LEGISLATIVE COUNCIL

Wednesday 24 September 1980

The PRESIDENT (Hon. A. M. Whyte) took the Chair at 2.15 p.m. and read prayers.

MOTION FOR ADJOURNMENT: SALISBURY REPORT

The PRESIDENT: The Hon. C. J. Sumner has informed me in writing that he wishes to discuss as a matter of urgency the matter of the Government's cynical use of the office of Attorney-General for blatant Party-political purposes, as shown by the Attorney's report purporting to deal with the dismissal of Mr. H. H. Salisbury, the Attorney-General's abuse and misuse of his office of Attorney-General and, in particular, his use of unsworn allegations from a discredited witness without any corroborative evidence, in a vicious attempt to discredit a former Premier of the State, which action indicates that he is no longer fit to hold the position.

In accordance with Standing Order 116 it will be necessary for three members to rise in their places.

Several members having risen:

The Hon. C. J. SUMNER (Leader of the Opposition): I move:

> That the Council at its rising adjourn until tomorrow at 10.30 a.m.

The Opposition has brought this matter forward for public airing in this Parliament because of the reasons stated in the notice I gave you, Mr. President. We believe that there has been a gross abuse by the Government of the position of Attorney-General in the production of this report relating to Mr. Salisbury.

The Opposition attempted to obtain agreement from the Government that there ought to be a motion of no confidence in the Attorney-General moved in this Council. To do that, leave of the Council is required or a suspension of Standing Orders. The Government was not prepared to allow that course of action. Accordingly, the only course open at this point in time for the Opposition was to move this urgency motion so that the matter could be immediately canvassed in the Parliament as fully as possible.

The only thing that the Opposition can agree with about this report is its conclusion that there should be no further inquiry or reopening of the Royal Commission. There never has been any need for a further inquiry, and there is certainly no need now as a result of the production of this report.

I should like to canvass the history of the report. There is absolutely no doubt that any person looking at this issue in any objective manner will come to the conclusion that the report, from beginning to end, has been ordered and used for political purposes associated with elections and to try to discredit a well respected former Premier of this State.

That is particularly true at the present time because his son is standing for the Federal electorate of Sturt which, of course, is under threat at the moment, and the Government believes that it could lose that seat. The report was ordered in February as a result of certain statements made by a Mr. Ceruto during the Norwood by-election campaign when the book *It's Grossly Improper* was launched not for the first time but for the second time. In that launching of the book, Mr. Ceruto made certain statements. The Government, particularly the Premier, used those statements as a pretext for ordering the Attorney-General to conduct an inquiry. That was in February. In June, the Attorney-General said that he was almost in a position to present the report to the Premier. Six or seven weeks later, on 27 August, the report was presented to the Premier. On 23 September it was tabled in Parliament, nearly a month after the report had been finalised and given to the Premier.

What has happened since the preparation and tabling of the report? The Federal Government has announced an election. There can be no other conclusion than that this was the rationale of the report from the beginning to end. It is convenient that the Government has tabled the report this week as it is the last week that it can do so before Parliament rises before the election. It is unprecedented that a report of this kind has been ordered by a Premier from his Attorney-General and then presented by the Attorney-General to the Premier in the way that it has been.

The Hon. J. C. Burdett interjecting:

The Hon. C. J. SUMNER: The Hon. Mr. Burdett is interjecting, and the Government has been at pains to unload on the Opposition responsibility for the tabling of this report. To try to do that is an out-and-out lie that they have attempted to perpetrate. The only reference to anything that can be interpreted as calling for the tabling of the report as distinct from what we wanted to know, which was whether there was going to be any reopening of the inquiry, was in my speech in the Address in Reply debate, when this report was listed with a large number of other reports that the Government had not tabled, including the report into the Monarto Commission and the Land Commission. Neither of those reports has been tabled. In my questions in this Council I have never called for the tabling of the report. I have asked what are the Government's intentions in relation to it.

The Hon. J. C. Burdett: What are you complaining about?

The Hon. C. J. SUMNER: I am not complaining about the report having been tabled as such by the Attorney-General. What I am saying is that the matter could have been resolved months ago and that the Attorney-General could have dismissed, as he should have, Mr. Ceruto's statement months ago (that would have ended the matter then) and said that there were no grounds for reopening the Royal Commission. The simple fact is, as I have said in my questions in this Council, that I have not specifically called for the tabling of the report. That was a pretext that the Government tried to use in the lead-up to the report being tabled last week when it circulated rumours that the report was due to be tabled last Thursday and then decided, in an attempt to blame the Opposition for the tabling of the report, that it would not table it. The only blame that exists in this matter of the tabling of the report rests with the Government. However, that is not the central issue that we wish to canvass this afternoon.

I refer to the report itself, and the way in which the Attorney-General has used his office. The Government, in order to—

The Hon. J. C. Burdett: Bring out the truth.

The Hon. C. J. SUMNER: Rubbish! This was done in order to try to assist the electoral fortunes of the Liberal Party and to continue a personal attack on the former Premier, Mr. Dunstan. It is worth reminding ourselves of what the *Advertiser* said in February, immediately this report was called for by the Premier. In its editorial, the *Advertiser* stated:

> The Government should establish Mr. Ceruto's meaning and quickly. Failing some new and solid material, it would be grossly improper to do anything but let the matter rest.

That was the *Advertiser's* comment 7½ months ago. Now,

when we are in another election situation, the report is tabled. Mr. Ceruto's statement could have been disposed of months ago. The Attorney-General and the Government could have announced that there was no intention to reopen the Salisbury inquiry. Surely that could have been done. Certainly, the *Advertiser* felt that it could be done. I think that all fair-minded citizens felt that it could, and the fact that it has been delayed for 7½ months is seen by all fair-minded South Australians for what it is: a political stunt.

Let us turn to what Mr. Ceruto said at the time of the Norwood by-election. My perusal of that eight-page or nine-page statement at that time indicated that there were only about three paragraphs in it that in any way threw doubt on Mr. Dunstan's testimony to the Royal Commission. However, the report produced by the Attorney-General contains a large number of appendices that are largely irrelevant, being padding for his conclusions, and the first seven pages of the report contain verbatim the statement made by Mr. Ceruto in February.

The next few pages contain a summary of the Attorney-General's thoughts on a further statement that Mr. Ceruto had apparently given to the Government. The report, which, as I said, is padded, contains no new evidence except for Mr. Ceruto's statements. Apart from being padded out, the report in no way pretends to come to grips with the essential part of the debate on this matter. It has not canvassed in any manner or at any depth the actual dismissal of the Police Commissioner, nor the reasons for his dismissal. It does not canvass the important principles of democratic and responsible government which were involved in the dismissal and which were first established or confirmed in this State by Mr. Justice Bright in the 1970 moratorium Royal Commission, namely, that a Police Commissioner is ultimately reponsible to the elected Government of the day and to the Parliament.

The report does not canvass the fact that Justice Mitchell in the Salisbury Royal Commission reconfirmed that notion. I ask the Council how the principles of responsible government can be upheld when senior public servants and senior Government officers mislead intentionally an elected official. Surely, no-one on the Government benches should maintain any other position. Surely, too, if the Hon. Mr. Burdett's permanent head, over a period of years, intentionally misled him on certain issues, the Minister would take strong action and, indeed, we would support him.

That is what happened in this case. Mr. Salisbury intentionally misled the elected Government over a period of time for, he said, reasons of security. Whatever the reasons were, that is what he did: he intentionally misled the Government.

I believe that an elected Government has a responsibility to act in those circumstances. What were the conclusions that Justice Mitchell came to about the central issue that the Government is trying to divert attention from by its attacks on Mr. Dunstan? At paragraph 89 of her report Justice Mitchell states:

> I have no doubt that the answers which Mr. Salisbury gave to the Government were intentionally incomplete and, being incomplete, they were in some instances untrue and misleading.

Paragraph 109 states:

> My conclusion from all of the evidence is that the Government was misled by the communications of Mr. Salisbury as to the nature and extent of the activities of Special Branch and that, relying upon such communications, it [the Government] misled others.

Paragraph 147 states:

> . . . it seems to me that there is no cause to find that he [Mr. Salisbury] was denied natural justice.

They were the obvious conclusions of an independent judicial inqurity set up to look at this specific matter. The inquiry was set up, I should add, at the request of and as a result of pressure from the Liberal Party, which was then in Opposition.

The criticism of the report is that the Attorney has not attempted in any sensible, legal or logical way to canvass the conclusions that the Royal Commissioner came to, nor to indicate in any way how Mr. Ceruto's statement throws doubt on those conclusions.

The Hon. K. T. Griffin: You haven't read the report, have you?

The Hon. C. J. SUMNER: I have read the report. I must say that it is not really worth reading.

The Hon. J. C. Burdett: Why worry about it?

Members interjecting:

The PRESIDENT: Order!

The Hon. C. J. SUMNER: You know why I am worrying about it.

The Hon. M. B. Cameron: Because you are embarrassed.

The Hon. C. J. SUMNER: I am not the least bit embarrassed. I am worried about it because of the reflection that it casts on the former Premier, Mr. Dunstan, by an uncorroborated and unsworn witness. I am concerned about it because it has been produced for political purposes by an Attorney-General who ought to know better.

As I said, the central part of the Royal Commission's findings are not discussed in the report. The only thing the Hon. Mr. Griffin can rely on is that Mr. Dunstan and the Labor Government knew about the extent of Special Branch files, the extent of the matters they contained and the extent of the surveillance by the Special Branch of political and trade union figures.

The Hon. J. C. Burdett interjecting:

The Hon. C. J. SUMNER: Rubbish! If the Government knew about that why, over a period of years, did it ask specific and detailed questions of Mr. Salisbury about the activities of the Special Branch? Why? Because it did not know and it wanted to ensure that what Parliament had been told—that what the Premier and the Ministers had been telling Parliament—was correct. The simple fact is that in providing those questions to Mr. Salisbury the Royal Commissioner has determined that he responded in a way that was intentionally designed to mislead the Government.

The only argument that the Liberals can latch on to was whether the Government or Mr. Dunstan knew about not only the Special Branch or the existence of files in the branch but also the extent of information being kept. That was the only evidence that the Liberals could rely on to say that the Government could not have been misled because the Government had that information. That issue was canvassed specifically by the Royal Commission. It was not brushed aside; it was raised during the Royal Commission. I think that some additional information was called about the matter from Mr. Dunstan towards the end of the inquiry to ensure that that issue was properly canvassed. That is the only issue that the Liberals can rely on, and the Liberals are relying for further support for that proposition not on that evidence but on a statement given to them by a Mr. Ceruto.

That statement ought to be given no credibility, as the Attorney-General knows. There was no attempt, so far as I know, by the Attorney-General to get a statement from the former Premier, Mr. Dunstan, on the allegations made by Mr. Ceruto. In his report he has continued his statement of Mr. Ceruto's allegations and puts them

forward as fact, saying that if they are fact they contradict Mr. Dunstan and, therefore, the findings of the Royal Commission are in jeopardy. The point I want to emphasise is simply that in the Royal Commission report that particular issue of the Government's knowledge of Special Branch files was canvassed, and canvassed fully.

Mr. Ceruto was in court during the proceedings of the Royal Commission. The Liberal Party's lawyers had access to him. I understand an allegation has been made today that Mr. Griffin was the solicitor acting for the Liberal Party in that matter, and no doubt at that time he would have had statements from Mr. Ceruto.

The Hon. K. T. Griffin: That's not correct.

The Hon. C. J. SUMNER: You were not the lawyer acting?

The Hon. K. T. Griffin: That is correct, I was not.

The Hon. C. J. SUMNER: Then who was?

The Hon. K. T. Griffin: I don't have to answer your question. You asked whether I was the solicitor acting, and I was not.

Members interjecting:

The PRESIDENT: Order!

The Hon. C. J. SUMNER: Nevertheless, Mr. Horton Williams, who acted for the Liberal Party, knew of Mr. Ceruto's existence and had interviewed him. Despite that, he was not called. What the Attorney-General is saying is that Mr. Horton Williams, Q.C., did not do his job, that he was incompetent and did not put this evidence before the Royal Commission. The Attorney is also casting a reflection upon Mr. Bollen, Q.C., who acted for Mr. Salisbury. What other conclusion can one come to? Mr. Ceruto was available at the time. The only statement in the Attorney-General's report that casts any doubt on the findings of the Royal Commission is Mr. Ceruto's statement. Mr. Ceruto was available to the Liberal lawyers but was not called. It really is a scandal.

I believe the Attorney-General ought to regret the action he has taken of parading before the Parliament under privilege this statement made by Mr. Ceruto without attempting to obtain Mr. Dunstan's view on it. The Attorney presented this statement as fact and tried to continue the Liberal Government's attempts to discredit a very fine former Premier of this State. To take just one example of the sort of distortions that the Attorney has included in his report, on page 28 he states:

> The question must also arise whether there was a denial of natural justice if the decision to dismiss was made before Mr. Salisbury had an opportunity to explain.

That precise matter was discussed by the Royal Commissioner, Justice Mitchell, who came to the following conclusion in paragraph 141 of her report:

> I find that, before his resignation was called for, Mr. Salisbury had ample time to put before the Government any information which he wished to give in order to show that the factual findings of White AJ as to the information stored in Special Branch were wrong, or that, if Mr. Salisbury has misled the Government, such misleading had been intentional.

In other words, Justice Mitchell said that Mr. Salisbury was given adequate opportunity to put submissions to the Government. The Attorney-General is now making a bland statement in his report that is completely contrary to the Royal Commissioner's statement. He is saying that perhaps Mr. Salisbury did not have a chance to explain. All I ask the Council and the public of South Australia to do is decide whose opinion they prefer. Do they prefer the opinion of Justice Mitchell and the findings of an independent judicial inquiry?

Do they prefer that well respected member of the South Australian Judiciary or the findings, so called, of an Attorney-General in a Liberal Government who has been ordered to prepare a report for electoral purposes and to continue the shabby attack the Liberal Party has been going on with over the past two or three years on the character of a well respected former Premier? I believe that many people in the Liberal Party are trying to hound Mr. Dunstan, despite his ill health, in a most disgraceful way. Some of them will not be happy until that man is in the grave and, really, it is a disgraceful attempt to further discredit Mr. Dunstan. I do not believe that, despite all this, he has been discredited at all. He was a well respected Premier of South Australia and, as Leader of the Labor Government, did an enormous amount for this State. I believe that fair-minded South Australians see the matter this way.

In summary, the attack that the Attorney has launched through his report is an attack on the Judiciary and on the integrity of Justice Mitchell, and is an indictment of the lawyers who appeared for the Liberal Party and Mr. Salisbury. The report is a straight-out political document tabled under Parliamentary privilege. It is like ordering Joe Stalin to do a report into civil rights in Russia. It has as much credit as that would have. The Attorney-General has forgotten his obligations. He has acted at the behest of the Government of the day in an improper and unprofessional manner. The matter could and should have been resolved months ago, as the *Advertiser* stated. The Attorney has done no credit to himself or the Parliament by producing a report such as this, and I believe that he ought to be condemned for it.

The Hon. J. R. CORNWALL: The Attorney-General, by his action yesterday, destroyed his credibility, demeaned his office, and disgraced this Parliament. The report tabled yesterday is a shameful document, employed in a shameful political exercise. Releasing this report in the way it was released, and the subsequent announcement that copies will be sent around the world, is an attempt to bolster its credibility and an attempt to imply that it has some offical or legal status. It has no status whatsoever.

It is a political exercise, carried out in a most shoddy and grubby fashion, by a political operator, obeying the behest of his master. This master, the Premier, incidentally, happened to be absent at the time, which does help to explain why a report, signalled to the press as being ready for presentation last Thursday, was suddenly moved to yesterday, to allow the Premier to get out of the way of the dirt. We often have reports tabled in this Parliament, and in almost every case they emanate from a respectable source, from the secretary of some public authority or, in legal matters, from a tribunal set up under law. This is just not one of those reports. It is a report that few people in the future will wish to emulate.

I doubt whether I can express deeply enough and with sufficient emphasis the totally inapposite nature of this exercise. For the Premier to ask his Attorney-General to report on a sentence in a statement issued by a former drug addict (who maintains he has reformed), a man with a plain grudge and the slightest public standing, is bad enough but, when that Attorney-General undertakes the report himself and does not hand it over to independent officers of the Crown to investigate in a dispassionate way, that Attorney-General is downgrading the office he holds. It does not fit our tradition in these matters. It does not provide any semblance of fairness. It does provide the opening for political advantage, when such a cynical compilation (for that is what it is) can be presented as a serious investigation into matters already gone over by a Royal Commission.

It is partial and tendentious. It is, in effect, a brief for a prosecutor, written by a man with a political point to make. I hope that the Law Society has something to say about the matter. To the credit of the Attorney-General, he does appear to have been embarrassed about the whole operation. When he issued his report yesterday he accompanied it with a Ministerial statement and tried to unload the responsibility on to the Labor Opposition in the Legislative Council. He maintained that the report was made public because we were insisting on that procedure.

The Premier said in mid-June it was unlikely to be made public. Now, when the Attorney-General makes it public (with one or two slight editorial omissions, with which I will not quarrel), he says it is because Labor wants it. Perhaps that is a sign that in future we only have to ask for something that the Government does not want to produce, and it will table it.

Let us go back to Mr. Ceruto, for he is now being placed centre stage by the Liberal Party. I doubt that the Liberals would be seen in public with him in any other circumstances. Mr. Ceruto appeared in public on 4 February this year to launch (it was a strange launching, because the book had already been launched once before) that disgraceful compilation entitled *It's Grossly Improper*. One would have thought that the less said by the Liberal Party about the book *It's Grossly Improper* the better. They might have to explain why the Premier sat in his car in the dark one night near his electorate office, talking to one of the authors, they might have to explain away the offers of finance from their Party to the authors, and they might be disturbed to find that a leading Adelaide journalist, Stewart Cockburn, paid the printer's bill for the first edition.

Ceruto had been one of the principal informants of the authors; he was due to appear in court later that day on a drug charge and he was a man with a vendetta against Don Dunstan. Ceruto appeared at the press conference at which the book was relaunched and read a prepared statement. He announced, regally, that he would not be subject to questioning. He read his statement and left. The statement was a heavily personal attack on Mr. Dunstan. No-one in his right mind, hearing the words and knowing the man, would have given it any weight, yet Premier Tonkin, who was then facing his first electoral test in the special election for Norwood, jumped straight in to announce that he at least took Ceruto seriously and thought that what he said about the former Labor Premier warranted an investigation.

As members will recall, this was one of five sudden inquiries called in the run-up to the election. As members will also recall, they were all a waste of time, as the Government lost the seat. Anyway, the commitment was made and the Premier handed the task to his loyal Attorney-General. I looked at Ceruto's statement then to see what it contained that could possibly justify such high level involvement. Everyone can share this experience now, because the entire statement is reproduced in the Attorney-General's report. I was amazed then, as I am still amazed, at the flimsy basis of the exercise.

I will not go into details, because I want to allow the Attorney time to reply. Unlike the Attorney, who makes attacks in this place under privilege, I intend to wind up, but I must conclude by saying that Parliament has a right to consider the propriety of the abusing of his office by the Attorney-General of South Australia in such a shoddy fashion and the foisting on this Parliament of such a disreputable document so that it can achieve the cover of privilege.

The Premier must share much of the blame, but surely the Attorney could have been man enough to stand up and refuse to have any part in this nasty little game, this prolongation of the smearing of a Premier who has given the best part of his life to the service of South Australia. The Liberal Party has absolutely nothing to be proud of in its performance and its embracing of Mr. John Ceruto as a credible witness of the truth. The Cabinet needs reproof for supporting the Premier, and the Attorney-General should feel sufficiently ashamed of his part to resign from his post to allow his high office to return to its proper level of public esteem.

The Hon. K. T. GRIFFIN (Attorney-General): It rather surprises me that the Leader of the Opposition should now begin to wriggle further to get off the hook about the tabling of the report which was requested by the Premier in February of this year. Why should the Leader of the Opposition be so keen to ask on so many occasions whether the report had been finished, and then be so anxious to back off from the report when it is made available?

I draw the Leader's attention to a statement made in another place by the Leader of the Opposition when, on April 2, he moved an urgency motion which referred in part to the failure of the Government to report to Parliament and to the public on the inquiries initiated by it. We then have in the *News* of 30 June an article headed "Ceruto report delay intolerable" which paraphrases the questions and the calling by the Leader of the Opposition in this place for information about progress on the report.

As I said yesterday, on all of the occasions when the Leader of the Opposition has asked questions about the various reports which have been requested by the Premier, on at least four occasions as well as others in the House of Assembly and when he raised the question during his Address in Reply speech in this Council on 6 August, the Leader of the Opposition made it quite clear that he wanted public disclosure of the report. He was anxious for the report and he would have embarrassed the Government or sought to embarrass it if it had refused to make the report available. He makes some criticism of me personally for having undertaken the preparation of the report myself. However, I can just envisage the scene if I had said in this Council that I had caused public servants to undertake research work or if I had asked officers of the Crown Law Office to undertake the inquiry into the matter.

The criticism would have been obvious. The Leader would have criticised me for abusing my responsibility and abusing the use of public servants in the preparation of the report. So, with the Leader of the Opposition you cannot win. If you do not table the report, you are criticised; if you do table the report, you are criticised; if you prepare the report yourself, you are criticised; and, if you were to have it prepared by public servants, you would still be criticised. You cannot win with the Leader of the Opposition. He thinks that everything ought to go his way all the time.

The Hon. L. H. Davis: You win on election day.

The Hon. K. T. GRIFFIN: That is correct. There has been a lot of comment in newspapers over the last two days, and the Leader of the Opposition and the Hon. Dr. Cornwall have sought to discredit Mr. John Ceruto. In the *News* today Mr. Dunstan has sought to discredit me and denigrate me. That is typical of members opposite when they cannot produce the facts—they get down to calling people names.

Members interjecting:

The PRESIDENT: Order!

The Hon. N. K. Foster: If they reduce politics to the gutter level, they deserve what they get.

The PRESIDENT: Order! The Hon. Mr. Foster will cease interjecting.

The Hon. K. T. GRIFFIN: Those who are the subject of the report and those whom it embarrasses seek to denigrate individuals by criticising them without reference to the facts at all. No-one adopts Mr. Ceruto as a perfect witness. What the Opposition is saying, and what one needs to think through, is that, if one has anything wrong with oneself or is offside with the Labor Party, one is not credible; if one is a reformed drug addict, then one's evidence need not be given any credibility.

The Hon. C. J. Sumner: Why didn't you call him at the Royal Commission?

The Hon. K. T. GRIFFIN: It was not for us to do that. It was in early 1978, and one could ask why the then Government did not call Mr. Ceruto, as he was then a friend of Mr. Dunstan. It is typical of the Opposition—when friends fall out they are discarded. One needs only to hark back to the relationship which Mr. Ceruto had with the then Government and its members. He was the product of some meteoric rises in the public arena. He was befriended by the then Premier and by members of the Government—by officers and Ministers and members of Parliament.

He had a meteoric rise and he was privy to a great deal of information. He had favours granted to him by the then Government because he was a preferred individual. We then see something of a parting of the ways, yet we still see the Government of the day giving assistance to Mr. Ceruto through the property used in conjunction with Theatre 62, and we see preference in connection with the Coalyard restaurant and in a number of other instances where Mr. Ceruto, who was then in favour, was granted preferment and preference in the public arena.

The Hon. L. H. Davis: The Labor Party did not object to him then.

The Hon. K. T. GRIFFIN: I agree. In fact, if one peruses the reports of the debates when the questions were raised by the then Opposition in another place, one sees how the then Government sought to fob off the questions being raised by the then Opposition. Yet we find that after several more years Mr. Ceruto ceases to be a friend at court and is discarded. We now have the disgraceful approach of the Opposition where a friend, no longer in favour at court, is discarded and the Opposition seeks to have him discredited completely because he may be a reformed drug addict and does not have the unblemished character that some members of the Opposition seek to claim for themselves.

The Hon. N. K. Foster: Some of your dealings around this town aren't so sweet.

The PRESIDENT: Order! The Hon. Mr. Foster will desist.

The Hon. N. K. Foster: He need not cast aspersions.

The PRESIDENT: Order! I have asked that this debate, because of its serious nature be heard in reasonable quiet. The Hon. Mr. Griffin.

The Hon. K. T. GRIFFIN: It is quite appropriate that, at the time when Mr. Ceruto in February made a clear and definitive statement, some inquiries should have been made as to the matters which it raised, and particularly the questions which it raised. If, of course, we had not done that, one can again imagine the sort of criticism that would have come, perhaps not from the Opposition, because it did not want old skeletons displayed in the cupboard, but from other members of the community. The Government could have been questioned as to the course of action that it wanted to take. The statement made by Mr. Ceruto was a matter which should have been inquired into because it raised a number of questions. It is the questions which are important, and not whether or not Mr. Ceruto is, in the eyes of the Labor Party, a credible witness.

I have sought to deal with those questions during the course of the report. The Leader of the Opposition has made some criticism about the statement being related in full in the report. But, of course, unless there was a full report of his statement, it would have been a defective report dealing with the questions that the statement was raising. So, I believe (and it is my assessment) that the assertion made by the Leader of the Opposition is quite baseless.

Let me now look at some of the questions that the statement raised. I have listed them from page 8 onwards. I indicate some eight questions to which the statement referred, and I then proceed to deal with them and to try to find whether or not there is any substance in the questions and any corroborative evidence.

I have dealt with those matters that relate to the relationship between Mr. Ceruto and Mr. Dunstan and the sort of problems that that might cause for a head of Government. Of course, one must remember that it is those compromising relationships which have been the subject of attention in many countries and which in themselves may lead to some compromise of a person's judgment and decision-making ability, particularly when that person holds public office.

I have drawn attention particularly to a matter that was one of the central themes of the Royal Commission. I refer to the question whether or not Mr. Dunstan knew about Special Branch and, indeed, whether the Labor Party had known about Special Branch and its activities.

The Hon. C. J. Sumner: About the files and the extent of their activities.

The Hon. K. T. GRIFFIN: Several years ago, Mr. Dunstan was reported as saying that he did not know of Special Branch before October 1970. However, in fact, even yesterday he back-tracked from that position and said, "I knew about Special Branch, but". We have already got some public disagreement about that point from Mr. Dunstan himself.

One of the central questions that Mr. Ceruto raised was whether or not Mr. Dunstan knew about Special Branch and its activities some years earlier than he admitted to the Royal Commission, and whether, in fact, the Government of the day also was aware of Special Branch and its activities before Mr. Dunstan said that he was aware of it in October 1970.

Of course, related to that question is the matter whether or not, if the Government of the day and the Premier did know about Special Branch and its activities, they could have been misled by statements made by Mr. Salisbury in the context to which I have referred in the report, namely, where Mr. Salisbury was perhaps in an embarrassing situation of knowing about information which he believed may have presented security problems but with which he did not know how to deal when confronted by the then Premier.

The Hon. C. J. Sumner: Why didn't he say that to the Royal Commission?

The Hon. K. T. GRIFFIN: There is ample evidence—

The Hon. J. R. Cornwall: You're a positive disgrace to the Parliament.

The PRESIDENT: Order!

The Hon. R. J. Ritson: Stop making a mockery of the Chair.

The PRESIDENT: Order!

The Hon. K. T. GRIFFIN: There is ample evidence from the appendices to the report which will indicate in the conclusion that I have reached that Mr. Dunstan and the former Government had information about Special

Branch and its activities and police activities over a much longer period of time than they were prepared to admit at the time of the Royal Commission.

The evidence is quite clear that Mr. Dunstan, who had a professed interest in police activities and the extent of those activities, was one of the most vocal critics and questioners of Governments in respect of police powers.

The Hon. J. R. Cornwall: Are you alleging perjury? Is that what you're saying?

The Hon. K. T. GRIFFIN: The people can draw whatever conclusions they like from the report. The fact is that there is a considerable amount of material which has been annexed as appendices to the report and which would raise very grave questions about Mr. Dunstan's state of knowledge regarding Special Branch and, indeed, about the Labor Party's knowledge of it.

The Hon. C. J. Sumner: It was all covered in the Royal Commission.

The Hon. K. T. GRIFFIN: It was not covered in the Royal Commission. The Leader of the Opposition seeks to assert that, by making that statement, I am criticising Mr. Bollen and Mr. Williams. He has sought to question whether I am criticising the Government's counsel. However, I have made quite clear that I am not criticising them, as this was a particularly difficult and emotive issue and, although much research was undertaken, these matters were not known, although they were on the public file but required a considerable amount of research to uncover. However, they disclose material that is relevant to the consideration of the questions that I have raised in the report. There is ample information upon which one could conclude that the concerns that both Mr. Dunstan and the former Government had over a number of years about police activities can be established in this report.

The fact is that it was known publicly that there was a Special Branch, and that either Special Branch or the police were from time to time undertaking inquiries which were not related to terrorism or to the commission of criminal offences, or in respect of a suspicion that a criminal offence may occur or had occurred.

The Hon. C. J. Sumner: Why did Mr. Salisbury say that they weren't doing that sort of thing?

The Hon. K. T. GRIFFIN: It is relevant to touch on these matters because it is a question whether, in dealing with this difficult situation, Mr. Salisbury did in fact mislead the Government of the day. Of course, if the Government of the day had knowledge of what was happening in Special Branch, it was guilty of manipulating the situation to dismiss a man who was appointed by the former Government but who had apparently run foul of the then Administration.

The Hon. C. J. Sumner: You're living in fantasy land.

The Hon. K. T. GRIFFIN: The fact is that the then Labor Government and Mr. Dunstan were aware that the Police Force (whether it was Special Branch or the Police Force) were undertaking inquiries and had information that was not related to the matters to which I have referred, yet the former Government did not do a thing about the matter until 1975, 1976 and 1977. Then, it only did it in such a way as to manipulate the situation.

The fact is that that material, which is publicly available and in relation to which the former Government and Mr. Dunstan were involved, is a matter of public record. It is really for the community to make its own assessment of whether or not that information supports the questions which I have raised and which have caused some concern.

I indicated in the report also that there were a number of other matters that may bring into question the decisions taken at the time of the Royal Commission. I made it clear yesterday and I make it clear again today that there is no criticism in this report, either expressly or impliedly, of the Royal Commissioner or then Acting Justice White.

I have indicated that, in the light of Ceruto's statement and the further information that is available, various questions are raised and that they do impinge upon the decisions that the Royal Commissioner took at the time, but decisions that she took at the time without the benefit of this information. It must be seen clearly as not a criticism of the Royal Commissioner or Acting Justice White, nor is it criticism of the officers assisting the Commission, whether counsel or otherwise.

There are several other matters with which I want to deal. I refer to the question of corroboration, because I do not want it to go unchallenged. I have produced in the report material which at least raises questions—

The Hon. J. R. Cornwall: Does it answer them?

The Hon. K. T. GRIFFIN: I believe it does. As I have said on so many occasions in the past two days, I believe that it raises serious questions, and the public will be able to judge for itself when it reads the report as a whole. The Opposition's criticism again is that this report does not really come to grips with the reasons for Mr. Salisbury's dismissal. I contest that, and I do not think that the Opposition has read the report particularly closely, anyway. The Opposition really does not care to have even grasped the problem itself because Ceruto's statement and the other material referred to in the report raise questions about the motives for Mr. Salisbury's dismissal.

The questions that I have referred to in the report, being in the nature of questions for the jury, relate to questions such as the motive of Mr. Dunstan in dismissing Mr. Salisbury and the way in which the then Government of the day agreed with his decision. Because time is short I want to just make a couple of brief comments. The first is in response to the Hon. Dr. Cornwall's claim that I have announced that I am sending the report all around the world to give it credibility. I have not at any stage indicated that.

What I have indicated is a response to a request by Mr. Salisbury that a copy of the report be forwarded to three organisations in the United Kingdom. If that is his request, then I am prepared to do that.

The Hon. L. H. Davis: What is wrong with that?

The Hon. K. T. GRIFFIN: There is nothing wrong with that. Why should the report not be available to those bodies which Mr. Salisbury believes have heard only one side of the story and which have a direct impact on his credibility and status in the community from which he came? I reject completely the allegations and assertions of the Opposition. I believe that as Attorney-General I have acted responsibly in putting together an objective and balanced report, and that the report, if read as a whole, will be seen for what it is—that is, an objective report.

The Hon. C. J. SUMNER (Leader of Opposition): Because the device of an urgency motion was the only way that this matter could be debated today, because this matter cannot be debated beyond 3.15 p.m., and because the procedures of this Council demand that I seek leave to withdraw the motion to adjourn the Council, that of course does not mean that I in any way withdraw the allegations in the matter of urgency that gave rise to my motion. Because the procedures of the Council demand it, and for no other reason, I seek leave to withdraw the motion.

Leave granted; motion withdrawn.

QUESTIONS ON NOTICE

CRUSHED ROCK

The Hon. C. J. SUMNER (on notice) asked the Minister of Community Welfare:

1. What increases have there been in the price of crushed rock since June 1978?

2. Will the Minister specify the price at that date, the dates of each subsequent increase to the present time and the amount of each such increase?

The Hon. J. C. BURDETT: Since 10 January 1980, when price control on quarry products changed from formal control to justification, individual quarries do not necessarily have the same product prices. As Quarry Industries Limited is the market leader in the metropolitan area, prices and increases given are those of this company.

1. Quarry Industries' price for crushed rock (20 mm quartzite screenings) has increased by $2·53 a tonne since June 1978.

2. Quarry Industries—20 mm quartzite screenings

Date of Increase	Increase per Tonne $ c	Price per Tonne ex bin $
June 1978	—	3·17
28 August 1978	5	3·22
7 December 1978	40	3·62
7 February 1979	8	3·70
12 July 1979	5	3·75
10 August 1979	27	4·02
21 January 1980	68	4·70
23 July 1980	1·00	5·70

SELECTION PANELS

The Hon. C. J. SUMNER (on notice) asked the Attorney-General:

1. Since 15 September 1979, have the selection panels for any positions in the South Australian Public Service contained persons not officers of the Public Service?

2. If so, what positions were involved, and in each case who was the person not an officer of the Public Service who participated in the selection panel?

3. Have any Ministerial officers not referred to above participated in the selection panels for positions in the South Australian Public Service. If so, what positions were involved and who was the Ministerial officer concerned?

The Hon. K. T. GRIFFIN: Regarding this Question on Notice and Questions on Notice numbers 3 to 7, I inform the Leader that I do not have all the details. Some questions have already been answered in the last few days, but over the period of the recess I will undertake to pursue these matters and arrange for members to obtain answers, and I will have them incorporated in *Hansard* when we resume.

NATURAL DEATH BILL

The Hon. FRANK BLEVINS brought up the report of the Select Committee, together with minutes of proceedings and evidence.

Ordered that report be printed.

PRICES ACT AMENDMENT BILL

The Hon. B. A. CHATTERTON obtained leave and introduced a Bill for an Act to amend the Prices Act, 1948-1980. Read a first time.

The Hon. B. A. CHATTERTON: I move:

That this Bill be now read a second time.

The purpose of the Bill is to provide grapegrowers with information from wineries that fall 15 months behind in payments for grapes, and protection against victimisation by defaulting wineries which withhold payments for previous vintages while paying out on recent ones. Growers (under this Bill) will have to be supplied with information with which to judge whether they will continue to supply wine grapes to a winery that has not paid them for grapes delivered 15 months and more ago.

The Bill has been drafted in such a way that the great majority of wineries which make prompt payment under the terms of the order issued under the Prices Act will not be affected. Co-operative wineries are exempt from this Act. Those wineries which fail to complete payment by 30 June in the year following harvest (that is about 15 months later) will have to provide growers with a statement setting out the amount owing to the grower for all vintages.

The grower will also be told how much the winery owes in total to grapegrowers and for what vintages. In addition, growers will be supplied with balance sheets and profit and loss accounts that could assist them in deciding whether they should continue to supply that winery or not. Recent experience with Vindana and other wineries has shown that growers can be victimised in a number of ways if they object to the delayed payments, and if they threaten to stop providing grapes because of this.

This Bill sets out to prevent one obvious way of victimising growers that has been practised. A grower who stops supplying a defaulting winery has been penalised by the winery threatening not to pay for earlier vintages and instead announcing an intention to pay for the current vintage only. The Bill ensures that payments for previous vintages must be completed before payments are made on current vintages. Obviously, it is impossible to prevent wineries from going bankrupt and causing losses to their creditors, but I believe this Bill will assist grapegrowers in making a more informed decision on the financial soundness of the winery they supply and protect them from possible financial victimisation if they act on this information. I commend the Bill to honourable members.

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

SELECT COMMITTEE ON UNSWORN STATEMENTS

The Hon. FRANK BLEVINS: I move:

1. That a Select Committee be appointed to inquire into and report upon the recommendations in the Third Report of the Criminal Law and Penal Methods Reform Committee of South Australia on the unsworn statement, the admissibility of evidence involving the imputations on the character of the prosecutor or the witnesses for the prosecution, the rebuttal of an unsworn statement and related matters with particular reference to:

   (a) whether the right to give an unsworn statement should be abolished and if so in what circumstances and under what conditions;

   (b) if the right to make unsworn statements is to be retained whether there should be any change in the law and practice in relation to it.

2. The Committee consist of six members and that the quorum of members necessary to be present at all meetings of the Committee be fixed at four members and that Standing Order No. 389 be so far suspended as to enable the Chairman of the Select Committee to have a deliberative vote only.

3. This Council permit the Select Committee to authorise

the disclosure or publication, as it thinks fit of any evidence presented to the Committee prior to such evidence being reported to the Council.

In moving this motion for the appointment of a Select Committee, I do not think that it is necessary to rehash the entire argument about this matter in any great detail. Over the past few weeks the arguments of opposing forces in the Council as to why or why not the question of unsworn statements should be referred to a Select Committee have been canvassed in great detail. I think it is only necessary, at this stage, to summarise those arguments. I do not think anybody would dispute that there has been put to all members of this Council conflicting evidence regarding the suitability of unsworn statements and whether they should be retained or not.

We have, on one side, the Attorney-General, on behalf of the Government, saying in his second reading explanation and subsequent speeches that the Government feels strongly that unsworn statements are no longer a suitable form to be used in our courts. Some of the contrary evidence has been submitted by the Aboriginal Legal Rights Service, which maintains that Aborigines, at least, and possibly other minority groups in the community, will have some difficulty in handling court procedures without the machinery of the unsworn statement being available.

Arguments have also been put to the Attorney-General by the Parks Legal Service that it, too, feels that people could be disadvantaged because they are not fully sure of court procedure, ethnic background, or some particular disability that they may have. The women's movement also has expressed, I believe, some disquiet about unsworn statements, but the movement has not seen or lobbied me about that matter.

That is not to say that the women's movement as a whole in South Australia does not support the abolition of the unsworn statement but, seeing that no member of the Council other than apparently the Attorney-General has been lobbied in this way, this certainly is all hearsay and I think that all members of the Council should have the opportunity to hear spokespeople for the women's movement direct or through a Select Committee.

The legal profession in this State, too, is divided on the question. We have at least three lawyers on the other side of the Council who are prepared to agree to the abolition of the unsworn statement, whereas a large number of lawyers out in the community say it would be wrong to abolish the unsworn statement, so even the legal profession does not speak with one voice on this question.

Various viewpoints have been put and there is certainly some validity, on the surface, in all these viewpoints. During the debates on this question, the Minister has not answered any of the questions that have been raised by either the Aboriginal Legal Rights Movement or the Parks Legal Service. He has made no attempt whatsoever to answer those questions.

What he has said is that Liberal Party policy is to abolish unsworn statements, that it is also Labor Party policy to abolish them, and they should be abolished. I query whether it is Labor Party policy. I believe that a statement was made by a previous Attorney-General but, to my knowledge anyway, we have certainly never gone to an election with a policy of abolishing unsworn statements. I do readily concede that a former Attorney-General in the Labor Government said that we would abolish them.

The Hon. C. M. Hill: What is your policy now?

The Hon. FRANK BLEVINS: I will tell you in a moment. The only way to resolve this obvious conflict is to refer it to a Select Committee. It appears to be a very genuine conflict. Everyone is putting his point of view with goodwill; no-one wants to see any group disadvantaged; and we all, including the Opposition, would like to see some resolution of the matter.

I will mention just one more point, and that relates to sexual offences. Everyone on this side of the Council agrees that there is a real problem in cases where a person can make an unsworn statement and make all kinds of allegations against witnesses that the prosecution may call. We want that problem solved. We do not want to solve it, if it is at all possible, at the expense of some other groups who are having problems with the law in this State.

I think the Hon. Dr. Ritson told me a few weeks ago that in the medical profession the first rule is that you do no harm. That is very wise. I am not sure that, in agreeing to the abolition of the unsworn statement, we would not be doing some harm to certain groups. For the sake of the few weeks that the Select Committee would take, we feel it is worth while having that delay so that we can attempt to solve the very real problems of unsworn statements without doing any harm to any other groups.

It may well be (and we concede this readily) that the only solution to the problem is the complete abolition of the unsworn statement. That may well be the only solution after the Select Committee has investigated the problem, but it just may be that we can solve the problem that certain people are having with the unsworn statement without going that far. We may be able to safeguard the position of other disadvantaged people before the courts. In that case we will have solved one problem and not created another, and I think it is very worth while that we make the attempt to do that. Unsworn statements in one form or another have been around for many hundreds of years. In this State, my legal friends tell me they have existed for more than 80 years. The Select Committee will take a very few weeks, because everyone wants to get on with the job.

The Hon. K. T. Griffin: How can you guarantee that?

The Hon. FRANK BLEVINS: The Leader has said quite clearly that members of the Opposition will co-operate to see that the Select Committee does not drag on unnecessarily. This problem has been identified and we want to solve it without creating another.

As I said previously, I do not want to go into all the arguments in detail again. Anyone who wishes to see them can read them in *Hansard*. For the reasons I have outlined, the Labor Party in this Council wants to see this Select Committee set up and operating as quickly as practicable. For those reasons, I commend the motion to the House.

The Hon. K. L. MILNE: As a layman, not a lawyer, I cannot really understand how such a thing as an unsworn statement ever got into the system in the first place. I should have thought that, if the accused made a statement on oath, when he was sworn to tell the truth, that would be the kind of statement that would have the privilege of not being cross-examined on, but that is not so. That privilege is given to people who are making unsworn statements, people who do not promise that they will tell the truth. To me, at best, that is back to front. I find the whole matter extraordinary. I know that the United States does not have the system of unsworn statements.

In the situation in which we find ourselves, I think it is certainly desirable that unsworn statements be abolished for rape and other sexual offences in cases involving children. This has been obvious for a long time and I do not know why it suddenly becomes so terribly urgent because, as the Hon. Mr. Blevins said—

The Hon. M. B. Cameron: You aren't a woman.

The Hon. K. L. MILNE: Do not try and pull that one,

because there are other people involved as well. You know perfectly well we are trying to be fair to everyone. The Mitchell Committee inquired into this matter and recommended its removal some six years ago, so I do not see why it suddenly becomes urgent. I believe that this is a very genuine matter for reference to a Select Committee, and I will give my reasons for wanting this matter so referred. First, the Government did not accept all the recommendations of the Mitchell Committee, and I would like to know why. They may be good reasons, but I would like to know them. Further, I now find that barristers themselves are still divided on the issue. It is not a question of abolishing unsworn statements: it is one of abolishing them under what conditions and to what extent.

There are certain groups that might be disadvantaged if they do not have the privilege of not speaking under oath, unless some discretion is given to a trial judge, which I believe is possibly unfair, and unless the rules of unsworn statements are changed in some way. Those groups include Aborigines, who are terrified in our courts in any case (possibly more terrified than we would be), and also immigrants conducting their own defence through an interpreter. They are only two groups that come to mind. Western Australia has apparently abolished unsworn statements but the other States are still considering the matter. I would like to know what points (and we should all know this) they are considering, because they must be worried about some areas, or they must themselves be trying not to make mistakes. I have said before that it would be in the Government's interest to refer the matter to a Select Committee in fairness to everybody. The Government could make it a priority and control the committee through the Chairman, and it would not take very long. If I were in the Government's shoes, that is what I would do.

The Hon. K. T. GRIFFIN (Attorney-General): I wish to move an amendment to the motion by adding a further clause, which would be paragraph 4. I move, therefore, to insert the following paragraph:

> (4.) That the Select Committee shall not make any commitment to expend funds on travel and accommodation outside South Australia unless it is first approved by the Legislative Council or, if it is not sitting at the time and is not likely to be sitting within four weeks on a request being made to make such commitment, by the President.

That is a proposition which I believe is an important one and needs to be considered in the light of the number of Select Committees being formed by the Legislative Council. Unless there is some measure of control over expenditure and some accountability by Select Committees, a Select Committee, without any reference to either the President or the Council, may incur considerable liabilities against funds that have been appropriated to the Parliament. What I am seeking to do by the amendment is provide a brake on expenditure incurred on travel and accommodation outside South Australia, unless that expenditure has the approval of the Legislative Council, or the President if the Council is not sitting or likely to be sitting within four weeks of a request being made by the Select Committee. I do not believe that anyone can quarrel with that concept, because it makes the Select Committee, in terms of its expenditure on those items, accountable to the Council, and it removes somewhat the temptation which undoubtedly may confront members of Select Committees to incur commitments on travel outside the State, or even overseas for that matter, without the appropriate consideration by the Council. The amendment will not impede the work of the Select Committee.

There are some other points to which I shall refer. The first is that the Government does not believe that there is any need for a Select Committee. We have indicated quite clearly what our policy was at the last election. We have introduced legislation which will implement that policy and which will take into account the major concerns of the Mitchell Committee. In any event, the fact is that the Bill has not yet passed Parliament, and undoubtedly it will be considered by the House of Assembly. One can predict that the matter will again be considered by the Legislative Council if the Assembly decides that it wants to reintroduce those provisions of the Bill which relate to the abolition of the right of an accused person to make an unsworn statement. If nothing else, a Select Committee is premature, but in any event I say that there is no need for a Select Committee.

One can acknowledge that the question of abolition of the unsworn statement is a matter of some complexity and some concern, but we do not follow the course of referring every difficult question to a Select Committee, because, if we did, we would be abdicating responsibility as a Legislative Council. In fact, the responsibility of the Parliament is to come to grips with the complex question of abolishing the unsworn statement, a principle which I am now told is not the policy of the Labor Party but is certainly the policy of the Liberal Party. We went to the people on that point, amongst many other promises, in 1979. We are honouring those promises.

The Hon. Mr. Blevins has alleged that I have not made any attempt to answer questions which have been raised by, for example, the Aboriginal Legal Rights Movement. He obviously did not bother to read the debate in *Hansard* when the Bill was in this Council.

The Hon. Frank Blevins: I said the Mitchell Committee had a look at the question.

The Hon. K. T. GRIFFIN: The Mitchell Committee did.

The Hon. Frank Blevins: Would you say that from now on we slavishly follow the recommendations of the Mitchell Committee?

The Hon. K. T. GRIFFIN: I am not advocating that at all but the Mitchell Committee adequately covered the problems raised by the Aboriginal Legal Rights Movement.

The Hon. Frank Blevins: This Council has not.

The Hon. K. T. GRIFFIN: That is fair comment.

The Hon. Frank Blevins: So, we give government away to the Mitchell Committee?

The Hon. K. T. GRIFFIN: No, but there is evidence which we can consider and weigh and which I believe will come down firmly in favour of the conclusions reached by the Mitchell Committee. If one looks at the United Kingdom and at Western Australia, one will see that the sort of exception to the rule which is now being raised by groups such as the Aboriginal Legal Rights Movement has not been adopted, and it has not created any hardship. The Mitchell Committee itself took into account the argument that persons who would undoubtedly have difficulty with the English language would be prejudiced. The Mitchell Committee took the view that that was not so and gave juries more credit than the Opposition and the Hon. Mr. Milne are giving to juries in the suggestion that this Select Committee should be set up.

I do not believe that there is a need for a Select Committee. Nor do I believe that the amendments will create any hardship: they are very much overdue and ought to be implemented as quickly as possible. We, as much as anyone else, will be monitoring very closely the impact of the abolition of the right of an accused person to make an unsworn statement. If there should be any hardship (which we do not believe there will be), if the measure is implemented quickly we will have an

opportunity to do something to remedy that hardship later this year. However, the appointment of a Select Committee means that it will not reach any conclusions within a few weeks: it will be lucky to reach conclusions within a few months.

As I predicted in the debate on the Bill, the fact is that this Select Committee will be lucky to report to us by the end of the year, and we are unlikely to see any legislation to abolish the unsworn statement before the middle of next year. That is a time period which I believe is intolerable and ought not to be accepted by this Council. I further indicate that, because the Government and I do not believe that a Select Committee is necessary, we can see no good purpose being served by members of the Government serving on such a committee, and I indicate to the Opposition that Government members will not be prepared to sit on the committee.

The Hon. C. J. SUMNER: All I can say about the Government on this occasion is that I am quite astounded by its attitude. The Government came to this Council, which it continues to herald as a House of Review, with legislation to abolish the unsworn statement. The Government thought that it had the numbers but, as it turned out, it did not have the numbers. Accordingly, the clause relating to unsworn statements was deleted from the Bill.

What is the Liberal Party's attitude to that? It believes that a House of Review should operate by Government members taking their bat and ball and going home. Government members are sulking because they have failed on this occasion. They say that they do not see a need for a Select Committee. However, if the Council, by a democratic vote, decides to set up the Select Committee, Government members say that they will have nothing to do with it and will boycott the committee.

Government members say that, although this Council is a House of Review, they do not want anything to do with this piece of legislation. That attitude is contemptuous of the Council and of the general democratic vote which I think will see the establishment of this Select Committee in the Council. Government members are peeved. They thought that they had it all lined up to have the Bill put through. Then, however, they were thwarted because they did not have the numbers. So, they are sulking and taking their bat and ball home. This is really an odd attitude for a Party that heralds the virtues of solid, sound legislation.

I oppose quite strongly the amendment that the Attorney-General has moved. It is an insult to members of Select Committees and will be an insult to the members of this Select Committee when they are appointed. The Attorney-General is saying that the Select Committee could not be trusted to behave responsibly in relation to expenses, travelling, and so on. Never before in the history of this Council has such a motion been considered necessary.

Indeed, never before in the history of the former Labor Government over the past 15 years did that Government seek to impose restrictions of this kind on a Select Committee. Yet here the Attorney-General is again breaking precedent in relation to this matter. He is trying to insult honourable members by saying that they will take advantage of being on the Select Committee, travel around the country and spend the taxpayers' money, without any regard for whether or not it is necessary. That is an imputation that I resent and reject, and I am sure that all honourable members would do the same.

Accordingly, the Opposition will oppose the amendment, which is completely unnecessary. It has never been necessary in the past. The Government is saying, "Because we are not prepared to sit on the Select Committee and because we are sulking, we do not trust those members who will go on the committee." I am sure that, in view of the Government's attitude, the Hon. Mr. Milne will agree to go on the committee. The Government is saying that the Hon. Mr. Milne and Opposition members will behave irresponsibly and use the Select Committee apparently to conduct junkets around the country.

That is a slur not only on honourable members individually but also on the Council. It is also a grave reflection on the system of Select Committees that this Council has from time to time set up. Accordingly, I support the motion and trust that in the next few minutes the Liberal Party will see the stupidity of what it is doing and support the appointment of the Select Committee. Certainly, I will oppose the Attorney-General's amendment.

The Hon. M. B. CAMERON: I reject absolutely this move. It is an incredible situation where the Government went to the people and indicated that it would introduce this Bill. The Government has now introduced it, and the Opposition, for reasons of its own, along with the Hon. Mr. Milne, wants somehow to conduct a new inquiry into the matter. The Hon. Mr. Milne has changed his mind on this matter.

The Hon. K. L. Milne: Twice, actually.

The Hon. M. B. CAMERON: So, the Government, at the whim of one honourable member, suddenly finds itself faced with the rejection of its concept and a new inquiry being ordered. I do not accept that. Before long, we will have the Opposition saying, "You are breaking your promise." I shall be interested to see what occurs with the legislation that is still to be considered by this Parliament.

The incredible thing is that, while this legislation is being considered by the Parliament, we have a move to set up an inquiry into whether the Government is doing the right thing. One would have thought that the Opposition and the Hon. Mr. Milne would have the decency to wait for the outcome of the legislation and to see whether it was approved by the Parliament.

The Hon. K. L. Milne: We aren't seeing whether you are doing the right thing.

The Hon. M. B. CAMERON: No, the honourable member wants to avoid having to make a final decision. He wants to be on both sides of the fence. He wants to be seen to be in favour of the unsworn statement but, as well, wants to keep a leg on the other side in case a few votes are there. The Opposition and the Hon. Mr. Milne are afraid to say, "Yes, we agree with it." This is typical of the rather weak attitude of both Parties opposite to this incredible move.

The Hon. C. M. Hill: What do all the women's organisations say?

The Hon. M. B. CAMERON: Opposition members are not worried about the women's movements, which, together with a few others, they are keeping on side. Members opposite want to avoid making a decision. It is scandalous that this is occurring right before an election. Opposition members have the audacity to accuse Government members of doing things before elections, but I say that the move to appoint a Select Committee on this matter is nothing more than an election gimmick. Opposition members do not have the gumption to make a decision and to say, "Yes, we approve." They want to stay on both sides. I now refer to the Government's indication that its members will not serve on the Select Committee. Can the Opposition go ahead and have control of the expenditure of funds?

The Hon. Frank Blevins: You did on the Forestry Bill.

The Hon. M. B. CAMERON: At 30 June next year, who will be responsible for the expenditure of funds? Certainly, the Government will be responsible. I challenge the honourable member to bring up the expenditure incurred by the Select Committee that was appointed on the forestry Bill. That committee would probably have been the lowest-costing committee ever.

The Hon. J. R. Cornwall: And the most useless.

The Hon. M. B. CAMERON: No, it was most useful. The Government will be asked to foot the bill. As the Government will be subject to criticism on this expenditure, it is only proper that this Council—

The Hon. C. J. Sumner: Are you saying that the Government is responsible for Parliament's funds?

The PRESIDENT: Order!

The Hon. M. B. CAMERON: This Council should have some say when no Government member has been approved by the Government to be a member of that committee.

The Hon. Anne Levy: That did not apply in regard to the forestry committee.

The Hon. M. B. CAMERON: It was up to the Government of the day to make some decision. Obviously, it made that decision. I believe it is a proper move and one that probably should have been made at the time.

The Hon. Anne Levy: Why didn't you make it?

The Hon. M. B. CAMERON: I would have wholly approved of such an amendment. It is only proper that the Council should have some control and that, if this Council is not sitting, the President should have some control. What is wrong with that?

The Hon. Anne Levy: Why didn't you move it?

The Hon. M. B. CAMERON: You were the Government of the day. There is no reason why this Council should not know what the committee wants to do. No-one would disapprove of that. It should apply to any Select Committee. Getting back to the original issue, the Opposition knows that appointing a Select Committee is not a worthwhile move at this stage. It knows that it is doing it for purely political purposes and on the whim of one member who has admitted that he has changed his mind twice. What an incredible situation. I strongly oppose the motion to appoint a Select Committee.

The Council divided on the amendment:

Ayes (9)—The Hons. J. C. Burdett, M. B. Cameron, J. A. Carnie, L. H. Davis, R. C. DeGaris, K. T. Griffin (teller), C. M. Hill, D. H. Laidlaw, and R. J. Ritson.

Noes (10)—The Hons. Frank Blevins (teller), G. L. Bruce, B. A. Chatterton, J. R. Cornwall, C. W. Creedon, N. K. Foster, Anne Levy, K. L. Milne, C. J. Sumner, and Barbara Wiese.

Pair—Aye—The Hon. M. B. Dawkins. No—The Hon. J. E. Dunford.

Majority of 1 for the Noes.

Amendment thus negatived.

The Council divided on the motion:

Ayes (10)—The Hons. Frank Blevins (teller), G. L. Bruce, B. A. Chatterton, J. R. Cornwall, C. W. Creedon, N. K. Foster, Anne Levy, K. L. Milne, C. J. Sumner, and Barbara Wiese.

Noes (8)—The Hons. J. C. Burdett, M. B. Cameron, J. A. Carnie, L. H. Davis, K. T. Griffin (teller), C. M. Hill, D. H. Laidlaw, and R. J. Ritson.

Pair—Aye—The Hon. J. E. Dunford. No—The Hon. M. B. Dawkins.

Majority of 2 for the Ayes.

Motion thus carried.

The Hon. FRANK BLEVINS: I move:

That the Select Committee consist of the Hons. Frank Blevins, C. W. Creedon, Anne Levy, K. L. Milne, C. J. Sumner, and Barbara Wiese.

It was regrettable that the Attorney-General, on behalf of the Government, said that every Liberal Party member of this Council would refuse to serve on the Select Committee. That shows a total lack of responsibility when this Parliament has come to a decision by a majority that a Select Committee should be appointed to look into this question. The Attorney-General, on behalf of slightly less than half the members of the Council, says that those members will not serve on that committee. That is contempt of the Parliament and a completely contemptible act.

On behalf of the Opposition I say that even at this stage any Liberal Party member who wants to serve on this Select Committee should indicate that now, and we will be happy to appoint three Liberal Party members to this Select Committee so that the numbers are equal. The Liberal Party would have the Chairman, so it would virtually be in control of the Select Committee. The Opposition is not trying to take the business of the Select Committee out of the hands of the Government in any way at all.

The Hon. L. H. Davis: The Select Committee is a sham, and the honourable member knows it.

The Hon. M. B. Cameron: An election year sham. The honourable member is putting the women of the State—

The PRESIDENT: Order! The Hon. Mr. Blevins has the floor.

The Hon. FRANK BLEVINS: The actions of members of the Liberal Party are not only reprehensible but also cowardly, because those members know that this is a perfectly proper resolution that has been moved and carried by a majority of this Council, something that they know was done constantly when the present Government was in Opposition and was constantly justified at length by the then Opposition. Members opposite say they are all individuals and are not acting as members of a political Party. What a sham that has turned out to be, as one Council member has got up in this place on behalf of all Government members and said he will not permit them to serve on this Select Committee.

The Hon. K. T. Griffin: No, I did not.

The Hon. FRANK BLEVINS: In fact, that is what the Attorney said. My offer still stands. I would respect enormously, and I am quite sure the whole of South Australia would respect, any Liberal Party member who said he would not toe the Party line on this matter but could act as a responsible Parliamentarian and accept his responsibilities to ensure that legislation that passes through this Council is scrutinised as much as possible and is in the interests of the majority of people in this State. The Opposition would welcome any member of the Liberal Party acting on his conscience and assisting this Select Committee to come to the best possible conclusion.

The Hon. K. T. GRIFFIN (Attorney-General): The Government made it clear that its members are not prepared to serve on this Select Committee because we—

The Hon. Frank Blevins: Who is "we"?

The Hon. K. T. GRIFFIN: The Government.

The Hon. Frank Blevins: You are saying this on behalf of all your members?

The Hon. K. T. GRIFFIN: They can say it for themselves; I do not mind.

The Hon. Frank Blevins: You said it on behalf of all your members.

The Hon. K. T. GRIFFIN: We have agreed that we will not serve on a Select Committee into this matter. The fact

is that the Government does not believe that a Select Committee is necessary. We do not believe it will achieve anything. We do not believe the proposed exception in connection with an accused person making an unsworn statement, that is, the exception proposed by the Aboriginal Legal Rights Movement, is an acceptable proposition. We believe the unsworn statement is either abolished completely or not at all: there are no half-way measures. The Government is committed to the abolition of the unsworn statement. That is a clear commitment and we intend at some appropriate time in the future to raise the matter again.

The Hon. Frank Blevins: Let's do it now.

The Hon. K. T. GRIFFIN: The Government believes that this is an important issue that cannot afford to be delayed until at least the middle of next year, until it comes up again in the legislative programme. It is too important to delay any longer. It is for that reason, because the Government does not believe a Select Committee will achieve anything, and because it does not believe it is necessary, that Government members are not prepared to serve on that Select Committee.

The Hon. C. J. SUMNER: I repeat the offer that has been made by the Opposition, that it does not wish to see this committee in any way discredited, that it wishes to conduct a responsible inquiry into this matter in a non-Party political atmosphere. We wish to do this in the way that Select Committees have been operating in this Council over the past few years; that is, by appointing a Select Committee with six members, three from each side of the Council, representing the different points of view, given that we have a Democrat, the Hon. Mr. Milne, in this place. The Opposition makes that offer to any members of the Liberal Party who may wish to stand. Those Liberal Party members who wish to serve on this committee are invited to stand during this debate and indicate to the Council that they are prepared to serve on this Select Committee. If that happens, we are prepared to move an amendment to enable those members to be appointed to the committee. I believe that the Hon. Mr. DeGaris, given his attitude to the Legislative Council, would be prepared to serve. Accordingly, I move:

> That the motion be amended by leaving out the name of the Hon. C. W. Creedon and inserting the name of the Hon. R. C. DeGaris.

I request any Liberal member who is interested in standing for this committee to rise during this debate and make his point of view known in case there is any doubt about the boycott of this committee announced by the Attorney-General.

The Hon. M. B. CAMERON: I think it is quite improper for the Leader to move an amendment of this sort in the absence of the member named. He has not given that member the opportunity to indicate his attitude. He knows as well as I that that member's attitude was indicated at the time of the second or third reading of the Bill and that it was that he was prepared to serve on a Select Committee into this matter if the Bill was passed. Now the Leader is putting that member in an intolerable position in his absence from the Council. I believe that move is quite improper and one that should not have been taken. It is a cynical manoeuvre like some sort of Dutch auction being held for membership of this Select Committee. Let me indicate to the Leader that Government members have not been ordered into a boycott by the Attorney-General; that is absolute nonsense. Government members say quite clearly that we supported Government policy at the last election and that we will continue to support Government policy on this matter.

The Hon. D. H. Laidlaw: It wasn't a bad policy, either.

The Hon. M. B. CAMERON: It was an excellent policy, aimed at correcting the position. It was also the policy of the Opposition but now the Opposition wants to hide. The Australian Democrats cannot make up their minds. They have changed their minds twice, as the representative of that Party in this Council has said.

The Hon. K. L. Milne: I'll tell you why.

The Hon. M. B. CAMERON: You tell us why you changed your mind when you spoke to Mr. McRae and Mr. Millhouse in another place. This matter was Government policy. For the next two years, the Opposition will say, "You are breaking your promises and you are cutting across the things that you said in the election campaign." That is the second time you have done it, and we wonder how many more times you are going to do it.

Members on this side supported the Government in the election campaign. The Opposition knew what the policies were and knew its own policies, but now it is trying to duck for cover in the face of a Federal election. It is a disgraceful episode in the history of this House when a member tries to conduct some sort of Dutch auction when he knows only too well that we are totally behind the Attorney-General in his move to try to implement Government policy.

The Hon. K. L. MILNE: This is getting very heated.

The PRESIDENT: It is getting very loud; I do not know that it is very heated.

The Hon. K. L. MILNE: It is empty rhetoric. I will do again as I did before and take some of the blame for this happening. The reason why I was in a difficult position was that I was in favour of a Select Committee right from the beginning.

The Hon. C. J. Sumner: You were tricked.

The Hon. K. L. MILNE: In fairness, I was not tricked, but I did discover that the Law Society wished to discuss the matter with the Attorney-General and had not told him. I felt it was my duty to tell him of this and at that time, to be fair, I asked him would he go and see the Law Society. I thought that would be beneficial. He did that and came back to this Council with several amendments. I felt that I had been helpful.

The Hon. L. H. Davis: And they were in favour of the Bill?

The Hon. K. L. MILNE: They were in favour of the Bill. He told me that they were in favour of the Bill under those conditions and, of course, he believed it and so did I. It was not a trick at all. I simply felt that, if the Attorney-General and the Law Society were happy about the situation, who was I to oppose it? I said that I would support the Bill which, in principle, I still do.

Let me make quite clear where I went wrong. I do not take all the blame because then I changed my mind during the recess and I spoke to a lot of people. The Hon. Mr. Cameron is quite right in saying that I spoke to Mr. McRae, Mr. Millhouse, and a lot of other people. I decided that the matter was not so clear-cut, but I did not tell the Attorney-General that I had changed my mind. One of the reasons was that he brought the Bill on first instead of at the end when it was listed. I am sorry, I should have told him but I did not. That made him cross and he started to abuse me. The Opposition also got cross. I am to blame for the way I did it. I do not apologise for changing my mind after listening to debate or finding further information, but I do apologise for not having done it properly.

The Hon. J. R. CORNWALL: I want to say that I am not cross. A very serious matter is under consideration. It is a great pity, in the circumstances, that we have had a lot of ranting and raving from people on the other side, particularly the Hon. Mr. Cameron, who jumped up and down in his usual fashion and gave a lot of idle rhetoric.

The amendment moved by the Leader has been moved, I believe, after discussion with the Hon. Mr. DeGaris and there has been some indication that that honourable member would be prepared to serve on the Select Committee. If he did, that would be splendid. There would be far greater balance on the committee and it could conduct the investigation in a manner that is not Party political. This subject is far too important to be bandied about on political lines. It is not a matter of what political philosophy it comes under.

It is an extremely important issue, particularly given the attitude of the Hon. Mr. DeGaris to Select Committees and to the functioning of this Chamber over the years, on which we should get an indication. There has been an indication to the Hon. Mr. Sumner that the Hon. Mr. DeGaris may be prepared to serve on the committee. If that is so, I welcome it.

The Hon. R. C. DeGARIS: I regret that I have been out of the Council this afternoon, but most members know the reason for that. Regarding the Select Committee, I do not know what has gone on so far but I indicate that, if the Council decides that a Select Committee should be appointed, members should serve on it. However, that is a Council decision. In this case, I believe that the Bill should pass and then the matter be referred to a Select Committee. I would be prepared to serve on that Select Committee, as I think I made clear in the second reading debate and in Committee.

The Government made clear during the election campaign that unsworn statements should be abolished. I also believe that that was Labor Party policy then. Although I do not know whether it was stated in the policy speech, the then Attorney-General said that the Government at that time was in favour of abolition of the unsworn statement. I believe that the Bill, in relation to both the examination of bankers' records in the case of white-collar crime (which I think is most important and should pass) and abolition of unsworn statements, is a clear election promise and is supported by most members of the Parliament. The Bill should pass. Then, if there are peripheral matters that the Council thinks should be examined, I would be happy to serve on a Select Committee.

The Hon. C. J. Sumner: Would you be prepared to serve at the moment?

The Hon. R. C. DeGARIS: Provided the Bill goes through, I would be. The big problem is that, unless the Bill is passed, we will delay the important measure on bankers' records and white-collar crime.

The Hon. C. J. Sumner: We will put those through. The only bit we will not put through is that regarding the unsworn statement.

The Hon. R. C. DeGARIS: I think I made my position clear in the debate. I do not think it possible at this stage to do anything else but either drop the Bill completely—

The Hon. C. J. Sumner: That's not right. The part about bankers' records can go through. That's similar to what we did on the random breath testing matter.

The Hon. R. C. DeGARIS: The abolition of the unsworn statement was a clear commitment given by the Government in the election campaign and the Government has honoured that. Whatever procedure was adopted, I think it would be extremely difficult to do other than I have suggested.

I think I have made my position clear in my speeches on this Bill: the Bill should pass as it is at present and, if there is a need or concern in this Council and if there are peripheral matters in relation to the unsworn statement, let us have a Select Committee and let us examine it and bring the report down to Parliament. On that committee I will be prepared to serve.

The Hon. C. J. Sumner: You are not prepared to serve on this one?

The Hon. R. C. DeGARIS: I have made my position quite clear.

The Hon. FRANK BLEVINS: I reply to this debate with a great deal of regret. Not one member of the Liberal Party has been prepared to accede to the wishes of the Council and serve on this Select Committee. All members, including the Hon. Mr. DeGaris, would have to agree that any Select Committee on which they have served has been conducted in a completely non-political way.

Members interjecting:

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

The Hon. FRANK BLEVINS: Without doubt, Select Committees have improved every piece of legislation that has been referred to those committees. For members of the Government to refuse, in this case, to serve on the committee is completely wrong, completely inappropriate and is a contempt of Parliament. I am disappointed with the Hon. Mr. DeGaris. He gave his explanation for not wishing to serve on the Select Committee, and I respect his views. However, I believe that the Hon. Mr. DeGaris knows that the Select Committees on which he and I have served have not operated in any way other than to improve the legislation in the best interests of the people of this State. To suggest that this Select Committee is in any way connected with an election is absolute nonsense. There are no votes in connection with this Select Committee for anyone, and neither there should be. It is completely non-political. I am sure that the committee's inquiries will be conducted quickly and that the decision will clarify the position for members of the Council, so that the final legislation that goes through will be in the best interests of the people of this State.

The Hon. C. J. SUMNER: In view of the position stated by the Hon. Mr. DeGaris, namely, that he is not prepared to serve on a committee of this kind, I seek leave to withdraw my amendment.

Leave granted; amendment withdrawn.

The Hon. R. C. DeGARIS: I rise on a point of order, Mr. President. In relation to the motion on the Notice Paper, how can this matter be referred to a Select Committee when the Bill, as I understand it, is in the House of Assembly? How can we refer the matter to a Select Committee when the question has not been resolved between the two Houses? It appears that we are putting about four horses before the cart.

The PRESIDENT: The Bill is not on our Notice Paper, and therefore the motion is in order.

The Hon. R. C. DeGARIS: The correct thing is that the matter should be adjourned until such time as the normal processes of Parliament are gone through, and then we can look at what happens. At this stage I would be forced to vote against the motion on those grounds. If a Select Committee is required, I suggest that the matter be adjourned until the next day of sitting to see what the result is of the normal processes of Parliament in relation to the Bill. Can I ask that the debate be adjourned?

The PRESIDENT: No; the Hon. Mr. DeGaris would be out of order. We are discussing the appointment of members to the committee. The motion to establish the

committee has already been passed and we are now dealing with its membership. The Hon. Mr. Sumner has withdrawn his amendment.

The Hon. M. B. Cameron: He seeks leave.

The PRESIDENT: Order! If the Hon. Mr. Cameron wants to take over, that might take him some time. I am trying to answer the Hon. Mr. DeGaris's question. I believe that the Hon. Mr. DeGaris is somewhat confused on the issue of whether we should have dealt with forming a committee at all. I believe that we were quite in order in dealing with the Select Committee as we no longer have the Bill in this Council.

Motion carried.

The Hon. FRANK BLEVINS: I move:

That the Select Committee have power to send for persons, papers and records, and to adjourn from place to place; the committee to report on 4 November.

Motion carried.

GAS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 18 September. Page 924.)

The Hon. B. A. CHATTERTON: I have no wish to debate this Bill at any length. Yesterday, we debated the principal Bill by which the Government intends to achieve this control of the South Australian Gas Company. The Opposition supports this Bill, which is linked with the legislation that was debated yesterday.

Bill read a second time.

The PRESIDENT: I am of the opinion that this Bill is also a hybrid Bill and, had the Council referred the South Australian Gas Company's Act Amendment Bill to a Select Committee, this Bill should have been referred to that committee as it is a related Bill. However, as the Council decided to keep the South Australian Gas Company's Act Amendment Bill as a public Bill, the Standing Orders should be suspended to enable this Bill to be treated in like manner.

The Hon. K. T. GRIFFIN (Attorney-General): I move:

That Standing Orders be so far suspended as to enable the Bill to be proceeded with as a public Bill.

Motion carried.

Bill taken through its remaining stages.

NATIONAL COMPANIES AND SECURITIES COMMISSION (STATE PROVISIONS) BILL

Adjourned debate on second reading.

(Continued from 28 August. Page 728.)

The Hon. C. J. SUMNER (Leader of the Opposition): This Bill and the following three Bills on the Notice Paper, namely, the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Bill, the Securities Industry (Application of Laws) Bill, and the Companies (Acquisition of Shares) (Application of Laws) Bill, are all related and are part of the scheme to establish a National Companies and Securities Commission and uniform legislation governing companies and securities throughout the whole of Australia.

I will use the opportunity in speaking on this Bill, which really provides for the operation of the National Companies and Securities Commission in South Australia, to make some general remarks about the co-operative scheme. In a sense, I am treating the matter, with your indulgence, Sir, as a composite debate. Having spoken on this Bill, I will not canvass either in this debate or later at any great length the specific Bills which follow on the Notice Paper and to which I have already referred.

The specific clauses are the result of agreement between the States after considerable public exposure and comment. In a sense, if we accept the desire for uniformity in this area (and by that I mean Australia-wide uniformity), we are limited in the amendments that we can make, because to amend this package of legislation substantially would destroy the aim of a national uniform scheme.

So, our only real alternatives are to reject the package of legislation and say that as a State South Australia does not want anything to do with it, or, if we accept the proposition that uniformity is desirable, we are really in the hands of the agreements which have been negotiated over a long period of time and which are now crystallised in the specific clauses in this legislation.

I make quite clear that the Labor Party would in no way support a proposition whereby the State of South Australia did not participate in such a scheme. Our policy has for many years been that there ought to be a national scheme and uniform legislation in relation to companies and securities. In fact, the Labor Government, with the former Attorney-General and Minister of Corporate Affairs (Hon. Peter Duncan) in charge of this legislation, participated fully in the development of this package when the Fraser Government decided to proceed with it following the 1975 election.

This package of legislation and a subsequent Bill which will be introduced, I understand next year, namely, the Companies Act (Application of Laws) Act, had their genesis over 10 years ago. A Select Committee of the Senate was set up under the chairmanship of Senator Peter Rae on 9 April 1970 following considerable disquiet about the operations of the securities industry during the period of the mining boom in the latter half of the 1960's. It is interesting to see what that committee, which reported on 18 July 1974, recommended. I will quote its principal recommendation in relation to the establishment of a National Companies and Securities Commission, as follows:

> Our recommendation is that the new national regulatory body should be established by the Federal Government. It is clear from the powers given in the Constitution that this Government was created to meet national needs relating to "foreign corporations and trading or financial corporations . . ." and interstate and overseas trade and commerce. It also has responsibility with respect to the use of postal, telegraphic or telephonic services, the Territories insurance and banking other than State banking. In our view the time has come for the Federal Government to step in to assume responsibility for seeing that the securities market is properly regulated.

The method of doing this was for a national regulatory body to be established by the national Government and, I believe it is certainly implied, with national legislation. In fact, a proposition similar to the present one, which is for a co-operative scheme with participation of the States, was considered and rejected by the Rae Committee.

Its recommendation in relation to this matter states:

> One possible form of a national regulatory body would be a national commission created by joint action of the States and the national Parliament. A proposal for such a body was put forward by the Eggleston Committee. As we noted earlier, that proposal was made before the decision of the High Court in the *Concrete Pipes Case* at a time when there was considerable doubt about the extent of the power of the national Parliament to legislate. The proposal was rejected by the Standing Committee of Attorneys-General. More

recently action has been taken by three States to set up a joint commission for those States only.

We wish to make it clear that in advocating the establishment of a national regulatory body we are not in favour of such a joint commission, particularly not one which involves the concept of continuing responsibility to all the Governments concerned. Such an arrangement would seriously endanger the ability of the system of regulation to adapt speedily to everchanging circumstances and standards. The experience referred to earlier has shown how difficult it is to secure the agreement of all seven Governments.

On the basis of that report the Labor Government before the 1975 election proceeded to try to use the Federal constitutional powers to establish a national commission and uniform legislation with powers that the Federal Parliament now has. That was in keeping with the recommendations of the Senate Select Committee. Senator Rae considered the constitutional position from the point of view of the reference I have just given the Council as to the power discussed in the High Court in the *Concrete Pipes Case*. The Rae Committee thought that such a national body with the powers of the national Parliament could be set up without the co-operation of the States and, indeed, the committee specifically rejected the notion of a joint State-Federal commission. It has always been Labor Party policy to support a national approach on this matter. Our policy states:

The enactment of a national Companies Act to ensure a rational framework for business, its public accountability and the protection of consumers, shareholders and workers.

The establishment of a National Securities and Exchange Commission to oversee share trading, take-overs, company accounts and the compliance of companies with legal requirements.

While we believe that it would have been possible to establish such a uniform system by Federal legislation using the Federal Parliament's powers given to it by the Constitution, it is possible that that would have been open to some constitutional challenge, particularly by the States which were dissatisfied with that approach.

After the 1975 election the Fraser Government decided on a proposal which did involve the States and which is a variation of the joint commission proposal which had been rejected by the Senate Select Committee chaired by Senator Rae. Although the commission is established by Federal legislation, it is responsible to State and Federal Ministers. I am not saying that what Senator Rae rejected in his report is precisely the scheme that has now been introduced by the Federal Government; it varies in that the Ministerial Council comprising State and Federal Ministers does have authority to direct the national commission by a majority vote. Therefore, the evils that Senator Rae saw of having to get unanimity amongst the States in the situation of a joint commission is no longer there.

I say that the Fraser Government has opted for a variation of the joint commission approach which was rejected by Senator Rae, but it has done it in a way which to some extent at least overcomes the problems which Senator Rae's committee saw in getting uniformity if each State had some kind of veto power.

As I have said, under this scheme a decision to direct the control of the National Securities and Exchange Commission is vested with the Ministerial Council, and any State must abide by a majority vote on that council. Their only recourse, if they are dissatisfied, is to withdraw entirely from the scheme, which they can do. Provision exists in the agreement signed in 1978 for a State to withdraw from the scheme, but that is their only option. They have to give, I think, 12 months notice of their intention to withdraw. At least we have not got the situation where a national commission is subject to the day-to-day veto power of the individual Government involved.

The South Australian Labor Government's approach, together with New South Wales and Tasmania, was that there was an urgent need for some national approach to this issue. We have actively supported the formation of this co-operative scheme, although originally a national Labor Government felt that the matter could be dealt with nationally. Certainly, it would have been less complicated if the States had been willing to refer powers on this matter to the Commonwealth, which they could do under the Federal Constitution.

However, that would have allowed the Federal Government to pass legislation without any constitutional doubts, and we could have had a national scheme and uniformity that would have applied across the whole of the country, irrespective of State Governments' attitudes. Certainly, that would have been a less complicated way of doing it but, clearly, that was unacceptable to some States which would not have been willing to refer powers, and I doubt that the Fraser Government would have been interested in that, in any event.

However, this scheme is a manifestation of the need that the Labor Party has always advocated to take a national view of Australia rather than a parochial States' rights view. I should say that it is no cheer to those who lament the erosion of State powers in this legislation, because this package constitutes a definite shift in the balance from States' powers to the national level and to a national solution of these problems.

The Hon. D. H. Laidlaw: Except that State Ministers have some powers to vote.

The Hon. C. J. SUMNER: Certainly, State Ministers have some power—and I will deal with that point in a moment—although the State Parliaments have no such power. Despite the new federalism proposals, and despite the rhetoric of the Fraser Government about the significance of the States and their sovereignty, the fact is that modern-day complex technological Australia requires a national approach to problems, and this is one such manifestation of that necessity. The securities market is a national market and requires national regulation. Companies operating in that market want uniform national laws. The Council should know that this is a definite and significant shift in State powers to the national level; it should know that the State Parliament is giving up some of its authority.

It should know (and I am sorry the Hon. Mr. DeGaris is not here to hear this) that the Parliament of South Australia will have no further say over amendments to the substantive legislation which we are now incorporating into South Australian law. Once these measures have been passed, then any amendment made to them will be made by the Commonwealth Parliament at the request of the Ministerial Council and without reference back to the State Parliaments.

The Hon. D. H. Laidlaw: The Parliaments can tell the Minister what they want him to do.

The Hon. C. J. SUMNER: I am coming to that. Quite clearly, it will be a matter for the State Government to vote at Ministerial Council on the way it wants a particular issue to go to the National Companies and Securities Commission. Once that Ministerial Council recommends a change to the law and the Federal Parliament acts on that recommendation, that change of law passed by the Federal Parliament will automatically become the law of South Australia without any further reference back to the Parliament of this State. It is only through the

Government that South Australia's point of view will be put at the Ministerial Council and National Commission level.

This raises the question of what role the South Australian Parliament will play. I believe that there should be some mechanism whereby the South Australian Parliament is informed of the Government's attitude at the Ministerial Council, which way it is voting on particular issues, and what stand it has taken on particular points. I believe that there should be some procedure whereby the minutes of the Commission and the Ministerial Council are tabled in the Parliament. It could be that the Government is taking decisions which affect the law in South Australia, without any recourse to Parliament. I believe that there ought to be a procedure whereby the Parliament can express its views on the Government's action on a particular matter. In order for the Parliament to do that, which it could do by way of motion, it must know what is the Government's attitude. It must know also what approach the Government intends to adopt at Ministerial Council on particular issues and what approach it has, in fact, adopted.

Accordingly, I have been giving consideration to moving an amendment which would require that certain information be given to the Parliament on the South Australian Government's decision-making and attitude before the Ministerial Council. I have requested in this Council on previous occasions minutes and decisions of national Ministerial meetings of State and Federal Ministers to be tabled in Parliament together with a statement of which way the South Australian Government voted on a particular issue. That request has been refused by the Government. It has said that it has no intention of tabling that information, so we do have, even with the normal Ministerial meetings, a situation where the Government is committing South Australia to certain courses of action at these meetings, first, without the Parliament knowing what decisions have been made and, secondly, without the Parliament knowing before they are made what matters are to be discussed and without its having an opportunity to express any view. That has been the Government's approach.

I asked this question several months ago, and the Attorney-General replied that there is no intention of letting the Parliament have that information. In this particular case, the Ministerial Council has the power not only to make decisions on behalf of South Australia but to change South Australian law. What this scheme does is leave it entirely to the Government. We accept that; we accept the national approach to it, but it should be made known, and the Parliament should know, that that is the authority that it is giving up and, while it is a co-operative scheme that the States are involved in, rather than the Federal Government acting at a national level, I believe that the constitutional principle requires that there be some method of informing the Parliament and some mechanism whereby the Parliament can express an opinion, so I am giving consideration to an amendment which would enable that to happen.

In saying that, I do not wish in any way to suggest that we are not in favour of the national approach: certainly we are, but we believe that, while it is done on the basis of State Government participation, there ought to be some mechanism for the Parliament to be involved beyond the only one suggested at present, which is for the report of the National Companies and Securities Commission to be tabled in the Parliament once a year. I believe that there is a need for more than that, and we will be giving consideration to some amendments concering that matter.

There are a number of questions I would like to raise with the Attorney-General, the first concerning the constitutional basis for this scheme. While there may be constitutional doubts about the power the Federal Parliament had to legislate nationally, I believe that there are certain constitutional doubts about this scheme. In fact, these constitutional doubts were referred to by the South Australian Law Reform Committee in its 53rd report presented to the Attorney-General, I imagine earlier this year, which was a report relating to the projected Securities Industry Bill, 1980, of the Commonwealth Parliament. In that report, when commenting on section 3, the committee had the following to say:

> It would appear that this Bill is intended to be enacted, so far as the Commonwealth is concerned, under section 122 of the Constitution and not under the companies power in section 51. The Commonwealth in relation to the agreement referred to in section 4 is, it would seem, operating under its normal powers, and in particular those contained in sections 51 and 61 of the Constitution. Accordingly whether it is possible for the Commonwealth in right of a territory to enter into or implement the underlying agreement might raise interesting constitutional problems. It is outside our purview to do more than raise the point. The only trouble from the State's point of view would be if some constitutional problem were thought to affect adversely the basic agreement. We do no more than refer to the problem.

I do no more than refer to the problem at this stage and ask the Attorney-General to provide some additional information to the Council on the likely areas of challenge to this legislation, to ask how they will be met, and to ask the Attorney-General to comment on the Law Reform Committee's statement in its 53rd report.

The second question I wish to raise relates to the comment the Attorney-General made about introducing this co-operative scheme in some States but not in others. He said that he has been working on trying to ensure this. I would like him to advise the Council what problems there have been with that matter, how much progress he has made with it, and how he thinks the scheme will work if some problems arise in Queensland in particular. The final comment I make relates to two of the substantive Bills, but I will make my comments now rather than debate the specific Bills later. The comments, first, relate to the Securities Industry (Applications of Laws) Bill and particularly to the approach of all Governments to the 53rd report of the Law Reform Committee of South Australia. Regarding this Bill in general, the committee stated:

> As far as the Securities Industry Bill is concerned, it is in some respects a bad Bill.

The committee was referring to the Federal Bill, which we, by the passage of this legislation, will incorporate into South Australian law. The committee continued:

> Few dispute that the securities industry requires regulation. A careful and well reasoned plea for that to be done is contained in the book *An Introduction to the Securities Industry Acts* by Professors Baxt and Ford and Mr. G. J. Samuel. Nothing, however, in that carefully planned and thoughtful text requires the treatment which is accorded to the subject by this Bill. The ordinary rights of persons in the industry and of those who have dealings in securities are left very largely at the mercy of executive discretion. The ordinary onus of proof in some of the proposed criminal offences is reversed. Many of the functions assigned to the Ministerial Council contravene the ordinary rules of law as to division of powers. Restraints are placed on the press. Generally the rights of the citizen are subordinate to administrative direction and not to the rule of law. The Bill ought to be completely redrawn with these considerations in mind. The only apt comment on the present Bill is that which

Tacitus addressed to our remote forebears:

idque apud imperitos humanitas vocabatur, cum pars servitutis esset.

I leave honourable members to ponder that Latin phrase in their spare time over the weekend. The Law Reform Committee of South Australia has made some quite serious criticisms of the legislation, and I should like to know, first, what is the Attorney's approach to those general criticisms. Secondly, what has been done about the specific criticism contained in the report? Subsequently, the report comments on several clauses in the Bill that was exposed for public comment, and I should like to know to what extent those comments have been taken into account in the final drafting of our Bill.

The problem that we have as a State Parliament is that, if we agree to uniformity, our capacity to amend the legislation or to do anything about the comments of the Law Reform Committee is limited. Such comments can be referred to the Ministerial Council, which can take them into account. However, once agreement is reached at Ministerial Council level, we are in trouble.

The second matter that I wish to raise refers to the Companies (Acquisition of Shares) (Application of Laws) Bill, which introduces into South Australian law the provisions of a Bill passed by the Federal Parliament on this matter and provisions that are in substantially the same terms as the Company Take-overs Bill that passed this Council yesterday.

The 49th report of the Law Reform Committee of South Australia contains criticisms of this Bill as it was originally proposed. That report was sent to me but, for reasons beyond my control, I have not been in a position to do much about it. It is the present Attorney's role to look at these comments and find out whether there is any validity in them. The report states:

> Our first comment is of a general nature. The committee fully appreciates the complexity of the subject matter and the need for careful, indeed in some cases minute, regulation of the procedures envisaged in the reform. Nevertheless, the committee feels that the drafting of the Bill leaves much to be desired.

I will not read the whole of the criticism but I draw the matter to the attention of the Attorney and ask him to comment on those criticisms, telling us how many have been accepted and whether they were taken to the confidence of Ministers. I support the Bill before us and the legislation to be dealt with subsequently. I give notice that I may be moving an amendment regarding the South Australian Parliament being informed of decisions of the Ministerial Council.

The Hon. L. H. DAVIS: Like the Hon. Mr. Sumner, I will be addressing my remarks to the four Bills that form part of a package of Bills relating to the proposed new securities and companies scheme. The package of 12 Bills relating to the scheme was introduced in the Federal Parliament on 27 August this year. The Uniform Companies Act, 1961-1962, was the first attempt at uniformity in the administration and regulation of the companies and securities industry made by the six States and the Commonwealth.

I will address my remarks to the history of the development of this matter and will speak only briefly on the specifics, which the Attorney-General covered when introducing the legislation. A combined Federal-State approach to securities industry regulation has finally come to fruition, after a rocky road marked by obstacles. The first was a dispute over whether the headquarters of the National Companies and Securities Commission should be in Sydney or in Melbourne, and this has been resolved in a draw.

Secondly, the Federal Labor Government led by Attorney-General Murphy sought to introduce not only Federal cover of the securities industry but also Federal control of companies. The Corporations and Securities Industry Bill languished following the decision of the Opposition-controlled Senate to refer the matter to a Select Committee. In any event, there was some constitutional doubt as to whether a Federal Government had power with respect to corporations already formed.

Thirdly, the Interstate Corporate Affairs Agreement in 1975 resulted in four States, New South Wales, Victoria, Queensland and Western Australia, agreeing to pass uniform legislation in the securities industry area and introduce new Companies Acts, but South Australia and Tasmania, which at that time were the only Labor-governed States, did not join this arrangement and so for three years did not have this legislation operating to regulate the securities industry.

It is instructive to reflect briefly on the background to companies and securities industry legislation in Australia. The Poseidon boom was really the beginning of it. There was an explosive lift in prices of mining shares in late 1969 and early 1970, including both established and newly-formed speculative mining companies and also some industrial companies which suddenly acquired mining interests. It was accompanied by allegations of impropriety, fraud and the inability of the existing systems to cope.

In March 1970 the Senate decided to establish a Select Committee to investigate the need for a National Securities Commission. The Chairman of the Commission was initially Senator Magnus Cormack and later Senator Peter Rae. The committee's terms of reference included the following:

> The desirability and feasibility of establishing a Securities and Exchange Commission by the Commonwealth, either alone or in co-operation with the States, and the powers and functions necessary for such a commission to enable it to act speedily and efficiently against manipulation of prices, insider trading and such other improper or injurious practices as the committee finds have occurred or may occur in relation to shares and other securities of public companies.

After three interim reports to the Senate, the final report of what came to be known as the Rae Committee was tabled in April 1974, and consisted of five volumes. Whatever people may say in praise and support or criticism and disagreement of the report, one thing cannot be denied, namely, that it is the first and, in fact, the only major study of the securities industry in Australia. It unanimously recommended the establishment of a National Securities Commission, and not unnaturally it saw the securities industry operating within a national framework. The report put it simply as follows:

> A large proportion of the business of the smaller exchanges is transacted in Melbourne and Sydney, and a substantial proportion of the total business in Australia is effected across State boundaries. For most listed securities there is in practice one market. Prices are set by national forces of supply and demand. Stock Exchanges, member firms and other intermediaries place new securities and orders throughout the country . . . The exchanges have increasingly moved to rationalise their organisation accordingly. They have a set of common listing requirements. There are some uniform rules.

The Rae Committee therefore supported a national regulatory body to minimise the problems companies have often encountered in dealing with eight different approaches and administrative requirements of the States and Territories, and to maximise efficiency, consistency, flexibility and performance in the securities industry and

capital market, as well as providing greater protection for the investor from abuses in the securities market and assurance to overseas investors who would have preferred dealing with one Australian body. The Rae Report therefore opted for a national commission rather than a joint commission.

Whilst waiting for this landmark report, the Federal Labor Government had prepared the Corporations and Securities Industry Bill whose ideas were drawn from existing Australian Acts and from English and American legislation. The Bill provided for the establishment of a Corporations and Exchange Commission. As Baxt, Ford and Samuel indicate in their valuable text *An Introduction to the Securities Industry Acts*, the Corporations and Exchange Commission was to be "an educator, a policeman, a promoter of enterprises, an investigator, and a law reformer".

At the same time as the Rae Committee had been set up in 1970, four States, namely, New South Wales, Victoria, Queensland and Western Australia had introduced legislation designed to regulate the securities industry through such provisions as the licensing of dealers, controlling short selling, tighter audit procedures for stockbrokers' accounts and insider trading. But this legislation was far from uniform between the four States, and it was not until 1974 when the Federal Labor Government introduced the Corporation and Securities Industry Bill that States moved to retain control of this area rather than take the risk of Commonwealth exclusivity in this field.

The three Eastern States in 1974 entered a formal agreement which resulted in the formation of the Interstate Corporate Affairs Commission and in legislation aimed at "greater uniformity in the law relating to companies and the regulation of the securities industry in trading in securities". Western Australia joined this arrangement in mid-1976, and on 1 March 1976 the four States amended their Companies Acts to make them entirely uniform and also enacted uniform Securities Industry Acts. This marked a major step forward. No change in this legislation could be made without the consent of all four States.

The securities industry Acts introduced in March 1976 are what South Australia introduced 3½ years later. In fact, this Act was introduced into the South Australian Parliament in November 1978, was assented to on 1 March and commenced operation on 9 July last year. No doubt a part of the reason for this delay is the fact that in 1976 the newly elected Federal Liberal Government announced that it would introduce a proposal to cover the twin areas of the securities industry and corporations—the idea of co-operative federalism as distinct from the Labor Party idea of national control.

Agreement on the Commonwealth proposals was eventually reached in May 1978 in the so-called Maroochydore pact. This co-operative scheme involved the formation of a National Companies and Securities Commission. The present Federal Treasurer was then the Federal Minister for Business and Consumer Affairs and so responsible for the Commonwealth legislation with the States. As he put it:

> The National Companies and Securities Commission will concern itself with the operation of the national securities market, those activities of public companies which infringe on that market and other activities of an interstate character. It would not be concerned normally with routine activities of State commissions.

Under the agreement, the States will repeal their various Companies and Securities Acts and these will be replaced by Federal legislation covering the securities industry and corporations. This Federal law is under the constitutional head of making laws with respect to Territories and so is applicable to the Australian Capital Territory.

Following this, the States would each pass legislation stating that the law on securities and corporations in the State is the law that applies in the A.C.T. The Federal Act can be amended only if a majority of State Ministers plus the Federal representative resolve to do so, this group having been styled the Ministerial Council. Any amendment will take effect automatically in the States without State Parliaments needing to enact legislation.

Under the formal agreement of December 1974, which was reached by all States and the Commonwealth, the Commonwealth was required to draft and introduce legislation into Federal Parliament relating to the four groups: first, take-overs; secondly, securities; thirdly, uniform interpretation; and, lastly, companies. The Commonwealth has, in keeping with its obligations, taken steps to introduce Bills into the House on 27 August. Take-over legislation is contained in the Companies (Acquisition of Shares) (Application of Laws) Bill, 1980, and the securities industry is to be regulated in accordance with the Securities Industry (Application of Laws) Bill. The uniform interpretation of the co-operative legislation is to be dealt with by the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Bill of 1980.

The Hon. Mr. Sumner raised some doubts as to the constitutionality of this package of Bills, but my understanding was that the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Bill was drafted for just that reason, in response to fears expressed by the parties that their co-operative scheme might prove to be unconstitutional. Then, companies legislation is provided in the draft Companies Bill, 1980, and the draft Companies Transitional Bill.

So, we have here, after many years of discussion between States, after early attempts of uniformity in 1961 (which ultimately broke down), after significant changes in the nature of the structure of our capital and securities market, and after the Rae Report, finally in 1980 a benchmark year for the introduction of this package of Bills designed to regulate companies and the securities industry spearheaded by the National Companies and Securities Commission. It is an instance of co-operative federalism. It has the agreement of all States and the Commonwealth and is a scheme which deserves the support of this Parliament. It is a scheme which has been commended by the Attorney-General and which I support.

The Hon. D. H. LAIDLAW secured the adjournment of the debate.

ADJOURNMENT

At 5.30 p.m. the Council adjourned until Thursday 25 September at 2.15 p.m.