LEGISLATIVE COUNCIL

Tuesday, October 29, 1974

The PRESIDENT (Hon. Sir Lyell McEwin) took the Chair at 2.15 p.m. and read prayers.

PETITION: LOCAL GOVERNMENT

The Hon. R. C. DeGARIS presented a petition from 226 ratepayers of the District Council of Mount Gambier expressing dissatisfaction with the first report of the Royal Commission into Local Government Areas and praying that the Legislative Council would reject any legislation to implement the recommendations of the Royal Commission in respect of the Mount Gambier district.

Petition received and read.

QUESTIONS

PHARMACEUTICAL ADVERTISING

The Hon. R. C. DeGARIS: I seek leave to make a statement before asking the Minister of Health a question.

Leave granted.

The Hon. R. C. DeGARIS: Last week the Minister replied to a question I had asked previously regarding pharmaceutical advertising, in which he referred to advertising guidelines but did not give any details of those guidelines or any information that could be available in that regard. I point out that a major concern of advertisers is that, although the National Therapeutic Goods Committee consulted the media on the first revision of the proposed advertising guidelines, they were denied an opportunity of seeing the second revised draft. Will the Minister supply the Council with any details of the guidelines or any information that can be obtained regarding this matter?

The Hon. D. H. L. BANFIELD: I will obtain a full report from my department and bring it down for the honourable member.

DEMAC SCHOOLS

The Hon. M. B. DAWKINS: I seek leave to make a short statement prior to asking a question of the Minister representing the Minister of Education.

Leave granted.

The Hon. M. B. DAWKINS: I believe that the Minister of Education recently issued a statement on Demac prefabricated school-building construction in which he said that in his opinion Demac was superior to Samcon construction. I recall that the Samcon buildings were designed in, I think, the latter days of the Playford Government, and the first Samcon school was opened in the Walsh Government's time, the then Minister of Education (Hon. Mr. Loveday) giving honourable members the opportunity to inspect this new type of school. In view of the criticisms that the present Minister of Education, when in Opposition, levelled at prefabricated temporary classrooms, I wonder whether he will be kind enough to explain the new type of construction and do as the Hon. Mr. Loveday did, giving honourable members the opportunity to inspect buildings of this type.

The Hon. T. M. CASEY: I will refer the question to my colleague and see whether he will comply with the honourable member's wishes.

PUBLIC DISTURBANCES

The Hon. C. M. HILL: Over the weekend, in the square in Henley Beach, there were unpleasant disturbances among factions of people, including bikie groups, and I understand the police effectively controlled the fighting that occurred. However, with the approach of summer, local residents and, indeed, residents in other beach suburbs of Adelaide fear that this problem will grow. The situation is also unpleasant from the point of view of people from other suburbs who visit beaches at the weekends and in the holiday periods during the summer months. My question deals with the situation regarding police patrols and police resources generally in the areas concerned. Is the Chief Secretary satisfied that the police patrol system and resources that are available are sufficient to cope with this problem during the summer months?

The Hon. A. F. KNEEBONE: I am quite confident about the services of the Police Department and the reorganisation of the Police Force in regard to patrols and being able to deal with emergencies of the type to which the Hon. Mr. Hill referred. I am confident that the police will be able to control these things, although often before they reach the scene of a disturbance something unpleasant has already happened. However, as I say, I am confident that the police are capable of handling this matter.

PARTS AVAILABILITY

The Hon. M. B. CAMERON: I seek leave to make a short statement prior to asking a question of the Minister representing the Minister of Labour and Industry.

Leave granted.

The Hon. M. B. CAMERON: Last Friday I was approached by a constituent who had had difficulty in obtaining a part for a vegetable slicer. Over the last 12 months I have had many complaints about the unavailability of parts for a wide range of products, and so I offered to look into this matter. I visited five major retail outlets for the product in question but found that no parts were available. However, a person connected with one outlet informed me that his organisation had had the part on order for two months. As the slicer is useless without this part, I then rang the distributor, who confirmed that the part in question was not available, had not been available for some time and, in fact, would not be available for some time to come, possibly until after Christmas. I then telephoned the retail outlets that I had visited, and the only store still selling this slicer was David Jones. I indicated interest in purchasing one of the slicers and inquired about the availability of parts. The shop assistant assured me that parts could be made available within three days of their being needed—a clear contradiction of the information I had obtained earlier. Will the Minister consider making it mandatory for a retailer, at the time of a sale, to state that parts are unavailable, if that is the situation? The principle "Let the buyer beware" does not operate if a misleading impression is given, as it was in this case.

The Hon. D. H. L. BANFIELD: I will refer the honourable member's question to my colleague and bring down a report.

LOCAL GOVERNMENT ACT AMENDMENT BILL

The Hon. R. C. DeGARIS: Has the Minister of Health a reply from the Minister of Local Government to my recent question about the Local Government Act Amendment Bill?

The Hon. D. H. L. BANFIELD: The statement by the Minister of Local Government was made on the basis of information he had been provided from a normally reliable source.

TRADE PRACTICES

The Hon. B. A. CHATTERTON: Has the Chief Secretary a reply to my recent question about the relevance of the Trade Practices Act to State licensing laws?

The Hon. A. F. KNEEBONE: The decision of the South Australian Licensing Court that a licence should be granted on the terms that beer should not be sold at a price less than the minimum retail price for the zone in which the premises are situate as may be fixed from time to time by the Liquor Industry Council does not conflict with the Commonwealth Trade Practices Act. The Trade Practices Act resale price maintenance provisions apply only where suppliers of goods engage in the practice of resale price maintenance. The restrictive trade provisions apply only to contracts, arrangements and understandings in restraint of trade and do not in any way apply to acts which are specifically authorised or approved by, or by regulation under, a State Act.

HOUSING FOR ABORIGINES

The Hon. J. C. BURDETT: Has the Minister of Agriculture a reply from the Minister of Development and Mines to my recent question about housing for Aborigines?

The Hon. T. M. CASEY: My colleague states that on March 3, 1973, the South Australian Housing Trust took over the administration of houses for Aborigines. At that time, there were already two families living in houses at Mannum, owned by the Community Welfare Department. Since that date, the South Australian Housing Trust has purchased a further three houses at Mannum for Aboriginal families. It is most unlikely that any further houses will be acquired in the township for several months at least. I am informed that the Housing Trust has no knowledge of a requirement for another 25 houses there, and presently has only two applications on hand from Aboriginal families requiring assistance at Mannum. One of the three houses purchased by the trust is being prepared for occupation. When this house has been renovated and allocated, there will be only one application outstanding.

SALT CREEK CROSSING

The Hon. J. C. BURDETT: Has the Minister of Health a reply from the Minister of Transport to my recent question about the Salt Creek crossing?

The Hon. D. H. L. BANFIELD: The design for a bridge to replace the existing concrete ford was completed by the Highways Department several years ago, but funds are still not available to commence construction. The present proposal is for the Highways Department to carry out complete construction at no cost to the council when funds become available.

COUNCILS

The Hon. M. B. CAMERON: Has the Minister of Health a reply from the Minister of Local Government to my recent question about council boundaries?

The Hon. D. H. L. BANFIELD: The Bill in respect of changes to council boundaries has been referred to a Select Committee in another place. It provides for boundaries to be in accordance with the reports of the Royal Commission, but modified in certain areas. It does not contain provisions for local option polls.

PARK LANDS

The Hon. R. C. DeGARIS: Would the Chief Secretary, as Leader of the Government in this Council, care to make any comments on this morning's press report that the Government intends to acquire some area of park land for railway development?

The Hon. A. F. KNEEBONE: This matter is under the jurisdiction of the Minister of Transport. Rather than express my own view, I would prefer that my colleague should comment.

The Hon. R. C. DeGaris: What about Government policy regarding the park lands?

The Hon. A. F. KNEEBONE: Government policy in regard to the park lands has been fairly clearly defined in recent times. Statements have been made regarding the return of some areas of park lands that were used in the past by the Government. The matter in relation to the area mentioned this morning is one on which the Minister of Transport has yet to report. However, the Government has indicated that the area of the Engineering and Water Supply Department at Kent Town eventually will be returned to the park lands, together with various other areas it has in mind. I can assure the Leader that, other than as a last resort, the Government would not be interested in further alienating the park lands area, although this may become necessary because of lack of any other suitable area. However, I prefer that any comment should come from the Minister of Transport.

WEST LAKES FLOODING

The Hon. C. R. STORY: Has the Minister of Agriculture a reply to the question I directed to the Acting Minister of Works on October 16 regarding West Lakes flooding?

The Hon. T. M. CASEY: My colleague, the Acting Minister of Works, previously replied to a similar question on this in another place on October 17, 1974. In that reply he stated that on October 12 and 13 West Lakes Limited carried out a test filling of the southern basin at West Lakes. The filling was designed to test the hydraulic inlet structure and other aspects of the operation of the lake system. In addition, it provided residents and the public of South Australia with an opportunity to see West Lakes as it will be. The exercise, apart from minor hitches, has proved most satisfactory and has provided the company's engineers with very useful information.

During the filling, and with the severe northerly blow on Tuesday, October 15, it became apparent that bank protection at the extreme southern end of the lake needed to be modified and some sections replaced. This work has already been completed. Late on that Tuesday there was a break in a temporary earth embankment and some of the water in the southern lake drained into the northern basin. This caused some scouring and minor damage to bank protection. During the next few days the earth embankment was rebuilt and the northern area dewatered. No other significant damage was done, and the company estimates that corrective action required will cost no more than $10 000.

Many thousands of people visited the lake during that weekend and the company received numerous phone calls congratulating it on the appearance of the area. Since the filling, many small-boat sailors have taken advantage of this new recreation area. The minor hitches described will in no way affect the public's ability to use the lake in the future. It is planned that the hydraulic system will be completed and fully operational within the next six months.

TRAFFIC CONTROL

The Hon. C. M. HILL: Has the Minister of Health a reply to the question I directed to the Minister of Transport on October 21 regarding whether consideration could be given to changing the traffic code from the existing system of giving way to the right to a system of priority roads?

The Hon. D. H. L. BANFIELD: My colleague states:

It is intended to introduce legislation shortly to amend the Road Traffic Act to change the meaning of the "stop" sign to require drivers to stop and give way to all traffic on the road they are entering. This amendment will bring

the Road Traffic Act into line with the National Road Traffic Code in this respect. Following this, consideration will be given to the introduction of some priority roads in metropolitan Adelaide.

SCHOOL BUILDINGS

The Hon. A. M. WHYTE: Has the Minister of Agriculture a reply to the question my colleague, the Hon. R. A. Geddes, directed to the Minister of Education on October 3 regarding school buildings?

The Hon. T. M. CASEY: The Acting Minister of Works informs me that on October 24, 1972, Wells and Schminke Proprietary Limited formally advised the Public Buildings Department of its inability to complete contracts with the Minister of Works and that it was entering into voluntary liquidation. Accordingly, on November 2, 1972, the Minister of Works absolutely determined the contracts then current with Wells and Schminke Proprietary Limited. The most relevant comparison to be used in assessing the financial results of the department's action on these four contracts is between the sum of the contract prices and the cost of the completed work. I am informed that the work was finalised by the department at a cost of 1·6 per cent in excess of the sum of the contract prices.

MURRAY RIVER FLOODING

The Hon. M. B. CAMERON: Has the Minister of Agriculture a reply to my recent question about Murray River flooding?

The Hon. T. M. CASEY: My colleague, the Acting Minister of Works, states that, whilst the floods at Albury are the worst in 60 years, they are unlikely to increase the predicted flood peak in South Australia, although it could mean the river will be high into January and February next year. There was little water in the Ovens, Goulburn, and Yarrawonga Rivers, and the flood peak was expected to dissipate even further when it reached the Edwards River complex.

SOAP POWDERS

The Hon. C. R. STORY: I seek leave to make a short statement prior to directing a question to the Minister representing the Minister in charge of consumer affairs.

Leave granted.

The Hon. C. R. STORY: I was interested to read a report at the weekend about some research being done into the advertising of soap powders and the like, which seems to indicate that some of the claims made over a considerable period about the various advantages of using certain types of detergent and soap powder are not substantiated by the tests carried out. In fact, it was stated that a well-known brand of ordinary soap, which sells freely on the market and has sold for many years, gained a better result than many of the much more expensive and widely advertised goods. Will the department investigate the situation to ascertain whether the results of the experiments as reported are factual and, if they are factual, will the Minister say what action the department intends to take about exposing what could be a racket?

The Hon. A. F. KNEEBONE: I will refer the honourable member's question to my colleague in charge of consumer affairs and bring down a reply as soon as it is provided.

WORKLIFE UNIT

The Hon. C. M. HILL: Has the Minister of Health a reply to a question I asked last week about whether Mr. Prowse's controversial report on the worklife unit could be made public, as a portion of it had already been revealed?

The Hon. D. H. L. BANFIELD: My colleague, the Minister of Labour and Industry, has indicated his appreciation of the honourable member's interest in industrial democracy. He has supplied me with several copies of the report referred to by the honourable member. I am prepared to make one available to him and to any other honourable members who care to ask me for one.

FLOODING

The Hon. M. B. CAMERON: Has the Minister of Agriculture a reply to the question I asked on October 9, concerning fears that the Warren reservoir, near Gawler, would collapse, thereby placing too great a load on the South Para reservoir?

The Hon. T. M. CASEY: I have been informed by my colleague, the Acting Minister of Works, that at 3 p.m. on the afternoon of Thursday, October 3, the South Para reservoir held 45 795 megalitres (that is 4ft. 3in. below top level, about 90 per cent of its total capacity). There was no discharge of water into the South Para River below the dam as the Barossa reservoir was being filled by diversion from South Para reservoir. During that day, and in the early hours of Friday morning, heavy rain, amounting to about 40 mm in the 24-hour period, fell throughout the catchment area. By 8 a.m. Friday morning the Barossa reservoir was full and the South Para reservoir was approaching its full supply level. Spillway gates were opened to pass a portion of the flood through the reservoir, commencing at 8 a.m. with one 2·7 m gate and one small gate, and progressively opening other gates to 2.30 p.m., by which time seven large and two small gates had been opened. These openings were maintained for 1½ hours and then progressively reduced with the easing of the flood.

At the same time, one of the largest floods recorded was occurring in the North Para River. Records show that the flood peak in the North Para at the Turretfield gauging station was about 3½ times the maximum discharge through the spillway gates at South Para spillway. The North Para River therefore contributed the bulk of the water, which subsequently caused flooding in the lower reaches of the Gawler River. The South Para reservoir is operated as a water supply dam and it is not designed to provide reserve capacity for flood mitigation. In this particular case, as the reservoir was not full prior to the flood, it was possible to retain about 63 per cent of the total run-off from the South Para catchment area over the two-day period in the South Para reservoir. The Acting Minister of Works considers that the spillway gates were operated correctly on Friday, October 4.

BUILDERS LICENSING ACT AMENDMENT BILL

Read a third time and passed.

PRIVACY BILL

Second reading.

The Hon. A. F. KNEEBONE (Chief Secretary): I move:

That this Bill be now read a second time.

For some time now, law reform commissions, commissions of inquiry and legislatures in various parts of the world have concerned themselves with the question of the preservation of personal privacy. The demand that more systematic attention should be paid to this problem has been growing since the end of the Second World War. Article 12 of the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations,

1948, stated that "no-one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honour, and reputation". The terms of the declaration emphasised protection against the activities of secret police and the officers of public authority, experience of totalitarian regimes being in the forefront of the draftmen's minds. But the terms in which the right was expressed were broader than that.

The same principle is expressed in Article 17 of the United Nations Covenant on Civil and Political Rights of December, 1966, which further provided that "no-one shall be subject to arbitrary interference with his privacy, family, home or correspondence nor to attacks upon his honour and reputation", and that "everyone has the right to the protection of the law against such interference or attacks". At a non-official level an international conference of distinguished jurists from many parts of the world, organised by the Swedish section of the International Commission of Jurists held at Stockholm in 1967, made a more comprehensive and specific examination of the right to privacy and of the steps necessary to protect it. Amongst its conclusions were:—

(1) The right to privacy, being of paramount importance to human happiness, should be recognised as a fundamental right of mankind. It protects the individual against public authorities, the public in general and other individuals.

(14) . . . (a recommendation) that all countries take appropriate measures to protect by legislation or other means the right to privacy in all its different aspects and to prescribe the civil remedies and criminal sanctions required for its protection.

In Australia this question has, over the years, occupied the attention of the Standing Committee of Commonwealth and State Attorneys-General, and in this State in particular some aspects of the question have been referred to our Law Reform Committee. The reasons for this growing interest in and discussion of the protection of personal privacy are not hard to find. There are growing pressures exerted by modern industrial society upon the home and daily life which produce a demand by the urban dweller for anonymity and seclusion. There is the growth of the various forms of mass media which, in catering to the tastes of an increasingly broad public, furnish descriptions of extraordinary events of all kinds containing detailed information about the life and habits of a variety of people. The development of technological and scientific means of invading privacy is also a factor.

Already, in the previous Parliament, the Listening Devices Act, 1972, was enacted into law, and that measure afforded the individual some protection from invasion of his privacy by mechanical means. This measure intends to create a general right of privacy, a right that has in the terms proposed not been previously recognised by law in this country. Such protection as privacy enjoys under our law is the fortuitous by-product of laws designed for other purposes, such as the laws of trespass, nuisance, breach of copyright and breach of confidence, or defamation; but the protection is incomplete because it is only incidental to the protection of other aspects of the citizen's life. The concept of privacy causes little difficulty to the ordinary citizen.

The Hon. R. C. DeGaris: You're kidding, aren't you!

The Hon. A. F. KNEEBONE: He can readily identify the part of his life which he considers to be peculiarly his own and for which he claims the right to be free from outside interferences or unwanted publicity. But a man's privacy requires protection from the law only to the extent to which it might be unjustly infringed. What must be balanced against the individual's claim for privacy is the "public interest", that is, society's interest in the circulation of truth. There can be no doubt as to the importance to be attached to truth in a civilised society. But that is not to say that the public is entitled to know all the truth about an individual or group. Some areas of a man's life are his business alone. Thus, the privacy this Bill is designed to protect is that area of a man's life which, in any given circumstances, a reasonable man with an understanding of the legitimate needs of the community would think it wrong to invade.

Clauses 1 and 2 of the Bill are formal. Clause 3 formally binds the Crown. Clause 4 makes it clear that, given a choice between the public good and the assertion of a private right, the public good must prevail and, in aid of this, provides that the exercise in good faith by a person of any duty or obligation imposed on him by law will not be touched on by this measure. Clause 5 sets out the definitions necessary for the purposes of this Act, and I draw honourable members' attention to the definition of "right of privacy" which, of course, is crucial to the measure. The right proposed is the right to be free from a "substantial and unreasonable" intrusion upon a person's private affairs. It is not intended that this protection will extend to insubstantial and trivial incursions.

The Hon. Sir Arthur Rymill: And his property. That's what it says. Would that include a capital gains tax as an unreasonable intrusion on his privacy?

The Hon. A. F. KNEEBONE: It says, "an intrusion upon a person's private affairs".

The Hon. Sir Arthur Rymill: It is in there. It's in the Bill.

The Hon. A. F. KNEEBONE: I am not debating the details of the Bill at present. When we reach the Committee stage I shall be pleased to debate these matters with honourable members opposite.

The Hon. Sir Arthur Rymill: I thought this was part of the debate.

The Hon. A. F. KNEEBONE: I remind the honourable member that interjections are out of order.

The Hon. A. J. Shard: Yes, in second reading speeches.

The Hon. Sir Arthur Rymill: Ministers are subject to interjection.

The Hon. A. J. Shard: But not when giving second reading speeches.

The Hon. A. F. KNEEBONE: Who is making this speech, anyway? There have been many attempts in the past to define "privacy". Perhaps the most succinct was the one adopted by U.S. Judge Cooley last century when he called it "the right to be let alone". Rather than search for a precise or logical formula that would either circumscribe the meaning of the word "privacy" or define it exhaustively, a broad concept of privacy has been used in this Bill. This is to allow the law to keep pace with changing social needs. The scope of what is considered should be private at any given time is governed to a considerable extent by the standards, fashions and mores of the society of which we form part, and these are subject to constant change. The definition of privacy that has been used in this Bill will allow the courts to preserve a degree of flexibility and so to decide from case to case, and from time to time, what should or should not enjoy the law's protection. The courts already exercise this sort of flexibility, for instance, in interpreting what is "reasonable" in relation to negligence and nuisance or in assessing the defence that a statement complained of in actions for defamation is "fair comment on a matter of public interest".

Clause 6 establishes a statutory right of privacy and gives a right of action against any infringement of that right. Subclause (3) does not limit actions to cases where special damages, such as actual pecuniary loss, are claimed. Clause 7 makes it clear that a person who knowingly benefits from an infringement of the right of privacy of another person will be liable to the same extent as it would be as if he were the author of that infringement. Clause 8 sets out the statutory defences that are available to an action for an infringement of a right of privacy. In effect these defences delineate the circumstances where a *de facto* infringement of a right of privacy is, in effect, justifiable.

Paragraph (*a*) provides that, where a person did not know and could not by exercising reasonable care have known that he had infringed another's privacy, he will have a complete defence to any action brought against him. I draw honourable members' attention to paragraphs (*b*) and (*c*) of this clause, since these two paragraphs represent a compromise between the need to preserve a right of privacy in an individual person and the need to ensure that the public interest is preserved. The defence set out in paragraph (*d*) again is an attempt to strike a balance between what might be called a "conflict of rights", and this defence makes it clear that the right of privacy is a shield, not a sword that may be used to attack another's lawful interests or to deprive a court of law of evidence that should properly be available to it.

Clause 9 sets out the powers of the court to grant relief in an action for infringement of a right of privacy. Subclause (2) enables a defedant to mitigate the effects of his infringement by apologising for his conduct and tendering suitable amends. Subclause (3) sets out some of the matters that the court is enjoined to take into account in considering an award of damages. Clause 10 is intended to enable the court to refuse to award what may be in effect "double damages". Clause 11 provides that in actions under the measure an appropriate degree of protection from publicity can be afforded the litigants by the court. Clause 12 provides that actions must be brought within two years.

Much thought has been given to the implication of this clause, and its inclusion is advocated for the reason that, without it, in many cases injured persons may have no real means of claiming relief from invasions of their privacy as the publicity attendant on legal proceedings of this nature could well exacerbate their situation, rather than provide a proper remedy for it.

In conclusion, it is conceded that a measure of this nature can only, as it were, plant a seed in the soil of the common law. To a considerable extent it is for the courts, in the consideration of the cases that come before them, to ensure that this seed grows and flourishes and proves a real value in the protection of the rights of the citizen. The problem of protecting the citizen's privacy by legal measures is complex. It is not to be thought that either this measure or any other single measure will provide the needed protection of itself. There must be a multi-pronged attack on the problem. The Government has already given attention to the matter in relation to listening devices, the regulation of bailiffs and inquiry agents, and in other ways. Legislation is planned to deal specifically with information storages and data banks and probably with regard to electronic devices that may be used for surveillance of the activities of the individual. All of these and other measures are necessary. They will be progressively enacted as their efficacy is demonstrated and the difficulties inherent in drafting such legislation are mastered.

The creation of this new tort of invasion of privacy must therefore be regarded as but one prong of the attack on the problem of protecting the privacy of the citizen. By development of common law principles, the courts have already gone some distance towards providing remedies for certain types of infringement of privacy. It is plain, however, that without legislative impetus the law cannot be developed by the courts to a sufficient extent to deal with the problem. The effect of this measure will be to provide the legislative impetus that is needed to set the wheels of the judicial process moving in the direction needed. Just as the courts have appplied concepts of reasonableness in the law of negligence and nuisance to concrete situations, so they will apply the general concepts expressed in this measure in a way which will in time provide a coherent body of law covering the subject. The judicial process by which the common law develops is particularly suited to the development of a new tort of invasion of privacy after receiving the necessary legislative impetus provided by this measure.

As I have stated, it is not to be thought that the creation of a new tort and the provision of civil remedies for its infringement are more than a partial answer to the problem of effective protection of the citizen's privacy, but the measure fills a gap which exists in the existing law and will give protection and justice to many people who have hitherto been denied it.

The Hon. R. C. DeGARIS (Leader of the Opposition): In his second reading explanation the Chief Secretary said:

For some time now, law reform commissions, commissions of inquiry and Legislatures in various parts of the world have concerned themselves with the question of the preservation of personal privacy. The demand that more systematic attention should be paid to this problem has been growing since the end of the Second World War.

I entirely agree with those comments. In this period in all democratic countries there has been a growing interest in the question of the individual's right to privacy. While our laws so far have not expressly recognised a right to privacy, nevertheless our system has afforded some protections to the right of privacy. We prohibit such activities as the interception of mail and wire-tapping. Actions can be taken on the ground of trespass, nuisance or defamation. The idea being promoted by some that the recognition of a right to privacy is something new is simply not correct. The law has always recognised the right to privacy, but it has done so by a process of constraint rather than the recognition of the right. But the development of modern techniques of surveillance, psychological testing and computers (to mention just a few) has created an awareness in the community of the need for legal protections to ensure that, with these new technological developments, privacy is not unreasonably intruded upon. Before we begin we must have some concept of the meaning of privacy. In 1973 the Hon. Haddon Storey, Q.C., a member of the Victorian Legislative Council, in a paper presented to the seventeenth Legal Convention, spoke of the diverse types of situation that involved a threat to privacy. Instead of quoting directly from the Hon. Mr. Storey's paper, I will quote the following newspaper report of the paper, which was presented at the Law Council's convention in Perth:

Mr. Haddon Storey, a Victorian Q.C. and member of that State's Legislative Council, looks at the problem and suggests some legislation to stop the insidious invasion of our solitude. His report, to be presented today to the Law Council's convention in Perth, is probably the most comprehensive made on the subject in Australia. Mr. Storey says privacy, however valuable, can never be an absolute thing but must be balanced against the necessary demands and restraints of the community we live in. Rather than seek a definition he outlines the ways in which it may be invaded.

The main areas are interference with the individual's solitude, invasions associated with the collection of information and invasions concerned with the distribution of information. These include intrusions on home life, surveillance devices, unwanted publicity, appropriation of a person's name without his consent, misuse of personal information and disclosure of information expressly implied or given in confidence. While it is widely accepted in England and Australia that the common law does not recognise any general right of privacy, Mr. Storey says it does provide some remedies, although not on grounds related to privacy. These include trespass, nuisance, wilful infliction of intentional harm, defamation, breach of copyright, breach of contract, breach of confidence and passing off. Some legislative provisions also afford protection.

These include consumer protection legislation, laws dealing with listening devices, some legislative provisions preventing the disclosure of information made to public bodies and legislation dealing with credit information. Common law courses of action could be developed or extended to give the individual more protection, but in the meantime most invasions of privacy would go on. Mr. Storey does not reject the concept of a general right of privacy but believes that invasions of privacy in the areas of unjustifiable acquisition of information and disclosure of information would be better dealt with in separate legislation.

If one reads the whole of the Hon. Mr. Storey's paper, one finds that he identifies the areas where invasions of privacy take place, but he does not come down strongly on the side of identifying a right to privacy. Indeed, I take his paper as suggesting we should follow the normal British pattern; that is, to leave the definition alone, to seek prohibitions on the intrusion into privacy. Jane Swanton, in the *Australian Law Journal*, volume 48, in an article entitled Protection of Privacy, in commenting on the paper of the Hon. H. Storey, states:

It must be conceded, that the quality which is common to these, and other privacy-invading activities has thus far defied analysis. It is clear from the various attempts at definition collected by Mr. Storey, that those definitions which do not consist simply in a lengthy enumeration of varieties of privacy-invading conduct are either too wide, or too narrow or too imprecise. Moreover, they nearly all define privacy in terms of a right. This is to confuse and prejudge the whole issue, which involves determining how far the law should go in creating rights of privacy. The law does not determine what privacy is, but only what situations of privacy will be afforded legal protection, or made private by virtue of legal protection.

I think I can speak for every honourable member in this Chamber and for many people in the community if I say there is a need to examine and to legislate to protect the privacy of the individual. From the base of that general agreement, I think I would be correct in saying that there are only two ways in which the Legislature can proceed if it desires to tackle the problem. The two avenues open to the Legislature are of proceeding with the concept in this Bill or of extending the existing law to cater for the areas that are creating some concern in the community.

As I see the position, these are the only alternatives. This Council must examine those alternatives, those two avenues of approach, to determine which is the correct method. Having read and turned over this matter in my mind for almost a week, I strongly advocate the second avenue of approach. I believe that the approach, as in the Bill, of creating a definition of the right to privacy and the creation of a tort, with the provision of a defence, is confused, illogical and unnecessary. The Bill attempts to cover the area of law, but the Bill will create unpredictable influences in the large areas surrounding it.

I have tried to consider an analogy, and I have come up with one. It may not be acceptable to legal people but to me, as a layman, it is the analogy I would use. The existing law in this field is a pile of marbles on a table. In this Bill we are attempting to place on top of that pile of marbles a large marble. It may balance there, but it may scatter the existing marbles in an unpredictable fashion. That analogy may not be acceptable to the legal mind, but it explains, to me, how this Bill could operate.

Laws are already operating, and if those existing laws are inadequate we should be looking at extending their scope rather than introducing this new concept that will cause confusion and coverage interference. Whilst the law in itself is not simple, we should at least strive for a maximum of simplicity. The ideas in this Bill are not simple and, as I have pointed out, it will create considerable overlapping and interference with existing concepts, both in common law and statute law. The object of the Bill could be achieved with greater simplicity if we approached the problem from the opposite direction; that is, using existing torts and extending existing established principles. I intend to return to this point later in this debate when discussing certain provisions in the Bill.

In considering how to approach the problem, I have no doubt that the report of the Younger committee to the United Kingdom Parliament will have a considerable bearing on this debate. The conclusions of that committee were agreed to by 14 of the committee members, but there were two individual minority reports. Rather than deal with those conclusions and those minority reports, I seek leave to have included in *Hansard* chapter 23 of the Younger committee report.

Leave granted.

CHAPTER 23—CONCLUSION

651. We are agreed, as we explained in chapter 6, that the concept of privacy embodies values which are essential to the work of a free society. We do not regard respect for privacy as merely a question of taste which can be left to the interplay of free discussion and the restraints of social convention. We recognise also that under modern conditions the growing interdependence and organisation of individuals, together with technological developments, has subjected privacy to dangerous pressures. In the light of these pressures we are further agreed that privacy requires additional protection. The fundamental decision which we have had to make concerns the method by which protection is given. Should the law provide a remedy against invasions of privacy as such? Or is it sufficient to rely on the protection of privacy in each social situation where it is likely to come in issue—whether that protection takes the form of direct remedies, civil or criminal, or of other social forces operating under the pressure of public opinion—reinforced, we hope, by the publication of this report?

652. Any general civil remedy would require hardly less general qualification in order to enable the courts (the judge or judge and jury) to achieve an acceptable balance between values implicit in respect for privacy and other values of at least equal importance to the well-being of society. We have particularly in mind the importance in a free society of the unimpeded circulation of true information and the occasions which would inevitably arise, if there were a general civil remedy for the protection of privacy, in which the courts would be called upon to balance, by reference to the "public interest", society's interest in the circulation of truth against the individual's claim for privacy.

653. We appreciate that there are countries (of which we give examples in Appendix J) in which it is precisely this balancing function which is left to the courts; and we point out in Appendix I that in English law the protection which is given to privacy by the action for breach of confidence may involve the courts in deciding whether the remedy should be refused on the grounds that the disclosure in question (as, for example, when it relates to the commission of a crime) was in the public interest. The vital difference, however, between decisions on what is in the public interest, taken by the courts in countries where a general remedy for invasions of privacy exists, and the decisions on the public interest taken by English courts in cases under existing laws which are relevant to the protection of specific aspects of privacy, is that the judicial function in

the latter is much more circumscribed. Thus, in an action for breach of confidence the court is faced initially with a disclosure of information which has been given in confidence; similarly, in an action for defamation no question of the public interest arises until there is before the court a defamatory statement which is untrue. It is clear that the function of the courts in such circumstances is a less difficult one and one which is likely to give rise to less controversy than that which would face a court which was called upon to apply a much more general law to cases in which no relationship of confidence existed and no false statement had been made. In such cases a court would in effect have to make an unguided choice, in the light of the public interest, between values which, in the abstract, might appear to have equal weight. We recognise that the courts could be given the task of considering, in the factual context of each case, whether a general right to privacy should be upheld against the claims of other values, in particular the value of the free circulation of true information. But we think that such a task might first make the law uncertain, at least for some time until the necessary range of precedents covering a wide range of situations had been established; and it might secondly extend the judicial role, as it is generally understood in our society, too far into the determination of controversial questions of a social and political character.

654. If privacy can be protected in no other way these disadvantages may have to be accepted, but we have thought it right rather to conduct our examination of privacy in the first instance with reference to the differing social contexts in which a claim for protection of privacy is, or could be, asserted.

655. We have now examined in chapters 7 to 20 each of the specific areas in which substantial concern about intrusions into privacy has been brought to our attention. In some cases we have recommended that there should be legislation to create either a new offence in order to deal with new threats to privacy, for instance, new technical surveillance devices; or a right of access by an individual to information held about him by a credit rating agency. In other cases we have thought it more effective to recommend that administrative controls should be established over a particular kind of activity, such as credit rating agencies and private detectives. In yet other cases where legal action has seemed too heavy an instrument and administrative control undesirable or unnecessary, we have preferred to rely on a measure of self-discipline being exercised by bodies whose activities involve a possible threat to privacy. Examples are the mass media, the universities, the medical profession and industrial employers.

656. Of these the mass media are by far the most important. On the one hand are the broadcasting authorities, which by virtue of charter or statute are already under extensive obligations to have regard to the interests of the public; on the other are the varied organs of the press, which are under no special legal restriction beyond the general law of the land, but have developed regulatory machinery of their own through the Press Council to handle complaints. As regards the broadcasting authorities and the press we have reached the conclusion that, in respect generally of their dissemination of information, it is best to rely for the protection of privacy upon improvements in the existing systems rather than upon new legislation. On the other hand we think that they should, along with ordinary citizens, be subject in their information gathering activities to the restrictions on the use of technical surveillance devices which we have recommended. They are already bound by the law relating to the disclosure of information obtained in breach of confidence and would be subject to any restrictions in that branch of the law which might emerge as a result of the clarification recommended in chapter 21.

657. Looking at the field as a whole, we have expressed the view that the existing law provides more effective relief from some kinds of intrusion into privacy than is generally appreciated. In particular it is our opinion that the law on breach of confidence, if some of its present ambiguities were to be authoritatively clarified (if necessary by legislation), would turn out to be a practical instrument for dealing with many complaints in the privacy field.

658. We have already referred to the need to balance the right of privacy against other and countervailing rights, in particular freedom of information and the right to tell the truth freely unless compelling reasons for a legal limitation of this right can be adduced. We have often found this balance difficult to strike. At every stage we have been conscious of differing judgments about the precise area of privacy which should be protected under each heading and about the considerations of "'public interest" which might be held in each case to justify intrusion and so to override the right of privacy. These uncertainties are, no doubt, largely the consequence of the acknowledged lack of any clear and generally agreed definition of what privacy itself is; and of the only slightly less intractable problem of deciding precisely what is "in the public interest" or, in a wider formulation, "of public interest".

659. Despite these difficulties we have reached broad agreement among ourselves about the practical approach which we wish to recommend under each of the headings dealt with in chapters 7 to 21. We recognise that this piecemeal approach leaves some gaps. In the private sector (with which alone we are concerned) it is not difficult to think of some kinds of intrusion, most obviously by journalistic investigators or by prying neighbours, for which our recommendations provide no new legal remedy. In the second place, some of our proposals frankly rely, to an extent which some may find over-optimistic, upon the readiness of potentially intrusive agencies, such as the press, to respond not to legal sanctions but to the pressures of public and professional criticism and to the climate of society. Yet other proposals rely upon codes of conduct or on negotiated conditions of employment as means of maintaining ethical standards.

660. Questions therefore arise whether the area which our recommendations would still leave legally unprotected is so important that it must somehow be covered; whether it is realistic to count upon the sense of responsibility of interested parties, or whether there is not a way of providing the additional support of legal sanctions, without at the same time requiring the courts to apply unduly vague criteria and to hammer out, without clear guidance from the statute book, the very definitions of privacy and of the public interest which have defied the best efforts of scholars and of successive draftsmen of parliamentary bills.

661. With these conflicting considerations in mind, we therefore turn to discuss the question whether a general right of privacy should be recognised by the law, on the lines proposed in Mr. Walden's Right of Privacy Bill. In doing this we would emphasise our unanimous view that our various recommendations made in previous chapters should remain unaffected whatever the outcome of this argument. In particular the question whether the criminal law should be invoked in some cases has, in our view, been sufficiently dealt with under our specific headings and need not be considered in relation to a general right. Any civil remedy provided for infringement of a general right of privacy must, we feel sure, be considered as an addition to measures proposed under specific headings and not as an alternative to them.

662. The case for including a general right of privacy in the domestic law of the United Kingdom may reasonably start from the fact, to which attention was called in chapter 2, that the Government of the United Kingdom is a party to the Universal Declaration of Human Rights, the United Nations Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, all of which in one form or another recognise the right of privacy in somewhat general terms. The principle therefore, is not in dispute, only the natue of the domestic legislation which is needed to implement it.

663. A number of other countries in Europe, America and the Commonwealth, have adopted legislation in wide and general terms. While the effectiveness of these laws varies from country to country, there is evidence that some practical use is made of them and no evidence that the information media have complained that these laws unduly restrict their legitimate activities. It seems a natural deduction from this that similar action could usefully be undertaken in the United Kingdom without risk. We have naturally paid close attention to the experience of other countries, but we have noted that the methods of adjusting domestic legislation to the requirements of international agreements differ widely from one signatory State to another, and that this has been markedly true in the field of human rights. This is firstly because some legal systems are readier than others to declare a general right and then to leave to the courts the development of effective sanctions against violations of the right. The second relevant consideration is the difference in the extent to which existing laws in particular countries are already believed to provide sufficiently for the protection of the new right. With

regard to the first point we think that the best way to ensure regard for privacy is to provide specific and effective sanctions against clearly defined activities which unreasonably frustrate the individual in his search of privacy. As far as the second point is concerned, we have already described in detail the considerable extent to which privacy is already protected by existing English law. We have noted that in some countries, where the law of defamation is less developed than in England, new laws for the protection of privacy are being used in cases which in England would fall squarely under the heading of defamation. In Germany, we were told, the dividing line between privacy and defamation is already blurred. We do not ourselves favour a similar development here, believing that the law should continue to distinguish clearly in the sanctions which it provides between statements which are both defamatory and untrue and statements which, even if they may be offensive on other grounds, are neither of these things.

664. This raises the question whether the method which we have adopted is nevertheless inadequate because it leaves the citizen without a legal remedy for important kinds of intrusion upon his privacy; and whether a general right of privacy, which would fill in these gaps, would in practice carry with it serious dangers to the legitimate circulation of information, which is an important value in any democratic society. We have concluded that, so far as the principal areas of complaint are concerned, and especially those which arise from new technological developments, our specific recommendations are likely to be much more effective than any general declaration. Having covered these areas, we do not think that what remains uncovered is extensive; and our evidence does not suggest that the position in the uncovered area is deteriorating. We think moreover that to cover it by a blanket declaration of a right of privacy would introduce uncertainties into the law, the repercussions of which upon free circulation of information are difficult to foresee in detail but could be substantial.

665. We have found privacy to be a concept which means widely different things to different people and changes significantly over relatively short periods. In considering how the courts could handle so ill-defined and unstable a concept, we conclude that privacy is ill-suited to be the subject of a long process of definition through the building up of precedents over the years, since the judgments of the past would be an unreliable guide to any current evaluation of privacy. If, on the other hand, no body of judge-made precedent were built up, the law would remain, as it would certainly have to begin, highly uncertain and subject to the unguided judgments of juries from time to time. It is difficult to find any firm evidential base on which to assess the danger to the free circulation of information which might result from a legal situation of this kind. The press and broadcasting authorities have naturally expressed to us their concern about any extension into the field of truthful publication of the sort of restraints at present imposed on them by the law of defamation, especially if the practical limits of the extension are bound to remain somewhat indeterminable for a period of years. We do not think these fears can be discounted and we do not forget that others besides the mass media, for instance biographers, novelists or playwrights, might also be affected. We already have some experience of the uncertainties which result, for instance in obscenity cases, when courts of law are asked to make judgments on controversial matters, where statutory definitions are unsatisfactory, and social and moral opinion fluctuates rapidly.

666. It would, in our view, be unwise to extend this kind of uncertainty into a new branch of the law, unless there were compelling evidence of a substantial wrong, which must be righted even at some risk to other important values. Within the area covered by our terms of reference, evidence of this kind has been conspicuously lacking and we therefore see no reason to recommend that this risk should be taken.

667. Finally, we repeat what we said at the outset of this chapter. Privacy, however defined, embodies values which are essential to a free society. It requires the support of society as a whole. But the law is only one of the factors determining the climate of a democratic society and it is often only a minor factor. Education, professional standards and the free interplay of ideas and discussion through the mass media and the organs of political democracy can do at least as much as the law to establish and maintain standards of behaviour. We have explained in this report that we see risks in placing excessive reliance on the law in order to protect privacy. We believe that in our recommendations we have given to the law its due place in the protection of privacy and we see no need to extend it further.

In conclusion we wish to express our warm thanks to our Secretary, Mr. G. P. Pratt, the Assistant Secretary, Mr. B. Lockett, and to their small supporting staff for the untiring and efficient service they have given to the committee in marshalling the written and oral evidence and in drafting and producing the report. Mr. Pratt, in particular, has played an indispensable part in advising on the form of the report and in the drafting process. We could not have been better served.

KENNETH YOUNGER, Chairman
MARGARET DRABBLE
BYERS
KATHLEEN EVANS
HARMAN GRISEWOOD
GEORGE GWILT
RICHARD HORNBY
MICHAEL KEMPSTER
NORMAN S. MARSH
GORDON NEWTON
KENNETH ROBINSON
CHARLES SMITH
JOHN TORODE
P. R. WOLLAN

G. P. PRATT, Secretary
B. LOCKETT, Assistant Secretary
25th May, 1972.

MINORITY REPORT

A. W. Lyon

1. We have decided unanimously to recommend three steps of importance in the protection of privacy—

(*a*) The restatement of the law of breach of confidence to give it coherence and publicity;

(*b*) The creation of a new crime and a new tort of unlawful surveillance by device which will do much to inhibit the growth of "bugging"; and

(*c*) The creation of a new tort of publication of information obtained by unlawful means which will give teeth to the existing law.

2. For the rest, we make a number of recommendations to improve administrative protection of privacy which are good in principle but will depend on the zeal of those charged with implementing them. Like the Highway Code and the Ten Commandments they would be improved by a legal deterrent. One is to hand—a new tort embracing a general right to privacy. Unfortunately my colleagues have rejected this radical but realistic solution to the problem we considered.

3. Despite the nature of the literature on the subject in recent years, the problem of privacy is not a widespread social evil like drugs or pornography. There is a basic human need for privacy, and a disquiet—reflected in the public opinion survey—about the increasing threat of intrusions. But the number of people suffering serious and unreasonable intrusion into their privacy is small and, in the foreseeable future, is not likely to increase. As life becomes more complex in more densely populated areas the number of calls on our private lives by the rest of society will grow, but most of these demands are unobjectionable. It is only where the intruder abuses the freedom to inquire that the problem begins.

4. Though the scale of the problem may be small the consequences for the person affected may be catastrophic. The revelation of an industrial secret, financial difficulty, a domestic tragedy or a sexual deviation may cause irreparable damage to the individual and his family. Even the fact that what he thought was private is known to others may create a sense of outrage though the information is not damaging in itself. Lord Goodman in his evidence on behalf of the Newspapers Proprietors Association suggested that privacy was just about sex and now that we were more broad minded the problem was diminishing. That showed lamentable misjudgment.

5. It is because the damage to the individual may be so great that I think it wrong to leave him without a remedy. A general tort would meet most of the cases, but before I turn to its merits, I consider the criticisms of my colleagues.

Criticism of a general right.

6. They begin by doubting whether privacy can be defined for the purpose of the law. I noticed in our discussions that there was rarely any doubt whether a

specific complaint, e.g. noise, was a privacy situation or not. As a philosophic concept the limits may be imprecise. I define it as that area of a man's life that he has shown he wishes to keep to himself. For the purpose of the law, however, privacy is what the laws says it is. If the statute said that only conversations in bed between husbands and wives were to be protected, that would be the limit of legal privacy.

7. The "Justice" committee and the sponsors of the Walden Bill wanted to cover as many situations as possible. They deliberately left it to the court to decide whether the facts constituted privacy after applying the principles set out in the statute. But it is possible to narrow the definition to cover whatever is considered desirable. For the purpose of the argument I produced a draft which was much narrower than the Walden Bill. The majority rejected it on the same arguments which had little to do with the definition.

8. The most cogent criticism was that a general law would inhibit the dissemination of truth. No-one doubts the importance to be attached to truth in a civilised society. I welcome the present trend to a more open discussion of public issues based on full disclosure of the facts. But that is far from saying that the public is entitled to know *all* the truth about an individual or group. Some area of a man's life is his business alone. The Orwellian nightmare of "1984" was unpalatable not only for "Newspeak" but for the complete absence of escape from the regime. I found the lack of privacy more disturbing than the distortion of truth.

9. My colleagues recognise that a balance has to be kept between the public's right to know and the individual's right to a private life. They claim that a general law would be an unjustifiable suppression of the truth. The law already puts curbs on dissemination of true facts in the area of breach of confidence, criminal libel, copyright and patent. To these we now propose to add curtailment of the use of electronic and photographic devices and the use of information obtained by unlawful methods.

10. In addition they support stronger curbs on the dissemination of truth which depend on voluntary action. The journalist and the banks are to be goaded into improving their standards. This acknowledges that we all have a moral obligation to refrain from passing on truthful facts where they would be hurtful and no useful purpose would be served.

11. In other words truth is not inviolate, any more than any other value in our society. When it conflicts with the commendable interest of privacy who must draw the line? At present it is the intruder himself. I think that in those cases where an individual can be seriously damaged by a wrong judgment of the intruder, he ought to have the right to ask society at large to adjudicate. The only acceptable instrument we have devised is the law.

12. Confounded on general principle, the detractors of a general right take refuge in prophecies of doom. The new tort, they say, would lead to a spate of blackmailing actions. The majority candidly admit that this has not been the experience of France, Germany, Canada, the U.S.A. or any other country where general rights have been created. Resort to law is expensive and dissuades most potential litigants. The press cite defamation as an area where unmeritorious cases succeed, but this is frequently because accident is no defence to defamation whereas all the suggested drafts of a tort of privacy have required a deliberate intention to intrude. Both experience and principle suggest that the number of cases under such legislation would be small.

13. Nevertheless, the critics continue, the threat of legal action may cause those whose duty is to reveal the truth for the public good to limit their activities. If that means that unjustifiable intrusions into individual privacy are controlled, the public in my view will benefit. All justifiable intrusions could be protected by the defences which would be written into any legislation.

14. If there are some disadvantages to the general right and the number of people assisted will be small is it necessary to legislate? The same argument might have been used in relation to the legal remedies of trespass, nuisance and even negligence. Relatively few people use these remedies each year but they are considered essential parts of the law. They raise similar issues of a balance of conflicting interests and some imprecision of definition. Because the individual would feel a sense of outrage if he was injured in these ways without legal redress, society has thought it right to give legal protection. In a number of western countries similar general protection has been given for privacy without any of the consequences alleged by the critics. It is significant that when the Committee felt offended by new devices for surveillance, it decided to legislate, even though there were no serious complaints from the public.

15. I therefore conclude that the alleged disadvantages of a general right are either unreal or considerably less than the advantages. Before I turn to these, I deal with the nature of the remedy.

A criminal or civil remedy?

16. A general remedy for intrusion into privacy could be either criminal or civil. A criminal remedy has the advantage that the citizen could invoke the aid of the police to investigate and prosecute the offender. But criminal penalties can only be applied where there is a general agreement that the behaviour of the offender was antisocial. Privacy is largely a problem of reconciling the conflicting interests of private individuals in which it would be inappropriate to exact criminal sanctions. Moreover the individual who has suffered financial loss or emotional distress wants direct compensation only available in a civil action. The offender also benefits since he can question the complainant's conduct in the assessment of damages and if he is in an occupation where intrusion into privacy is inevitable he can insure against the risk. The civil remedy I favour is a general tort covering all privacy situations such as that outlined in the "Justice" report or the Walden Bill.

Advantages of the general tort.

17. First, it would cover almost all the privacy situations which could be conceived, even those which have not yet become apparent. If we had legislated on privacy before the war we would not have included electronic devices. Parliamentary time is restricted and every new advance demands a long and sometimes exhausting campaign. It is much better to set out the principles on which the courts can act and leave them to develop the law as need requires. Most of our common law was created in this way and, provided the principles are clear, the courts are well able to undertake the task.

18. Some criticism of this approach betrayed a suspicion of the conservatism of the judges. British judges are not at their best in developing social policy. Our tradition in this respect differs from the Americans where lawyers commonly discuss issues of wages, social benefits and education. In England these matters are left to Parliament or to administrative tribunals outside the courts. But the problem of privacy is one of balancing conflicting freedoms, which raises issues well understood by British judges and they already have some experience in matters relating to privacy.

19. Second, it gives a remedy to all those seriously prejudiced by intrusions into privacy. As the Committee considered specific remedies for each privacy situation, we frequently rejected proposals for legislation as too cumbersome for the complaints disclosed. Thus the major portion of credit checking in this country is carried out by two responsible firms against whom there was no complaint. It seemed too onerous to create new statutory controls to deal with any smaller firms who might not adopt the same standards. But anyone injured by the activities of such a firm would have a redress if there was a general tort.

20. Third, it gives teeth to many of our other recommendations. If a computer operator knew that his activities might lead to a suit for damages, he would be more likely to respond to the code of principles we enunciate.

21. Fourth, it allows juries to set the standards in a constantly changing area of human values. If private inquiry agents are to lose their certificates of registration for unreasonable intrusion into privacy, who is to decide what is reasonable? The Home Office? The police? I would prefer a jury as more representative of public opinion.

22. Fifth, it would provide an effective remedy for any unreasonable behaviour. Not only would damages reimburse financial loss or mollify injured feelings, but an injunction would be a useful deterrent to prevent anticipated intrusions into privacy. These remedies would make potential intruders consider carefully before acting and would, in itself, reduce the number of bad cases. No worthy exhortation to better behaviour is likely to be so effective.

23. Sixth, no general remedy is likely to gain Parliamentary approval if it did not include government activities. The result of my colleagues' recommendations is that the government has succeeded in keeping its activities to itself although many would agree that government intrusion is potentially more dangerous and annoying. A general tort would easily have been amended to cover all those government activities which were not authorised by law. This in turn would have lent support to those who are critical of government's existing powers to intrude.

24. Seventh, we would have fulfilled our obligations under the United Nations Declaration of Human Rights and the European Convention. One of the ironies of the majority report is that the European Court may choose in time to give a remedy for English litigants which my colleagues would deny to them.

25. For all these reasons I greatly regret the decision of the majority to reject the general right. They have been congenial colleagues anxious to extend protection for privacy where they thought right. But as I reflect on the many individuals who in future years will suffer unnecessary injury without redress, I can but hope that public opinion will force Parliament to reconsider their objections.

26. Early in my researches on this subject I came across the case of a Mrs. X whose policeman husband took a mistress. The wife prevailed upon him to give up the mistress and they were reconciled. The jealous lover told a national newspaper. When their reporter was rebuffed by Mrs. X, they printed the story under the headlines "The love life of a detective". The family had to move; the husband had to give up his job; the child was teased at school. What do I now tell Mrs. X? "Truth must prevail". "We cannot protect privacy except where there has been a breach of confidence or the intruder used offensive new methods like bugging devices." "A reformed Press Council will censure the newspaper!"

27. Somehow I find all these excuses inadequate. I prefer a society where a zeal for the truth is matched by compassion and where even the weakest of our fellow citizens knows that he can call upon the law in his unequal fight with those powerful interests, including the government, who abuse his freedom.

ALEXANDER W. LYON
27th March, 1972

MINORITY REPORT

D. M. Ross

I have the misfortune to differ from all my colleagues except Mr. Alexander Lyon on the question of a general right of privacy. Upon all other matters I am in agreement with the other members of the committee. My approach to the question of a general right of privacy is somewhat different to that of Mr. Lyon and I have therefore thought it right to give my own reasons for dissenting from the majority of the committee on this important issue.

I feel obliged to approach the issue from the point of view of principle. My starting point is the fact that the Government of the United Kingdom is a party to the Universal Declaration of Human Rights, the United Nations Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, all of which recognise a general right of privacy. Yet there is no legal right to privacy as such in the law of England and Wales or in the law of Scotland. This means that the United Kingdom's acceptance of the Declaration of Human Rights is at least to some extent a sham. It is worth repeating that Article 12 of the Universal Declaration of Human Rights and Article 17 of the United Nations Covenant on Civil and Political Rights have expressly provided that "no-one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation" and that "everyone has the right to the protection of the law against such interference or attacks". The majority of the committee recognise that their approach means that there are some kinds of intrusion for which their recommendations provide no legal remedy. This means that some people in the United Kingdom will be denied "the right to the protection of the law against such interference or attacks". I believe that this is a result which is unacceptable on social grounds. In my opinion, the law in the United Kingdom should now be brought into line with these important declarations.

In my view the law of any civilised country ought to recognise expressly the existence of a general right of privacy. More particularly, in the conditions in which we live in this country, recognition of a legal right of privacy is both necessary and desirable. I respectfully agree with Lord Denning, the Master of the Rolls, when he said under reference to Lord Mancroft's Bill, "If the law does not give the right of privacy, the sooner this Bill gives it the better . . .".

It has been observed that a right of privacy has been given by the law of other countries, notably France, Germany and the United States. At one stage in our deliberations the majority of my colleagues expressed the view that English lawyers had long tended to be sceptical about the effectiveness of general declarations for the protection of rights. I do not know if this view is well-founded, but if the United Kingdom is to join the European Economic Community, it is perhaps time that we all stopped being sceptical about such general declarations. In any event, many English lawyers favour the creation by statute of such a general right as evidenced by the submissions both oral and written of "Justice". Owing to their different traditions north of the border, Scottish lawyers have shown less scepticism, and the Faculty of Advocates in Scotland favour the recognition of a legal right to privacy.

I have read, I hope with care, chapter 23 of the report containing the views of the majority of the committee. It seems plain that the principal reasons for their conclusion that there should be no general right of privacy are three-fold—

(1) A declaration of a general right would introduce uncertainties into the law;
(2) it would interfere with freedom of speech; and
(3) there was no evidence of a substantial wrong requiring to be righted.

With all respect to my colleagues, I find these reasons singularly unconvincing. In the first place, uncertainties in the law are not unusual. To decline to alter the law because it would be difficult to define the new law is a doctrine of despair which could be applied to almost any proposed legal reform. For example, it would be a sound reason for not enacting any Finance Bill and it would have prevented the Industrial Relations Act from entering the statute book. Moreover I can see nothing wrong in requiring the courts to make decisions of a controversial social character, and such questions in my view are quite appropriate for judicial determination. The courts have frequently to consider such questions which are appropriate questions for judges or juries to determine. When a court is deciding whether in a particular situation an individual's right of privacy had been infringed, I would not regard the court as making a political decision, but as making a legal decision having regard to various social considerations. Unlike my colleagues, I see nothing undesirable in requiring the court to make decisions of this kind.

So far as the second reason is concerned, I can readily understand my colleagues' concern over the importance of maintaining freedom of speech, and I subscribe completely to the principle that the press and other media have an important part to play in maintaining freedom in this country. With all respect to my colleagues, however, I feel that they have allowed themselves to be overwhelmed by the powerful and weighty evidence which the influential press interests presented to the committee (see paragraph 124). The truth is that the press have always fought a strong rearguard action when it has been suggested that the press acts unfairly towards private individuals. (See Chapter 7 and in particular paragraphs 131-136.) In seeking quite legitimately to protect what they see to be their best interests, the press have always exaggerated the dangers of muzzling the press. The Press Council was only set up by the press after strong public pressure, and I am bound to say that what I have learnt about the Press Council has not given me any confidence that it handles complaints with objectivity. The fact that the Press Council exonerated the newspapers concerned following the complaints relative to the heart transplant cases (paragraph 165) causes me to believe that the Press Council is an ineffective protection to individual members of the public.

I regard it as significant that there has been no suggestion that freedom of speech has suffered in those countries where a general right of privacy has been recognised.

For myself I do not see that any material aspect of freedom of speech would be prejudiced if the law when

enacting that there should be a general right of privacy made some exception for cases of investigation and publication which were in the public interest. If the right of the press to publish in the public interest were preserved, what is the loss to the press or the public if the press are precluded from otherwise invading the privacy of individuals?

In paragraph 130 we have recorded how the press view was put succinctly by one leading spokesman who asked whether the shortcomings of some reporters and of some newspapers were so outrageous that the very principle of freedom of speech needed to be subordinated to a general right of privacy. I think that the question should be put more fairly thus—whether freedom of speech is so important that it should prevail over an individual's right to privacy, and, in my opinion, it should only so prevail where it can be shown to be in the public interest.

The third reason which has commended itself to my colleagues is that there was no evidence of a substantial wrong requiring to be righted. I do not regard this as a convincing reason. Even if there were only one or two cases established each year I would regard that as sufficient to justify an alteration in the law. I would observe that when considering technical surveillance devices, I and my colleagues did not regard the small number of complaints as "an index of the necessity to act in this matter". In any event (paragraph 116) we received more complaints about the activities of the press than on any other aspect of our subject. Moreover, if there had been a general right of privacy we would not have had to consider such deplorable instances as the publication of the identities of those involved in heart transplants (paragraph 165) and the publication of custody orders (paragraph 162). I am mindful too that a general right of privacy would also assist in dealing with cases of prying (paragraph 397) because, in fairness to the press, the press are not the only offenders.

In chapter 23 (paragraph 652) this committee refers to the need to balance by reference to "public interest" society's interest in the circulation of truth against the individual's claim for privacy. But unless it is accepted that the courts should do this in cases brought before them, there will be a repetition of cases like the heart transplant cases where society had no legitimate interest in the publication of the identities of the individuals concerned and the individuals had every justification for claiming privacy. Under the present law, there is no remedy for the individual in such cases, and, as I have already observed, the Press Council was not prepared to condemn the newspapers and has thus shown that it cannot be relied upon to balance these conflicting interests. I consider that the individual ought to have a legal remedy in such circumstances.

In all the circumstanes, I have regretfully reached the conclusion that the reasons put forward by the majority for rejecting a general right of privacy are unconvincing.

When dealing with Mr. Walden's Bill, the then Home Secretary said (paragraph 642) that he was "satisfied that certain actions by business organisations, reputable and disreputable, certain actions by the press and certain actions by individuals have constituted serious infringements to personal privacy". I too consider that on occasions this has occurred, but further I feel that such infringements ought not to be allowed to occur. I therefore favour the creation of a general right of privacy along the lines of Mr. Walden's Bill.

D. M. Ross
19th April, 1972

The Hon. R. C. DeGARIS: First, I draw the attention of honourable members to the statements made in paragraph 655, and the first part of paragraph 656. The Bill before us is all embracing, and exactly the same statement made in the Younger report is equally applicable to the mass media in relation to this Bill. I intend to devote some time to a consideration of this problem. The fundamental question we must ask ourselves is whether there exists a right to privacy over the accepted right of freedom of speech and freedom of expression, subject to the existing laws to which I have already referred. Perhaps the word "over" is wrong; perhaps I should say "alongside": whether there exists a right to privacy alongside the accepted right of freedom of speech and freedom of expression. If the answer to that question is "Yes", we must decide whether the Bill before us is the correct way of answering that question. If the Bill is not the best way of proceeding, we are left with two alternatives: to legislate specifically to prohibit, under criminal penalties, the publication of certain types of news, or to follow the recommendation of the Younger committee. I refer honourable members now to the contents of paragraph 656, dealing with the question of privacy and the media.

In New South Wales the approach recommended in Professor Morison's *Report on the Law of Privacy* is similar to that in the Younger report in Great Britain. The Morison report advises against creating an all-purpose right of privacy or a new tort. It recommends the more conservative approach of a statutory committee to investigate complaints and to advise on legislation, possibly on a variety of pieces of legislation, each dealing with a particular problem. In New South Wales, the privacy committee has already been established, but it will not have statutory powers until next year. It has already appointed four subcommittees to report on the media, data banks, credit bureaux, and medical privacy. If the Parliament considers that some protections are needed, the correct process, in my opinion, is along the lines recommended both in the Younger report and in the Morison report in New South Wales.

On these matters, my legal colleagues would be better able to expand the understanding of the Council to better effect than I could. I intend now to turn my attention to the media itself. Burke summed up the role of the press as the "fourth estate of the realm". It may sound rather strange today to talk about the "fourth estate of the realm". Nevertheless, Burke's summing up of the role of the media (it was then the press, but it has been expanded by new changes to the media) reminds us that the press (we may like to go so far as to say the profession of journalism) is the co-equal of the other estates and is a political institution in its own right. Each of these estates has its own effect, but the media achieves its effect by the way it influences ideas and information into the public arena. To allow each of the estates as conceived by Burke to fulfil its role effectively, there must be an assurance of freedom of expression in all of them. Any restriction on one will inevitably effect the value of the others. We must also consider in this context that there is no constitutional guarantee of freedom of speech or freedom of the press in South Australia or Australia. So, if we wish to compare the American situation with ours, we must not forget that here we do not have the backdrop to the torts existing in the American scene, a constitutional provision in relation to the freedom of speech and expression.

The Hon. Sir Arthur Rymill: In the light of what is going on at present, it might be as well that we have not got that provision.

The Hon. R. C. DeGARIS: I am certain that is true, but probably in a different way from that in which the honourable member has interjected. This point appears to me to assume some importance when one is discussing the general question of providing a right to privacy. We cannot completely ignore the unique position the media occupies in a free democratic society; nor can we ignore Burke's views. In the relationship of the media to the Government and Parliament, we can recognise several general forms of journalism. If I was given the task of identifying those various forms of journalism, I would say they broke up into three categories—partisan journalism, liberal journalism, and investigatory journalism. I know that one could probably identify other forms, but I think those three

categories reasonably cover the field of the relationship of the media with other estates as defined by Burke, although the boundaries may become somewhat blurred.

Partisan journalism begins with a definite political viewpoint: it aims at appealing to the audience that shares its political views. It is less concerned with news and seeks the elaboration of a certain point of view. Liberal journalism is characterised by a concern with facts and events and an indifference to ideology, presenting where possible the objective viewpoint. As regards investigatory journalism, since the euphoria surrounding the Watergate exposure, the press throughout the democratic world is flexing its muscles and will be moving into this type of journalism. Although the first two forms can impinge on the area of privacy, the last form is more likely to be the offender.

I believe that South Australia has enjoyed a relatively liberal media, seeing its role in the traditional liberal journalistic philosophy; yet one can detect a move in recent years into the investigatory, partisan and adversary areas; not so much the partisan ideological type to which I have referred, but a personal promotional type of journalism, which usually develops as its running partner an adversary or annihilatory type of journalism. In this type of aggressive journalism, we have seen evidence of invasions of privacy and the promotion of the information source, which has caused, I believe, a decline in the acceptance of the media as a reliable disperser of ideas and information to the public arena. I believe, for example, that the consensus of opinion amongst the people of this State at present would favour the ideas behind this Bill, although obviously they would not understand the ramifications in the legal sense; but that acceptance by people at the moment is due to some degree to the media itself; it must rest on its shoulders. No demagogue can create a movement without a sounding board and the support of a section of the media.

On the American scene, I suppose the most important example that one can point to is the rise and fall of McCarthyism. By uncritically repeating the source information, and dramatically displaying the sensational charges of Senator McCarthy, the press provided him with the necessary sounding board, so character assassinations continued for a period in the history of American journalism, and this did nothing to add to the standing of the media in that country.

In America today newsmen almost unanimously agree that they permitted themselves to be used irresponsibly, so the demagoguery of McCarthyism gripped America for a time with the support of a substantial section of the United State's media. To draw an analogy between the McCarthy episode in the United States and some recent promotions in South Australia is possibly taking things too far, but all the essential ingredients of the role of the media in the McCarthy episode can be detected here in South Australia.

One can detect evidence of professional manipulation of the media. We all know of invasions of privacy involving the use of recording devices. We have seen the uncritical publication of source information, without any attempt being made to check or authenticate that information. We know of the theft of private mail, the theft of private correspondence, and the creation of dossiers on members of Parliament, and we know that such dossiers could possibly form the basis of some of the source information, yet we have seen no press exposure of this tawdry affair.

We have seen the press promotion of the political haloed hero at critical periods, with views quite vicious, and unsubstantiated allegations, while the victims of those allegations have had to stand aside and suffer in silence. We have seen in South Australia a brand of subtle annihilatory journalism often veneered with academic comments that has left much to be desired from a responsible media. I could say much more, but I hope these brief references will, at least, allow those who played a part in this unsavoury episode to look back on their part with the same sense of guilt that their American counterparts now see in their role in the McCarthy affair. Even to the media, truth is the daughter of time.

In defence of the media, I believe that, since the introduction of television in Australia, journalism has been seeking to find a new role, a more aggressive adversary role, but, in the changing competition in the total media field, I believe certain parts of the media have not found their feet. Further, I believe that the investigatory and adversary role of the media could develop considerably in the ensuing years and, as I have said, the euphoria surrounding the free press following Watergate may well see the development of a more critical investigatory and adversary journalism than now exists. Following Watergate, the halo the press is tending to wear could easily become its hobble.

Even with the criticism that can be levelled against certain sections of the media concerning the ability for it to be manipulated, and its power as an annihilatory force involving the uncritical use of source information, I firmly believe that the approach in this Bill will destroy or seriously hamper the role of the media and the role that professional journalists must play in a free society. The definition of "privacy" in the Bill allows the courts to preserve a degree of flexibility and to decide, from case to case and from time to time, what should or should not enjoy the protection of the law.

Undoubtedly, case law will grow, but this will involve a gradual process, and for many years there will be a state of uncertainty during which no reporter or editor would ever be able to be sure of the law. This would be a bad thing. If this Bill passes with this concept, the Legislature will have shirked its responsibility and merely transferred to the courts the responsibility for legislating. That, too, would be a bad thing. This may also be described as legislative cowardice. Whatever label any media commentator may wish to apply, I have never legislatively shown any characteristics of being a cowardly custard, or any capacity for being a nervous Nellie.

The application of the concept of this Bill on the media will have serious side effects, which should not be countenanced if we wish to maintain the media in its traditional position. As honourable members can judge from what I have said, I do not support the approach to this problem as presented in the Bill. Therefore, I shall be voting gainst the second reading. Originally, I considered voting for the second reading, with the idea of referring the Bill to a Select Committee. This idea appeared to have appeal, until I read the full report of the Younger committee and of the Morison committee in New South Wales.

I have concluded that nothing further can be gained by rehearing that evidence. The facts are already plainly before us, and there is no advantage in referring this Bill to a Select Committee. I also considered voting for the Bill and seeking amendments during the Committee stage, but I rejected that course of action, because the Bill is not capable of sensible amendment. I admit having worked over the whole weekend trying to find ways and means of amending the Bill, but it cannot be amended, because the approach to this problem is from the wrong direction. The matter comes down to a decision about which way the problem should be approached. As I firmly believe

that the approach should be along the lines of the Younger committee's report, I am left in the position of having to vote against the second reading.

As I recognise the need for legislative action, I believe it is incumbent on me to suggest an alternative process. The Younger committee has provided us with an excellent basis for understanding the legislative problems involved in this matter. From the point of view of the United Kingdom it is unfortunate that the Younger committee, having made its report, is no longer able to continue its investigations or to upgrade its recommendations to the United Kingdom Parliament. The whole question of privacy is still affected by rapid social and technological change, and a strong case can be made for the establishment of a standing Parliamentary committee, with continued existence, to have the responsibility of examining the whole matter of extending the law in many areas, which will suitably protect the intrusions on privacy without adopting the unsatisfactory method of trying to define a right of privacy. This approach avoids the trap of trying to build a body of case law on terms of reference that are inescapably vague and unenforceable. For example, the Bill provides that only substantial and unreasonable infringements of privacy are actionable, and that the action will fail if the defendant can show that the infringement was done in the public interest. These terms are so vague as to be almost useless. The court may be able to operate with such criteria in some fields, but on privacy it is asking the impossible, as the whole concept of privacy will vary so much from person to person over a vast field that any build-up of case law will, I believe, be almost an impossibility.

I am suggesting that the Standing Committee would have the task of looking at separate extensions of the existing law, for instance, spying and prying, as part of the criminal law; that is more likely to be effective than placing it in the category of civil or all-purpose right of privacy. Industrial spying should be covered possibly by extending the existing laws on larceny. The use of a person's name should be more effectively covered by extending the law on false pretences, if necessary. Sections 7, 17 and 23 of the Police Offences Act should be examined for extension to cover areas of intrusions on an individual's privacy. We already possess the legislative ammunition. It may be necessary to redesign some of the existing laws and place specific duties on the community to prevent intrusion. In this approach, we do not create rights (which has never been the basis of British law): we create duties that protect those rights.

In this approach, we are left with the problem of the media. Having thought through the position to this point, I wonder whether the Attorney-General also reached this point, came face to face with the media problem, and, deciding that he could not tie the fourth estate up in a nice little compact bag, following the line of reasoning I have given so far, turned tail and went in the opposite direction. I ask this question, as the Attorney-General's attitude puzzles me.

I strongly support the Attorney's view regarding the introduction of a Bill defining human rights, because I believe, as he does, that such an attempt merely leads to confusion of the existing base of the law. The Attorney and I share similar views on trying to define human rights, and I cannot understand his adoption of this attitude in relation to a right to privacy. I have therefore come to the conclusion that the only way he could satisfy his meticulous but inflexible mind was to throw the whole lot into the tort action bag.

There are other strange anomalies in the Government's reasoning to which I should like to refer. Although they may be somewhat humorous, they are nevertheless anomalous. Regarding the Government's attitude to the Bill, we have the shadow Attorney-General in another place talking about introducing a Bill to invade the privacy of members of Parliament and their families by disclosure—

The Hon. A. F. Kneebone: Who is the shadow Attorney? Let me into the secret.

The Hon. R. C. DeGARIS: It seemed to be common talk that there was a shadow Attorney-General, and he seems to be doing quite a lot in another place introducing private members' Bills in order to get headlines.

The Hon. G. J. Gilfillan: He's even wearing a suit now, isn't he?

The Hon. R. C. DeGARIS: That is so. The point is that one member of the Government is introducing a Bill to create a right of privacy which binds the Crown and another is asking the Crown to consider a Bill to invade members' privacy in relation to a disclosure of their private financial position. If that is not an anomalous situation for any Party to be in, I do not know what is. Then we have the action of the Government in relation to tort actions. For so long we have heard it say, "We must get rid of tort actions in relation to industrial disputes." Suddenly, tort actions have become all the rage in relation to this question of privacy.

I return now to the question of the media, regarding which I believe the Attorney-General, when thinking his way through it, struck this stumbling block and went in the opposite direction, putting it in the tort action bag. If we accept the summing up of Burke that the media is the fourth estate and, in itself, has a specific role to play in the democratic process, I believe the approach of the Younger committee is the correct one. It maintained that the freedom of the press, subject to existing laws, places a further constraint on the press over which it has some say in its standing orders (if I can put it that way). I again refer to the recommendations of the Younger committee regarding the media, which can be found on pages 54 and 55 of its report. Although dealing with the press, the committee pointed out that what it had to say applied equally to other parts of the media. Under the heading "Conclusion", the report states:

We conclude that, because it is impossible to devise any satisfactory yardstick by which to judge, in cases of doubt, whether the importance of a public story should override the privacy of the people and personal information involved, the decision on this point can be made only in the light of the circumstances of each case. The question we have to answer, therefore, is who should make that decision.

We are in no doubt that the initial decision can only be made by those responsible for the publication: that is by the press themselves. The question is whether, in performing this function, they should be liable in case of complaint to be called to account by the courts acting under a law designed to protect privacy. For reasons which we discuss in chapter 23, we do not think that this is the sort of duty that should be given to the courts. Therefore, we look for some way other than legislation of fostering the right sense of responsibility on the part of the press. Accordingly, we consider how far the existing machinery of the Press Council is or could be made adequate for this purpose.

The first function of the Press Council under its present constitution is to preserve the established freedom of the press; and its second function, if it is working properly, should be to express the press' sense of responsibility. As such, it must be the creation of the press, and its members must be appointed by the press and include a large proportion of people who are concerned with management and editorial policy, and with the everyday work of journalism. We do not, however, see how the

council can expect to command public confidence in its ability to take account of the reactions of the public, unless it has at least an equal membership of persons who are qualified to speak for the public at large. We do not suppose that the Press Council is incapable of choosing such people, but their influence in the council and hence their effectiveness will depend on the extent to which they are generally regarded as independently representing the interests of the public rather than of the press.

Recommendations

We therefore recommend that the Press Council should alter its constitution so that one half of the membership are drawn from outside the press; and that the existing council, and thereafter the reformed council, should nominate for each "non-press" vacancy a selection of names from which the appointee should be chosen. As to who should make this final choice of the lay members, we recommend that the Press Council itself should establish an independent appointments commission which would be so composed that there could be no reasonable doubt about (*a*) its independence of the press, (*b*) its varied experience of public life, and (*c*) its standing with the general public. Its precise composition would be a matter for the Press Council, but it should clearly be as widely representative of the public as possible.

We recommend also that these reforms should be made at an early date. We have in mind the delay by the press in giving effect to the proposals for the composition of the Press Council made by the two Royal Commissions on the press.

We accept the press view that, as a non-statutory body, the Press Council could not appropriately have powers to levy fines on newspapers, suspend their publication, award compensation or make orders to newspapers to pay compensation. However, we are not satisfied that the sole action which the council can now take, that is to order an offending newspaper to publish a critical adjudication, is sufficient in its present form. The instances of refusal to publish are no doubt few and a paper of good standing would be unlikely to refuse, but a truculent editor might well put the report in an inconspicuous corner of his paper or otherwise fail to give it proper treatment. We therefore recommend that when the Press Council makes a critical adjudication, the newspaper at fault should publish it with similar prominence, if possible, to that given to the original item of news.

Finally we commend to the council the possibility of a codification of its adjudications on privacy, in a form which would give rather readier guidance to busy practising journalists, and to the interested public, and that it should be kept up to date.

I believe that that is the correct approach to the problem of the media in the context of invasion of privacy. That recommendation is as far as we should go in placing any further uncertainty in the path of the media, because the media has a unique role to play in the democratic process. I oppose the second reading of this Bill but, in doing so, I emphasise again that I do not oppose legislation to protect the privacy of the individual: I oppose the approach that this Bill makes to the problem. Its objects can be achieved more satisfactorily by following existing provisions and, where necessary, extending them. The recommended committee to achieve legislative changes and continue investigations is a satisfactory way of maintaining a constant watch on the social and technological changes that may demand further legislative action to prevent intrusions into the individual's right to privacy.

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

LOCAL AND DISTRICT CRIMINAL COURTS ACT AMENDMENT BILL

In Committee.

(Continued from October 16. Page 1499.)

Clauses 2 to 8 passed.

Clause 9—"Appeal from local court to Full Court."

The Hon. F. J. POTTER: I move:

In paragraph (*a*) to strike out "three" and insert "five", and in paragraph (*b*) to strike out "three" and insert "five".

The amendments limit the right of appeal from a local court to the Full Court to those matters that are in excess of $500, which is the same jurisdiction as that proposed in the Bill for the small claims court. New section 152e provides that there shall be no right of appeal from the small claims court except by leave of the Supreme Court. I believe that the same jurisdiction should apply throughout the local courts generally. My amendments make the whole matter consistent.

The Hon. A. F. KNEEBONE (Chief Secretary): The Attorney-General has informed me that he is willing to accept the amendments.

Amendments carried; clause as amended passed.

Clause 10 passed.

Clause 11—"Enactment of Part VIIA of principal Act."

The Hon. F. J. POTTER: I move:

To strike out new section 152e.

This amendment is consequential on the amendments made to clause 9.

The Hon. A. F. KNEEBONE: I agree that the amendment is consequential.

Amendment carried.

The Hon. A. F. KNEEBONE: I move to insert the following new section:

152g. (1) Where the plaintiff in an action—

(*a*) makes pecuniary claims (including a small claim or consisting of, or including, a number of small claims) aggregating an amount exceeding five hundred dollars;

or

(*b*) makes a small claim but also seeks relief in addition to a judgment for a pecuniary sum,

the provisions of this Part shall not apply in respect of the action.

(2) Where the plaintiff in an action makes a small claim and the defendant makes a counterclaim that is not a small claim, the court shall—

(*a*) order that the claim and the counterclaim be tried separately;

or

(*b*) where an order under paragraph (*a*) of this section would result in substantial inconvenience to the plaintiff, order that the action be dealt with otherwise than under this Part (and where such an order is made, the provisions of this Part shall not apply in respect of the action).

(3) Where the defendant to an action makes a counterclaim that is a small claim, the provisions of this Part shall not apply in respect of the counterclaim unless the claims made by the plaintiff are also justiciable under this Part.

New section 152g deals with a case where a small claim is advanced by a party but the case also involves claims that are not small claims. For example, in an action for nuisance the plaintiff may apply for an injunction to prevent the nuisance continuing and he may also advance a small claim for damages suffered by him as a result of the nuisance. There may also be cases where the plaintiff advances a number of small claims (perhaps based upon a series of separate contracts) which amount in aggregate to more than $500. It is felt that such actions should not be dealt with under the new small claims provisions. Subsection (1) of new section 152g accordingly deals with this matter. Subsection (2) deals with the case where the plaintiff advances a small claim but the defendant advances a claim that is not a small claim. In such cases subsection (2) provides that the claim and the counterclaim must be tried separately unless that course would cause substantial inconvenience to the plaintiff. Subsection (3) deals with a case where the plaintiff does not advance a small claim but the defendant does. In such a case the action is not to be dealt with under the new small claim provisions.

The Hon. F. J. POTTER: I have examined the amendment, and I support it. It is a proper amendment to be included, and the circumstances contemplated by new section 152g should not be overlooked. The general idea of a small claims court is one where the matter is dealt with more or less in isolation, not when it becomes part of the broader issues between the two parties.

Amendment carried; clause as amended passed.

Clauses 12 to 17 passed.

New clause 17a—"Proceedings on ejectment."

The Hon. F. J. POTTER: I move to insert the following new clause:

17a. Section 230 of the principal Act is amended—

(*a*) by striking out from subsection (1) the passage "ten thousand dollars" and inserting in lieu thereof the passage "twenty thousand dollars"; and

(*b*) by striking out from subsection (3) the passage "ten thousand dollars" and inserting in lieu thereof the passage "twenty thousand dollars".

As all honourable members know, the general jurisdiction of the Local Court here is extended to the sum of $20 000 in lieu of the previous limit. That matter had my support and that of other honourable members, but I think it has been overlooked that section 230 of the Act needs to be specifically amended in this respect. That is the purpose of the amendment.

The Hon. A. F. KNEEBONE: I support the amendment.

New clause inserted.

Remaining clauses (18 to 23) and title passed.

Bill reported with amendments. Committee's report adopted.

PRISONS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from October 24. Page 1673.)

The Hon. V. G. SPRINGETT (Southern): This is another of those Bills the primary function of which is to facilitate consolidation, under the Acts Republication Act, 1967, of our Statutes. Since 1968, the Prisons Act has been amended seven times. The original Act had as its chief officer the Comptroller of Prisons. The *Oxford Dictionary* gives the definition of the word "comptroller" as follows:

Misspelling of Controller in some titles.

"Control" is defined as follows:

To dominate, command, or hold in check.

Under the amendments in the present Bill, the title of the chief officer ceases to be "Comptroller", and becomes "Director of Correctional Services". That title change was effected by proclamation under the Public Service Act on April 11, 1974. The new title is one of the things being done to indicate the modern air and the modern aims that should apply in dealing with offenders against the law. Whether we should add that a rose is a rose by any other name is another matter!

A prison, by definition, is a place where a person is legally committed while awaiting trial or for punishment, custody, or confinement. It is not easy for us to picture or imagine the feelings and thoughts of most people when they are awaiting trial. I am referring to the group comprised of average citizens who have run foul of the law on some issue and who still have an active conscience. I am not thinking of the recidivist, or the chronic "old lag" to whom gaol is home or to whom prison is a holiday hotel (and there are such people).

There must be a different feeling on the part of the person being held in custody if he is under the supervision of the Director of Correctional Services, with Deputy and Assistant Directors, rather than under a comptroller of prisons, a deputy comptroller, and a gaoler. Clause 5 re-enacts section 7a of the principal Act in terms compatible with the terms of the new terminology, and states the powers and duties of the Director, the Deputy Director, and the Assistant Directors in a form compatible with modern thought, while clause 3 (*a*) is consequential on the change of the officers' titles, and clauses 3 (*a*), 4, 6, and 7 are all relevant to changes of titles.

Clause 8 re-enacts section 12 of the original Act, leaving it exactly as it was previously except that there is no longer reference to the second schedule, which is repealed later in the Bill by clause 38. The second schedule contained a list of prisons and their descriptions at the time the parent Act was proclaimed. Over the years, the list has become obsolete because of various changes and it is no longer effective. Because of changes in other legislation, including the Community Welfare Act and the Juvenile Courts Act, section 14 (*f*) of the principal Act is struck out and replaced by more appropriate terminology.

Clauses 10 to 25 are all consequential, involving changes of titles from those previously in use to the new titles. In clause 26, subclauses (*a*) and (*b*) contain some consequential changes, but clause 26 (*b*) also changes monetary value from £5 to $10. As so often happens when we see changes being made regarding monetary values, the amount of $10 bears little relationship to the value of £5 when it was accepted as an appropriate sum to be forfeited by a person being fined for a proven offence committed while an inmate of a prison after an inquiry by the comptroller or the visiting magistrate. Clause 38, as I said earlier, repeals the second schedule, and subsections (2) and (3) of the 1954 Prisons Act Amendment Act dealt with prisoners who were in prison under the provisions of the Maintenance Act of 1926-52 and were still in prison when the 1954 amending Act came into force. This no longer applies. No-one is in prison today under those provisions. The punishment provisions under that Act have been repealed, and great steps forward are being taken, an aim which is frustrated, to a degree, by the chronic pressures of our prisons. There is not adequate room to house them all: in other words, old buildings are often a handicap.

In this regard, three aims should be sought after in dealing with prisons. First, we should keep out of prison people who should not be there. That covers a wide variety of people, many of whom are sick in mind as well as in body. Secondly, we must use alternative and possibly more effective forms of punishment or restraint, as the case may be. Thirdly, we must improve the prison system for those people for whom there is no alternative to imprisonment. Considering those three aims, we must admit that it is a tragic reflection on modern society that an all too great proportion of society's manpower is incarcerated in gaol at any one time, if they are not being retrained to return to society as useful citizens. Their stay in gaol is a waste of society's manpower and a condemnation of society's willingness to employ them. History, all the way through, shows that society is afflicted with problems of its anti-social members. The terrible thing today is that there is a swing from placing the emphasis on discipline and punishment in order to protect the community to the other extreme of regarding all law-breakers as the victims of the society on which they prey.

It is akin to the philosophy that, if we give every worker more and more money, we do away with industrial strife. Nothing is farther from the truth in either case. Law-breakers in many cases need help to enable them to resume

their place as full and useful members of society. Personally, however, I think it is right and fair to keep in mind and recognise that, unless we provide facilities for retraining commensurate with the needs of the outside world and society at large, we shall be helping no-one; we shall not be helping them to integrate into society again but we shall just be adding to our prison population. I was impressed to learn that in this State the prison staff has a turnover of only 3 per cent a year, this figure including deaths and retirements. That speaks well of the organisation and control of our corrective services. We can therefore look with hope to what can be done when adequate facilities are provided. May the changes that this Bill ensures by its updating of old terminology help those who safeguard the public and help rehabilitate the criminally sick. One cannot but hope that the provision of such facilities will be forthcoming. I support the Bill.

Bill read a second time and taken through Committee without amendment. Committee's report adopted.

MARGARINE ACT AMENDMENT BILL

Consideration in Committee of the House of Assembly's amendments:

No. 1, page 1, line 9 (clause 2)—After "proclamation", insert "not being a day that occurs before the first day of February, 1975".

No. 2, page 1, line 21—After clause 4, insert the following new clause:

5. Sections 20, 20a, 21, 23 and 24 of the principal Act are repealed.

Amendment No. 1:

The Hon. T. M. CASEY (Minister of Agriculture): I move:

That the House of Assembly's amendment No. 1 be disagreed to and the following amendment made in lieu thereof:

Clause 2, page 1, line 9—After "This Act" insert ", other than section 5 thereof,".

After line 9—Insert—

"(2) Section 5 of this Act shall come into operation on the first day of May, 1975."

This amendment is moved because the company that was to manufacture dairy spread in South Australia wanted some time in which to get that product manufactured. It told me that a suitable time would be February 1, 1975. That is the reason for the House of Assembly's amendment. However, in the meantime, from discussions I have had with the margarine industry, it has been decided that a later date should be determined for the lifting of quotas to give dairy spread an opportunity to get into production. It seems futile to specify a date for the introduction of dairy spread and to provide another date for the abolition of margarine quotas. It is not necessary for this amendment to be accepted, because when the Act is proclaimed the manufacturers of dairy spread can launch the product whenever they wish. I ask the Committee not to accept the House of Assembly's amendment.

The Hon. C. R. STORY: The Minister's alternative amendment seems to do what he undertook to do for the dairy industry when he agreed to amend the Dairy Produce Act and the Dairy Industry Act to alter the definition of dairy produce to include a new spread, which this Chamber has agreed to and which was recently accepted by the House of Assembly. The recent amendments to the Margarine Act brought these three Bills into line. I agree that we should not accept the House of Assembly's amendment but that we should agree to the Minister's alternative amendment.

The Hon. R. A. GEDDES: Will the manufacturers of dairy blend be granted a period in which to get their product on to the market before margarine quotas are lifted and margarine products flood the market?

The Hon. T. M. CASEY: Butter manufacturers have stated that a suitable date for them to get dairy blend on to the market would be late January or early February. We suggested February 1, and they agreed. The alternative amendment provides the date for the abolition of margarine quotas, and the manufacturers of dairy blend will have at least three months in which to get their product on to the market before margarine quotas are lifted. Dairy blend manufacturers have said that the period allowed is reasonable, so there is no reason to include the date of February 1 in the Bill, because when the Bill is passed it will be proclaimed, and the manufacturers can bring their products on to the market before February 1 if they wish.

Motion carried.

Amendment No. 2:

The Hon. T. M. CASEY: I move:

That the House of Assembly's amendment No. 2 be agreed to.

This amendment seeks to repeal sections 20, 20a, 21, 23 and 24 of the principal Act. When margarine quotas are lifted, these sections will be redundant. Section 24 deals with the duty to advertise the fact that margarine is sold in a place where bread, rolls, or any other foodstuff is sold. That is not done now, and I do not think it has ever been done. Section 20 deals with the control of the amount of margarine that may be manufactured in the State. Section 20a deals with the effect of certain declarations. Section 21 deals with export margarine, and section 23 deals with substances to be included in margarine. With the lifting of margarine quotas, these sections will become redundant.

The Hon. C. R. STORY: I oppose the motion. I went along with the first amendment to get the legislation in order in the event of my not being able to sustain the course I intend to take. Bills to amend the Margarine Act, the Dairy Produce Act and the Dairy Industry Act were passed in this Chamber, the purpose of which was to provide for the introduction of dairy blend, which would help the dairy industry. This Bill, when it went to the House of Assembly, was a small Bill. It stayed there for some time, and I did not know why, because as a result of the Minister's previous statements I understand that some urgency was involved so that the dairy industry could take advantage as soon as possible of the new product. Until the evening before the Agricultural Council meeting the Minister had told us that the Government intended to increase table margarine quotas. I agree that the quotas should be increased, but I certainly do not agree that the floodgates should be thrown wide open. This Bill provides no precautions to see what will be the effects of the Bill on the dairying industry, on the Australian-based margarine manufacturers, or on a nucleus industry which is in the making in South Australia in two forms: I refer to dairy spread and to the oil seed industry. I believe all those things are relevant and very much in our minds when we think through these matters. The effect of the Bill will be to remove all quotas on table margarine, which, as honourable members know, falls into two categories: saturated and poly-unsaturated. As far as this State is concerned, those categories are undefined. "Table margarine" is defined in the Act as follows:

"Table margarine" means—

(*a*) margarine containing any fat or oil produced elsewhere than in Australia or any fat or oil obtained from any product produced elsewhere than in Australia:

(*b*) any other margarine which the Governor by regulation declares to be table margarine,

but does not include any margarine which the Governor by regulation declares not to be table margarine.

Section 3 (2) provides:

This Act shall be construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State, to the intent that, if any provision hereof would, apart from this section, be construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

In 1961, the Governor in Executive Council agreed to the following definition of " 'margarine' declared to be 'table margarine' ":

Any margarine which contains fat or oil (or both), other than beef fat and mutton fat, to an extent of more than 10 per centum by weight of the total quantity of fat and oil in such margarine.

That regulation came into force as from the date of the proclamation. According to Minister of Agriculture's minute 76/1961, that Minister was to give the necessary directions referred to in the proclamation. I believe that table margarine quotas throughout Australia should be increased in an orderly manner. In this respect, I am not alone. Indeed, I am in good company, as the Commonwealth Minister for Agriculture, Senator Ken Wriedt, and the Commonwealth Minister for Health, Dr. D. Everingham, were reported as having said:

The Australian Government would not support the continuation of production quotas on table margarine beyond July, 1976.

The report continues:

This was announced today by Senator Wriedt and Dr. Everingham following acceptance by the Federal Parliamentary Caucus of a recommendation from a joint meeting of its health and resources committees. The Government's view will be put to the next meeting of the Australian Agricultural Council next month where margarine quotas are listed for discussion.

The Ministers pointed out that table margarine production quotas in the individual States were a matter for those States to determine. However, the Australian Government is directly concerned with quotas within the A.C.T. and will not restrict production there beyond July, 1976. The current A.C.T. quota is 306 tonnes out of a national quota of 22 800 tons.

The choice of July, 1976—

and this is important—

to end support for quotas was chosen to coincide with the operational span of the new $28 000 000 dairy adjustment scheme which is aimed at ensuring a better future for viable and potentially viable dairy farmers. In addition, by July, 1976, the Industries Assistance Commission will be making a recommendation on continuation of dairy reconstruction.

The main features of the $28 000 000 scheme are interest-free loans to help prospectively viable cream suppliers change over to whole milk supply, assistance to dairy factories to meet such change-over requirements, and a broadening of the range of assistance beyond that available under the Marginal Dairy Farms Reconstruction Scheme.

The Ministers added that at the Agricultural Council meeting the Australian Government would declare its opposition to restrictions now applied by some States to the colouring and flavouring of margarine. But the Government will express its support for the view that margarine should be correctly labelled as to contents and, in particular, margarine should be labelled either "poly-unsaturated" or "not poly-unsaturated".

That document is relevant to this discussion, at it illustrates what the Commonwealth Minister thinks regarding quotas. I agree with that policy, as the Commonwealth Government may have to change its mind regarding the date of July, 1976. Here, we are looking completely into the darkness. We do not know what will be the effect on the dairying industry of the present world situation regarding the marketing of dairy produce; nor do we know what will be the effect on next season's grain crops. The Commonwealth Government is so seized of this situation that it has set up a committee to investigate these matters. I now refer to a document which is often referred to these days and which is the Labor Party's bible. Entitled *Rural Policy in Australia*, and most commonly known as the Green Paper, it was commissioned by the Prime Minister on December 14, 1973, and was made available to the public on May 31, 1974. The committee was under the Chairmanship of Dr. Stuart Harris. The following is a relevant part of the Green Paper:

As a permanent form of protection, it should have no place in a rational rural policy. Nevertheless, the dairy industry should be given time and facilities to adjust —by providing for a gradual relaxation of such restrictions. The pace at which margarine restrictions should be liberalised requires judgments involving welfare comparisons and must, ultimately, be a matter for political determination.*

Our attention is directed by the asterisk to the opinion of one of the members of the commission, Sir John Crawford, previously the Director of the Department of Primary Industry. In his notation on that paragraph, Sir John says:

As I have agreed to conduct an inquiry into assistance for the dairy industry, I note this observation and refrain from endorsing it in order to ensure full discussion of the principle by those who wish to give evidence one way or another during that inquiry.

Sir John is at present taking evidence as Chairman of a committee that has to report to the Commonwealth Government. Action taken between now and when the committee reports will affect the committee's findings. Precipitate action taken now could put the dairying industry at a disadvantage in the next 12 months, and this will be reflected in the committee's report; that is one side of the coin. The other side of the coin is that removing quotas in one fell swoop may invite the strongest of the margarine manufacturers to get as large a share of the market as possible in the shortest time. The Unilever group manufactures margarine, detergents, soap, and many other products, and it has a world-wide operation. If there is a shortage of a commodity in Australia and if the Unilever group wants to push that product, the group can draw resources, technology and machinery from all over the world.

The Hon. R. C. DeGaris: Your complaint is that this will assist the multi-national corporation.

The Hon. C. R. STORY: Yes. At present an Australian firm of oil producers has the greatest penetration into the market for poly-unsaturated table margarine, but the Unilever group has increased its share from less than 10 per cent of the rest of the market a few years ago to well over 60 per cent at present. It has not done this by cutting the price. In fact, if one looks at Unilever's brands in supermarkets one finds that the Unilever price is between 4c and 5c greater than that of other spread-type margarines. This is possible as a result of massive advertising campaigns. Many people regard Stork as synonymous with margarine, and unfortunately people associate that brand with poly-unsaturated margarine, but really it is a spread and therefore does not help people who, because they have a high cholesterol level, eat poly-unsaturated foods.

The Unilever group has, through advertising, made a terrific impact not only in connection with margarine but also in connection with every other sphere it has entered. Unilever has only a small proportion of the poly-unsaturated margarine market at present. When quotas are completely lifted, other Australian-based multi-nationals, which at present are not manufacturing margarine under the quota system but which are associated with other industries (including the wine industry), may enter the market. So, it is undesirable for quotas to be lifted overnight; that is why I intend to vote against the motion.

We are in an awkward situation, and I should like the Minister not to oppose what I intend to do. I should like the Minister to redraft the margarine legislation, insert a proper definition of poly-unsaturated margarine so that people are not exploited, insert a proper provision in regard to advertising, insert a proper provision in regard to labelling, and bring the legislation up to date. Western Australia and Queensland have brought the corresponding legislation up to date, and New South Wales has done so to some degree. People in Australia are entitled to get as much table margarine as they want to buy. I do not object to the Government's doing what I thought it would do when the Minister went to the last meeting of the Agricultural Council and what I believed the Minister's fellow members of the Agricultural Council thought the Government would do—seek an increase in the quotas. I am sure we would be pleased if the Minister were to increase South Australia's quota by one-quarter, or even more. However, to take off the handbrake and let the car go downhill into the river seems imprudent, especially when there is no insurance.

The Hon. R. C. DeGaris: Do you think he is trying to beat the Attorney-General in being the first cab off the rank?

The Hon. C. R. STORY: I do not know. We have been denied a good second reading explanation on this and, although I have been treated kindly in what I have been able to say, I have not been able to range over the whole spectrum of the matter, because in dealing with this motion I can speak only to this clause. When he spoke of what was being repealed, the Minister mentioned the small fry, but one of the important provisions we are repealing is section 20 of the principal Act, dealing with quotas.

The Hon. T. M. Casey: I did mention that.

The Hon. C. R. STORY: The Minister mentioned it, but he did not place on it the importance I think he could have done. Section 20 is the crux of the matter; it deals with the control of the amount of margarine to be manufactured. If that section is repealed, the teeth of the legislation will be drawn. I want to see the Act as it is at present, and I shall give the Minister every support so that we will have adequate legislation dealing with the control of margarine (not just table margarine but margarine in its various forms) and its marketing. I do not want to see the dairying industry taken to the cleaners, as I believe it will be if the matter is left wide open. Providing that it is to come into operation on a certain date will not be good enough if we allow this matter to be thrown open to everyone who wishes to become involved.

Progress reported; Committee to sit again.

ADJOURNMENT

At 4.50 p.m. the Council adjourned until Wednesday, October 30, at 2.15 p.m.