LEGISLATIVE COUNCIL

Thursday, November 11, 1976

The PRESIDENT (Hon. F. J. Potter) took the Chair at 2.15 p.m. and read prayers.

ASSENT TO BILLS

His Excellency the Governor, by message, intimated his assent to the following Bills:

Metropolitan Adelaide Road Widening Plan Act Amendment,

West Terrace Cemetery.

QUESTIONS

UNEMPLOYMENT RELIEF GRANTS

The Hon. R. C. DeGARIS: Has the Chief Secretary a reply to my recent question regarding unemployment relief grants?

The Hon. D. H. L. BANFIELD: On November 3, 1976, the Minister of Labour and Industry wrote to the Naracoorte District Council advising that, in light of commitments already undertaken and grants already allocated to relieve unemployment in the Naracoorte area, no further grant would be made at this stage.

LONG PLAINS BUS SERVICE

The Hon. C. M. HILL: I seek leave to make a statement before asking a question of the Minister of Lands, representing the Minister of Transport.

Leave granted.

The Hon. C. M. HILL: A serious problem has been brought to my notice concerning the bus service from Long Plains to the Salisbury railway station. I have been told that a 35-passenger bus was used for this service, and, I understand, it continued on as a school bus in the Virginia area. Now, an articulated vehicle, apparently with a greater passenger capacity, is used. However, difficulty is experienced in turning the articulated vehicle in the railway yards, which delays the trains. Also, the driver of the articulated vehicle, who is positioned in the prime-mover section, has little control over schoolchildren travelling as passengers. My constituent who has brought forward this matter considers that a 46-passenger single-unit bus would be far preferable to the articulated vehicle. Will the Minister ask his colleague to investigate this matter and to say whether an improved bus service could be established in the interests of greater efficiency and safety?

The Hon. T. M. CASEY: I will refer the honourable member's question to my colleague and bring down a reply.

MUSIC COURSE

The Hon. C. M. HILL: I seek leave to make a statement prior to directing a question to the Minister of Agriculture, representing the Minister of Education.

Leave granted.

The Hon. C. M. HILL: My explanation will take the form of reading a letter from a correspondent in today's *Advertiser* as I think the letter leads up completely to the question I wish to ask. The letter, under the heading "Music Course", reads as follows:

Sir—We, the students undertaking the course in advanced music at the Flinders Street College of Further Education, wish to bring to notice a situation which to us seems grossly unjust. The Flinders Street course for the Certificate in Advanced Music is now in its third year, and, in our opinion, is equal, or superior, to any degree course in South Australia. Our college offers many facilities. We have 20 full-time staff members, some of world renown. In addition, we have a number of highly skilled hourly paid instructors. We have a fine library of books and music, and numerous other features.

The college has applied to have the course recognised as a diploma course, and a working party from the South Australian Board of Advanced Education has recently examined our course, and, while acknowledging the excellence of the syllabus and the facilities available, has seen fit to shelve our application until after a post-secondary education enquiry has been completed, which, we believe, could take 18 months or more. Meanwhile, the Torrens College of Advanced Education is offering a degree course in music, almost identical to our course, to be started in 1977. We understand that a staff of no more than seven will be conducting this course compared with our 20. What we consider a great injustice is that the same board of enquiry which has deferred decision on our diploma status has seen fit to grant the rights to a degree course to the Torrens College of Advanced Education before it has has even been given a trial run while our course, in its third year, has already proved conclusively to be of an extremely high standard.

The letter is signed by 20 signatories, including Glenys-Jean March.

The Hon. D. H. L. Banfield: Who are the other signatories?

The Hon. C. M. HILL: I have not got that; the newspaper does not reveal their names. Will the Minister investigate this matter and say whether he considers these complaints by the people of the Flinders Street College of Further Education are justified? Does he intend taking any action in regard to this matter? Will the Minister of Education also confer with the Premier, in Cabinet, as the Premier is known as the Minister for the Arts in Cabinet?

The Hon. B. A. CHATTERTON: I will refer the honourable member's questions to the Minister of Education and bring down a reply as soon as possible.

NURSING HOME FEES

The Hon. J. R. CORNWALL: I seek leave to make a brief statement prior to asking a question of the Minister of Health.

Leave granted.

The Hon. J. R. CORNWALL: Over the past months, many constituents have approached me on the problem of nursing home fees. I understand that the Federal Government has refused to raise the subsidy to meet the gap between the cost of the nursing home fees and the person's pension. Last Friday, a constituent approached me and showed me his complete budget for keeping his wife in a nursing home. Their combined pensions came to $3 700 a year. His wife's costs in the nursing home, together with his gas bill, telephone bill, etc., on top of the Government subsidy, are $4 400 a year. This leaves an unavoidable deficit of $700 before there is any allowance for food and clothing. He has $2 300 of his life's savings left. Clearly after that has gone, he faces starvation, unless the situation changes. I think that no

comment, either political or otherwise, on that is required. Can the Minister say whether desperate cases such as this are widespread?

The Hon. D. H. L. BANFIELD: Yes; there are definitely cases such as this that are widespread. I am getting reports in just about every week. It is most unfortunate that the Australian Government has not seen fit to increase the subsidy to cover the gap between the fees of the nursing home and the person's pension. The fees for a nursing home are approved by the Commonwealth before they can be charged. Unfortunately, while the Australian Government allows nursing homes to increase fees it does nothing about decreasing the ever-widening gap between the subsidy and the pension. This situation is causing much distress to pensioners in the community who are in the unfortunate position of needing nursing home care. Representations have been made to the Commonwealth Government many times by many people, but this anomaly still exists and, whilst the Commonwealth refuses to increase the subsidy, more and more people will suffer as a consequence.

DROUGHT RELIEF

The Hon. F. T. BLEVINS: I seek leave to make a brief statement before asking a question of the Minister of Lands.

Leave granted.

The Hon. F. T. BLEVINS: An announcement was made yesterday by the Premier that special loans at 4 per cent interest over seven to 10 years for South Australia's drought-affected farmers would be available. In his announcement the Premier said that the scheme aimed to provide carry-on finance to meet living costs, fodder, fuel and restocking charges, and would start immediately. Individual loans would be geared to individual needs and circumstances and the South Australian Government decided that the first repayment would not be demanded until March, 1979. Farmers who have taken out special loans under the Primary Producers Emergency Assistance Scheme at 10½ per cent could apply for conversion of those loans to the new 4 per cent rate. The Government has worked on the basis that longer-term problems would occur for farmers later this year and throughout next year, and this has been consistent with the attitudes of the State's producer organisations. The Premier stated:

The financial effects of the drought will continue throughout next year, and the major thrust of the Government's programme has been carry-on assistance to help overcome these effects.

This morning I heard the shadow Minister of Rural Affairs in another place (Mr. Nankivell) say on the radio that this scheme appeared attractive but, after he gave it closer examination, he decided there was little in it for the farmer. Knowing the Minister's great concern and the concern of the Labor Party for all rural industry, can he say whether he has heard the comments of any responsible spokesman for the rural industry on this scheme announced yesterday by the Premier?

The Hon. T. M. CASEY: I did not hear the member from another place make a broadcast this morning, but I am not surprised that that was done. It seems that the Liberal Party in South Australia has always tried to belittle the Labor Party when it wanted to do anything for farmers in this State. This position goes back for many years. I remind honourable members that it was the Labor Party that introduced and established the Wheat Board many years ago. That was for the benefit of the farming community. The board is providing something that the farming community likes to hang on to.

The Hon. R. C. DeGaris: Parliament passed that legislation.

The Hon. T. M. CASEY: It does not matter; the board was introduced by a Labor Government. Anything to do with rural matters, when it is introduced by a Labor Government, is always belittled by the Liberal Party. I do not know why this occurs. Perhaps the Liberal Party believes that Labor members should not represent rural districts, or something like that. It is interesting to note that, when I answered a question yesterday concerning this matter, on a similar line to what was announced by the Premier, not one honourable member raised the position in respect of farmers, who have borrowed under the Primary Producers Emergency Assistance Scheme and who have borrowed funds at the bond rate, which is about 10½ per cent. I was waiting for a question to come from the Opposition, but it did not come. I am therefore glad to have the Hon. Mr. Blevins' question. People who have received loans under the Primary Producers Assistance Act can convert their loans to this new scheme; the Minister has power to do this under the legislation. This matter has been wholeheartedly supported by producer organisations. An article in this morning's *Advertiser* quotes Mr. Grant Andrews as saying:

We were pleased to co-operate with the State Government on its latest submission to the Federal Government requesting long-term aid be made available on the terms and conditions outlined.

That sums up the situation, and I do not know why honourable members opposite have criticised the scheme, because it will be in the interests of the farmers, who really need it.

The Hon. A. M. WHYTE: I seek leave to make an explanation following Mr. Blevins' question to the Minister of Lands.

Leave granted.

The Hon. A. M. WHYTE: The Minister made a rather pleasing job of telling us how smart he and his Government are in connection with this scheme, but he has omitted to say that this is a Federal grant and, unless the State is willing to provide $1 500 000, it cannot qualify for assistance. No-one is disagreeing with the attempt to make carry-on finance available to the agriculture industry. The Minister seems to be unaware of the requirements of the grant. He refuses also to admit that to qualify for this scheme an individual is faced with an almost impossible task and therefore, as I said yesterday, it is an absolute farce unless that requirement is altered.

The Hon. F. T. Blevins: Is Mr. Andrews wrong?

The Hon. A. M. WHYTE: I had a long conversation with Mr. Andrews, who is most irate. Perhaps I should refer not only to the Minister of Lands but also to the Minister of Agriculture, because the Minister of Lands had to be prompted by the Minister of Agriculture when he replied to my question yesterday regarding the criteria necessary to qualify for these loans; he said that no alteration would be made to the necessary criteria.

The Hon. T. M. Casey: That is not true, and you know it. I am talking about the prompting allegation.

The Hon. A. M. WHYTE: It is an absolute fact.

The Hon. T. M. Casey: How would you know?

The Hon. A. M. WHYTE: The Minister of Lands did not know what to say, and the Minister of Agriculture said "No".

Members interjecting:

The PRESIDENT: Order! The Hon. Mr. Whyte.

The Hon. A. M. WHYTE: The Hon. Mr. Blevins, who would be the first to admit that he knows very little about the agriculture industry, asked a question of the Minister, who could not answer a question yesterday. Can the Minister give details of what is required of the State to qualify for this Federal loan? Will consideration be given to criteria under which applicants must qualify?

The Hon. T. M. CASEY: After listening to the rambling on of the Hon. Mr. Whyte I do not know what he is driving at when he asks his question. The honourable member has attacked me personally by saying that I did not answer a question yesterday but had to be prompted by the Minister of Agriculture. That is absolutely untrue. I think for the honourable member to stoop to that situation is most unbecoming of him. The situation is, first of all, that it is not a Federal scheme. It comes under the drought scheme for which the State Government has to provide $1 500 000 before the Commonwealth is interested in coming in. We still have to clarify the situation with the Commonwealth Government in order that we can take part in the scheme and bring in the $1 500 000. If the honourable member cannot get that through his thick skull I feel sorry for him.

The Hon. R. C. DeGaris: That is exactly what he said.

The Hon. T. M. CASEY: No. He said it was a Federal scheme, and it is not. It is a State scheme and it will be the State's money provided up to $1 500 000.

Members interjecting:

The PRESIDENT: Order! The Minister is able to answer the question without help from honourable members.

The Hon. T. M. CASEY: As I informed the honourable member yesterday when he asked me the question, the scheme has to be administered in such a way that the administration has to be certain that these people need carry-on finance. If you were to go to a bank today, Mr. President, to obtain money you would have to prove to the bank in no uncertain terms that you had certain assets that could be used against the loan which you were going to acquire.

The Hon. N. K. Foster: What is the interest rate?

The Hon. T. M. CASEY: It could be anything up to the bond rate or it could be higher because when one goes into the bank one does not get it at the first counter; one has to go further down. It could be 14 per cent.

The Hon. N. K. Foster: Plus!

The Hon. T. M. CASEY: The situation is that this is a seven to 10 year loan at 4 per cent. I think it is only fair and proper that the taxpayers of this State should be absolutely insured against lending money in such a way when people do not qualify. When these people qualify under conditions that are laid down by the authority the loans will become available. I take great umbrage that members opposite, and particularly in this case the Hon. Mr. Whyte, seem to think that no-one in the Labor Party knows anything about the problems of the man on the land. That is just not the case because some members in the Labor Party have just as much experience as members opposite.

The Hon. M. B. CAMERON: I seek leave to make a short explanation prior to directing a question to the Minister of Agriculture.

Leave granted.

The Hon. M. B. CAMERON: I was interested to hear what sections of the reply by the Minister of Agriculture related to the question asked by the Hon. Mr. Whyte, particularly that section about going to the bank to get a loan.

The Hon. T. M. Casey: You mean me? You mean the Minister of Lands?

The Hon. M. B. CAMERON: Yes, I apologise to the Minister. I am directing my question to the Minister of Lands. He stated that if you went to the bank you would have to prove you had certain assets to go against any loan that you might obtain. Is the Minister aware that before one can qualify for this scheme one must have gone to the bank and been refused, gone to the stock agents and been refused, and in fact gone to all normal sources of credit and been refused? Is the Minister aware that that makes it almost impossible to qualify? By the time one has gone through those sources one is hard put indeed to convince anyone, particularly with the criteria that are now used, that one can qualify for a loan under this scheme. It is very difficult indeed.

The Hon. A. M. Whyte: The sum of $33 000 assistance was provided under provisions of drought relief.

The Hon. M. B. CAMERON: As the Hon. Mr. Whyte pointed out, $33 000 assistance was provided in this State for particular sections of drought relief. That is an indication that it is extremely difficult to qualify under this criteria. Will the Minister ease the criteria slightly so that people may qualify for this assistance? Also, will he give an assurance that the people involved will have a slightly easier time in obtaining finance and that in future, when such matters relating to drought relief are introduced, the Minister will act sooner to provide this finance, as I understand that the Commonwealth Government has for some time been waiting to hear any suggestions emanating from State Ministers regarding ways of applying for Commonwealth drought relief assistance? The Government has been considering the unemployment relief scheme so much that it has lost sight of this scheme.

The Hon. T. M. CASEY: This is another typical example of the honourable member's not knowing what he is talking about when asking a question. Merely because a certain sum of money has been paid out to farmers for drought relief, the honourable member accuses the Government of not doing enough. However, the Government has done everything that it has been asked to do.

The Hon. M. B. Cameron: You just haven't given the money.

The Hon. T. M. CASEY: The honourable member should let me finish answering his question. Regarding the provision—

The Hon. C. M. Hill: How much have you given, in the last financial year, under the farmers assistance fund?

The Hon. T. M. CASEY: Mr. President, I am trying to answer one question.

The PRESIDENT: I know. There are far too many interjections, which are out of order during Question Time.

The Hon. T. M. CASEY: Thank you, Mr. President. Assistance has been granted to primary producers this year since the drought began in all the areas in which it has been requested. It is not the Government's fault if farmers have not taken advantage of the range of offers that have been made to them.

The Hon. A. M. Whyte: You know that they couldn't do so under the criteria that were laid down.

The Hon. T. M. CASEY: I remind the Hon. Mr. Whyte, who wants to have another bite at the cherry while I am answering the Hon. Mr. Cameron's question, that the Government granted concessions on fodder, and on the

transport of stock by road and rail for agistment purposes. The Government has also given $10 a head for cattle that have been slaughtered, and has paid district councils for costs incurred in burying sheep carcasses. The Government has, therefore, done everything that it has been asked to do. It has even carted water to drought-stricken areas, and opened up Crown lands so that farmers could agist their sheep—free of charge, I might add. It can be seen, therefore, that the Government has done everything possible in this respect. I do not know how the honourable member can criticise the Government if farmers have not taken advantage of all these schemes that have been made available to them. I do not know what more the Government can do.

It is all very well for the Hon. Mr. Cameron to get up and say that he has heard from the Commonwealth authorities that they have been waiting on certain recommendations to come from the States. I point out to the honourable member that about three weeks ago a meeting of Lands Ministers, together with two Agriculture Ministers, who administer this scheme in the various States, and the Commonwealth Minister (Hon. Ian Sinclair) was held. That meeting tried to bring together all these drought relief schemes under one piece of legislation so that the Commonwealth could act expeditiously. It is claimed that the Commonwealth is slow to initiate these schemes on behalf of the States. However, this has not been the fault of the States. Even the Hon. Mr. Sinclair admits this because, every time the States want to introduce a drought relief measure, it must first be passed by the Commonwealth Parliament and, if that Parliament is not sitting, this cannot happen.

We hope to do this more expeditiously in future, and I hope that this scheme will come into operation some time in January. However, I am still awaiting word from Mr. Sinclair in this regard. The honourable member asked whether the criteria involved could be toned down. I think the authority has done an exceptionally good job in the interests of the taxpayers. This operation is the same as a private business operation: these matters must be examined in the light in which they turn up, and I cannot see any reduction occurring in this respect at present.

The Hon. A. M. WHYTE: Having got over the shock of the Dorothy Dixer that was asked a moment ago—

The Hon. F. T. BLEVINS: On a point of order, Mr. President, I ask Dorothy Dixer questions, as does every other honourable member. However, until I came into this Chamber this afternoon the Minister did not know that I was going to ask the question. I am a little sorry that I did ask it, because of the fuss that has been made about it. My question certainly was not a Dorothy Dixer: it was a question without notice.

The PRESIDENT: I think it would be desirable if all honourable members refrained from using that expression.

The Hon. A. M. WHYTE: Following the question asked by the Hon. Mr. Blevins, I should like to explain, from information I have, that I understand that the criteria which the people must follow in their applications will be amended. When the Minister has a copy of the new criteria, which I understand is being worked on at the moment and which it is hoped will be reduced from 14 pages to five, will he let me have a copy of it?

The Hon. T. M. CASEY: Yes; I shall be delighted to do so.

PORT PIRIE RADIO-ACTIVITY

The Hon. M. B. DAWKINS: I seek leave to make a statement before asking the Minister of Health a question.

Leave granted.

The Hon. M. B. DAWKINS: My question relates to the problems that have arisen in the Port Pirie area recently and to the apparently exaggerated comments that have been made by Dr. Helen Caldicott and others on this matter. I think most honourable members have probably received correspondence from Dr. Caldicott. We have also heard from other authorities, such as Sir Philip Baxter, who stated that Dr. Caldicott's representations are very seriously exaggerated. I believe that the Hon. Hugh Hudson, who described himself as a layman, said, when speaking personally, that he was very unimpressed by the comments made by Dr. Caldicott. I believe that this matter should be in the field of the Minister of Health, and I should be interested to know whether he has consulted his officers on the matter and whether he has any official comment to make, on behalf of the Government, regarding it.

The Hon. D. H. L. BANFIELD: I have answered a similar question along these lines during the week, and I have issued a press statement, in which I said that I deplore statements made that could cause panic in the Port Pirie area. I said that, although I was concerned about the presence of radio-activity in the area, the average level was very low and there was no need to overstress the dangers of the situation. This has resulted in an investigation being conducted by my department, which has had the matter under consideration for some time. I said that the hazard was so low that there was no point in finding the children who had been playing on the site, as the investigation would reveal nothing and cause needless anxiety.

The recommendation from the National Health and Medical Research Council was that exposure should not be more than 500 millirems in one year. There was evidence that some children had been playing in certain areas of the site. Fortunately, these areas were of relatively low concentration of radio-activity, and children playing there would need to have exceeded more than 1 000 hours in a year to exceed the prescribed limit set down by the National Health and Medical Research Council. True, there was one small spot which showed the highest activity, but it was most unlikely that children would be playing in that area. Again, I stress that it is most unfortunate that people make exaggerated claims that might cause concern in the area.

My department has the matter under review all the time and, although we are concerned that there is radio-activity in the area, I can give an assurance that the reading does not exceed the National Health and Medical Research Council's recommendations in relation to exposure limits.

HOLIDAY PROGRAMMES

The Hon. C. M. HILL: Has the Minister of Tourism, Recreation and Sport a reply to a question I asked recently about holiday programmes for schoolchildren? I suggested that vacant school rooms and buildings could be used as holiday accommodation in various areas distant from the homes of schoolchildren who otherwise could not enjoy the holiday periods, because of the financial position of their parents.

The Hon. T. M. CASEY: I am happy to be able to satisfy the honourable member's request, although he forgot to mention city children going into the country for holidays.

The Hon. D. H. L. Banfield: He was not concerned with city children.

The Hon. C. M. Hill: Indeed I was.

The Hon. T. M. CASEY: I have consulted with my colleague, the Minister of Education, who has advised me in the following terms:

Prior to each school holiday period, the Education Department invites all schools to conduct school holiday vacation centres at their schools and offers financial assistance to administer these centres. During the forthcoming December-January period, about 130 schools will administer programmes under this arrangement. The concept of having children camp at a school, either in the city or in the country, is one for individual schools to consider and decide upon. The centres would, of course, have to possess basic living facilities such as for washing, cooking and changing, and the full-time presence of school staff would be necessary. Moreover, the question of public health requirements would need to be closely examined.

Within my own department, we are aware of many vacation camping opportunities available to country and city young people. The Methodist Department of Education and Citizenship is conducting a programme specifically for country school leavers called "Preparing to live in the city". There are adventure camps centred on sea and river locations, sports coaching camps, craft camps, and camps offering a variety of activities at a mixture of country and city locations. The organisations involved include Y.M.C.A., Y.W.C.A., Scout Association, youth groups, Legacy, Children's Foundation, churches and the Craft Association of South Australia. Details of these camps will be included in the list previously mentioned in my reply to the Hon. J. R. Cornwall on Tuesday, November 2.

FERRY SERVICE

The Hon. F. T. BLEVINS: I direct a question to the Minister of Lands, representing the Minister of Transport. Could the Minister supply me with any information he has about the Greek ship *Georgious Di Ozos*, which press reports suggest could commence a ferry service between Rapid Bay and American River on Kangaroo Island? Would the owners of the vessel need any approval from the State Government to operate the vessel on the proposed route? What significance for the proposed operation do the investigations of the Highways Department and the Transport Department have? They suggest no significant cost savings would be made in operating a vessel across a shorter route than that taken by the *Troubridge*.

The Hon. T. M. CASEY: I will refer the honourable member's question to my colleague the Minister of Transport and bring back a reply.

JUSTICES ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 9. Page 1941.)

The Hon. J. C. BURDETT: This Bill and the two following Bills, in the main, follow the Mitchell committee's recommendations and, with exceptions to which I shall refer, I applaud them as a step forward in trying to alleviate the trauma for victims of sexual offences. I support the second reading. It is a short Bill, it has been shortly explained, and I shall speak on it shortly. It seeks to relieve the alleged victim of a sexual offence from all obligation to give evidence at the preliminary hearing unless the justice deems it necessary. The second reading explanation rightly referred to the traumatic experience to which the victim of a sexual offence is subjected. I agree with that comment. I would add, however, that the victim of a brutal bashing or a working over by a gang, and certain other victims, are subjected to a fairly traumatic experience.

The second reading explanation goes on to say that, notwithstanding the traumatic experience of the victim, the rights of the accused must not be forgotten. After all, however revolting the offence, it does no good at all to punish the wrong man. I accept that the Bill preserves a reasonable balance, and I support the second reading.

The Hon. J. A. CARNIE secured the adjournment of the debate.

EVIDENCE ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 9. Page 1942.)

The Hon. J. C. BURDETT: I support the second reading of this Bill. It provides that the evidence of complaint in sexual offences is to be excluded from and no longer to be an exemption to the hearsay rule. I have no objection to this. I agree also with the restriction as to cross-examination of the prosecutrix as to previous sexual experience unless leave is granted. This is a most humane and proper provision. Leave is only to be granted if the judge is satisfied that the object of cross-examination is directly relevant to the matter in issue. This is eminently reasonable.

I refer to clause 3, which has nothing to do with sexual offences specifically, and does nothing to alleviate the trauma of the victim. It follows the recommendation of the Mitchell committee, but I have some doubts about it. It provides:

Section 18 of the principal Act is amended by striking out from subparagraph (*b*) of paragraph VI the passage "or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution".

This would mean that an accused person would be allowed to blacken the character of Crown witnesses, however unjustifiably, and swear, however falsely, that the police had been guilty of the grossest misconduct without any reason in having his own character investigated. He could swear that a perfectly virtuous girl was a prostitute, and that the police had bullied him and had concocted a faked version without the jury being allowed to know that he was, for example, a professional criminal. It has always been accepted by the courts, here and in England, that, if charges of this sort are to be made, then it is fair that the jury should know something about the man making them. The Mitchell committee has produced the old argument that, once a jury knows that an accused person has been in trouble before, he has no chance of getting a fair trial. In the opinion of many who are connected with the criminal law, this is a quite unwarranted reflection on the intelligence and sense of justice of the modern jury. The present law does no harm to the respectable defendant, but the amendment would be an invaluable deterrent to the old offender. With those observations, I support the second reading.

The Hon. ANNE LEVY: I, too, support the second reading and wish to comment on the reasons why some clauses in the Bill are necessary. Often it is true in a rape case that the fundamental strategy of defence has been to undermine the moral character of the woman complainant. However irrelevant the woman's sexual history may be, defence counsel often ruthlessly exploits it in the

interests of his client. Some of the mud may stick, no matter what is the outcome of the trial. In this way, women have been humiliated, without cause, by irrelevant evidence.

I instance an example, quoted in the press recently, of a rape case in Sydney in which a conviction resulted. In that case, the offender, because he had not given evidence on oath, was not subjected to a single question during the trial, but the victim of the rape had to answer 1 600 questions throughout the trial, mainly dealing with her most private and personal life. I am pleased that, following the passage of this Bill, such occurrences will not be repeated in this State. The removal, except in exceptional circumstances, of evidence relating to the victim's previous sexual history in rape cases is not new. It has already been put in legislation in 17 States in the United States. I should like to refer to a statement paper by Julie Dahlitz, of Monash Law School, in which she states:

As a result of a long line of precedents, evidence in rape trials has been admissible which is irrelevant to both the character of the witness and the facts of the particular case. These anachronisms are not needed for the defence of the innocent accused but they are often used unscrupulously to confuse and mislead the jury and to intimidate the victim.

I applaud the removal of such procedures from our courts. Another matter dealt with in the Bill concerns the publication in the media of names of both the victim and the accused. Regarding the publication of the name of the victim, this will be merely putting on the Statute Book what is the practice in this State and has been so for a long time. We have not had the situation that applies in the United Kingdom, and I will quote from a survey of newspapers which was made last year and which covered a period of 20 years. This survey showed that, in 54 per cent of rape cases reported in the press, the name of the victim was given, although her address was given much less frequently.

Furthermore, the Bill deals with the right of the accused not to have his name published during the committal proceedings and provides that, if it is published in the trial proceedings, in the event of an acquittal equal prominence must be given to the fact of his acquittal. I am sure that all honourable members support this addition to the law. In the United Kingdom survey to which I have referred, it was shown that only 20 per cent of acquittals were subsequently even reported in the press, let alone the same degree of prominence being given to the initial trial proceedings, so this provision also will add much to the rights of the accused, particularly the innocent accused, in our law courts.

The Hon. R. C. DeGARIS secured the adjournment of the debate.

CRIMINAL LAW CONSOLIDATION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 9. Page 1944.)

The Hon. J. C. BURDETT: I support the second reading of this Bill. First, it widens the definition of "rape", and I have no objection to that. The only major part of the Bill about which I have any argument is clause 12. This matter is most important, because doubtless many women are subjected to violence for sexual reasons by their husbands. I think that probably the incidence of this kind of violence has been increasing and, of course, it is well known that violence generally, particularly the incidence of rape, has been increasing.

We are still awaiting a general inquiry into the incidence and causes of rape. We should be most concerned at the plight of women who are subjected to violence by their husbands, but the question is whether this clause gives any real and practical protection to the married woman. If it did not, certainly no change in the criminal law would be justified. The Mitchell report recommended that the substantive criminal law be changed so that a husband living separately and apart from his wife could be convicted of rape. I entirely agree with the recommendation in that regard.

Marriage is a consensual state. We speak of the marriage contract, and marriage is, among other things, a contract. I think it is more than that: we speak also of the estate of marriage. To suggest that in sexual or many other matters there is no difference *inter se* between persons who are husband and wife and between those who are not is ridiculous. The law and this Government in many fields recognise that there are special considerations as between husband and wife. The Government is at present proposing to abolish altogether succession duties on successions between spouses. The local government franchise recognises the special position of spouses, and there are many other examples.

However, the Mitchell committee realistically recognises that, when a husband and wife are not living together, the consensual arrangement that is marriage is, at least for the time being, at an end. The marriage is terminated or suspended, from a practical point of view. There is, during suspension, no reason why a man should not be able to be convicted of rape against his wife. This was a recommendation of the Mitchell committee, and I propose to move an amendment to implement it. The Mitchell report (it was the report of the Criminal Law and Penal Methods Reform Committee of South Australia) specifically declined to go further and enable a husband to be convicted of the rape of his wife while cohabiting with her. I point out that the personnel of the committee could hardly be said to be repressive, conservative or likely to be insensitive to the rights of citizens to protection.

The Hon. F. T. Blevins: They could be wrong.

The Hon. J. C. BURDETT: Anyone can be wrong. I can be wrong and—

The Hon. F. T. Blevins: As long as you are not giving them some divinity.

The Hon. J. C. BURDETT: Of course I am not. For the benefit of the honourable member I repeat what I said, and I adhere to this: the personnel of the committee could hardly be said to be repressive, conservative or insensitive to the rights of a married woman or any other person. A woman who is viciously assaulted for sexual reasons by her husband can proceed against him for common assault. The whole circumstances can be brought before the court and an appropriate penalty imposed.

I do not see how the practical protection of a married woman would be increased if the husband could instead be convicted of rape. Let me get this clear: even the slightest touching of another person without real consent amounts to assault. One does not have to be beaten black and blue and be able to show bruises in order to establish assault. Rape includes every element of assault, plus the additional requirement of penetration. It is not possible that one can establish rape without being able to establish assault. Marriage includes a general consensual

arrangement regarding sexual intercourse. I reject any suggestion that it does not. Within marriage, where the husband is guilty of violence against his wife—

The Hon. F. T. Blevins: The Mitchell report did not say that.

The Hon. J. C. BURDETT: I am speaking now.

The Hon. F. T. Blevins: You only quote the report when it suits you.

The Hon. J. C. BURDETT: I do not only quote it when it suits me, but the Mitchell report did not deal largely with this subject. I am speaking to the Council on the subject of this Bill. After all, the Bill completely ignores the Mitchell committee and goes beyond its report. Within marriage, where the husband is guilty of violence against his wife for sexual reasons, the evil is the violence rather than the sexual aspect, and in such cases a charge of assault is a proper remedy.

True, assault within marriage is difficult to prove; rape would be even more difficult to prove. Within marriage the borderline between consent and non-consent must sometimes be fine. True, many women who have been assaulted by their husbands refrain from taking action, and perhaps action should be taken more frequently. It is equally true that many women refrain from prosecuting their husbands for rape. It is said by the proponents of clause 12 that women could threaten their husbands with prosecution for rape, and thus use the provision as a deterrent. They could equally threaten their husbands with prosecution for assault and, as I have said, all the circumstances could be brought before the court.

Speaking on the deterrent aspect, many of the proponents of the Bill who have spoken to me have used the example of the drunken husband. I doubt whether the possibility of conviction for rape would prove more a deterrent to a drunken husband, anyway, and I doubt whether the possibility of a conviction for rape would prove much of a deterrent in any husband and wife cases. One of the reasons advanced by the Mitchell committee for not extending criminal liability for rape to a husband cohabiting with his wife (and these are largely the words used) is that husbands may be largely at the mercy of vindictive wives.

I have already suggested that it is unlikely that a wife could prove rape against her husband, but she could threaten or report her husband and cause him to defend himself. Rape is difficult to prove and, paradoxically, difficult to counter if one is accused. I refer to Sir Matthew Hale, Chief Justice a few centuries ago—

The Hon. F. T. Blevins: That's appropriate.

The Hon. J. C. BURDETT: The problem was much the same then. He stated:

Rape is a most—

The Hon. F. T. Blevins: What date is that?

The Hon. J. C. BURDETT: I do not know.

The Hon. F. T. Blevins: How many centuries ago?

The Hon. J. C. BURDETT: From the spelling, it is many centuries ago. That does not matter much.

The Hon. R. C. DeGaris: There was probably good cause then.

The Hon. J. C. BURDETT: True. He stated:

Rape is a most detestable crime, and therefore ought severely and impartially to be punished . . . ; . . . it is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho never so innocent . .

The point made by the Mitchell committee about the vindictive wife is valid, although it would not carry much weight with me if I thought that what has been called rape within marriage would really protect any wife. I make the point that, if it gets to the stage that a husband violently assaults his wife to have intercourse with her, then the consensual arrangement, the love, which ought to exist between husband and wife is obviously at an end (at least temporarily), and the marriage has broken down.

Some time ago another amendment to the Criminal Law Consolidation Act seeking to abolish the crime of sodomy between consenting adults was before Parliament and was passed. Many of the protagonists of that Bill are also protagonists of clause 12. One of the things that was said at that time was that the criminal law ought to be kept out of the bedroom, yet here we have an attempt to bring it back into the bedroom, between a husband and wife. It was also said regarding the former crime of sodomy that the Criminal Law Consolidation Act was not the place for setting out ethical codes. That Act provides protection for the public, and the question is whether clause 12 provides a real protection. I believe it does not.

The Hon. F. T. Blevins: Are not wives members of the public?

The Hon. J. C. BURDETT: Of course they are, and if the honourable member listened he would know what I mean. The Criminal Law Consolidation Act is not a bill of rights and it is not the place to set out women's rights as such. The question is as I have already posed it. I have already canvassed the main merits of the matter, but it is worth considering what has been done elsewhere in Australia and oversea countries.

Concerning the position in Australia, I started research in the October issue of *Reform*, published by the Australian Law Reform Commission under Mr. Justice Kirby. I asked the library research staff to bring the position up to date, and I have their report here. Nothing seems to have been done in Queensland; in New South Wales in reply to a question the Attorney-General (Mr. Walker) stated that, when the Commission on Human Relations had completed its review of the law on rape, laws would be drafted after the report was available. In Victoria no new legislation had been introduced, although it has been stated that at least the procedural parts, the evidentiary provisions or something similar, will be introduced. In Tasmania, two new Bills were introduced in the Legislative Assembly during October; I have copies of them. Neither Bill has yet reached the second reading stage. These Bills are purely evidentiary and procedural, as are the two Bills we discussed earlier today in principle. The Tasmanian Government has also stated that it intends to amend the criminal law so that a married woman living apart from her husband may charge him with rape, and he may be convicted; that would be in line with the Mitchell committee's report. In Western Australia, the position is interesting. The *Hansard* report, commencing with the Attorney-General's remarks, of the second reading debate on this Bill in another place, includes the following (*Hansard*, page 1836):

The Opposition is merely making a political point out of this legislation. I do not intend to take it any further than that, but this situation is simply a typically political point-scoring exercise in which the Opposition is involved tonight. I challenge members opposite to deny that. Their conservative colleagues in Western Australia are hardly known as a radical bunch; if anything the Western Australian Liberal Party is even more of a troglodytic organisation than is the South Australian Liberal Party. In the *Australian* of October 23 we see, in a report on page 9 by Robert Duffield, the *Australian* reporter in the West, the following:

Women raped in Western Australia will no longer face interrogation in court over their previous sexual experience

with men other than the accussed. This is the main reform in the Evidence Act Amendment Bill, introduced into the Western Australian Parliament this week by the Attorney-General, Mr. Medcalf.

For those members who do not know, Mr. Medcalf is the Liberal Attorney-General in Western Australia. The report continues:

Further legislation will ensure that a wife can charge her husband with rape, even if they are living together.

There being a disturbance in the Strangers' Gallery:

The SPEAKER: Order! I must warn people in the gallery that they must hear this debate in complete silence.

The HON. PETER DUNCAN: I do not object to their support, but I know that members opposite will be chronically embarassed by that indication of support. That is an indication of how this is simply a Party-political ploy that the Opposition is pulling on this matter. It is not a matter about which Opposition members have great fears and feelings of conscience: it is simply a political matter. Members opposite know full well that, if they were a Government making responsible decisions about what should go into legislation, they would be taking the same course that their counterparts in the Western Australian Liberal Party are taking. Members opposite are quiet after hearing that. I am surprised that they did not raise that matter in debate to try to deny an association with the Western Australian Liberal Party, but most of them are so ignorant that they hardly read the daily papers and do not know what is happening in Western Australia, let alone in other parts of the nation.

That was a nice jibe that the Attorney-General had at the Liberal Party, but it was not true.

The Hon. R. C. DeGaris: It is not unusual for the Attorney-General.

The Hon. J. C. BURDETT: I agree. The person who was ignorant of what was happening in Western Australia was the Attorney-General.

The Hon. Anne Levy: Wasn't it Robert Duffield?

The Hon. D. H. L. Banfield: The Attorney-General indicated that he was quoting a report in the *Australian.*

The Hon. F. T. Blevins: So, it was the report in the *Australian* that was inaccurate.

The Hon. J. C. BURDETT: No-one in Parliament has yet heard the truth but, if honourable members opposite will be quiet, I will tell them the true position.

The Hon. Anne Levy: The Bill arrived in the Parliamentary Library only last Friday.

The Hon. J. C. BURDETT: The Bill arrived on Monday. It provides that a husband may be convicted of rape against his wife whilst he is separated from her and not residing in the same residence. The report in the *Australian* was quite inaccurate. It is a pity that the Attorney-General used that report without checking it out, and it is a pity he used an inaccurate report as a basis for snide and unjustifiable remarks about South Australian Liberals. The report in the *Australian* says:

Further legislation will ensure that a wife can charge her husband with rape, even if they are living together.

That is not the position. The legislation introduced provides that a husband can be charged with the rape of his wife whilst separated from her and not residing in the same residence.

The Hon. M. B. Dawkins: The Attorney-General did not do his homework.

The Hon. D. H. L. Banfield: The Attorney-General said that he was quoting from a report in the *Australian.*

The Hon. J. C. BURDETT: But he did not check it out.

The Hon. D. H. L. Banfield: Yesterday, abuse was directed at me as a result of a newspaper report. The fact that it was only a report did not deter the Hon. Mr. DeGaris from flying his kite.

The Hon. J. C. BURDETT: If the Attorney-General had simply quoted the report which was, in fact, inaccurate, I would have no complaints. However, he was not justified in making his nasty remarks without checking out the report. The Western Australian Government has introduced a Bill in accordance with the amendment I intend to move, in accordance with the Mitchell committee's report, and in accordance with an amendment moved in another place by the member for Mount Gambier. The Western Australian Government, far from being troglodytic, is a reforming Government; this is indicated in the periodical to which I referred—*Reform.*

The Hon. D. H. L. Banfield: Now, you are referring to what someone else has written.

The Hon. J. C. BURDETT: If the Minister wants to do some research work for himself, he can do it. It is pretty common in this Council to refer to research. The periodical *Reform* indicates that the Western Australian Government has been quick to follow recommendations of reform committees around Australia, and to follow a recommendation of the Mitchell committee; it did not go beyond it. On Monday I sent a copy of a letter to the Attorney-General in which I set out the true position as regards the Western Australian legislation. So, he is now aware of the true position, but he has not seen fit to inform Parliament of the mistake he made.

The Hon. F. T. Blevins: The Attorney-General merely quoted Robert Duffield.

The Hon. J. C. BURDETT: He should have checked out the report. What the Attorney-General went on to say was unjustified for a person who did not check out the report. Because I did not want there to be any possibility of an injustice being done to the Attorney-General, I contacted Mr. Medcalf by telephone and he confirmed that the Bill was in accordance with the copy which I had, and that it had never been the intention of the Western Australian Government to move otherwise. The Labor Opposition did seek to amend the Bill in line with our present clause 12 and that amendment was defeated.

I next turn to a few other clauses. Concerning clause 5, the provision in the Bill is opposed to the Mitchell committee report. It repeals section 57a of the principal Act. That section provides that in sexual cases (only among indictable offences) a man can plead guilty before the prosecution has produced its evidence. The purpose of this section is to save the victim from further trauma. I can see no other reason for that section in the principal Act. Even that long ago, when it was enacted, it was acknowledged that the victim in sexual offences suffered a particular trauma and it provided for the possibility of a person charged with such an offence to plead guilty without any evidence being given at the preliminary hearing.

The Mitchell committee recommended that this practice be retained. I suggest that the Government was wrong in rejecting the report of the Mitchell committee in deciding to abolish this provision. The reasons advanced by the Government in the second reading speech were that a man could be done an injustice, that he could be motivated by wrong reasons to plead guilty even when, in fact, he was not guilty. I cannot see how a man can be done an injustice by being given an opportunity of pleading guilty in a case such as this. It seems to be a retrograde step, when the object is to relieve a trauma for the victim of sexual offences, to provide that a man cannot admit what he has done and prevent the possibility of even a preliminary hearing and the evidence being considered by the preliminary hearing.

The only other clause to which I intend to allude is clause 6. It is a very important clause and provides that section 57b of the principal Act be repealed. Clause 6 provides for the offence of indecent interference (and the Mitchell committee recommended that) to be abolished and in that respect the Bill is in accordance with the Mitchell committee report. It is directly said in the second reading speech and in the Mitchell committee report that it is hardly possible to conceive a case where indecent interference could be proven but indecent assault could not be. I agree with that.

The point of the offence of indecent interference was that it was dismissable before a magistrate or a relatively small penalty could be imposed in a case where the police felt the defendant ought not be charged with indecent assault. This procedure for the offence of indecent interference did provide an expeditious, just and convenient way of bringing to justice persons who had perpetrated very minor indecencies. It is a convenient procedure not abused by the police and it is probably a mistake to remove it from the Act. It will be seen from what I have said that I propose to move amendments in the Committee stage. I support the second reading.

The Hon. F. T. BLEVINS: I, too, support the second reading, and before coming to the main part of my speech I would like to answer one or two things that the Hon. Mr. Burdett stated in his contribution. He made great play, of course, that the Mitchell report came out against the principles embodied in clause 12 of the Bill. However, he did not quote part of what was contained in the Mitchell committee report when it commented on the real problem. The Hon. Mr. Burdett suggested that marriage was a contract, and so on and so forth, and that there was an implicit agreement when one got married that there was always a consent to sexual intercourse. I think that that was the tenor of his contribution. On that particular point the Mitchell committee said this:

> The view that the consent to sexual intercourse given upon marriage cannot be revoked during the subsistence of the marriage is not in accord with modern thinking. In the community today it is anachronistic to suggest that a wife is bound to submit to intercourse with her husband whenever he wishes it irrespective of her own wishes.

The Mitchell committee report would not back up the contention of the Hon. Mr. Burdett.

The Hon. R. C. DeGaris: That does not refute any part of what the Hon. Mr. Burdett said.

The Hon. F. T. BLEVINS: I believe it does. He said the mere fact of getting married implies consent to sexual intercourse.

The Hon. J. C. Burdett: That's right.

The Hon. F. T. BLEVINS: So you agree. That is not what the Mitchell report says.

The Hon. R. C. DeGaris: You read it again.

The Hon. F. T. BLEVINS: I will read it again. The report states:

> The view that the consent to sexual intercourse given upon marriage cannot be revoked during the subsistence of the marriage is not in accord with modern thinking. In this community today it is anachronistic to suggest that a wife is bound to submit to intercourse with her husband whenever he wishes it irrespective of her own wishes.

The Hon. Mr. Burdett's comments—

The Hon. J. C. Burdett: I didn't say that at all.

The Hon. R. C. DeGaris: You are a good reader but a bad logician.

The Hon. F. T. BLEVINS: That is your opinion. I think that people who read *Hansard* can draw their own conclusions.

The Hon. J. A. Carnie: I think you are reading into that wrongly. I think you are misunderstanding what the Hon. Mr. Burdett said.

The Hon. F. T. BLEVINS: I am not. He made it clear and specific.

The Hon. J. A. Carnie: I think you are misinterpreting him.

The Hon. F. T. BLEVINS: That is my interpretation of what he said, and I invite anybody to read what he said and read what the Mitchell report said and draw their own conclusions. In 1976 there is no contract within marriage to say that the wife has to submit to sexual intercourse whenever the husband desires it.

The Hon. R. C. DeGaris: He never said there was.

The Hon. J. C. Burdett: I never said that.

The Hon. F. T. BLEVINS: That is what you believe.

The Hon. J. C. Burdett: I do not.

The Hon. F. T. BLEVINS: I am happy to stand by what I said and welcome people to read the two contributions to the debate and make up their own minds. The other thing that the Hon. Mr. Burdett said that interested me was that he did not think if clause 12 were included in the Act it would be much of a deterrent to a drunken husband. To some extent I agree that it would not be much of a deterrent. Implied in that "much" is that it can be some deterrent, however slight, and in relation to clause 12, however slight that deterrent is, we should have it. If it only stops one instance out of the thousands of rapes within marriage that take place every day—

The Hon. R. C. DeGaris: What about other Bills? You had better be very careful what you say.

The Hon. F. T. BLEVINS: I am dealing with the Bill now before the Council. If it only prevents one rape of the thousands of rapes that take place every day in marriage surely it would be worth while having it. I am not suggesting that this Bill will remove rape from marriage. When the Hon. Mr. Burdett says that it will not be much of a deterrent, I agree with him and with what is implied in that remark: that there could be some slight deterrent effect if clause 12 is included in the Bill.

The Hon. Mr. Burdett also went on at length about the Attorney-General, and made claims about the situation in Western Australia. I, too, have the same *Hansard*. One tends to go over the same type of material that is available in these things, as do other honourable members. However, nowhere in the Attorney-General's contribution on that day did he say that this was anything other than a press report. Any comments he made were based on the press report. The Attorney did not say that this emanated from his own research or that of his staff: he said that it was a press report, and he made his comments based on that report. What is wrong with that? Honourable members stand up here often during Question Time and quote from press reports.

The Hon. J. C. Burdett: It was a press report dated more than a week before.

The Hon. F. T. BLEVINS: So what? If the Attorney had said that he knew this of his own knowledge, I agree that he would be misleading the House. However, he did not do so. He told the House clearly where the report came from and on what he was commenting. I do not know what is wrong with that. Everyone does it every day in this Council and in every other House of Parliament.

This Bill comes to the Council in the form in which the Government introduced it in another place. That Bill was introduced and passed as a Government measure. Clause 12, the so-called rape-in-marriage clause, was introduced

and passed as an issue of fundamental policy: that all men and women are born equal, that they deserve equal rights and opportunities and that, as a matter of principle, they ought to have equal standing before the law.

The Opposition in the House of Assembly rejected these basic rights when, in a so-called conscience vote, they unanimously voted against the third reading of the Bill. The rape-in-marriage question has active and vocal champions and powerful obstinate opponents, and the two sides of the argument have been debated heatedly in the media. It seems to me that one of the most valuable and productive aspects of this kind of legislation is the degree to which it stirs and provokes public discussion. I have heard more men and women all over South Australia talking with each other about their lives and experiences of relationships, and their own roles within marriage, over the past few months than I have ever heard before! I am sure that this applies to other honourable members.

To my mind, this process of extending community education and increasing self-awareness can bring positive results only. For too long, these subjects have been social taboos, mainly because of fear and ignorance. The more we come to understand the internal dynamics of marriage on a wide scale, the more we will be able to educate ourselves and our children about the responsibilities of sexual relationships within marriage.

One of the most alarming aspects of the public discussion on rape in marriage has been the number of wives who have revealed the alleged sexual abuses to which they have been subjected by their husbands. This is not an abuse that I believe can be covered by the laws of assault. I am sure all honourable members have read the statements made by a spokesperson of the Naomi Shelter. The woman concerned has been forced out of her home by her husband demanding sexual intercourse. He had stated, "It is either you or her." The "her" was the 12-year-old daughter of the marriage. Of course, if the lady consented to that, the man could not be prosecuted for rape. In no way could that be regarded as anything other than rape, and there is no way in the world in which such action should not be illegal.

The Hon. J. C. Burdett: It is illegal; there's no consent.

The Hon. F. T. BLEVINS: If the woman consented under duress—

The Hon. J. C. Burdett: The same applies in assault as in rape. The law is exactly the same.

The Hon. F. T. BLEVINS: That man could not be prosecuted for rape, although he could be prosecuted for assault or anything else. Clause 12 seeks to enable this to happen. I have referred to only one case, although I have every intention of telling the Council of a few more. I hope other Government members do the same thing. Since this matter has been in the public eye, women have been willing to come out and state their cases and to tell of the things that they must tolerate in marriage. A good press report on this matter was that written by Mr. Stewart Cockburn, which appeared in the *Advertiser* of September 25. This involved an interview with a former teacher who worked at the Naomi Women's Shelter at Prospect Road, Prospect. The report is as follows:

She told me she had compiled the brief case histories from talks with women who had visited the shelter on a single day about a fortnight ago.

She said, "Is the law not interested in providing protection against vindictive husbands? And if, being a woman, you had been thrown around the room, kicked in the stomach, punched until you bled and then raped, would you object to the law "invading your bedroom"? Perhaps the law should not invade the bedroom to interfere with practices engaged in by two consenting adults.

She said, "But why should it not interfere when one of the two parties is manifestly not consenting and especially where a woman is not strong enough to protect herself against an assault? All too often the bedroom of marriage is not some love nest, not some heavenly bower one step below paradise. It is frequently the scene of violent crime which the police ought to investigate".

The report continues:

I ask my visitor why, in these circumstances, a new law about rape within marriage would benefit the women now suffering as she described. "It would help to change society's attitude towards such behaviour," she replied. Gradually, it would help to establish in society's collective thinking the principle of true equality between the sexes and the rights of women as equal partners with equal rights within marriage.

Here are some of the case histories compiled at the Naomi Shelter—

and this involved the number of people who came into the shelter on one single day—

Mrs. B. is 20, and has a three-month-old baby: "One time he pulled me out of the spare bedroom and ripped my nightie off. I kicked him and said: 'Leave me alone,' but he is much stronger than me. He took me to bed and had sex with me. He used to ask me to do filthy things. When I didn't he used to bash me up. He tried to have sex with me from behind and I refused and he bashed me up. He often had sex with me, when I didn't want to".

Mrs. E. is 30, and has two children: "Perverted. He was very perverted. He used to do horrible things to me. If we had normal sex he used to get upset and say it was filthy and then used to bathe because he felt dirty. He used to force me to do these things. I can't say what he did—it was horrible."

Mrs. F. is 30, also with two children: "My husband used to tie me up and whip me with an electric cord. Then he used to rape me. This happened very often over four or five years. After the first couple of times I never wanted to have anything to do with him, but I was very frightened of him. He used to gag me so that I couldn't scream, and leave me tied up for a while. I escaped him by planning it for a long time and by not taking anything with me except what I was wearing when I left with my children."

The Hon. R. C. DeGaris: Do you think that giving anyone the right to lay a charge would solve that problem?

The Hon. F. T. BLEVINS: The next example is:

Mrs. J. is 40. She has four children by her first husband and two by her second. She has now divorced her second husband. "He cut me here on my eye (showing a 1½-inch scar) and broke my nose. He used to come home from the pub with beer and stout and make me drink it. He wouldn't let me go to the toilet and he hit me when I tried to get away. "Then he would have sex with me and say: 'Hit 'em with a belly full of . . . .' He said it was the best way to have a woman."

The Naomi Shelter worker summed up: "To alter the law regarding rape as the Government proposes is merely to point society more strongly in the proper direction—of freedom and equality for both sexes, especially within marriage."

They are appalling instances of what happens; we all know it happens. It is happening daily, but a husband cannot be charged with rape in marriage.

The Hon. R. C. DeGaris: He could be charged with assault.

The Hon. F. T. BLEVINS: It is appalling and ridiculous that the conservative elements see the criminalisation of "rape in marriage" as the product of rampant forces of darkness and immorality which, they say, are working to eat away and wipe out the fundamental institutions in society. We have had a campaign on roneoed letters from people scattered around the State, who have only to put their names to a letter and sign at the bottom. The Hon. Mr. Burdett would know about that.

The Hon. J. C. Burdett: I had nothing to do with any of that correspondence.

The Hon. F. T. BLEVINS: You are ashamed of that correspondence, are you?

The Hon. J. C. Burdett: No.

The Hon. F. T. BLEVINS: I have a file of it here.

The Hon. J. C. Burdett: I had nothing to do with it.

The Hon. J. R. Cornwall: Do you agree with it?

The Hon. J. C. Burdett: With some of it I do, and with some of it I do not.

The Hon. F. T. BLEVINS: That fundamental institutions in society are being wiped out by the rampant forces of darkness and immorality—what nonsense! I think the Bill helps to strengthen marriage, introducing the necessity for co-operation and consideration into the sexual relationship, and giving the wife a dignity and equal standing that she has not had previously. Why should a married woman living with her husband not have the same rights and protections of the law as a *de facto* wife? The fact that a *de facto* wife has this protection surely strengthens the case for clause 12. If she is a *de facto* wife, she can charge the *de facto* husband with rape if any of these terrible things are done but, if she is married, she does not have the protection that the law affords to a *de facto* wife. It is amazing.

The Hon. R. C. DeGaris: In other words, you are using the *de facto* relationship as a model for marriage.

The Hon. F. T. BLEVINS: Certainly, it is a reality today that *de facto* relationships happen, and I am not moralising about that.

The Hon. J. E. Dunford: It is recognised even by the Fraser Government.

The Hon. F. T. BLEVINS: I do not moralise about that, but I make the point clearly that, if a man rapes his *de facto* wife, he can be charged in law with rape.

The Hon. J. E. Dunford: And so he should be.

The Hon. F. T. BLEVINS: But, if the two people are married, he cannot. It is absurd. Apart from being immoral, it is absurd. The churches also have played some role in the debate leading up to this debate today. By and large, the leaders of some churches have come out time and time again as opposing the Government's intention to make rape in marriage a crime. I remind honourable members opposite of some of the church's archaic views on women. The view commonly held in the church is that women were created second, and in second place they should stay.

The Hon. J. C. Burdett: Where did you get that?

The Hon. F. T. BLEVINS: I will tell you in a moment. This, of course, is reinforced by the absurd woman-hating found in St. Paul. I did a strange thing today: I went to the Parliamentary Library and asked for a Bible. I have been reading a tremendous book by Bertrand Russell called *Marriage and Morals*. I am sure the Hon. Mr. Burdett has read it. Unfortunately, he does not appear to have got as much out of it as I have.

The Hon. J. C. Burdett: I wonder how much you got out of St. Paul.

The Hon. F. T. BLEVINS: Sufficient to prove my point.

The Hon. J. C. Burdett: That is all you read of it?

The Hon. F. T. BLEVINS: I saw references in Bertrand Russell's book to St. Paul and I thought I had better go to the source and look at what St. Paul said because, frankly, I do not remember from my Sunday school days what St. Paul said. I got one of the research officers from the library, a competent person, to assist me. It can be found in the Bible in Romans, chapter 7, verse 2, which states:

For the woman which hath an husband is bound by the law to her husband so long as he liveth.

That is what St. Paul said, that she is bound to her husband so long as he lives. I find that appalling.

The Hon. J. E. Dunford: How long ago was that?

The Hon. J. A. Carnie: Times have changed.

The Hon. F. T. BLEVINS: I hope so and, when we vote on this Bill, we shall find out whether times have changed; when we vote on it, we will find out how much the attitude of members opposite has changed since St. Paul.

The Hon. J. A. Carnie: You are simplifying it too much.

The Hon. F. T. BLEVINS: I will go back to my first source. I will leave the Bible momentarily. I want to quote from *Marriage and Morals* by Bertrand Russell, chapter 5 "Christian ethics" at page 40. Bertrand Russell quotes the Bible and he states:

The views of St. Paul on marriage are set forth, with a clarity that leaves nothing to be desired, in the First Epistle to the Corinthians. The Corinthians, Christians one gathers, had adopted the curious practice of having illicit relations with their stepmothers (1 Cor. V.1).

He felt the situation needed to be dealt with emphatically and the views he set forth are as follows:

1. Now concerning the things whereof ye wrote unto me: It is good for a man not to touch a woman.
2. Nevertheless, to avoid fornication, let every man have his own wife, and let every woman have her own husband.
3. Let the husband render unto the wife due benevolence: and likewise also the wife unto the husband.
4. The wife hath not power of her own body, but the husband: and likewise also the husband hath not power of his own body, but the wife.
5. Defraud ye not one the other, except it be with consent for a time, that ye may give yourselves to fasting and prayer; and come together again, that Satan tempt you not for your incontinency.
6. But I speak this by permission, and not of commandment.
7. For I would that all men were even as I myself. But every man hath his proper gift of God, one after this manner, and another after that.
8. I say therefore to the unmarried and widows. It is good for them if they abide even as I.
9. But if they cannot contain, let them marry; for it is better to marry than to burn.

What incredible attitudes! Those attitudes are from the Bible and I assume that the Christians amongst us take some notice of that and abide by the attitudes expressed in the Bible. If they do, it is completely beyond my understanding how these attitudes invade the thinking of people, especially legislators, today.

Church leaders who have spoken out in opposition to the rape in marriage clause suprisingly have little to say about the nature of marriage as an institution or of their religious views on sexuality and its role in marriage. I need not remind honourable members opposite of the churches' general attitude to the ordination of women in the clergy. Just in case honourable members have forgotten exactly what is their attitude on this (with the assistance of the gentleman in the Library who guided me through the Bible), I refer to Corinthians chapter 14, verses 34 and 35, which state:

34. Let your women keep silence in the churches: for it is not permitted unto them to speak; but they are commanded to be under obedience, as also saith the law.

35. And if they will learn any thing, let them ask their husbands at home: for it is a shame for women to speak in the church.

That is St. Paul. The Hon. Mr. Burdett asked me to give a few quotes from St. Paul, and there are a couple.

The Hon. J. C. Burdett: But they are not representative.

The Hon. F. T. BLEVINS: The honourable member says that they are not representative. I am not a great theologian but I agree that one can find, as the honourable

member will, passages in contradiction to those I have referred to. I agree that the Bible is not an authoritative source, and I do not normally use it. However, as religion has been brought into this debate—

The Hon. J. C. Burdett: Who brought it in?

The Hon. F. T. BLEVINS: There have been about 16 000 letters from the Festival of Light.

The Hon. J. C. Burdett: It was brought into the debate by you, and by no-one else.

The Hon. F. T. BLEVINS: Strangely, the church has argued along the lines that the crime of rape would be difficult to prove; that the legislation would be unworkable. It seems that the church wants to play at being a lawyer; it wants to intrude blindly and ignorantly into legal matters.

Even more strange is the position of Opposition members in another place who have suddenly and surprisingly become pious moralists. If honourable members read their contributions, apart from being appalling contributions (apart from that of the member for Mitcham), that is exactly how they have come over—as pious moralists. The crime of rape in marriage will be only as hard to prove as any other alleged offence of rape where there are no witnesses. About 80 per cent of rape victims are acquainted with the alleged rapist. Corroborative evidence is always required, and the requirements of such evidence are always stringent. The churches' meddling in this area has not only been totally destructive but also unchristian.

I say that some people who claim to be Christians are unchristian (and I have used that term before). Surely rape should be recognised by the churches as it is recognised by all other people as a violent crime of hatred, inflicting humiliation and degradation upon the victim, wherever it occurs. Rape is a foul crime. I refer to the attitude of the churches to these matters by reference to Bertrand Russell (*Marriage and Morals*, chapter 9, page 96) under the title "The place of love in human life", who states:

Consider the life of a typical businessman of the present day, especially in American—

this also applies in Australia today—

from the time when he is first grown up he devotes all his best thoughts and all his best energies to financial success; everything else is merely unimportant recreation. In his youth he satisfies his physical needs from time to time with prostitutes: presently he marries, but his interests are totally different from his wife's, and he never becomes really intimate with her. He comes home late and tired from the office; he gets up in the morning before his wife is awake; he spends Sunday playing golf, because exercise is necessary to keep him fit for the money-making struggle. His wife's interests appear to him essentially feminine, and while he approves of them, he makes no attempt to share them. He has no time for illicit love any more than for love in marriage, though he may, of course, occasionally visit a prostitute when he is away from home on business. His wife probably remains sexually cold towards him, which is not to be wondered at, since he never has time to woo her. Subconsciously he is dissatisfied, but he does not know why. He drowns his dissatisfaction mainly in work, but also in other less desirable ways, for example, by the sadistic pleasure to be derived from watching prize-fights or persecuting radicals. His wife, who is equally unsatisfied, finds an outlet in second-rate culture, and in upholding virtue by harrying all those whose lives are generous and free. In this way the lack of sexual satisfaction both in husband and wife turns to hatred of mankind disguised as public spirit and a high moral standard. This unfortunate state of affairs is largely due to a wrong conception of our sexual needs. St. Paul apparently thought that the only thing needed in a marriage was opportunity for sexual intercourse, and this view has been on the whole encouraged by the teaching of Christian moralists. Their dislike of sex has blinded them to all the finer aspects of the sexual life, with the result that those who have suffered their teaching in youth go about the world blind to their own best potentialities.

So, according to Bertrand Russell, St. Paul has a lot to answer for. Something that has clearly emerged during the public debate on this matter is that many men find it difficult to understand the difference between rape and sexual intercourse. Rape is brutal and callous, and an assertion of ownership and domination over women in general, as well as over the particular woman whom the man chooses for his victim. The tragedy in present times is that a husband could ever consider raping his wife; that he has the protection of the law in doing so, and that she has none in suffering this vile abuse, is appalling. It is bad enough that some men can contemplate doing this, but surely it is even worse that we, as legislators, do not make it illegal.

Every member of the community is owed the protection of the criminal law as a basic and essential human right. Until married women are given equal rights with every other human being in this State with respect to the law of rape, a gross injustice will be perpetrated. The experience of rape is unknown to most men. I ask honourable members opposite to consider what it would be like to have someone (and, in the case of marriage, someone that the wife has relied on, trusted, and is totally economically dependent on) overpower you, force himself upon you, recklessly indifferent to your own feelings or wishes. I dare say that the honourable members opposite would be revolted by it; it certainly revolts me. I also ask honourable members opposite to consider the ridiculous myth that many men seem to believe (and I am certain we created it) that women like rape; we have all heard this myth.

The Hon. J. C. Burdett: I have not.

The Hon. F. T. BLEVINS: At the end of this debate I shall be delighted to see all those who do not agree with the idea I just put forward voting on this side of the Chamber. Of course, it is a myth that we have created; I include myself as a male, but not as an individual. We have created the myth all victims of rape really ask for it: she loves it.

The Hon. J. C. Burdett: I have never heard that myth.

The Hon. F. T. BLEVINS: The honourable member has obviously led a sheltered life. Almost everyone knows the myth that, in essence, the woman loves it. Of course, it is rubbish. The Hon. Mr. Burdett referred to the argument that the passage of the clause would put a dangerous weapon in the hands of a vindictive wife, but that argument is without foundation.

The Hon. J. C. Burdett: I simply quoted the Mitchell report.

The Hon. F. T. BLEVINS: And I simply said that the honourable member referred to it. Some wives may think of doing so, but they will not get far in the obstacle course of the judicial process. Meanwhile, the present law condones a free-for-all for vindictive husbands. I say to honourable members opposite: those who do not need such a law will not use it; those who have insufficient corroborative evidence cannot use it. Let those who need it at least be allowed recourse to justice and human dignity. The Mitchell report says that the criminal law should not invade the bedroom, other than in exceptional circumstances. I ask honourable members opposite whether they consider rape to be an exceptional circumstance. This is the essence of the argument.

I agree that the police and the courts have no rights in the bedrooms of anyone else but surely, as the lady from the Naomi Shelter says, when one party is violently abused, society has an obligation to go into the bedroom and protect that person, so that the act to which she is subjected

is made illegal. Do honourable members opposite agree that rape is an exceptional circumstance? If they do, and if they agree that everyone is entitled to the protection of the criminal law, I ask them to put their consciences into practice in an honest way, above political point-scoring, and to vote for this Bill, which I support.

The Hon. ANNE LEVY: I support the second reading of the Bill. In her book *Against our Will; Men, Women and Rape,* Susan Brownmiller says:

One of the reasons why men continue to rape is that they continue to get away with it.

Rape is certainly not an erotic crime. It is an act of violence and humiliation. Very few of us in this Parliament would have actually seen a rape, but I once saw a rape portrayed in Ingmar Bergman's outstanding film *Virgin Spring,* which was banned in this country at that time. It was horrifying and sickening in its violence and degradation. Having seen that film I am appalled whenever rape is made a subject of humour and levity. In America, according to *Time* magazine, there were 55 000 reported rapes in 1974. Official estimates in America say that unreported rapes would make the true figure up to three times that figure. And *Time* adds that only about 2 per cent of rapists are convicted and gaoled. In South Australia in 1974 only 35 per cent of the 100 reported rapes resulted in arrests or summonses, and only 17 convictions resulted. In 1975, of 91 reported rapes in this State, only 64 cases were cleared up—70 per cent. There were only 14 convictions—only 15 per cent of the reported cases. So, we can agree with Susan Brownmiller that rape is one of the crimes that men get away with more easily than any other. The chances of being caught and convicted are very low.

Some interesting figures, collected over two years, have come from the rape crisis centre in New South Wales. Regarding the people who have been to that centre, 11 per cent of the rape victims were raped by their relatives. They were mainly cases of incest. In fact, of those in the 16-year-old to 18-year-old age group, 37 per cent of the rapes involved incest. Of all the rapes, 37 per cent were as a result of pack rape, 3½ per cent were on victims aged less than 12, and only 30 per cent were rapes that had been perpetrated by strangers to the victim.

The official comment so often made is that women should not be out in the dark on their own because they are liable to be attacked and raped, but the vast majority of rapes do not occur from strangers in such situations: they occur from friends, aquaintances and relatives, and they occur in the victim's own home. From the figures on rape one could say that many women would be safer in the streets than in their own homes. The women's shelter in Sydney, which has a very large collection of cases in its short existence, shows that of the 1 065 women who have been there more than 70 per cent of them say they have been raped by their husbands.

This brings me to the question of the rape-in-marriage clause (clause 12). It is said by some that rape in marriage is a threat to marriage. Yet, as was stated by Dr. Tonkin in the other House, surely if rape occurs within marriage that marriage is over in any real sense. Certainly the ideals which many of us have of love, respect, honour, appreciation and tolerance must long since be gone in any marriage in which such acts occur. Surely women in marriage need legal protection against rape in marriage, the same protection as is afforded to every other member in society. The argument that was referred to a great deal in the debate in the other House by members of the Opposition was that the answer to rape in marriage was not to pass clause 12 but to spend more money on women's shelters and rape crisis centres. This is a very simplistic argument, particularly when we consider that the Federal Liberal Government is carefully cutting back on money for such shelters and centres.

It was suggested by Dr. Tonkin that it was far more dignified for a wife to leave her home with her children if her husband raped her, while her rapist husband stayed in possession of the house, the income, and continued his normal life. Why should it be the wife who suffers this extra hardship when it is her husband who has offended against all the rules of decent behaviour? Furthermore, the economic situation of many women often makes this very difficult for victims of marital brutality to carry out.

The Henderson report on poverty shows that a very large proportion of the 1 000 000 poor people in this country are in families without a male breadwinner, and this is true whether or not the female is a breadwinner who works or is on a pension. In this respect I would like to quote from a letter that appeared in the *Advertiser,* as follows:

Despite the number of married woman who may be in the work force, it is incontrovertible that most women in marriage are either partly or totally dependent on their husbands economically. They frequently have children who are also dependent on him for support and shelter. They are therefore to this extent in the power of their husbands. While the legal profession appears to fear that the sanction of the criminal law, in this context, may be a tool for vindictive women, it would seem that the fear of loss of security for herself and her children is far more likely to cause her to forgo the criminal sanction than for her to behave in a vindictive way.

In the case of rape within marriage it is unlikely that physical proof of assault would be found. For this reason many rape victims fail to lay charges. This would include the raped wife. If, however, the raped wife feels there is good and sufficient reason to bring charges, she should be able to bring a criminal charge for a criminal act.

Furthermore, while looking at quotes from newspapers with regard to rape in marriage, I would like to quote from the editorial of the *News* of October 20, 1976. The *News* is not known to be an avidly militant newspaper in its editorial stance, and the editorial states:

The State Government's rape-in-marriage Bill, now before Parliament, affirms an important and impeccable moral principle: that wives are not the property of their husbands. But, while there may be general agreement with that principle, there has been considerable unease that the Bill may prove unworkable in one key area. This is the proposal that rape should be an offence between husband and wife, regardless of whether they are living together or apart.

I stress the next comment from the editorial:

Any other view is repugnant to modern-day Australia.

The question of proving a charge of rape in marriage has been raised, and I think one would be quite ready to agree that proof may often be difficult to obtain, as indeed it is in any rape case, whether or not the individuals are married. There will, however, be cases where proof can be obtained. The whole question of the re-examination of the laws of rape arose from the Morgan case in Great Britain, finally reported on last year. This was the case where Morgan took three of his Air Force friends home and invited them to rape his wife and joined in, telling them that she was likely to object a bit, but not to take any notice of that because that was the way she liked it.

This case horrified the British public, and the ripples from it spread far from the shores of Britain. In this case, the four men concerned were ultimately convicted. The three friends were convicted of rape, and Morgan himself, who had obviously raped his wife, just as the other three had done, could only be convicted as an accessory; he could not be convicted of rape, even though

clearly, from the facts of the case, he was every bit as guilty as his friends. In a situation like that I am sure that a conviction for rape could have been brought down against this "gentleman". Other cases of rape within marriage are quoted in numerous documents. It is interesting to note that in many of these cases the woman claims to have been raped by her husband while the children were watching. The husband did not even have the decency to do it behind the closed bedroom door. Provided that the children are not too young, this could surely be used as evidence in cases of rape.

The point which has sometimes been raised in this whole discussion of rape in marriage is that of public opinion on the matter. A public opinion poll was taken by Gardner and Associates, which was quoted considerably when this Bill was debated in another place. The contention was made that the majority of people do not support this clause. However, there are several interesting things about this poll.

First, the proportion of people who said that they agree with clause 12 was 28 per cent of women but only 25 per cent of males. Those who disagree were 55 per cent of women and 62 per cent of men. I do not think I have ever before, in my experience of reading the results of many polls, seen a case in which the opinion of women was more liberal and less conservative than that of men on a social issue. In my experience in every other poll, there has either been no difference between the sexes or the women have taken a more conservative attitude. This is the exception. I was delighted to see that women, who are obviously far more affected by legislation of this type, are less conservative than their male counterparts.

There is another interesting aspect regarding the Gardner poll. On inquiring, I found that the 800-odd people who were sampled were questioned over two weekends, one of which was the weekend of September 24 and 25. We must remember when considering this matter that this poll was taken after a prominent press report had appeared in the *Advertiser* condemning the rape-in-marriage clause but before the report published the following week of the interview by Stewart Cockburn with the person from the Naomi Shelter. Therefore, those who replied to this questionnaire had read the "anti" case but had not seen anything of the "pro" case. No letters had been written to the newspaper at the time that the poll was taken. I am not talking about when the results were published.

The Hon. J. A. CARNIE: Will the honourable member give way?

The Hon. ANNE LEVY: Yes.

The Hon. J. A. CARNIE: I seek information from the honourable member. Did that poll show any difference in the questions asked on the two weekends, or was it all shown as one result? I am trying to see whether the second report would make any difference.

The Hon. ANNE LEVY: The response has not been separated. However, the polls were conducted on two weekends before the report in favour of clause 12 appeared in the press. On September 23, a report entitled "Difficulties of dealing with rape within marriage" appeared in the press.

The Hon. J. A. Carnie: And the other was on the 25th.

The Hon. ANNE LEVY: No, it was later than that. I think the honourable member will find that it was the following week. I have referred to the report by Stewart Cockburn, which quoted a number of cases that had been brought to his attention by the women's shelter. Other cases were also taken to Mr. Cockburn by a representative of the women's shelter that were not used in his report. I realise that Mr. Cockburn thought he was unable to publish them for reasons of taste. However, it is strange to me that some people could be too sensitive even to read about the sufferings and indignities that some women are forced to experience. I should like to quote a few of these cases which are, of course, anonymous. One woman, 35 years of age and with two children, stated:

My husband raped me often. Once, he pushed a carrot up my anus and I was bleeding.

Another woman, 26 years of age with five children, said:

If you talked the wrong way or annoyed him you got a belting and then he would want to go to bed. If you objected you got belted again until in the end you give in because you just can't take any more. Once he belted me and I went into the bathroom to clean myself up a bit, and when I came out he wanted to go to bed. I just wanted to be by myself, and I didn't want to go to bed so he belted and kicked me, so I went to bed. He raped me several times in front of the kids, and they took a long time to forget a thing like that.

Another case involved a 38-year-old woman with three children, who said:

I went to the Christmas break-up party for my work. I went alone because my husband didn't want to come. When I came home he said I was a "filthy bitch fucking the foreman" and hit me so that I fell to the ground. He tore my clothes and pulled my pants off. I was too scared to do anything. Then he bit me and pulled out bunches of my pubic hair and bit me there very badly and then he had sex with me and it hurt a lot especially because of the bites.

Another case involved a woman of 26 years of age, who had three children. She said:

He came home drunk and wanted sex and afterwards he drank some more and wanted it again. I didn't want to but he did. He used the beer bottle on me when he couldn't do it again.

I think we all need to know what goes on in our community. Surely, a woman who is raped by her husband deserves some protection and consideration, as is afforded to all other women in our community.

As the Hon. Mr. Blevins said, a *de facto* wife can now charge her *de facto* husband with rape, although this may not be generally known. It has been suggested in several of the letters we have received that clause 12 will destroy the concept of marriage. I would certainly maintain that it will strengthen it, by giving wives the same rights as *de facto* wives. If wives have fewer rights, surely it weakens marriages. Marriage in a legal sense will be strengthened if wives have rights at least equal to those of unmarried women.

Much has been made of the quotation that the law has no place in the bedroom of the nation. When that was first uttered by Pierre Trudeau, he said, "The law has no place in the bedrooms of the nation, except in the most exceptional circumstances." The latter part of that sentence is usually omitted from the quotation. Surely such a phrase refers to consenting sexual relationships in a bedroom.

The law should not concern itself with what happens in the bedroom between two or more people who are consenting to what is occurring. Rape is surely the exception when one of the parties by definition is not consenting. To suggest that that phrase negates the validity of clause 12 is a complete misuse of it.

One comment I make on the numerous letters we have received on this matter is that in some of them there is a suggestion that the only people who support this Bill in its entirety are a few women who have not consented to their husbands and so have lost them. This is a most

despicable statement based on no evidence whatsoever, and says far more about the low and vindictive motives of the writer than about our society.

The Hon. J. A. Carnie: Who said that?

The Hon. ANNE LEVY: One of my correspondents. I assure the honourable member that this measure has wide community support from men and women, married and single. One of the bodies that support clause 12 is the Young Women's Christian Association, which is hardly renowned as a militant feminist or unrepresentative group, and yet I have seen a copy of a letter sent by the Y.W.C.A. fully endorsing the Government's action in bringing in clause 12.

Law is the hallmark of civilisation: communities are judged by the laws they have. Now that this matter of rape in marriage has been raised, to amend this Bill by defeating this clause would be taken as *carte blanche* for husbands to rape their wives. Before the matter had ever been raised, this need not have applied but, when this prohibition is being suggested, if members opposite reverse this or turn down this prohibition, it will be viewed as their condoning, and even encouraging, such behaviour.

The Hon. R. C. DeGaris: What rot!

The Hon. ANNE LEVY: Once the matter has been raised (and I am glad the Government has raised it) if people are opposed to this clause, it can only be taken that they are condoning rape in marriage. I cannot see how members can come to any other conclusion.

The Hon. N. K. Foster: Brutality and degradation.

The Hon. ANNE LEVY: I fail to see how any other interpretation could be put on their disagreement. The criminal law serves to educate as well as to proscribe. Clause 12 would maximise the opportunity to educate members and the public in the matter of decent and civilised conduct within marriage. I should like to conclude, as I began, with a quotation from Susan Brownmiller's book *Against Our Will: Men, Women and Rape.* It is as follows:

> Rape, as the current law defines it, is the forcible perpetration of an act of sexual intercourse on the body of a woman not one's wife. The exemption from rape prosecutions granted to husbands who force their wives into acts of sexual union by physical means is as ancient as the original definition of criminal rape, which was synonymous with that quaint phrase of Biblical origin, "unlawful carnal knowledge." To our Biblical forefathers, any carnal knowledge outside the marriage contract was "unlawful." And any carnal knowledge within the marriage contract was, by definition, "lawful." Thus, as the law evolved, the idea that a husband could be prosecuted for raping his wife was unthinkable, for the law was conceived to protect his interests, not those of his wife. Sir Matthew Hale explained to his peers in the seventeenth century, "A husband cannot be guilty of rape upon his wife for by their mutal matrimonial consent and contract the wife hath given up herself in this kind to her husband, which she cannot retract." In other words, marriage implies consent to sexual intercourse at all times, and a husband has a lawful right to copulate with his wife against her will and by force according to the terms of their contract.
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> The most famous marital rape in literature, occurring onstage in the popular television serial but offstage in the novel, is that of Irene by Soames in *The Forsyte Saga.* As Galsworthy presents the Soamesian logic, the logic of Everyhusband, although perhaps not of Galsworthy himself, the denied husband has "at last asserted his rights and acted like a man." In his morning-after solitude while he hears Irene still crying in the bedroom, Soames muses, "The incident was really of no great moment; women made a fuss about it in books; but in the cool judgment of right-thinking men, of men of the world, such as he recollected often received praise in the Divorce Court, he had but done his best to sustain the sanctity of marriage, to prevent her from abandoning her duty . . . No, he did not regret it."
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> In the cool judgment of right-thinking women, compulsory sexual intercouse is not a husband's right in marriage, for such a "right" gives the lie to any concept of equality and human dignity. Consent is better arrived at by husband and wife afresh each time, for if women are to be what we believe we are—equal partners—then intercourse must be construed as an act of mutual desire and not as a wifely "duty," enforced by the permissible threat of bodily harm or of economic sanctions.
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> In cases of rape within a marriage, the law must take a philosophic leap of the greatest magnitude, for while the ancient concept of conjugal rights (female rights as well as male) might continue to have some validity in annulments and contested divorces—civil procedures conducted in courts of law—it must not be used as a shield to cover acts of force perpetrated by husbands on the bodies of their wives. There are those who believe that the current laws governing assault and battery are sufficient to deal with the cases of forcible rape in marriage and those who take the more liberal stand that a sexual assault law might be applicable only to those men legally separated from their wives who return to "claim" their marital "right," but either of these solutions fails to come to grips with the basic violation. Since the beginning of written history, criminal rape has been bound up with the common law of consent in marriage, and it is time, once and for all, to make a clean break. A sexual assault is an invasion of bodily integrity and a violation of freedom and self-determination wherever it happens to take place, in or out of the marriage bed.

The Hon. J. A. CARNIE: Before moving on to the real subject of the Bill, I should like to inform the Hon. Miss Levy and other honourable members that the poll was conducted on September 23 and September 25, two days apart. I am not making an issue of the matter, but it would have been an interesting comparison if it had been made over a period. In a matter such as this, every member should stand and be counted. It is a social issue of great importance on which there should be a free vote. The Bill has become known commonly as the rape-in-marriage Bill, and that shows the emotion that is engendered when the subject is raised. Rape is the vilest assault that one human being can inflict on another, but we cannot allow this one clause to affect our judgment on the whole Bill, because the measure deals with other aspects of sexual offences.

As stated in the second reading explanation, the Bill has come about largely as a result of the report of the Criminal Law and Penal Methods Reform Committee. The Bill alters many definitions that are now being used. For example, it deletes the definition of "rape" and brings in new references to sexual intercourse. It strikes out archaic terms such as carnal knowledge and fornication. Part of clause 12 enacts a new section 73(2), which deletes the present provision that a boy under 14 years of age is incapable of sexual intercourse. Clause 19 makes an important amendment regarding abduction. All these things are good, and probably many of them are long overdue.

All people feel compassion for victims of rape, and two other Bills that have been before the Council this afternoon, if they do not lessen the trauma, take positive steps to ensure that the trauma is not added to. At the same time, we must remember that the alleged rapist is entitled to the full protection of the law and, undoubtedly, many men who come before the courts on a charge of rape have been led on by the victim, who has then backed off and had the person charged with rape.

Part of the Bill, in a move to protect the alleged rapist (this is in clause 4, enacting new section 49) provides that it shall be a defence to a charge to prove that the victim was, on the date on which the offence was alleged to have been committed, of or above the age of 16 years,

or that the accused believed on reasonable grounds that the person with whom he has had, or attempted to have, sexual intercourse was of or above the age of 16 years, so protections are built into the Bill for the alleged rapist.

Another provision repeals section 57a of the Act, and this is a further protection for the alleged offender. It is interesting that another departure from the recommendations of the Mitchell committee is made there. Whilst these matters are extremely important the main matter in the Bill and the matter that has aroused most public interest is the so-called rape-in-marriage clause. That is clause 12, although not all of the clause deals with that matter.

The clause enacts new sections 73(3) and 73(4) in regard to rape in marriage. This provision has caused the post boxes of all honourable members to be full for several weeks with many letters and petitions arguing for or against the proposal. I think most of us have been subjected to intensive lobbying. There is intense feeling in the community and, unfortunately, it has come out in this debate when, to prove a point, people have brought out emotional matters more than they have needed to do.

Whilst this emotion in the community is understandable, it does not make for reasoned judgment. There should be earnest and informed debate among well-intended and sincere people, although these people may hold differing opinions. The matter has become the battleground for women's liberation advocates and their opponents, and that is a pity, because the topic is serious and should be treated, as should all matters that come before the Parliament, objectively rather than emotionally.

I am sure every honourable member has given the matter much thought in deciding how to vote on the issue. I have discussed it with many people. The first point we must remember is that the question of rape within marriage must be divided into two parts. First, we have the situation of a couple who are still married, but whose marriage has broken up and they are living apart. Whether or not they are legally separated is not important. I do not argue about protection being necessary and warranted in a case such as that. However, the heart of the matter is whether this law should apply while couples are still married and are living together.

I have tried to weigh up the arguments for and against and, although it is difficult to be impartial, I have tried to be so. I came down narrowly in favour of the argument that the provision should not apply while couples were still living under the same roof. I am sure that all honourable members have thought deeply about the matter. I am in good company in my conclusion, because the Criminal Law Committee of the Law Society of South Australia, which held a meeting regarding this matter, unanimously supported the recommendation of the Mitchell committee. By a narrow margin the law committee was not in favour of that proposed legislation. Throughout the community there is no strong support one way or the other about this provision. The feeling on both sides is close.

The Hon. C. J. Sumner: Is the Law Society in any better position to judge this matter?

The Hon. J. A. CARNIE: Possibly not. I think the society's view is probably a reflection of general community thinking in this matter. I took a long time to come to a decision on this matter, and there are several reasons why I made my decision as I did. They are not necessarily in any order of merit but, first, there is the argument advanced by the churches and others of the sanctity of marriage. I am sure that this point has been raised earlier today, that the attitude of the community is changing towards marriage and non-marriage. The law has recognised more and more the *de facto* relationships and, personally, I do not believe that this is a change for the best. Nevertheless, we must accept this change. The Mitchell committee referred to the fact that the principle at common law was that a husband could not be guilty of rape upon his wife because the fact of marriage implies consent to sexual intercourse.

I hope that by referring to that fact it will not be taken that I believe that the position is as it should be. I am sure that most marriages are based on the belief that, while marriage does in a way imply consent of sexual intercourse, such intercourse should be by mutual consent. This is borne out by the report, as referred to by the Hon. Mr. Blevins, which states:

> The view that the consent to sexual intercourse given upon marriage cannot be revoked during the subsistence of the marriage is not in accord with modern thinking. In this community today it is anachronistic to suggest that a wife is bound to submit to intercourse with her husband whenever he wishes it irrespective of her own wishes.

The vast majority of marriages are based, I believe, on this principle. Reference has been made this afternoon to the worst cases, and I do not intend again to refer to them in full, as I am sure that all honourable members are aware of them. About five or six cases have been referred to in a press report. While these cases are bad, they comprise only a minority of marriages, as I do not believe that the majority of marriages are like this. We are debating a law to deal with a minority and, by doing so—

The Hon. D. H. L. Banfield: Surely all laws are for minorities? They affect only a certain group.

The Hon. J. A. CARNIE: The majority of laws are for the good of the majority of the people.

The Hon. D. H. L. Banfield: But they effect only a minority.

The Hon. J. A. CARNIE: I will not argue with the Minister on that, but we must be careful that this law is not introduced for a minority. If it were to provide protection for a minority it may be a different matter, and I will come to that matter shortly. By doing this we are changing the status of marriage as an institution. As I said, I would support this clause (I intend to support the Bill) if I thought it would help, if the provisions could be applied. This point has already been made by earlier speakers, that it is difficult if not impossible to prove rape within marriage. The Hon. Anne Levy said it is difficult to prove rape in any circumstances, and it is almost impossible to prove rape within marriage under the same roof. In the *Advertiser* (August 6, 1976) the Attorney-General is referred to as follows:

> Mr. Duncan said he did not expect a rush of rape charges against husbands in South Australia largely because any claim would be difficult to prove.

The Anglican Archbishop of Adelaide (Most Rev. Dr. K. Rayner) said it would be difficult to prove rape as an offence in marriage. He stated:

> . . . (It) would be difficult to prove.

Father P. Travers of the Catholic Church said that he agreed with what the Attorney-General was trying to do, but that it would be almost impossible to prove. The fact is that the law already affords considerable protection.

The Hon. J. R. Cornwall: He did not say he opposed it.

The Hon. J. A. CARNIE: He said he agreed with the principle, but said it would be difficult to prove. Will the Hon. Mr. Cornwall allow me to continue, because I am sure he agrees with this point? The law already affords considerable protection. Under the Justices Act a husband can be bound over to keep the peace. If assaults do take

place he can be charged with several offences ranging from common assault to assault occasioning actual bodily harm.

The Hon. J. R. Cornwall: How does that work?

The Hon. J. A. CARNIE: I will come to that point. I do not believe that changing the law will alter the situation. Many husbands and wives have been charged with physical assaults of various kinds and brought to trial.

The Hon. J. R. Cornwall: The provision cannot possibly worsen the position. You have taken the most pessimistic view.

The Hon. J. A. CARNIE: The honourable member is to follow me in this debate and will have his chance to rebut my argument then. I refer to the protection that is already built into the law for the protection of wives. The Family Law Act provides that a wife may seek an injunction restraining her husband from molesting her, but by the time a wife takes this step the marriage, if not irretrievable, is getting close to it. Another aspect raised by previous speakers concerns a woman working at the Naomi Women's Shelter in Prospect Road, Prospect. The press report of her comments is as follows:

The hard facts about rapes within marriage are that they happen much more often than any other rapes—

No-one argues about that. It is a difficult thing to prove, for obvious reasons. The report continues:

They are seldom reported or even mentioned to close friends, and the women concerned are not usually prepared to do anything about them because they are afraid of their husbands.

If a wife is afraid to report a husband now, will bringing this new provision in make her any less afraid of her husband? Will she be any more likely to bring a charge against her husband? I do not believe she will. Altering the law will not change the situation. If I believed such a change would act as a deterrent, I would support it. The Hon. Mr. Blevins raised this point and said that, if it acted as a deterrent in just one case, it was worth putting on the Statute Book. It is strange that we often hear the argument that capital punishment is not a deterrent to murder and should therefore be taken off the Statute Book.

I do not believe that this law will act as a deterrent. If we are to speak of crimes of passion at all, surely rape is one of them. I do not believe that a man, either because he is drunk or for any other reason, who intends to commit rape will be deterred because he thinks he will go to gaol because of his action. In most cases where marriage has reached such a stage, it is probably best to dissolve the marriage, and this is usually what happens. In most cases a wife will put up with just so much of this, and normally leaves her husband.

The Hon. C. J. Sumner: What if she has not left her husband, and she is raped?

The Hon. J. A. CARNIE: The charge of assault should apply. It is much easier now in our more enlightened society for wives to leave their husbands legally and financially, but I accept that in the lower socio-economic groups it is not so easy. If it is argued that some women cannot, for economic reasons, leave their husbands, it seems odd that husbands should be sent to gaol, because that would effectively eliminate any hope of their supporting their families. If the threat of gaoling husbands is necessary to prevent them from attacking their wives, the marriage should not continue, and the wife should be given every assistance by the Family Court and the Government to arrange a separation as easily as possible. The Family Law Act, not the criminal law, should be used where appropriate. The Attorney-General, in dealing with homosexuality, used that often-quoted statement: the law has no right in the bedrooms of the nation. The Mitchell report says:

Nevertheless it is only in exceptional circumstances that the criminal law should invade the bedroom.

The point has been made that that is an act between consenting adults. However, if rape is involved, one party is certainly not a consenting adult. The argument is that, therefore, the law should invade the bedroom. The lady from the Naomi Shelter has said:

If, being a woman, you have been thrown around the room, kicked in the stomach, punched until you bleed, and raped, would you object to the law invading your bedroom?

In these circumstances the law can invade the bedroom: the women can bring a charge of assault against her husband. Of course, as the lady mentioned, usually women are too frightened to do it. In most cases where charges of assault are brought against a husband, rape is almost invariably involved, too. If the woman is too frightened to bring a charge, changing the name of the crime will not alter the situation; that is really my entire argument. The woman does have redress in law through a charge of assault but she does not use it. I cannot support this part of the Bill. I do not agree with all of the Mitchell report; for example, the recommendations that the crime of incest be abolished and that the age of consent be lowered. However, I have the highest respect for the committee. The proposal to which I referred earlier was seriously considered by the committee and was rejected for reasons given in the report. The final recommendation with respect to rape by husbands is as follows:

We recommend that a husband be indictable for rape upon his wife whenever the act alleged to constitute the rape was committed while the husband and wife were living apart and not under the same roof, notwithstanding that it was committed during the marriage.

Parliament at this stage should not go any further than that. Finally, I refer to the question of the Peter Gardner poll. I accept the Hon. Miss Levy's comment that in this case women were less conservative than men; that is most unusual, but in this case it is understandable. Women are more emotionally involved in a question such as this.

The Hon. Anne Levy: Physically, too.

The Hon. J. A. CARNIE: Not in many cases. Emotionally, women would abhor the crime. About 58·5 per cent of all the people interviewed opposed the State Government's new rape-in-marriage legislation. I admit that that certainly is not overwhelming opposition. The criminal law committee also made a narrow decision on this matter. My own thoughts narrowly come down on one side of this question: it is not a clear-cut decision, nor is it with the public. Nevertheless, the public has narrowly come out against this clause. It would be a dangerous law to enact.

The Hon. Anne Levy: What is the danger?

The Hon. J. A. CARNIE: The danger lies in the effects on the institution of marriage. The Mitchell report says that it might put a dangerous weapon in the hands of a vindictive wife, and an additional strain on the matrimonial relationship. If the Hon. Mr. Blevins can say that, if this provision acts as a deterrent in one case, it is worth putting into the law, surely I can say that, if it gives a vindictive wife a weapon in one case, it is worth keeping out of the law. Generally speaking, this is a very good Bill, which provides many worthwhile amendments. I shall support the second reading, and I shall support the Hon. Mr. Burdett's amendment, which will bring the Bill into line with the Mitchell report.

The Hon. J. R. CORNWALL: In supporting the Bill, I wish to make clear that I do so as a Christian. I would hope, although I am not commonly known as Saint John, that I am a Christian in the best sense of the term, as I understand it: that one should do unto others as he would have them do unto him. My initial response to this matter was one of caution because, being a pragmatist at heart, I wondered how effective it would be in practice. That was the response of one who has the good fortune to be happily married. I have a magnificent wife: my marriage is a true partnership, and I believe in the sanctity of marriage.

Then I looked further and I found, particularly after listening to the Hon. Mr. Blevins and the Hon. Anne Levy, that there are some dreadful things going on in the real world today, and as legislators we ought to be very concerned about them. All Christians believe in the sanctity of marriage, but not in brutal bashings or rape. There is a very small extreme lunatic right wing fringe of so-called Christians who have fallen upon this. They are taking quotes in isolation from the epistles written some 19 centuries ago which, in this day and age, have no application. They simply quote them for their own ends. If one wants to get into a discussion on theology in this matter, the only things that are really valid, if you want to take them as guidelines, are the gospels.

The Hon. J. C. Burdett: The Hon. Mr. Blevins quoted them.

The Hon. J. R. CORNWALL: He was criticising the extreme right wing. There is an extreme right wing lunatic fringe who were distorting, for their own ends, what they quoted, and that ought to be made very clear. It is a small group and they debase the whole concept of Christianity. Let there be no doubt about that. The Hon. Mr. Burdett referred during the course of his remarks on this matter to the homosexual reform Bill which was before us some time ago. At that time I had a flood of letters, submissions, phone calls and many intelligent discussions with many intelligent church people (both ministers of religion and lay persons) who were concerned about various aspects of the Bill. It was not all one-sided. They were concerned to find out our attitude and the possible effects of that Bill and I was delighted to discuss it with them. It is significant that, as one who regards himself as a Christian (and I would think is regarded by the community at large as a Christian), on the Bill before us I have had no communication whatsoever from any responsible minister of religion or any concerned church lay person. The member for Mount Gambier was the principal speaker for the Opposition in this debate in the other House.

The Hon. F. T. Blevins: He was very poor, too.

The Hon. J. R. CORNWALL: I have read what he had to say with great dismay. I can only conclude, having read the report, that either he has become a captive of the lunatic fringe, or alternatively, or worse, he was using the debate for shameful political purposes. His performance was disgraceful.

The Hon. C. M. Hill: He is doing a very good job in his electorate.

The Hon. J. R. CORNWALL: Do not play politics. He is using it—

The Hon. C. M. Hill: Do not underestimate him. He draws you down to Mount Gambier every weekend.

Members interjecting:

The PRESIDENT: Order!

The Hon. J. R. CORNWALL: I can understand his siege mentality. This seems to be the only subject on which he can get a line, even in the local paper (the *Border Watch*). I refer to what he had to say on clause 12. I quote from *Hansard*:

> I regard this provision, moving as it does for recognition of rape in marriage, as an attack on the institution of marriage.

What a fine Christian attitude! What a wonderful Christian point of view! Any attempt to upgrade the status of women from mere chattels is an attack on Christian marriage! He further remarked on the Family Law Bill. It has been applauded by the legal profession and the community at large as a sensible, humane piece of legislation, and he had this to say about it:

> This is minority legislation designed to protect a few, yet putting at risk an institution revered and respected by the majority of Australians.

The Hon. F. T. Blevins: The man's mad.

The Hon. J. R. CORNWALL: The performance of the honourable member for Mount Gambier was not surprising as he consistently implied in his electorate that the Mitchell committee recommendations regarding incest and the lowering of the age of consent were to be legislated for by the Government. That of course was a gross misrepresentation and it was a shocking performance. It was a dreadful thing to do. Fortunately, he is a passing phenomenon on his performances, and on his performances in these areas he deserves to be.

The Hon. M. B. Dawkins: Do unto others as one would have them do unto you—and you make this scurrilous attack on a man who cannot defend himself here.

The Hon. C. M. Hill: That is a point well taken.

The Hon. J. R. CORNWALL: Would you allow me to respond? As the Hon. Mr. Blevins said, you are a nasty old man. You are a bitter old man, a twisted old man. If you would give me one minute I would respond. I will go over it again. I am telling the Council that the member for Mount Gambier in another place is capable of gross misrepresentation on the matter of incest and on the lowering of the age of consent. It was never considered by the Government. There was never any suggestion that it would be legislated upon. One must look at the remarks which he made on it and which have been reported in the local press. This was a disgraceful performance. Indeed, it was absolutely contemptible. If that person was a Christian, as he professes to be, he would not resort to misrepresentation and political dishonesty. Let members opposite respond to that if they will!

The Hon. A. M. Whyte: Judge not that ye be not judged.

The Hon. J. R. CORNWALL: I should prefer to address my remarks to the Chair.

The Hon. M. B. Dawkins: It's a pity that you don't.

The PRESIDENT: Order! Honourable members should cease interjecting.

The Hon. F. T. Blevins: How can you, with a creep like that?

The PRESIDENT: Order! The honourable member will cease referring to other honourable members in that kind of language. If the Hon. Mr. Dawkins is not prepared to stand up and object, I will, in order to maintain the standard of debate in the Council.

The Hon. M. B. DAWKINS: I object, Sir, and seek a withdrawal and an apology.

The Hon. F. T. Blevins: That's all right.

The PRESIDENT: Order! The Hon. Mr. Dawkins has objected to being called a creep by the Hon. Mr. Blevins, and has asked for a withdrawal. I ask the Hon. Mr. Blevins to withdraw that remark.

The Hon. F. T. BLEVINS: I have no objection whatsoever to doing that but, in the interests of maintaining some dignity in this Council, surely you are going to have to shut the man up. I withdraw and apologise.

The PRESIDENT: I think I might have to shut plenty up before too long.

The Hon. F. T. BLEVINS: You shut plenty of Government members up but not members opposite, particularly the Hon. Mr. Dawkins.

The PRESIDENT: Order! The honourable member will cease interjecting and arguing with the Chair. An unfortunate situation develops in the Council from time to time because of interjections that are made across the Chamber that have nothing to do with the debate. Someone makes a comment, and immediately personal abuse is hurled about by honourable members who are participating in the debate.

The Hon. F. T. Blevins: I agree.

The PRESIDENT: Order! I think all honourable members can assist by observing a far better standard of debate, particularly in relation to interjections.

The Hon. F. T. BLEVINS: On a point of order, Sir, I ask who was out of order. The Hon. Mr. Cornwall was in order making his second reading speech, and the Hon. Mr. Dawkins interjected. If you had said to him, "You are out of order," I would be happy. If you said that just once—

The Hon. C. M. Hill: The Hon. Mr. Dawkins doesn't use that kind of language to which objection can be taken.

The Hon. F. T. BLEVINS: The Hon. Mr. Hill should not mind about that. He is out of order interjecting while I am talking. However, nothing is being done about him. I have raised a point of order, and I am entitled to do so.

The PRESIDENT: Standing Orders provide that all interjections are out of order.

The Hon. F. T. Blevins: Not just those by the Labor Party. You still won't say that he was out of order by interjecting.

The PRESIDENT: He was.

The Hon. F. T. Blevins: Then I should appreciate your telling him.

The PRESIDENT: This is a debate about a serious matter and, in some respects, one of the most important matters that the Council has had to consider this year. It is a shame that the debate should degenerate into a slanging match between two honourable members.

The Hon. F. T. Blevins: I couldn't agree more.

The PRESIDENT: The Hon. Mr. Cornwall is trying to make a serious contribution, as are all other honourable members.

The Hon. F. T. Blevins: He should be afforded your protection.

The PRESIDENT: I will see that he is.

The Hon. F. T. Blevins: You haven't yet.

The PRESIDENT: I do not need anyone's assistance to do that.

The Hon. J. R. CORNWALL: Without reflecting on the Chair, I was not afforded quite as much protection as I might have been. The Hon. Mr. Dawkins not only was being deliberately provocative but he also implied (and I take severe exception to it) that I was behaving in an unchristian fashion, and that really hurt me.

I move on now to the difficulty of proof argument that has been advanced. That is a completely spurious argument. It has been said that it is covered in present legislation, because a wife can charge her husband with assault. Presumably, unless a considerable degree of physical harm was inflicted, the charge would be one of common assault and would be heard in a court of summary jurisdiction, and it is unlikely that a significant penalty would be imposed. It has also been said that a wife can take out an order against her husband to bind him over to keep the peace. In my experience out in the real world involving constituency work, I know that, in practice, it does not work, anyway. Possibly, if a great deal of violence was inflicted, the husband could be charged with assault occasioning actual bodily harm, in which case he would be charged in a higher court. The penalty might be a severe one, although it certainly would not be as severe as if the husband were charged with rape and convicted. Taking the most pessimistic view, the point I tried to make while the Hon. Mr. Carnie was speaking was that there is no way in which clause 12 could do any harm. Taking the more optimistic view, it would upgrade the status of women; it would be on the Statute Book, and it could be used. There is already amending legislation to lessen the victim's trauma once the charge is laid.

Turning to the vindictive wife argument, it seems to me that it is no different from any other vindictive person who wants to frame someone in a criminal jurisdiction. It is a completely spurious argument that, if someone wants to get at another person by telling lies, in almost any criminal jurisdiction it is possible for a person to try to do that. I discount that also as a completely spurious argument. The Hon. Mr. Burdett and the Hon. Miss Levy referred to learned comments made in the seventeenth century. I rather thought that that was an indication of the thinking of the shadow Attorney-General, and perhaps that is the era in which he rightly belongs. I point out to him that forensic medicine has improved considerably since then, so in terms of proof I think it would be less difficult in the last quarter of the twentieth century than it was in the seventeenth century. The Bill, which upgrades the status of women, does not detract one iota from the beauty of a happy marriage, and I have much pleasure in supporting it.

The Hon. R. A. GEDDES secured the adjournment of the debate.

ADOPTION OF CHILDREN ACT AMENDMENT BILL

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

The Hon. D. H. L. BANFIELD (Minister of Health): I move:

That this Bill be now read a second time.

It seeks to amend the Adoption of Children Act, 1966-1975, and has become necessary following the bringing to Australia of a large number of children from Asian countries, particularly Vietnam and Cambodia, in circumstances in which personal particulars of the children and their abandonment or surrender are not always clear or cannot be proved, and in which it is not clear who their parents may be. I seek leave to have the rest of the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

REMAINDER OF EXPLANATION

However regrettable were the causes that resulted in the children being brought to Australia, this country has given sanctuary to many Asian children and it is now the duty of the Governments of Australia to ensure that they are assimilated into our community by granting their adoption to suitable persons. The circumstances

towards the end of the Vietnam war were such that many of the children arriving in this country had little or no documentation as to their age, their name, their place of birth or the names, or indeed the existence of, their parents. Although some had certificates of release for adoption signed by an orphanage director, they did not have documents signed by their parents consenting to their adoption in Australia.

For such children the provisions of the Adoption of Children Act, 1966-1975, appear now to be inadequate to enable adoption courts to grant their adoption to suitable prospective adoptive parents. This Bill seeks to rectify the problems found to exist in the principal Act. This is not to say that the principal Act was not appropriate for the vast majority of adoptions in this State. It means only that the Act was not drafted foreseeing the possibility of a large number of children from foreign countries being brought to this country for adoption, particularly from war-ravaged countries. Such a possibility has now become a reality and, in amending the principal Act, the Government has been careful to ensure that the exception should not become the rule. Certain safeguards to ensure that the exceptional circumstance should not become a common circumstance are provided in this Bill.

At present 177 children from Vietnam and Cambodia are residing in South Australia. Adoption orders have been made by courts in this State in respect of 20 of these children. It now appears likely that, unless the legislation is amended, adoption orders may not be granted for the remaining 157 children. The opportunity afforded by this amending legislation has been used to revise and amend the principal Act in other more minor ways following decisions taken at interstate conferences. Other provisions in this Bill are consequent on alterations to allied legislation.

Clause 1 is formal. Clause 2 seeks to repeal that item in section 2 of the principal Act which refers to interim orders, sections 35-37. The provisions of the Act enabling an adoption court to make interim orders have never been used and, as it is thought that they never will be used, they should be repealed. Clause 3 (*a*) seeks to repeal from the interpretation section of the principal Act the definition of "charitable organisation". The term "charitable organisation" is not thought to be an appropriate one. Rather, this Bill seeks to provide in clause 25 (*c*) that an application shall not be made for approval as a private adoption agency by an organisation formed for the purpose of profit. Clause 3 (*b*) is consequent upon clause 2. Clause 3 (*c*) is consequent upon clause 3 (*a*). Clause 3 (*d*) replaces the definition of "the Director" in section 2 of the principal Act with a definition consistent with the Community Welfare Act, 1972-1975.

Clause 4 seeks to repeal the phrase "under a *de facto* adoption" in section 10 of the principal Act. It is thought that these words add nothing to the provision and indeed could cause complications. Clause 5 seeks to amend section 11 (2) of the principal Act to achieve uniformity with similar provisions in other States. Clauses 6-10 are consequent upon clause 3 (*d*). Clause 11 seeks to amend section 20 (1) of the principal Act by deleting the final provision. It is considered that this provision is adequately covered in sections 20 (1) (*b*) and 20 (2) and that it is in some conflict with section 30 of the Act. Clauses 12, 13 and 14 (*a*) are consequent upon clause 3 (*d*). Clause 14 (*b*) seeks to overcome in part the problems associated with the adoption of Asian children by amending section 27 of the principal Act, which relates to the power of the court to dispense with the consent of a person to the adoption of a child. The proposed new subsection provides that consent will not be required in situations where the Director-General has certified that the child entered Australia otherwise than in the charge of a parent or an adult relative who proposes to care for the child while in Australia. The other requirements made in the subsection are that the child has been in the care of the applicants for at least 12 months and the making of an adoption order in favour of the applicants would be in the best interest of the child. The provisions of the subsection will apply only in cases where the Director-General joins the applicants in their application to an adoption court. If the Director-General declined to do so, the applicants could still apply under the existing provisions relating to dispensation of consent The principle of the additional subsection sought to be added was recommended by the officers of the Standing Committee of Attorneys-General. At the meeting of the Standing Committee last month, the Attorney-General undertook to provide the committee with a draft provision, and this is the provision based on recommendations of officers to the committee.

Clause 14 (*c*) is consequent upon clause 3 (*d*). Clause 15 is consequent upon clause 2. Clause 16 seeks to provide for the Director-General to accept or transfer guardianship of children awaiting adoption from or to an interstate authority when the child moves between States. It also provides for the guardianship of the Director-General to terminate when the child is placed by him in the custody of a parent of the child. Clause 17 (*a*) seeks to delete certain words from section 30 of the principal Act which are redundant as there is no State law which expressly distinguishes in any way between adopted children and children other than adopted children. Clause 17 (*b*) is consequent on the deletion of the present subsection (5). Clause 17 (*c*) seeks to provide authority for the Minister to contribute to the support of a child under his care and control who is suffering from some physical or mental disability after an adoption order has been made.

Clause 18 seeks to insert a provision in the principal Act that provides that no change in the forename of a child over the age of 12 years shall be made by an adoption court without the consent of the child. Clause 19 is consequent upon clause 2. Clause 20 is consequent upon clause 3 (*d*). Clause 21 (*a*) seeks to fill a gap in the offences prescribed by section 44 by adding to subsection (1) payments made in consideration of the revocation of consents to adoption. Clauses 21 (*b*) and 22 are consequent upon clause 3 (*d*). Clause 23 (*a*) seeks to make it an offence under section 47 of the principal Act, in addition to those offences already prescribed by that section, for an unauthorised person to receive a child for the purposes of adoption. Clause 23 (*b*) is consequent upon clause 3 (*d*). Clause 24 seeks to amend section 58 of the principal Act to provide also that, where a child whose birth is registered in South Australia is adopted in a country outside Australia, the Registrar can register the adoption and make appropriate entries in the registers of births. Clause 25 (*a*) is consequent upon clause 3 (*a*). Clause 25 (*b*) is consequent upon clause 3 (*d*). Clause 25 (*c*) has been dealt with under clause 3 (*a*). Clauses 26-30 are consequent upon clauses 3 (*a*) and 3 (*d*).

Clause 31 seeks to add a new section to the Act to provide that the fact that the age of a child is not known should not of itself be reason for refusing an application for adoption. This proposed section also attempts to overcome problems associated with adopting Asian children. Officers of the Standing Committee of Attorneys-General recommended that in jurisdictions where it was

considered necessary consideration be given to the enactment of such a provision. Clause 32 is consequent upon clause 3 (*d*). Clause 33 (*a*) seeks to insert in section 72 of the principal Act, which provides power to make regulations, a power to stipulate by regulation criteria upon which the Director-General might approve prospective adoptive parents. Under the regulations to the principal Act the Director-General keeps a list of approved prospective adoptive parents. The number of applicants is out of proportion to the number of children being given for adoption, with the result that the waiting time for placement of a child has become unduly long. A Community Welfare Advisory Committee is considering this problem and the amendment is necessary to give power to implement by regulations any recommendation the committee may make. Clause 33 (*b*) is consequent upon clause 3 (*d*).

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

TEACHER HOUSING AUTHORITY ACT AMENDMENT BILL

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

The Hon. B. A. CHATTERTON (Minister of Agriculture): I move:

That this Bill be now read a second time.

It amends the Teacher Housing Authority Act, 1975. The major purpose of the Bill is to extend the powers of the Teacher Housing Authority to enable it to acquire and provide accommodation for kindergarten teachers. The Government considers that this is a desirable, indeed necessary, extension of the authority's function. At the same time, the opportunity is taken to insert a provision declaring that the authority holds its property on behalf of the Crown. This will ensure that the authority is exempt from land tax, stamp duty and succession duty.

Clause 1 is formal. Clause 2 amends the definition of "teacher" so that it includes employees of the Kindergarten Union. Clause 3 provides that the authority shall hold its property on behalf of the Crown, thus exempting it from liability to duty upon its transactions. Clauses 4 and 5 amend sections 14 and 15 of the principal Act. Specific references to exemption from duties on gifts, devises and bequests to the authority are removed. These are rendered unnecessary by the provision declaring that the authority is to hold its property on behalf of the Crown.

The Hon. C. M. HILL secured the adjournment of the debate.

CITY OF ADELAIDE DEVELOPMENT CONTROL BILL

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

BRANDS ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

CATTLE COMPENSATION ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

LICENSING ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.

(Continued from November 4. Page 1908.)

The Hon. R. C. DeGARIS (Leader of the Opposition): I support the second reading. I will deal with the important amendments proposed by the Bill. The first of these deals with the reorganisation of the Licensing Court. Under the principal Act, the court, when dealing with new applications for licences, comprises a judge and two licensing magistrates, and the Government believes now that such a court is no longer warranted. The Bill proposes that the court should normally be constituted simply by a single member. The Full Bench of the court will still hear appeals from a magistrate sitting alone. I do not wish to comment on this new proposal. Other honourable members probably know more about the constitution of courts than I do, and I will listen to their submissions. At this stage I raise no objection to the new procedures.

The next major amendment is the relaxation of trading hours in certain cases. The Bill proposes that there will be no limitation on the hours during which a hotel may carry on its dining-room trade. This means that liquor may be supplied with a meal in those parts of the licensed premises designated as dining areas. The hours for bar-room trade are extended to 12 midnight. The hours during which a hotel must be open will be 11 a.m. to 8 p.m. The holder of a vigneron's licence or distiller's storekeeper's licence may sell at any time, any day. Regarding club licences, the proposal is that the court may fix the hours during which the liquor may be sold by the club.

I raise no objection to the Bill. The flexibility of trading hours is an important aspect that has been included. In some hotels, there is no need for trading hours to go beyond 8 p.m., but in other areas hotels will be able to open until midnight. With the development of large entertainment-type hotels, many people have complained to me about the disruption of their residential areas by these operations. In many circumstances, I understand those complaints and the reason for them.

In speaking to the Bill that was introduced in 1967, after the Sangster report was submitted, I pointed out that we should be reappraising the position more thoroughly and providing far more neighbourhood outlets for liquor and trying to move away from the large entertainment-type hotels, particularly those in residential areas. I still hold that view. We are still bound by nineteenth century thinking in our approach. This phrase is often used when one looks back at the horse and buggy days. When one looks at the original concept of licensed premises, one sees that the reason why a limited number of licences was granted was that licensees had to undertake certain obligations that were, virtually, community obligations: the community could not provide those facilities. To provide the service that was required in many areas, a licence was given, but responsibilities of a community nature were involved in that licence. That concept has gone, and we should be considering closely the idea of establishing more family-type operations, involving smaller units, in the retail liquor trade. I am certain that that would be conducive to a saner view of our whole licensing laws.

The Hon. B. A. Chatterton: Don't you think that the same forces as those which are operating in other retailing areas and pushing out the family storekeeper in favour of supermarkets might also be acting in the area of liquor retailing?

The Hon. R. C. DeGARIS: I do not take that view at all. I take much exception, as I believe any reasonably civilised person would, to going to a hotel and finding a bar 30 metres long with 30 barmen serving a mass of patrons. If one goes from Norwood Parade through the foothills to, say, a north-south access and counts the number of hotels and liquor outlets in that residential zone one would find that there were about three or four. When development takes the form of large outlets, that is bad development.

I prefer to see a policy adopted where, instead of having massive outlets and large congregations of people, we encourage more small outlets, not necessarily tavern style, because there are other factors that should be taken into consideration. We are still governed by the nineteenth century concept in our licensing laws. I have long held that view, and I again stress it. I believe we have made progress in the licensing laws in recent years, but we have not yet gone far enough in what I regard as more civilised licensing of premises.

I go no further with this argument except that I would like to comment on a matter not covered by the Bill, although trading hours are covered and, in that way, this matter is dealt with. I believe that we cannot justify under our existing licensing laws the closure of hotels on Sundays. I refer to the 1967 Bill and the Sangster report. Honourable members must not overlook the fact that the Sangster report recommended that hotels should be able to open on Sundays.

That view was not accepted by the Government, but it introduced club trading on Sundays. Presently, we have a tremendous anomaly in our licensing laws whereby licensed clubs, some with a full licence and some with a limited licence, can operate on Sundays.

The Hon. T. M. Casey: All day, any time?

The Hon. R. C. DeGARIS: No. The hours are specified. If the Minister will wait a moment, I will refer to a judgment in relation to that.

The Hon. T. M. Casey: You said you wanted hotels open on Sundays; are you saying they should be open for any hours?

The Hon. R. C. DeGARIS: No.

The Hon. N. K. Foster: Licensed clubs were operating on Sundays before the Sangster report was made.

The Hon. T. M. Casey: A limited number.

The Hon. N. K. Foster: It was not a limited number.

The Hon. R. C. DeGARIS: The Hon. Mr. Foster is correct, but what the Minister has said is right, too: a limited number of clubs operated on Sundays. There has been an escalation in Sunday trading by the club system, introduced by the 1967 amendment. I think the Minister would agree with that point; anyone who knows anything about what is happening in South Australia would agree. I should like to quote from what I said in 1967, quoting from *Hansard*, at page 1794, as follows:

> I move to insert the following new paragraph:
> (*b*1) upon a Sunday between the hours of twelve o'clock noon and seven o'clock in the evening for consumption in a lounge and not otherwise;

In deciding to move this amendment I have taken a totally different course from my first reaction to the Royal Commissioner's report, which was that I opposed any suggestion of Sunday trading for hotels. However, after studying the report and taking into account other facts, I have come to the conclusion that the only logical way to deal with this matter is to allow hotels to trade within their lounges on Sunday afternoons. That is the correct course for the good of the community. We are faced here with two alternatives: we must either completely prohibit the sale or supply of liquor on Sundays by clubs or hotels or allow hotels the same hours of trading as those available to clubs. The Bill, as it now stands, allows a permit to be given to a club for Sunday trading whether it is licensed or not. Another place was not prepared to grasp this nettle and it came to a compromise between the two alternatives. I shall quote from the Royal Commissioner's report, as follows:

> I have concluded that those objectives are, or should be, the regulation and control of the sale, supply and consumption of alcoholic liquor so far as (but no further than) needed in the public interest—

I emphasize the words "in the public interest". The Commissioner continues:

> (a) in the availability of adequate and proper premises, goods and services to meet the reasonable needs and convenience of those who seek them, and
> (b) in the prevention of excessive or other undesirable consumption of alcoholic liquor and of the adverse consequences thereof.

It seems to me a proper assumption that the laws of this State do not, and should not, forbid the consumption of alcoholic liquor.

The Commissioner then referred to practices that were being tolerated by the South Australian public. In his report he deals with the question of police tolerance; I point out that not only did the police tolerate these activities but the public itself tolerated them. In this connection, the Commissioner states:

> Turning, then, to the topic in the narrow sense of a policy, from wherever it originated, of allowing a particular law to be habitually and openly broken by a particular class of people and in a particular manner, I can only say that I was appalled by the nature and extent of the illegal practices actively or tacitly allowed to grow up and thrive in our community. I summarize the evidence as follows:
>
> (*a*) The law prohibits the sale and supply of liquor by a club to its members or at all unless the club is registered under the Licensing Act.

At the end of this statement, the Commissioner says:

> In fact, many of the clubs and their members do not abide by the law.

He further says:

> I should also say that I use the phrase "police tolerance" to indicate a practice of the Police Force as a whole (whether originating within the force or in consequence of a Ministerial direction) not to enforce a particular law.

These breaches of the Licensing Act of this State were being tolerated by the Police Force and by the community. The Commissioner further deals with the matter as follows:

> As will appear from my report below, a number of the practices which are at present illegal, and which are at present the subject of police tolerance, are in themselves practices which do not appear to attract public opprobrium and which I do not think should be prohibited. However, if I am right in saying that they are not practices which should be prohibited that is a question for the Legislature and not for the Executive or the police to determine.

What happened in that Bill was that clubs were given the right to trade on Sundays, but hotels were not. I believe that the outcome of this has been, whether one looks at the question of justice or not, that this has created something of a social evil, where clubs have an open go on a Sunday, whether licensed or not previous to 1967, but now, of course, with a limited licence or some form of licence. I do not think this is conducive to sanity in our licensing laws. I shall now quote an extract from a decision of the Deputy Chairman of the Licensing Court (Acting Judge R. W. Grubb) given on July 20, 1976, in the matter of an application for a club licence by the Tantanoola Football Club. The licence was granted. The extract, headed "Comments re Sunday Trading", is as follows:

There has been much said and written of late about what is described as "the social evil" of hotels being allowed optional trading hours on Sundays. It seems to me that before the loudest of these organised, oft quoted, and sensationally reported critics are permitted wholly to confuse and to cloud the issue they might be well advised, in the interests of truth if nothing else, to ascertain the facts. In the first place, "temperance" cannot be equated with "prohibition". To campaign against the evils of the excessive consumption of alcoholic liquors is a good thing. A vast majority of the public would support and take part in any such campaign. On the other hand, to campaign for prohibition is, in this day and age, to shut one's eyes to the powerful lessons of history. Would anyone seriously suggest we should return to those days of Prohibition and the rackets of boot-legging as experienced in the United States of America? Would anyone seriously suggest we should revert to the horrors of the pre-1967 licensing laws in South Australia? There was then, and is now, universal condemnation against the "six o'clock swill" of evil memory.

It seems to me, therefore, that for spokesmen of goodwill to say "We are quite opposed to the whole concept of hotel trading on Sunday" is curious, to say the least. Why do these men of goodwill rail only against the trading by hotels on Sunday? In my experience, not one such voice has been raised protesting against the fact of the enormous growth in the selling and consuming of liquor by club members in clubs, all over the State, on Sundays. What then is the evil to which these men of goodwill are so totally opposed? Not buying and drinking alcoholic liquors on a Sunday, but only buying and drinking alcoholic liquors in a hotel on a Sunday. An examination of the facts makes this selective opposition curiouser and curiouser.

As at the time of writing there are 185 licensed clubs and 756 "permit" clubs in this State. As far as the licensed clubs are concerned, slightly more than 87 per cent trade on Sundays and just over 57 per cent have hours of trading in excess of eight every Sunday. Of the section 67 permit clubs, just over 74 per cent trade on Sundays and more than 32 per cent trade for hours in in excess of eight every Sunday.

That summarises my sentiments on this question. When the 1967 Bill was before this place, I moved that hotels have the optional right to trade on Sundays, and I hold to that view now.

The Hon. C. J. Sumner: Will you be moving amendments?

The Hon. R. C. DeGARIS: Yes. I moved an amendment in 1967, and I shall do so this time. I agree entirely with the sentiments of Acting Judge Grubb, and I agree that (and I predicted this in 1967) at present, with more than 1 000 clubs trading on Sundays in South Australia, it is ridiculous to say that hotels shall not compete on Sundays. I do not expect honourable members to follow that argument if they do not desire to do so, but I ask them to examine the situation not from the position of being opposed to the sale of liquor but from the position of what is fair and just to the community. During the debate in 1967 I opposed the idea of Sunday club trading, but that was accepted. I believed that it was unfair to treat hotels differently from licensed clubs. The Hon. Mr. Sumner interjected and asked me whether I would be moving amendments. I still believe that my view in 1967 was correct and, believing that it was correct, I intend to move an amendment to show my genuine concern. I seek leave to conclude my remarks.

Leave granted; debate adjourned.

IMPOUNDING ACT AMENDMENT BILL

Read a third time and passed.

ADJOURNMENT

At 6.2 p.m. the Council adjourned until Tuesday, November 16, at 2.15 p.m.