDS virus), is so great that it is irresponsible for them not to do so—much greater than risk to their life from not wearing a helmet while riding a cycle. It has been pointed out that, if I were to fall from a cycle now, with the additional leverage that would result in the event of my head falling and twisting, I would probably end up a quadriplegic. Whether anyone else thinks that is an appropriate fate for me, I do not.

The CHAIRMAN: Order! It is midnight. Standing Orders require that I report progress.

Progress reported; Committee to sit again.

ADJOURNMENT

At 12 midnight the House adjourned until Thursday 14 November at 10.30 a.m.