LEGISLATIVE COUNCIL

Wednesday 29 August 1984

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

PAPER TABLED

The following paper was laid on the table:

By the Minister of Health (Hon. J.R. Cornwall):

Pursuant to Statute—

South Australian Totalizator Agency Board—Report, 1984.

QUESTIONS

GOVERNMENT ADVERTISING

The Hon. M.B. CAMERON: I seek leave to make a brief explanation prior to asking the Minister of Agriculture a question about Government advertising in Party political journals.

Leave granted.

The Hon. M.B. CAMERON: I have followed with interest the recent appearance of Government advertising in the Labor *Herald.* It is interesting to note that before July 1983 the Labor *Herald,* which of course is the official newspaper of the Australian Labor Party, carried a variety of advertisements from private firms. Leading up to July 1983 it was interesting to watch the gradual decline in that advertising. Obviously, companies which advertised were becoming increasingly doubtful about the benefit of advertising in such a newspaper with limited circulation. Before July 1983 advertisements encouraging readers of the Labor *Herald* to support the advertisers within that journal appeared with increasing frequency, suggesting that advertisers had complained that there was little advantage in advertising in the Australian Labor Party newspaper.

In the July-August 1983 edition there appeared a large front page article entitled 'The *Herald* Calls for Help'. In a plea for advertising, the article stated:

> The *Herald* not for the first (or last) time has run into financial trouble. Our problem is not circulation but advertising—or the difficulty in obtaining it.

They obviously do not understand advertising, because if one has circulation one has no problems with advertising. The article concluded with the following comment:

> We are keeping our fingers crossed about developments over the next six weeks. Any support Party members or loyal readers can provide, especially in the area of obtaining advertisers, will be welcomed.

Obviously members of the State and Federal Cabinet read the Labor *Herald's* plea because in the very next edition, and for the first time, Government funded advertisements appeared, and in the next 12 months one has witnessed the growing variety of Government-funded advertisements.

We must be extremely sceptical that any of the advertisements were placed as a result of a legitimate and researched commercial decision. The Labor *Herald* has a circulation of just under 15 000: 5 000 of these are Labor Party subscribers; 5 000 copies go to trade unions; and the final 5 000 copies are letterboxed by Labor Party branches as part of their propaganda crusade. Advertising for this limited circulation is relatively expensive at a cost of $625 for a full page, $325 for a half page, $175 for a quarter page and $90 for an eighth page. For a few more dollars Government departments and agencies could obtain regular advertisements in the editions of the much more widely read Messenger newspaper which can have a circulation of more than 40 000.

The last edition of the *Herald* carried Government funded advertising worth nearly $2 000, and in dollar terms it appears that the till has rung up nearly $10 000 worth of Government support for the *Herald* since it first got into financial trouble. Those who advertised included the Education Department, Woods and Forests Department, Australian Government promoting the accord, and the Department of Public and Consumer Affairs.

The Woods and Forests Department's advertisement, which takes up over half a page, solely promotes the Department of Woods and Forests and is not the first of such advertisements. This is clearly a case of the misuse of public funds to benefit the Labor Party in a direct way—as bad as the Minister of Health's polling exercise. My questions are as follows:

1. Did the Minister of Agriculture give any direction to his Department to advertise in the Labor *Herald*?
2. What is the cost to the Department for advertising?
3. Are advertisements booked to appear in the future and, if so, will the Minister withdraw the advertisements?

The Hon. FRANK BLEVINS: Concerning the question, 'Did the Minister give any direction to his Department to advertise in the Labor *Herald*?' the answer is 'No'. The first that the Minister knew about it was when he opened the *Herald* and saw the advert. That was also the first that I knew about the advert in the *Advertiser* and other newspapers—they were very good and effective adverts, too.

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order!

The Hon. FRANK BLEVINS: Concerning the cost to the Department, I will find that out for the honourable member. I will also find out for the honourable member the answer to the third question about whether or not there was any forward programme for advertising.

The Hon. M.B. Cameron: Will you stop it?

The Hon. FRANK BLEVINS: That wasn't the question. Are you asking me a supplementary question?

The Hon. M.B. CAMERON: A supplementary question, Mr President. My last question, which the Minister obviously missed—and I am sorry he missed it—was 'If so, will the Minister withdraw the advertisements?'

The Hon. FRANK BLEVINS: I will have discussions with officers from the Department of Woods and Forests regarding its advertising programme to see whether any particular newspaper should not have the advertisement placed in it.

The Hon. L.H. Davis: You must be heading for a preselection.

The PRESIDENT: Order!

The Hon. FRANK BLEVINS: I am delighted that the debate has been somewhat broadened. I found the question particularly boring until the interjection of the Hon. Mr Davis which you, Mr President, permitted. I will find out the answer to the Hon. Mr Cameron's supplementary question and have discussions with officers of the Department concerning newspapers. Regarding the preselection matter, that is much more interesting.

The PRESIDENT: Order! Let me correct the statement that the honourable Minister just made. I did not permit the interjection and called 'Order!' I have no means of stopping someone from opening their mouth and interjecting: I can only stop them from repeatedly interjecting.

The Hon. FRANK BLEVINS: Now that the topic of preselection has been raised, it would be rude of me to not pursue it. Obviously, I am not up for preselection for many years. However, the position of the honourable member

who interjected is somewhat different. Now that he has raised the matter he obviously wishes it to be raised in Parliament, so I think that we should spend a little part of the Parliament's time discussing it. The problem that the Hon. Mr Davis is having with preselection is well known to all members because the Liberal Party has the Hon. Mr Davis, and the Hon. Mr Griffin, and I am not sure about the Hon. Mr Hill—

The Hon. C.M. Hill: No.

The Hon. FRANK BLEVINS: Well, he is not going to get another run. Then there is the Hon. Dr Ritson, who was described in 1979, by the members of this Council who are certainly less charitable than I, as a political accident that they never expected to sit in this Parliament. Of course, that honourable member is heading for another go as well. The Hon. Mr Burdett has thrown his hat into the ring, too. If one looks at those members, and the desire of a large number of other members of the Liberal Party to take their places (the Hon. Mr Davis is in the thick of it, as are the others), then if we are talking about problems of preselection, the problems are certainly not in the Labor Party or with me.

The Hon. Diana Laidlaw: You don't have—

The Hon. FRANK BLEVINS: I thank the Hon. Miss Laidlaw for her interjection. She—

The Hon. Peter Dunn: What has this got to do with the question?

The Hon. FRANK BLEVINS: I am not quite sure, but members opposite keep raising it. The Hon. Miss Laidlaw assists me by saying that in the Liberal Party they do not have automatic preselections as we have in the Labor Party. The Hon. Miss Laidlaw is quite correct.

Members interjecting:

The PRESIDENT: Order!

The Hon. FRANK BLEVINS: In the Labor Party we do not go through this back stabbing or knifing of members that is going on right at this minute—

Members interjecting:

The PRESIDENT: Order! We have had enough tommy rot.

The Hon. FRANK BLEVINS: It is going on right now in the Liberal Party. I would expect that journalists who do this political journalism would follow up these very helpful interjections by the Hon. Mr Davis and the Hon. Diana Laidlaw and let the whole of South Australia know what is happening in this Liberal preselection for the Legislative Council. Certainly, it is much more interesting than whether the Woods and Forests Department put an advertisement in the *Herald.*

HEALTH SECTORISATION

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister of Health a question about sectorisation.

Leave granted.

The Hon. J.C. BURDETT: The Hospitals Association at its recent annual general meeting passed the following resolution:

> That the Association express its concern at the erosion of the authority of the sector offices and attraction of the authority to the corporate sector.

For the benefit of the Council I indicate that South Australia is divided into three geographic sectors: central, including Royal Adelaide Hospital; western, including Queen Elizabeth Hospital; and southern, including Flinders Medical Centre. There is also the corporate sector that should provide the support function. The sector system has worked well and has provided a necessary measure of decentralisation for the Health Commission. The fear of the Hospitals Association is that the powers of geographic sectors are being eroded and are being centralised in the corporate sector. Is the Minister aware of the erosion of the authority of the geographic sectors and the assumption of greater authority by the corporate sector? If he is, does he support this change? If he is not, will the Minister investigate the position?

The Hon. J.R. CORNWALL: I am very pleased to tell the Council and the people of South Australia that we have now reorganised the sectors and instituted a degree of control that was very sadly lacking when I became Minister of Health. Let me give the Council two examples of sectorisation as it was conducted under the Liberal Party. The then Chief Executive Officer of Port Augusta Hospital had rented a house for his mistress and quite erroneously and fraudulently he had been allowed under the Liberal Administration to put that under the name of a quite fictitious person. That is how well sectorisation was working—

Members interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: That is how well sectorisation was working under the Liberal Government. Another person, a senior appointee of that period, purchased an up market Holden station sedan and registered it, of course, with plain plates to the Port Broughton Hospital. That is how well sectorisation was working under the previous Administration. And the shadow Minister has the gall to stand up in this place and criticise me by implication for restoring order and efficiency to the sectors. I make no apology for that. Under the Chairmanship of Professor Andrews there has been at his behest, but I must say with my full support and encouragement, a return to a certain degree of centralisation to the extent necessary for the good conduct of the health industry in this State. I am pleased to inform the Council that the Health Commission is in very good shape at this stage. The corporate approach which I have instituted is working very well.

An honourable member interjecting:

The Hon. J.R. CORNWALL: The honourable member interjects and says that the Hospitals Association does not think so. I am a frequent visitor to Executive Meetings of the Hospitals Association and, indeed, I attended the meeting to which the honourable member referred: I was invited to open the annual conference and to share many thoughts with all of those attending. It was not possible to go on encouraging the ridiculous notion of literal autonomy, which was going on under the previous Administration. I inherited a shambles. We now have the best health administration in Australia. That has occurred in a period of less than two years.

PRISON DISCIPLINE

The Hon. K.T. GRIFFIN: Does the Minister of Correctional Services have a reply to the question I asked on 9 August about prison discipline?

The Hon. FRANK BLEVINS: A very broad interpretation of the term 'statistical material' will enable me to incorporate the reply in *Hansard* without reading it. The reply is very lengthy, and I do not wish to take up Question Time in reading it out. Therefore, I seek leave to have the reply, which could be described as mainly statistical, incorporated in *Hansard* without my reading it.

The PRESIDENT: It is not necessary to claim that material for incorporation is statistical if it is a reply to a question. We have allowed such material to be incorporated in *Hansard* without being read.

Leave granted.

Reply to Question

1. There have been 36 acts of disobedience of prison authorities at Adelaide Gaol and Yatala Labour Prison in the 12-month period to 9 August 1984.

2. The actions taken to bring disobedience of prison authorities to an end vary according to the nature of the act of disobedience. The Department of Correctional Services has developed procedures which should be followed by officers when reacting to acts of disobedience. Charges may be referred to the appropriate authority or privileges withdrawn from the inmate as a deterrent against repetition of the inappropriate behaviour.

3. The penalty imposed in relation to each act of disobedience was:

Nature of Act	No.	Penalty Imposed
Violent protest	1	The Crown Prosecutor has been requested to lay informations for the common law offence of riot against nine prisoners. The Ombudsman was involved in the resolution of this incident.
Refusal to eat	7	No disciplinary action was taken in these cases.
Refusal to be searched	4	*(a)* Prisoner was released on parole prior to the charge being heard before the Visiting Justice. *(b)* The Visiting Justice took into account the inmate's confinement in 'S' Division for seven days without contact visits. *(c)* Transferred to 'S & D' Division. Four weeks loss of contact visits. *(d)* Seven days loss of remission.
Climbed on roof	3	*(a)* Twenty-one days loss of privileges. The Ombudsman was involved in the resolution of this incident. *(b)* Fourteen days loss of remission. *(c)* Twenty-one days loss of remission.
Refusal to attend court	1	No disciplinary action was taken.
Refusal to return to cells	4	*(a)* After consultation the inmates returned voluntarily to their cells and no disciplinary action was taken. *(b)* An inmate was charged with abusive language and lost 3 days remission. *(c)* Two inmates lost twenty-one days remission. Two inmates lost fourteen days remission. One inmate lost 5 days remission. *(d)* Three prisoners lost four days remission. Three prisoners have been remanded to appear on charges at a later date.
Refusal to work	1	The inmate returned to work voluntarily after consultation. No disciplinary action was taken.
Sit-ins	11	*(a)* No disciplinary action was taken. *(b)* One hundred and four inmates suffered loss of privileges as well as loss of remission of between ten and twenty-one days. *(c)* One inmate suffered seven days loss of privileges. One inmate lost seven days remission. One inmate lost fourteen days remission. One inmate lost twenty-one days remission. *(d)* One inmate received a caution. Two inmates were released on parole before charges could be heard. Five inmates lost seven days remission. One inmate lost ten days remission. One inmate lost fourteen days remission. Six inmates lost twenty-one days remission. Four inmates lost twenty-four days remission. The Ombudsman was involved in the resolution of this incident. *(e)* No disciplinary action taken. *(f)* No disciplinary action taken. *(g)* No charges laid. *(h)* One inmate was released on parole before charges were heard. Two inmates lost twenty-one days remission. One inmate lost fourteen days remission and $5 in wages.

Nature of Act	No.	Penalty Imposed
		(i) Nine inmates were cautioned by the Visiting Justice.
		(j) Thirty-seven inmates each lost fourteen days remission.
		(k) One inmate suffered three days loss of privileges. Four inmates each lost seven days remission.
Other refusals	4	No disciplinary action was taken in three instances. In the fourth incident the inmate suffered twenty-one days loss of privileges.

4. The Ombudsman became involved in three of the acts of disobedience. These were referred to in my response to Question 3.

TAXATION

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Minister of Agriculture a question about the value of natural increases for taxation purposes as described in an article in the *Advertiser.*

Leave granted.

The Hon. I. GILFILLAN: In an article in the *Advertiser* this morning Maximillian Walsh made what I believe is a quite unjustified and savage attack on the grazing industry. He states, under the caption 'Grazing':

> . . . raising livestock, be it cattle, sheep or horses—is the great Australian tax rip-off, or if you are sensitive to such vulgarisms, tax shelter.

In this article Mr Walsh recognises that the new values at which livestock born on properties can be brought onto the books as now being $1 per sheep, $5 per head of cattle and for each horse, and $4 for each pig. Mr Walsh describes it as:

> The artificially low prescribed minimum value explains why our rich have this great urge to return to the land. In any other business you are obliged to value your inventory at cost or market value.

In explanation of my question, I comment that 'at cost' is extremely difficult to estimate for rural properties, and it varies enormously.

Members interjecting:

The PRESIDENT: Order!

The Hon. I. GILFILLAN: The fact that it can be a minimum value probably means that the actual values on the new tax scale in certain circumstances may very well be the minimum cost for the natural increase in those instances. Later in the article, Mr Walsh states:

> Essentially, the token prescribed minimum value for livestock enables a grazing operation to choose its level of declared income for tax purposes.

That is extremely difficult to justify, in my opinion, and I ask the Minister to respond. The understanding is that the tax is paid on stock when it is sold. The gap between the value at which they are taken onto the books and the actual sale price is taxable. That is inevitable; it cannot be avoided. Mr Walsh also states:

> In the absence of a capital gains tax it is no trouble to turn an improved property and herd—

I emphasise 'and herd'—

> into a tax free capital gain on sale.

I do not believe that that is true and it is creating a dangerous and false impression in the public mind of the economics of the tax applied to the grazing industry. As far as I am aware, there is no way in which the normal process of sale of livestock can be avoided for the purpose of tax and there cannot be a tax-free capital gain. Therefore, I ask the Minister the following questions:

1. Does the Minister consider that Mr Walsh has misrepresented the situation?

2. Does the Minister consider that the current tax situation, with natural increase valued at sheep $1, cattle and horses $5 and pigs $4, is fair and reasonable?

3. Does the Minister agree that the article is deceptive, mischievously misleading and requires rebutting?

4. Will the Minister consider responding to the points raised in the article, in particular that 'grazing is the great Australian rip-off', by way of correspondence with the *Advertiser*?

The Hon. FRANK BLEVINS: The short answer is 'No'. I will not be doing the things that the member has requested. I have no Ministerial responsibility for Federal taxation. If the Hon. Mr Gilfillan has any objection to what Maxmillian Walsh or any other journalist or commentator is writing, I suggest he take it up with that commentator. We have a very effective system of communication and free speech in this country. Maxmillian Walsh is entitled to his opinion as is Mr Gilfillan entitled to his. As regards that part of the question referring to whether the tax was too high, too low or otherwise, I suggest that, if the Hon. Mr Gilfillan has any objection to it, he take it up with the Federal Treasurer.

WOMEN'S HEALTH POLICY

The Hon. DIANA LAIDLAW: I seek leave to make a brief statement before asking the Minister of Health a question on women's health policy.

Leave granted.

The Hon. DIANA LAIDLAW: The Minister will be aware that in the past I have asked questions on the development of women's health policy. I was therefore pleased to note that on 16 August the Minister made a statement on this matter when he tabled both the Government's policy on women and health and the report by the working party on women's health chaired by Mrs Prior. In part of his statement to the Council, the Minister noted that Cabinet had approved the setting up of a women's consultative committee to 'ensure that the recommendations of the working party report are considered and implementation strategy developed'. As an aside I wish to record that I find it surprising that these tasks (namely, the consideration of the working party report and development of an implementation strategy) should be assigned to the consultative committee. The working party, after all, finalised its report on the development of the women's health policy in June 1983, and in that same month the South Australian Health Commission approved that policy. Now, on the Minister's own admission, it appears that the Health Commission's earlier approval of the policy has no status and, further, that no action has been taken in the past 14 months to consider the working party's recommendation or to implement a development strategy.

These tasks are apparently now to be the responsibility of the women's consultative committee. Be that as it may, the Minister's statement of 16 August notes:

The consultative committee comprises experienced and qualified women from a wide range of health and associated services who collectively have formidable skills to deal with this important issue.

I appreciate the Minister's reference to 'formidable skills', considering the nature and range of the responsibilities with which this committee has been charged. However, while the Minister has publicly acknowledged the collective skills of members of the committee, he did not advise to whom he was addressing his compliment. Will the Minister state the names and positions of members of the consultative committee, the name of the person who will chair that committee and, if he is able to do so, the term of office of those members and whether they are being paid for their services to the committee?

The Hon. J.R. CORNWALL: First, I am dumbfounded that the Hon. Miss Laidlaw, who is one of the more reasonable members of a very weak Opposition, should take this tack. The record of this Government on women's policies and action in the health area is unequalled in Australia.

The Hon. M.B. Cameron: What about the world?

The Hon. J.R. CORNWALL: By world standards it is certainly a world leader; there is no question about that. The fact is that we were the first Government in Australia to appoint a Women's Adviser on Health. There is unanimous agreement among all those who know Liz Furler that the appointment was an outstanding one. She is performing remarkably in that position as Women's Health Adviser.

The question of developing a policy on women and health—not simply a women's health policy—was specifically given to her shortly after her appointment. That policy concerns, as I told the Council and as the Hon. Miss Laidlaw in particular should know, women as consumers of health care and their special and well identified and identifiable needs as consumers of health care, and also as an enormously important component of the health work force; about 78 per cent of the total work force in the health area comprises women. The further fact is that we are also actively developing equal opportunity policies. This is another task given to the Women's Health Adviser and to the consultative committee.

I have not got the 13 names of that consultative committee before me at this moment, but I can say that it will be chaired by Ms Furler. Dr Aileen Connon, for whom I have an enormous regard, will be a senior consultant to that committee. A number of very well known women are on the committee, not the least of whom is Barbara Garrett. I cannot recall all 13; if I stood here and pondered for long enough I could probably get close to double figures, but the names were circulated widely in the press release that was put out at the time when I tabled the Prior document and the Commission's and Government's policy on women and health about a fortnight ago. I will be pleased to make sure that the honourable member gets a full list of the names and positions.

Indeed, she is about to be invited to lunch in the Speaker's dining room, along with all the female members of this Parliament, to meet all the members of that committee and the senior female members of my staff. A majority of my personal staff are women, and that is no accident. In the health area, our women's policies, whether they relate to women as consumers or as employees, as I said before, stand very proudly in the Australian spectrum.

As far as the implementation of the strategy is concerned, a lot of things have already been implemented. We already have four women's health centres in metropolitan and suburban Adelaide. There was one when I became Minister of Health 21 or 22 months ago. We already have that network extending. A major CEP study is going on in the Iron Triangle. Studies are mooted for the Green Triangle, based on Mount Gambier, and in the Riverland. So that network will be rapidly extended into the non-metropolitan and rural areas.

I repeat that I am delighted to receive the question from the Hon. Miss Laidlaw. I hope that she brings up often the question of women and health. I hope that she gives me the opportunity to keep the Council informed as to what we are achieving in this area, because it is an area to which I have given a great deal of attention and in which we are happily achieving a very great deal.

HEALTH COMMISSION ADVERTISING

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Minister of Health a question about Health Commission advertising.

Leave granted.

The Hon. R.I. LUCAS: For the past couple of months there has been considerable dissatisfaction and concern within the advertising industry over the decison by the Health Commission to change its advertising agency. However, as with the Minister's infamous ANOP market research episode earlier, advertising agencies have been reluctant to speak out because of possible effects on access to future Government contracts. The Health Commission account is regarded as significant by the advertising industry, as it runs into some hundreds of thousands of dollars.

I am informed that the account of the Health Commission was taken from an accredited agency and given to a Mr Toby Ralph, who was previously the account executive for the agency that lost the Health Commission's account. A number of curious aspects of this decision deserve a response from the Minister.

I have been told that Mr Ralph resigned from the advertising agency just before the Health Commission made known its intention to put the account out to tender. I understand that up to three accredited agencies expressed some initial interest in handling the Commission's account but that it was awarded to Mr Ralph, who is and was an unaccredited advertising agent. I make no personal criticism of Mr Ralph, but one of the questions that needs to be answered is: why award such a significant account to an unaccredited agent when there were available fully accredited agencies with all the services that they provide? For example, an unaccredited agent cannot directly book advertising space and time; it must be done through an accredited agency. This is what Mr Ralph has had to organise.

In addition, many questions have been raised with me about the Health Commission's financial arrangements with Mr Ralph. My questions to the Minister are:

1. Why was the account awarded to an unaccredited agent rather than to a fully accredited advertising agency?

2. Was the Minister aware of the change, and did he approve it?

3. Was there any discussion between officers of the Health Commission and Mr Ralph about changing the Health Commission's advertising arrangements before Mr Ralph resigned from the advertising agency?

4. What financial arrangements have been made for providing Health Commission funds to Mr Ralph to allow him to book advertising space and time on the Health Commission's behalf?

5. Was any large sum of money given to Mr Ralph prior to the end of the financial year 1983-84? If so, for what purpose, and did the Minister approve it?

The Hon. J.R. CORNWALL: The beaver, I am afraid, has missed out this time. The short answer to the first question is that I have not got the remotest idea. The answers to the second question are 'No' and 'No'. The

answer to the third question about changing the Health Commission's advertising arrangements before Mr Ralph resigned from the advertising agency, which incidentally is unnamed throughout, is that I do not have the remotest idea.

On the fourth question, again, the matter of this advertising agency is a matter with which I have had no contact whatsoever. I could not tell the honourable member the name of the unnamed advertising agency.

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order!

The Hon. J.R CORNWALL: He is trying to bask in his former great glory, Sir. He was able to beat the hell out of a very small story earlier this year and build it up a bit, and he thinks he is on another one.

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: Young Mr Lucas, Mr Boring 1984, interjects—

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: —and says that I have not answered any of his questions. I have answered them all. The fact is that I have not the slightest idea what he is talking about. I have not the slightest idea what advertising agency it was, or what is the name of the unnamed advertising agency to which he refers.

Members interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: I have had no dealings with any advertising agency. If the Health Commission deals with that agency, or Mr Ralph (whom I do not know, but whom the honourable member seems to be trying to smear by association)—

The Hon. R.I. Lucas interjecting:

The Hon. J.R. CORNWALL: There is a little matter here about large sums of money allegedly being passed to Mr Ralph. That, I would have thought, is certainly an attempt to smear by implication. I do not know Mr Ralph. I have never heard previously of Mr Ralph. I do not know what advertising agency the Commission was using. The Health Commission is a statutory authority, but I am not its Chairman. I am not involved with the day-to-day conduct of the Health Commission. I am the Minister of Health.

The Hon. R.I. LUCAS: As a supplementary question, will the Minister bring back a reply to all the questions that he has been unable to answer?

The Hon. J.R. CORNWALL: I will bring back answers to some of the questions that are worthy of being dignified with a reply. Where there is any suggestion that innocent people are being named and smeared in this Chamber under Parliamentary privilege then, of course, I would use my well known discretion.

ISOLATED PERSONS MEDICAL TREATMENT

The Hon. PETER DUNN: My question relates to IPTAAS. Will the Minister of Health inform the Council of the criteria applicable to allow isolated people to receive specialist treatment by recognised practitioners, what is the living away allowance, have these criteria been altered lately, how much per day is the allowance, and has that allowance been increased or decreased in the past six months?

The Hon. J.R. CORNWALL: I am very pleased that the Hon. Mr Dunn has asked those very constructive questions, as he so often does. I will answer them in the best traditions of this Council in order to provide the Hon. Mr Dunn with a very substantial amount of information. I hope that the Hon. Mr Dunn, like other country members from more remote areas, such as the Hon. Mr Blevins, will see to it that the *Hansard* record in relation to this matter is widely distributed. The Isolated Patients Travel and Assistance Scheme (IPTAAS) is a Commonwealth Government scheme. It is a partial reimbursement scheme that provides financial assistance to people, regardless of age or means, who need to travel more than 200 kilometres from their home to obtain specialist medical treatment or services, or specialist oral surgery.

Referral by a medical practitioner, or a dental practitioner in the case of oral surgery, to the nearest suitable specialist for treatment is an essential part of the scheme. The benefits under IPTAAS are restricted to journeys associated with professional services—that is, for services that are an item within the Commonwealth medical benefits schedule and therefore attract a medical benefit. IPTAAS also provides assistance to escorts for patients under 17 years of age and to escorts of older patients on the recommendation of referring practitioners.

Provision is also available for assisting a medical attendant with travel and accommodation. The referring medical practitioner is required to provide certain details of the referral. Where the patient has not been seen previously by the nominated specialist and the specialist is not the nearest, reasons for selecting the specialist are to be provided. The specialist is required to certify when and where the patient was treated and to give details about accommodation needs associated with the visit.

Although this scheme was introduced originally to cover the cost of travel exceeding 200 kilometres, there are instances where the nature of the geography produces specific travel difficulties. For that reason, Kangaroo Island has been listed as a prescribed island within the IPTAAS legislation and the Island's residents are eligible for IPTAAS assistance, although quite clearly they are closer than 200 kilometres (as the crow flies or any other way) from Adelaide.

IPTAAS does not cover ambulance standard non-emergency transport or special transport arrangements required for certain medical conditions. With regard to benefits, the scheme provides reimbursement of travel costs less a patient contribution of $20 and accommodation costs up to a maximum of $30 per night after the trip. The standard of travel reimbursed under the scheme is economy class rail or a mileage allowance for the use of a private motor vehicle. However, a practitioner may recommend air or first class rail travel if warranted by the medical condition of the patient. The regional office of the Commonwealth Department of Health in Adelaide administers the scheme in South Australia. The 1984-85 Commonwealth Budget increased the provision for IPTAAS from $11.8 million to $15 million to reflect increased costs and demands. That was on a national basis, Australia wide. There was no change in benefit levels. In South Australia in the 1983-84 financial year the scheme cost $950 000 for approximately 10 000 claims.

RATING OF ELECTRICAL APPLIANCES

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Minister of Agriculture, representing the Minister of Mines and Energy, a question about the rating of electrical appliances.

Leave granted.

The Hon. I. GILFILLAN: There is apparently a Commonwealth and State Government proposal to introduce a national scheme of labelling domestic appliances for energy efficiency. The proposed scheme would involve the testing of appliances for energy consumption according to proce-

dures determined by the Australian Standards Association. A label setting out the quarterly energy cost and consumption would then be attached to each appliance. The aim of the scheme is to promote conservation of energy and to lower consumption by directing consumers to more efficient appliances; to provide an incentive to manufacturers to produce efficient appliances; and to allow consumers to make an informed choice.

Similar schemes overseas have proved very successful in reducing energy consumption. The Australian Mineral and Energy Council predicted that the scheme will result in savings of about 500 GWh per year after seven years and 1 400 GWhs after 15 years as old appliances are replaced. At a recent address to the Electricity Supply Association an AMEC representative predicted that the labelling scheme, together with other proposed conservation measures, would lead to an overall reduction of consumption of 20 per cent to 30 per cent in existing homes, 40 per cent to 60 per cent in new homes, and 15 per cent to 30 per cent to industry as a whole, a very significant saving that could have dramatic consequences on future electricity generation needs for South Australia or Australia as a whole. However, despite what appears to be a compelling case, the proposed scheme is floundering.

After four years of planning the scheme was to have been introduced in March this year with industry voluntarily participating. In January industry withdrew its support. I believe that this is a relatively straight forward scheme with a huge energy saving potential that should be implemented as quickly as practicable to avoid further wasting Australia's energy resources. My questions are:

1. Is the Minister familiar with the proposal?
2. What are the objections, if any, to the scheme?
3. What action is the Minister taking to implement the scheme?
4. If the Minister is not taking any steps to promote the scheme, why not?

The Hon. FRANK BLEVINS: I will refer that question to my colleague in another place and bring back a reply.

SEXISM IN SCHOOLS

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister of Agriculture, representing the Minister of Education, a question concerning sexism in schools.

Leave granted.

The Hon. ANNE LEVY: I asked a question about the project of sexism in schools some time ago and received a reply from the Minister indicating that a steering committee had been asked to present a report and recommendations to him by the end of April this year, and that particular attention would be given to the question whether the pilot study that had been carried out should be extended to encompass a wider sample of schools. Will the report be available for me and other members to see? What are its principal recommendations, and are they being carried out?

The Hon. FRANK BLEVINS: I shall refer that question to my colleague in another place and bring back a reply.

NATURAL DEATH ACT

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of Health, as acting Leader of the Government, a question about the Natural Death Act.

Leave granted.

The Hon. L.H. DAVIS: Honourable members will be aware that an Act to provide for and give legal effect to directions against artificial prolongation of the dying process (it was styled as the Natural Death Act) was assented to on 22 December 1983. As I understand it, that Act has not yet been proclaimed. Does the Minister of Health know why this is so? If not, will he make inquiries and bring back a report?

The Hon. J.R. CORNWALL: I suppose that I could stand up, say 'Yes' and sit down again. I certainly know why the Act has not yet been proclaimed; it will be committed to me as Minister of Health and not to the Attorney. The person who has a special interest in this Act is my colleague, the Minister of Agriculture, who keeps me very honest by asking me almost *ad nauseam* when it will be proclaimed so that we can call an appropriate press conference at which, I understand, the Minister will want to be the first person in the State to proclaim it, and quite rightly so, because it is a great credit to him and—

The Hon. Frank Blevins interjecting:

The Hon. J.R. CORNWALL: —the architect of the Bill. It has nothing to do with the fact that he has lately felt under stress in his portfolio. Seriously, it is a great credit to the Hon. Frank Blevins that this outstanding piece of legislation will enable us to ensure formally that at least in this State—the most civilised State in a civilised country—there is a right to die with dignity, a very important right indeed. In turn, I have continually, although gently, because I am a gentle person, put considerable pressure on some of the senior people who are fortunate enough to work in or about my office. Only yesterday the Hon. Frank Blevins again asked me when it was likely to happen, and I made another one of my almost continual inquiries. I am pleased to tell the Council that it may now expect that the Act will be proclaimed on or before 30 September this year.

There have been some difficulties, because we wanted to make sure that the administrative arrangements were right and that forms were available for people to sign. We had to do this notwithstanding the fact that the AMA, as all members of the Select Committee that looked at the natural death legislation would be aware, was less than enthusiastic and co-operative about this Act. Therefore, it was necessary for us to proceed to make arrangements that would be sensible and sensitive yet, at the same time, could be arranged without the active co-operation of the South Australian Division of the AMA. This very excellent piece of legislation is an example of the Legislative Council select committee system working at its best. A monument to my colleague and friend, the Hon. Frank Blevins, it will be proclaimed on or before 30 September.

WINE TAX

The Hon. PETER DUNN: Has the Minister of Agriculture an answer to a question I asked on 22 August concerning the wine tax?

The Hon. FRANK BLEVINS: In a full year the wine tax is estimated to raise only $62 million from the total Australian wine industry. South Australian grapegrowers alone will receive about $63 million for their wine grapes and they represent about 60 per cent of total Australian wine-grape production. Given the above, the tax revenue collected by the Federal Government's new wine tax will not exceed the total amount paid to grapegrowers in South Australia for their saleable crop.

HOSPITAL CORPORATION OF AMERICA

The Hon. J.C. BURDETT: During his recent visit to the United States, did the Minister of Health have any discus-

sions with representatives of the Hospital Corporation of America?

The Hon. J.R. CORNWALL: There seems to be some implication that somehow or other—

The Hon. J.C. Burdett interjecting:

The Hon. J.R. CORNWALL: There is a clear implication. A question was asked yesterday of me that implied that I might have been involved in some sort of devious or dubious manoeuvring with the Hospital Corporation of America. Again there is that implication in this question today. The only contact I had in any way, shape or form with that Corporation when I was in the United States in May or early June was a visit to the St Paul Hospital in New Orleans. I also happened to be in New Orleans for the world fair. The Deputy Chairman of the Health Commission accompanied me on a visit to that hospital and the only representative of the Hospital Corporation of America I met was the Manager of that hospital, who was a very pleasant young man but in no way a lobbyist.

I might say that the HCA was very insistent that it should force hospitality on us, and I very actively resisted at all stages. However, I do wish to confess to the Council that when I got to the Royal Sonesta Hotel in Bourbon Street, in the French Quarter of New Orleans, there was a basket of fruit with the compliments of the HCA that contained two apples, two bananas and two oranges, and I remember it well.

QUESTION ON NOTICE

CLASSIFICATION OF PUBLICATIONS BOARD

The Hon. I. GILFILLAN (on notice) asked the Attorney-General:

1. What publications and video tapes are required to be submitted for classification by the Classification of Publications Board?

2. Whose responsibility is it to ensure that any publications or video tapes required to be submitted for classification are submitted to the Classification of Publications Board for classification?

3. What action does the Board take to ensure that all publications and video tapes that should be submitted to it for classification are so submitted?

4. *(a)* Is the curiosity of the members of the Board aroused by the absence, from the publications submitted to it for classification, of some issues of regularly published periodicals?

(b) What action does the Board take to ascertain why these issues have not been submitted for classification?

5. What action does the Board (or any other arm of the Government) take to ensure that the conditions of classification of each publication or video tape submitted for classification are observed, or to ensure that the publication or video tape is not distributed in any case where classification is refused?

6. *(a)* How many prosecutions for breach of the conditions of classification have been undertaken?

(b) What have been the findings of the courts resulting from each of these prosecutions?

(c) What penalties have been imposed for such breaches?

7. *(a)* Have any known breaches of the conditions of classification not been the subject of prosecution?

(b) What action has been taken in the case of each such breach?

(c) Why was the prosecution not undertaken?

8. What is the procedure employed by the Board to arrive at the classification to be given to each publication or video tape, and is this followed for every publication or video tape?

9. How many publications or video tapes were classified by the Board during the period from 29 June 1983 to 28 June 1984?

10. How many persons are employed by the Board for the purpose of classifying the publications and video tapes submitted to the Board for classification?

11. What is the approximate average length of time required to classify a publication or a video tape submitted for classification?

The Hon. J.R. Cornwall, for the Hon. C.J. SUMNER: The replies are as follows:

1, 2, 3, and 4:

The classification of publications and videos is at the moment on a voluntary basis and therefore the Classification of Publications Board is only required to classify those publications that are submitted to it. I understand that in practice most publications are in fact submitted for classification.

5. The policing of the Classification of Publications Act is the responsibility of Police Vice Squad, which maintains an active watching brief over all pornography outlets to ensure compliance with the law. This activity on the part of the Vice Squad is supplemented on an *ad hoc* basis by other plain clothes and uniform branches of the force.

6. *(a)* Forty-seven prosecutions were instigated during the financial year 1983-84.

(b) Of the 47 cases for 1983-84, only three have been finalised to date. In each case, convictions were recorded with fines imposed and forfeiture of seized material ordered.

(c) The fines imposed were $200 in each of two cases and $30 in the third case.

7. *(a)* Four breaches were not prosecuted during 1983-84.

(b) In each case the offender was cautioned by local police.

(c) The four breaches occurred in country areas and it was the decision of the police commanding officers concerned that the issue of a caution was the appropriate action in the circumstances.

8. The Classification of Publications Board has derived a set of guidelines which are used to classify every publication that is submitted.

9. 6 330 (that is, 2 625 video tapes and 3 705 publications).

10. An officer of the Attorney-General's Department has been appointed as Registrar of the Board and he spends approximately 20 per cent of his time on work related to the classification of publications.

11. The time required to classify a publication varies according to the publication. In some cases five minutes is all that is required, whereas a video could take up to an hour.

PLANNING ACT AMENDMENT BILL (No. 3)

The Hon. I. GILFILLAN obtained leave and introduced a Bill for an Act to amend the Planning Act, 1982. Read a first time.

EVIDENCE ACT AMENDMENT BILL (No. 4)

The Hon. K.T. GRIFFIN obtained leave and introduced a Bill for an Act to amend the Evidence Act, 1929. Read a first time.

The Hon. K.T. GRIFFIN: I move:

That this Bill be now read a second time.

By the introduction of this Bill the Liberal Party seeks once again to abolish the right of an accused person to make an unsworn statement from the dock. The Liberal Party gave an unequivocal commitment in the election of 1979 to abolish this right, endeavoured to do so on two occasions during its term of office and unsuccessfully sought to amend the present Government's Bill in March 1983 to achieve that objective. The present Government's Bill sought to make relatively minor variations to the law relating to unsworn statements. On each occasion when the Liberal Party has endeavoured to abolish this anachronistic hangover from earlier centuries it has been rebuffed by the Labor Party and the Australian Democrats acting in concert to thwart attempts to achieve a long overdue reform in the criminal law.

Before the 1979 election a number of Labor Party members of Parliament and supporters were in favour of abolition. Somewhat surprisingly that point of view changed when the Liberal Party came to office. Now, the unsworn statement is again a focus of attention, this time in respect of reform of the laws relating to rape because it is in this area that it gives the greatest level of concern to members of the community, particularly women who have been the victims of rape, their families and those who support them.

Notwithstanding the cosmetic changes made by the present Government in 1983 to the law relating to the unsworn statement, that law continues to be a major cause for concern in respect of the imbalance in rape trials, where the victim is frequently made to feel as though she is the accused subject to interrogation while the accused stands unchallenged in the dock making an unsworn statement. The report of Dr Ngaire Naffin that was released in April of this year refers to the abolition of the unsworn statement as one of the possible reforms of the law in so far as it refers to rape cases, but not with the significant emphasis which I and the Liberal Party believe abolition should be given.

Notwithstanding other proposals for reform referred to by Dr Naffin in a comprehensive report (to which I will refer later), the fact is that the greatest single reform in the law relating to rape which will do more than anything else to redress imbalance is the abolition of the unsworn statement. It is in this context, therefore, that this Bill is introduced, although it is not limited to the abolition of the unsworn statement in only rape cases. The persuasive arguments in favour of abolition in rape cases apply equally in all other criminal cases.

Several weeks ago there was a public meeting at the University of Adelaide to discuss Dr Naffin's recommendations. I am informed that the issue upon which the greatest emphasis was placed by the people present, predominantly women, was the issue of the unsworn statement, and it is about time the Labor Party and the Australian Democrats came to grips with that particular issue and stopped pushing it under the carpet. Obviously, as I have indicated, this Bill, if accepted, will achieve more for victims than any other reform of the law. However, as the Bill arises out of current concern with the law relating to rape it is appropriate to consider this reform in the context of other reforms which the Liberal Party is prepared to support. The principal provision of the Criminal Law Consolidation Act dealing with rape is section 48. It provides:

> A person who has sexual intercourse with another person without the consent of that other person—
>
> *(a)* knowing that that other person does not consent to sexual intercourse with him; or
>
> *(b)* recklessly indifferent as to whether that other person consents to sexual intercourse with him,
>
> shall be guilty of the felony of rape and be liable to be imprisoned for life.

As the *Advertiser* editorial of 31 May 1984 observed, when commenting on Dr Naffin's report:

> The core of the problem will remain consent. It is right that jurists and jurors, indeed all of society with its popular notions about how people behave in unusual situations, re-examine deeply ingrained beliefs that, if a female victim, for whatever reasons, does not fight off an attacker and show the bruises, she has consented, or that if she does say 'No' it is merely a woman's way of saying 'Yes'. If, in such basic areas, Dr Naffin's report rekindles widespread debate on sexual assault it will have done some good.

The Crown frequently has a difficult task in establishing, under the definition to which I have referred, that the accused knew that the victim did not consent to sexual intercourse—this is an element which is solely within the knowledge of the accused. Obviously, that is so, although it is often possible to imply that knowledge from the circumstances of the case where, for example, force was involved. However, in the context of the abolition of the right of an accused person to make an unsworn statement, that difficulty should be reduced.

I should indicate that, while this whole area is difficult, the Liberal Party is presently sympathetic to a proposal to place the onus on the accused to show to the jury on the balance of probabilities that he honestly but mistakenly believed that the victim was consenting. In that context, that would still be a matter for the jury after considering the question whether or not the Crown has proved beyond reasonable doubt that the intercourse took place without the victim's consent. The onus placed on the accused on the balance of probabilities would be a question for the jury but, of course, would be part of their total consideration of the Crown and defence cases.

The Hon. Anne Levy: Did you say, 'a reasonable belief'?

The Hon. K.T. GRIFFIN: An honest belief.

The Hon. Anne Levy: A reasonable belief.

The Hon. K.T. GRIFFIN: That is one of the options, is it not? But it is readily acknowledged that there are differing points of view in this whole question, and the Liberal Party remains open to submissions on both points of view before making a final decision. It is important that we all be reminded that basic to our system of justice is the principle that an individual is innocent until proved guilty and that the onus rests upon the Crown to prove the crime in all instances beyond reasonable doubt.

In addition to the abolition of the unsworn statement, the Liberal Party supports the principle of grading the crime of rape into offences of decreasing seriousness but with a number of significant changes to the proposals made by Dr Naffin. For example, there appears no good reason for limiting sexual assault grades 1 and 3 (to which she refers in her recommendations) to cases where the victims are under 17 years of age or over 65. Obviously, whether or not the crime is graded will not alter the current requirements in respect of rape for the Crown to establish beyond reasonable doubt that the accused had sexual intercourse with another person without the consent of that other person. The question as to the knowledge or belief of the accused has already been referred to. Of course, while the grading of offences may mean more convictions it is still essential that the ingredients constituting the graded offences should be proved by the Crown beyond reasonable doubt and that the risk of convicting innocent persons is not increased.

In the context of graded offences it is important that there not be any opportunity for 'plea bargaining', which I always strongly resisted as Attorney-General and will continue to resist because of the unsavoury practices which are or may be associated with such plea bargaining. Plea bargaining, or the doing of deals between Crown and defence in order to get some conviction, has no place in our South Australian system of the administration of justice.

In the context of the penalty, which Dr Naffin also proposes to be graded, the present penalty for rape is life imprisonment. A great deal of community concern has been expressed that 'life imprisonment' does not mean what it says and in fact means the release of prisoners in, maybe, eight to 12 years. While courts are imposing tougher penalties in some cases, the Liberal Party believes that some alternative to the 'life' imprisonment description is worth investigation. Accordingly, we would be prepared to support removal of the maximum penalty of life imprisonment to replace it with a maximum period of 30 years. That is a definite term and gives a clearer indication to the courts of Parliament's intention to clamp down on rapists than the nebulous concept of 'life imprisonment'. In this, a proper balance between punishment, protection of members of the community and the prospect of rehabilitation must be sought.

A question is raised by Dr Naffin as to whether the crime presently known as 'rape' should hereafter be referred to as 'sexual assault'. There are lots of reasons for and against this change. But, on balance, the Liberal Party does not believe that there is any merit in changing the description of what is a particularly vicious crime, predominantly against women. While it has been suggested that to change the name of the crime to sexual assault may mean less apprehension on the part of the jury to convict, there is no objective evidence at all that that is the likely consequence; it is surmise. Accordingly, our preference is to continue to refer to the crime as rape, a crime which members of the community can readily recognise.

There are two other matters which ought to be mentioned. The first is the need to upgrade the level and quality of education of the community as to the nature of the crime of rape in order to promote a better comprehension of the trauma of the victim, and to provide a higher level of competent support after the crime. The second is to undertake a comprehensive study and survey of the convicted criminal to obtain a higher level of understanding of the causes of the crime leading to more effective ways of preventing it.

In Dr Naffin's report there are other recommendations. However, they are not so significant as the ones to which I have referred. They will be the subject of Opposition consideration when any Bill is introduced by the Government. The Liberal Party has not introduced a Bill with respect to amendments to the law of rape (relating to the Criminal Law Consolidation Act) because that is a separate piece of legislation, and the focus, in our view, ought to be on the abolition of the unsworn statement. That abolition remains the key to regaining a more appropriate balance between the rights of the accused and those of the victim. However, if the Government does not take any steps within a reasonable time to reform the law relating to rape, the Liberal Party will give serious consideration to initiating some action.

Clause 1 is formal. Clause 2 abolishes the right of an accused person to make an unsworn statement in his defence. It protects the character of an accused person from being exposed by cross-examination where his evidence, although casting imputations on the character of witnesses for the prosecution, relates to circumstances surrounding the matters subject to the charge, the investigation of the charge, or proceedings consequent upon the laying of the charge. The clause also contains transitional provisions. Clauses 3 and 4 are consequential.

The Hon. ANNE LEVY secured the adjournment of the debate.

INSEMINATION AND FERTILISATION PROCEDURES

The Hon. K.T. GRIFFIN: I move:

1: That a Select Committee of the Legislative Council be established to consider and report on the ethical and legal questions in and associated with the availability and use of artificial insemination by donor and *in vitro* fertilisation procedures in South Australia including, but not necessarily limited to, the following matters, namely, whether or not:

(a) to forbid the use of fertilised gametes of human beings for scientific or genetic experimentation;

(b) to permit the freezing of fertilised gametes which are surplus to the requirements of a couple during any one treatment cycle and to provide for the destruction of such fertilised gametes after one successful pregnancy or some other event;

(c) to forbid the use of a couple's fertilised gametes by another person, or if allowed, to propose laws to deal with that donation similar to the existing laws relating to adoption;

(d) to prevent the maintenance of fertilised gametes in laboratory culture medium beyond the physiological stage at which implantation will occur;

(e) to forbid use of known donors in artificial insemination by donor or *in vitro* fertilisation programmes;

(f) to ensure that in the best interests of children from successful pregnancies following *in vitro* fertilisation, the same degree of anonymity should apply as it applies with children from successful pregnancies following other infertility treatments;

(g) to prevent the release of any information concerning participants or donors in artificial insemination by donor or *in vitro* fertilisation programmes in order to maintain privacy and confidentiality;

(h) to prevent the flow of information relating to either the donor of gametes or the child born following the use of such donated gametes;

(i) to prohibit surrogacy either in artificial insemination by donor and *in vitro* fertilisation programmes or more widely and, if prohibited, the mechanisms which should be established for achieving that objective.

2. That in reporting in accordance with its terms of reference, the Select Committee should, if possible, produce draft legislative proposals to deal with the legal and ethical questions requiring attention.

3. That 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 Committee to have a deliberative vote only.

This motion seeks to establish a Select Committee of the Legislative Council after the pattern of other Select Committees in this Council: there will be six members, three of whom will be Government members and three of whom will be from the Opposition and other Parties within the Council, to ensure that the Government still retains control over such a Select Committee. That Select Committee would have the brief to consider and report on the ethical and legal questions in and associated with the availability and use of artifical insemination by donor and *in vitro* fertilisation procedures in South Australia.

Certain matters specifically referred to in the motion undoubtedly should be the subject of consideration by the Select Committee, but they do not limit the brief of the Committee to look at all the ethical and legal questions related to these two procedures in South Australia. I spoke at length yesterday during the consideration of the Family Relationships Act Amendment Bill to outline the Liberal Party's position in respect of the whole question of that Bill in so far as it dealt with the status of children and the broader issues. It was obvious in the consideration of that Bill that the Government had initiated legislation on only one very small part of a much broader and more complex matter that also raises significant ethical and legal questions.

Earlier this year a report of a small working party comprising Dr Aileen Connon of the Health Commission and Miss Phillipa Kelly of the Attorney-General's office was released for public discussion. As I understand it, it was released on the basis that those who desired to make sub-

missions on the recommendations would have an opportunity to do so up to and including this month of August. Those recommendations extend to a wide range of legal and ethical questions.

Yesterday, the Attorney-General interjected on several occasions while I was speaking to at least suggest that there is no need for some other committee to investigate the ethical and legal questions related to these procedures, but I refer particularly to the fact that the Western Australian Government, for example, has considered the matter and is introducing—if it has not already introduced—legislation that would limit *in vitro* fertilisation procedures to married couples, and that in New South Wales or Victoria there is a different approach in that the procedures will be available on a wider basis.

It is clear that there is a distinction between the recommendations made by other committees in Australia and those of the Connon-Kelly report. While it may be acceptable superficially to suggest that the matter has been extensively investigated, this Parliament has the responsibility for making decisions about the law that will apply in respect of these procedures in South Australia, and there has been no consideration of these issues by the South Australian Parliament. In fact, no Bill is before us to deal with those wider issues.

In that context, therefore, there is considerable merit in a Select Committee, representative of members of this Council, taking evidence, considering other reports and endeavouring to reach conclusions on what undoubtedly are controversial issues. I referred yesterday to several of those controversial issues; there is the controversial question as to whether or not embryos ought to be destroyed. The Connon-Kelly recommendation was that fertilised gametes or embryos should be maintained until such time as any of the following events occur:

(a) A couple wishes to use the fertilised gametes themselves in a subsequent treatment cycle;

(b) A couple requests in writing that storage of their fertilised gametes be ceased;

(c) The relationship of a couple ceases through death or any other reason; or

(d) At the expiration of an agreed period, but in any event no longer than 10 years from the date of commencing storage.

In conjunction with that, there is also the question as to whether fertilised gametes ought to be available for the use of another woman who has contributed no genetic material. The Connon-Kelly working party report recommends that they should not be so available; yet only recently Dr Kerin has said that he will not be part of any direction that requires the destruction of fertilised gametes.

The Hon. J.R. Cornwall interjecting:

The Hon. K.T GRIFFIN: I am using the terminology that has been referred to in the Connon-Kelly working party report. I recognise that the whole issue has very emotional connotations but, whether one says that it is 'destruction' or the 'withdrawal of support for fertilised gametes', the context is seen by many people in the community as being similar, if not identical.

The Hon. J.R. Cornwall interjecting:

The PRESIDENT: Order! I am sure that the Minister will have the opportunity to debate the matter.

The Hon. K.T. GRIFFIN: The Minister of Health's interjection highlights the level of controversy and perhaps also the level of concern about that subject and the differing points of view that may exist on it.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: The honourable member will have a chance to speak on it during the course of the debate, but it is an area for debate. It raises the question of when life begins. The Hon. Mr DeGaris has referred to that. Just as he referred in the last session to the question of when life ends, he is now looking at the other end of the line—at when life begins. That is a question that concerns a range of people within the community. Church leaders and others have expressed concern about it. The proper forum for debating that issue is a Select Committee, where generally less publicity is given to either the submissions or the differing points of view, unless, perhaps, it relates to random breath testing.

I have found in the time that I have been here—and I am sure that other members have—that a Select Committee is a good forum in which to discuss some of these issues quietly and rationally with a view to making some sensible decisions. The fact that there is no Bill in the Parliament to deal with the question of the use of fertilised gametes and their preservation and so on is an indication of the difficulty of that subject. The proposition that I am putting to the Council is that we endeavour to come to grips with these problems away from the spotlight of the media and endeavour to reach some sensible conclusions to very complex problems upon which medical practitioners, theologians and others presently disagree.

They are questions that we have to come to grips with. The fact that it is a matter of public debate is indicative of community concern that the issues be considered. I also raised yesterday the question of surrogacy because that, too, is a relevant matter to be considered by a Select Committee since there is a wide range of issues in relation not only to surrogacy in respect of the *in vitro* fertilisation programme but also in regard to the general community. We have seen public reports in respect of a situation in New South Wales where a woman agreed to bear a child for another couple for a consideration of $10 000 but is no longer prepared to hand over the child.

We have heard of similar controversy in the United Kingdom in relation to what has generally been termed as 'rent-a-womb'. Also, we have seen in Victoria an undertaking by four couples to enter into surrogacy arrangements, so that question is not just limited to the IVF programme but has much wider connotations.

It is a difficult question to come to grips with. How does one prevent a surrogacy? What are the consequences if somebody breaks the law? What is to happen to the child born as a result of a surrogacy agreement? These are important questions and I think that a Select Committee could usefully consider such matters. I would hope, notwithstanding the complexity of the issues that this Select Committee would consider, with some reasonable assistance and diligence on the part of members, we could present a report by the commencement of the next session of this Parliament.

I would hope that within that period of almost a year there would be an opportunity taken by all members of the community to give deeper consideration to the issues raised by *in vitro* fertilisation and artificial insemination by donor questions. I canvassed this matter in great detail during the debate on the Family Relationships Bill, and it is not necessary to repeat the points that I made at that time. I accordingly leave my contribution to the debate on this question of a Select Committee at this point by moving that it be so established.

The Hon. ANNE LEVY secured the adjournment of the debate.

TRAFFIC PROHIBITION (WOODVILLE)

The Hon. G.L. BRUCE: I move:

That regulations made under the Road Traffic Act, 1961, concerning traffic prohibition (Woodville), made on 19 April 1984, and laid on the table of this Council on 1 May 1984, be disallowed.

This motion is in accordance with the committee's report tabled this day. I indicate that the committee received evidence from the Woodville council that it is quite happy to have these regulations disallowed.

Motion carried.

NATIVE VEGETATION (CLEARANCE) BILL

The Hon. M.B. CAMERON (Leader of the Opposition) obtained leave and introduced a Bill for an Act to regulate the clearing of native vegetation; and for other purposes. Read a first time.

The Hon. M.B. CAMERON: I move:

That this Bill be now read a second time.

Last year in this Council I proposed a motion to disallow regulations introduced by the Government to control the clearance of native vegetation. I took that action with great reluctance as I was convinced that the controls introduced by the Government were unfair and, in some respects, would cause greater problems than those they attempted to solve. I stressed then, and I stress again today, that I support the control of the clearance of native vegetation within reason. It is important to preserve areas of native scrub for the future. I believe that society widely supports this view.

My concern has been that the regulations introduced by the Government led to a fundamental denial of people's property rights. The Government ruled out any compensation or realistic assistance to landholders. Its dogmatic attitude led to many of the problems that the Opposition foreshadowed. The Opposition is now proposing a positive remedy to the problems which the Government has created for the community.

The Liberal Party's policy on the clearance of native vegetation is very clear, fair and sensible. We recognise the need to preserve portions of remaining native vegetation for the benefit of present and future generations. We also believe that if society makes the judgment that land that has been bought for the express purpose of being cleared should not be developed, then the landholder responsible for those lands should be duly compensated for his or her losses.

The Opposition does not support a blank cheque approach. In our Bill we have set down the guidelines that should operate—limits must be set on which land is compensable and which land is not.

When I first spoke on the question of native vegetation clearance last year, I expressed grave concern that it would cause farmers, environmentalists, local government and the State Government to become offside with each other. As a result, I was fearful that we would end up with the situation where we had lost sight of the original cause. That has been the case. The regulations, and the way in which they have been applied, have given rise to an unfortunate antagonism towards scrub on the part of farmers. I said at the time:

> The intention of these regulations is, of course, to ensure greater retention of native vegetation. Unfortunately, these regulations, and probably more significantly the way in which they were introduced and are being administered, are likely now to cause the opposite. Some farmers, fearful and frustrated by what is happening, will no doubt overstate their claims for land clearance in an 'ambit claim' to ensure approval of at least some land for clearing . . . Unfortunately, too, the problems which farmers are experiencing with the regulations will only seek to aggravate them. They will not look as kindly on scrub retention as in the past. And their attitude towards conservation, the environment and environmentalists will not be improved.

Their attitude has certainly not been improved. This Bill, I believe, will help to rebuild some of the bridges. I am sure few members would be unaware of the ill-feeling that has developed. All parties need to be brought together.

The vegetation clearance issue is not a planning and development issue alone; it is an environmental issue as well. It needs to be taken away from the Planning Act and placed in a more compatible area.

I believe that the Department of Environment and Planning, the Department of Agriculture, the Department of Lands, the farming community and environmentalists all have a legitimate interest in the question of native vegetation clearance. The Government's approach has failed to recognise these legitimate concerns and to bring these parties together and, as a result, ill-feeling and antagonism has grown to excessive levels. The Liberal Party wants to bring the parties closer to promote communication and understanding. This Bill will help do that.

The principal aims of the Bill are to recognise the right of landholders to compensation in cases where their property rights are unfairly eroded, and to establish improved mechanisms for processing applications for the clearance of native vegetation.

In assessing applications for the clearance of native vegetation, the Opposition has set down a number of important guidelines. First, given the fact that South Australia has already seen enormous land clearance over the past 150 years, we propose that any future clearance of native vegetation should require the consent of either the Minister or a native vegetation advisory committee, which we propose to establish.

As I indicated earlier, I have been concerned that inadequate consultation has taken place between all parties that have a legitimate interest in this question. Instead of the present system under which the Department of Environment and Planning has effective contol of land clearance, we support the use of a native vegetation advisory committee, which would bring together representatives from the areas of environment, lands and agriculture, the United Farmers and Stockowners, the Local Government Association and the Nature Conservation Society.

The Hon. Anne Levy: Why not the CWA?

The Hon. M.B. CAMERON: If the honourable member believes that this is an issue of humour, she obviously does not understand that this Bill is a genuine attempt to—

The Hon. ANNE LEVY: A personal explanation, Mr President. I do not think that the CWA is a subject of humour.

The PRESIDENT: Order! Is the Hon. Ms Levy calling a point of order?

The Hon. ANNE LEVY: No, a personal explanation, Mr President.

The PRESIDENT: Order! The honourable member can make an explanation when she takes up the debate.

The Hon. M.B. CAMERON: The CWA, of course, is part of the scene of the land but the UF&S is the umbrella body, and I assure the honourable member that there are good women in that organisation, too. This Bill is not a matter for humour; it is very serious indeed. It is proposed that an owner of land on which vegetation stands makes application to the respresentative native vegetation advisory committee and that that committee, on receipt of the necessary particulars, seeks reports from the Soils Division of the Agriculture Department and the Minister for Environment and Planning. The committee would then assess these reports as well as provide them to the applicant.

One of the inadequacies of the present system is that the decision to approve an application for clearance rests principally with the Department of Environment and Planning which may lack some of the vital information necessary for an informed decision to be made. For example, even though it may appear from the point of view of the Department of Environment and Planning appropriate to clear land because of the nature of surrounding flora and fauna, the

land involved may be totally unsuitable for development and only an expert group, such as the Soils Division of the Agriculture Department, would be able to provide this essential advice. There have been examples where land that is unsuitable for development has been approved for development by the Department.

The Liberal Party's proposal remedies this deficiency by ensuring that the Soils Division always provides a report as to the suitability of any land clearance scheme. We also believe that the Rural Assistance Branch of the Agriculture Department should use its expertise to provide an economic assessment of any clearance proposal if the committee, the Minister or the applicant, makes such a request. In this way our proposal brings together all the environmental and economic considerations that need to be taken into account before a decision is made. This is much superior to the present regulations.

Ever since the regulations were introduced, I have advocated a compromise proposal. Because of the Government's failure to act, this legislation has proven necessary. In my view it is reasonable to require all holders of land bearing native vegetation to set aside, without compensation, a maximum of 10 per cent of land suitable for development for retention in its natural form. Beyond that 10 per cent, the Government ought to ensure the payment of compensation.

With this policy in mind, I propose that the proposed native vegetation advisory committee should, where more than one-tenth of the arable land to which the application relates is not considered suitable for clearance, make recommendations to the Minister who would make a decision about how much should be cleared. Such a decision should be made only after reports prepared by the Minister for Environment and Planning and the Soils Division of the Department are considered, and after the applicant has had an opportunity to respond to the committee's recommendations.

The Minister or the committee would be able to grant consent for clearance either unconditionally or subject to such conditions as they see fit. It is here that the Opposition again proposes a much more positive approach to this issue than that proposed by the Government. I consider that it is only fair that in deciding whether or not clearance should proceed both the environmental significance of the vegetation and the economic advantages to the applicant and the State should be taken into account. In cases where the Minister refuses consent, the Opposition proposes that the land in question can be acquired by the Minister or that compensation can be paid to the applicant.

It is the question of compensation which, I believe, is very important. It is wrong for the Government to step in, without offering any form of financial recompense, and prevent someone from clearing land which they have expressly bought for that purpose and for which they may have borrowed significant sums of money in anticipation of development. What we are doing when we decide to stop land being cleared is saying that that land should become, in esssence, a privately held national park. As such, society should pick up the tab. It should not be the burden of one individual or company.

The compensation system is not new. It has operated in Western Australia, although our proposal, I believe, is more conservative and reasonable. Compensation would not be payable on land which the Soils Division had determined was inadequate for development anyway, and it would only be payable on the basis of the value of the land after taking into account the cost of clearance, but if the applicant were permitted to clear it.

The extraordinary situation presently exists where some individuals have agreed to purchase some land as freehold from the Government where that land was previously leased on perpetual lease. The payment for this land is over five years and the Government is still requiring the payment to be made even in cases where it has ruled that the land cannot be cleared. That is totally unfair to the person concerned. Such an unfair policy on the part of the Government is to be condemned, and our scheme will rectify this inequity. In paying compensation, the Government may divide the total into five equal annual payments so that one large lump sum need not be paid.

Unlike under the present regulations, where the capacity to appeal is limited, we propose that an aggrieved applicant can appeal to the Land and Valuations Court if he is unhappy with either a decision of the committee, the Minister or the Soils Division of the Department of Agriculture. In summary, I believe our proposals contained in this Bill provide a sensible and fair response to the problems of controlling the clearance of native vegetation. We seek to bring together all interested parties in this matter, avoiding the antagonism and ill feeling which has arisen under the application of the Government's one-sided regulations.

Let me assure the Council that such ill feeling is rampant within the community affected. Under the present system all the work is done under the Planning Department, and I assure the Council that that Department is not always the most appropriate body. Certainly, the Planning Commission is not the most appropriate body to which appeals should be made. I believe that by getting together all the groups who have an interest or who are affected by these proposals we will get some sensible and acceptable decisions, and we will not have the antagonism that is arising between public servants and farmers, and between farmers and the rest of the community.

It is essential that we seek to offset the criticism and the antagonism that have arisen. Certainly, I can assure the Government that, in spite of what it thinks, these regulations have caused massive clearance of land that probably would never have been cleared; if there had been some recognition of property rights, there would not have been the number of applications for clearance that there have been. I believe that if this provision comes into force it will at least cause some restraint. I hope that the Council will look at the Bill and consider it carefully. I suggest that the Government and people in the community restrain themselves from responding to it immediately, that they let the Bill lie on the table for a while to be considered by the community and the Government, because this is a genuine attempt to try to get over the problems caused. I would not like any decision on the Bill to be hurried, because I would like anyone in the community with an interest to have time to provide input. If any changes are sought or if there is criticism of the Bill, or if there are amendments that the Government or any other person believes will help, I will certainly be willing to consider them in a positive way. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 defines certain terms used in the Bill. Clause 3 sets out circumstances in which clearance of native vegetation is not controlled by the Bill. Paragraph *(b)* ensures that where vegetation has been lawfully cleared any regrowth may also be cleared if the clearance takes place within five years of the initial clearance. Clause 4 establishes a committee called the Native Vegetation Advisory Committee. Clause 5 provides for the term of office of members of the committee and the circumstances in which they will vacate office.

Clause 6 provides for allowances and expenses to be paid to members. Clause 7 sets out the manner in which the business of the committee may be conducted. Clause 8 is a standard provision that ensures the validity of proceedings of the committee, notwithstanding an irregularity in the appointment of a member to the committee or a vacancy in the membership of the committee. Clause 9 is the central provision of the Bill. Under this clause it will be an offence to clear native vegetation without the consent of the committee or the Minister. Clause 10 sets out the manner in which the application is to be made. An application may result in the acquisition of land by the Minister and therefore only the owner of the land may apply for consent. Clause 11 requires environmental and soil reports from the Minister for Environment and Planning and the Department of Agriculture respectively. The Department of Agriculture must determine the areas that would be suitable for primary production if cleared. These areas are referred to in the Bill as 'arable land'.

Clause 12 enables the applicants, the committee or the Minister to obtain a report from the Rural Assistance Branch of the Department of Agriculture as to the economic impact of the proposed clearance. Clause 13 requires the committee to consider the reports and to give the applicant an opportunity of making representations to the committee. Clause 14 provides that the Minister must decide the application where the committee is of the view that more than one tenth of the arable land should not be cleared. Clause 15 sets out the criteria on which consent may be given or withheld. Clause 16 provides that where consent is refused to clear more than one tenth of the vegetation the Minister must either acquire the arable land to which the refusal relates or pay compensation to the owner of the land.

Clause 17 provides that only one application may be made in respect of any area of vegetation. Clause 18 provides for appeal to the Land and Valuation Court. Clause 19 removes the question of the clearance of native vegetation from the Planning Act, 1982. Clause 20 provides for notification on the title to land of a determination made under the Act in relation to that land. Clause 21 requires an owner to keep stock off land in relation to which compensation has been paid and requires the Minister to fence the land. Clause 22 provides that offences under the Act will be summary offences. Clause 23 provides for the making of regulations.

The Hon. ANNE LEVY secured the adjournment of the debate.

PERSONAL EXPLANATION: NATIVE VEGETATION (CLEARANCE) BILL

The Hon. ANNE LEVY: I seek leave to make a personal explanation.

Leave granted.

The Hon. ANNE LEVY: When the Hon. Mr Cameron was giving his second reading explanation to the Native Vegetation (Clearance) Bill I interjected, suggesting that the CWA be added to the committee proposed in the second reading explanation. My remark was certainly not facetious and for the Hon. Mr Cameron to treat it as being facetious and to suggest that this was a trivial matter for laughing seems to indicate his opinion of the CWA rather than mine.

SOIL CONSERVATION ACT AMENDMENT BILL

The Hon. FRANK BLEVINS (Minister of Agriculture) obtained leave and introduced a Bill for an Act to amend the Soil Conservation Act, 1939. Read a first time.

The Hon. FRANK BLEVINS: I move:

That this Bill be now read a second time.

This short Bill makes several important amendments to the Soil Conservation Act, 1939. The need for these amendments arose out of discussions with several of the District Soil Conservation Boards constituted under the Soil Conservation Act, with responsibility for promoting sound land use in their districts. The Boards are actively involved in the management of the group conservation schemes funded under the National Soil Conservation Programme and play a vital role in promotion and co-ordination of the schemes. For example, the Boards approve applications for financial assistance. Board involvement has ensured the success of group conservation schemes.

From time to time Boards are required to hear applications for soil conservation orders in situations where erosion from a property is affecting adjacent properties. Boards have the power to make orders requiring respondents to take appropriate action to prevent further problems occurring. Because the Boards have the expertise to assess problems having regard to all points of view, orders are made only as a last resort after all other attempts to find a solution have been exhausted. In some instances, considerable damage to adjacent properties occurs before a soil conservation order is confirmed. For example, drift sand may have banked up and destroyed crops. The applicant for a soil conservation order currently cannot recover the costs of removing the drift sand unless he takes court action.

The amending Bill makes provision for a soil conservation order to require respondents to make good any damage caused to the applicant's land. If the respondent fails to make good any damage, the applicant may recover the costs from the respondent. The applicant can also recover damages from the respondent. The amendments will be of particular value to local councils which are often involved in considerable expenditure removing sand from roads after it has been eroded from adjacent properties.

Two minor amendments provide for the repeal of sections which are no longer relevant. The proposed amendments have been agreed to by the United Farmers and Stockowners, and the principle that damage should be made good was supported by Australian National, the Highways Department, the Local Government Association and the Local Government Department. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 provides for the substitution of a new definition of Soil Conservator. Clause 3 provides for the insertion of new section 6aa, which provides for the office of Soil Conservator. That position may be held in conjunction with any other office in the Public Service of the State. Clause 4 provides for the repeal of section 12a of the principal Act. Clause 5 provides for the insertion of new section 13a. The new section provides that it is the duty of an owner of land to take reasonable precautions to prevent soil erosion from occurring on his property. For the purposes of the section, owner includes occupier. Clause 6 amends section 13e of the principal Act. New paragraph *(ca)* is inserted in subsection (3), providing that a soil conservation order may require the respondent to take specified action to make good any damage caused to the land of the applicant or to any other specified land.

Clause 7 makes a consequential amendment to section 13j of the principal Act. Clause 8 provides for the insertion of new section 13ja. The new section provides in subsection

(1) that, where a person fails to comply with a soil conservation order and damage is caused to the land of another person which would not have been caused if the order had been complied with, the other person may recover damages from the person bound by the order. Under subsection (2), where a person fails to comply with an order requiring him to make good damage caused to the land of another person, the other person may recover the cost of making good the damage from the person bound by the order. Clause 9 provides for the repeal of section 14 of the principal Act.

The Hon. PETER DUNN secured the adjournment of the debate.

ADMINISTRATION AND PROBATE ACT AMENDMENT BILL (No. 2)

By leave, the Hon. Frank Blevins, for the Hon C.J. SUMNER (Attorney-General), obtained leave and introduced a Bill for an Act to amend the Administration and Probate Act, 1919. Read a first time.

The Hon. FRANK BLEVINS: I move:

That this Bill be now read a second time.

I seek leave to have the detailed explanation of the Bill inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

This Bill to amend the Administration and Probate Act deals with a number of disparate matters. The four basic areas affected by the proposals are as follows:

1. Amendments affecting the mental health area. At present section 118m (2) of the Administration and Probate Act requires the administrator of the estate of a mentally ill person who wishes to sell property valued at more than $20 000 to obtain Supreme Court approval before the sale can take place.

The Guardianship Board has encountered problems with this provision due to the expense of Supreme Court proceedings coupled with what is often a substantial delay in obtaining the order for sale. In addition the figure of $20 000 has not been altered since the enactment of the provision in 1978. The Guardianship Board and the administrator of an estate of a mentally ill person take considerable care to ensure that the sale of any property is appropriate in all the circumstances.

The Bill provides that the administrator may sell property of not more than a prescribed value with the consent of the Board. It is intended that the prescribed value be set at $80 000 for the time being, this value allowing for the sale of most reasonably priced homes. A similarly limited power for an administrator to purchase property is also included. The Bill will also allow an administrator to purchase or lease property or pay a donation which may be necessary to secure accommodation in a church home or the like. This power has not previously been available to an administrator appointed under the Mental Health Act. Provision allowing an administrator to lodge a caveat is also included.

Section 118m (2) *(u)* provides that an administrator may spend up to $2 000 in improvement of any property by way of building or otherwise. The principal reason for the introduction of this power was to allow for the installation of deep drainage. $2 000 is now inadequate for this purpose and this amendment provides for the amount to be spent on improvements to be set by regulation. Section 118q has been amended to provide that a disposition of property, however made, is voidable at the option of the administrator. Savings provisions have been included to ensure that a disposition may not be avoided if the other party did not know and could not reasonably be expected to know that the person was of unsound mind.

The old Mental Health Act provided that where an asset of the patient was converted by the administrator the identity of the asset was maintained in order to preserve the rights of beneficiaries entitled under the patient's will. This provision was not carried forward into new mental health legislation in 1978. It is seen as desirable for there to be some provision for the preservation of interests amongst beneficiaries. Accordingly, a new section is proposed to enable applications to be made to the court if beneficiaries have been unfairly disadvantaged by an administration under the Mental Health Act.

2. Amendments concerning the Public Trustee.

Section 118o of the Administration and Probate Act authorises an appropriate authority outside South Australia to request the Public Trustee to administer the South Australian assets of a mental patient under the control of that authority and for the Public Trustee to carry out that request. There is no formal authority for the Public Trustee to request an authority outside South Australia to administer the extra State assets of a South Australian patient. The proposed section 118oa provides this power.

The Public Trustee frequently finds himself acting for opposing estates. The inability of the Public Trustee to act in two capacities often lengthens proceedings and makes them more costly. The Public Trustee in Victoria is empowered to act in more than one capacity. This Bill provides for the Public Trustee to act in more than one capacity with the approval of and in accordance with the directions of the court.

3. Disclosure of Assets and Liabilities of Deceased Estates.

Provision has been made for a disclosure of the assets and liabilities of a deceased estate to be lodged with applications for probate or administration. This information will then be available from the court to those persons who can show a legitimate interest in the contents of the estate, for example, beneficiaries, auditors and those who may have a claim under the Inheritance Family Provision Act and others.

In the past this need was met by the non-contentious probate rules which prior to 1977 required the applicant for a grant of representation to swear to the gross value of the estate left by the deceased in South Australia and to set forth briefly particulars of the assets in an inventory annexed to the oath; and prior to the abolition of succession duties an audit of the assets of all deceased persons was made and interested persons could inspect the succession duties statements.

The need for disclosure is unfortunately not limited to the provision of information to persons with a legitimate interest but it is also necessary to protect the estate and the beneficiaries from any lack of disclosure by a person who may have an inclination towards misappropriating estate assets. Mandatory disclosure on the part of the personal representative of the assets and liabilities in a deceased estate will greatly discourage fraud and greatly assist in the discovery of fraud when it occurs. The need for such provisions has been pointed out by the judges of the Supreme Court and Mrs Mary Bleechmore, who was appointed by the Law Society to manage the practice of Mr B. Hunter, a former Adelaide solicitor.

The amendments make it mandatory for a person who applies for a grant of probate or administration to disclose to the court the assets and liabilities of the deceased. The disclosure is not limited to those assets and liabilities known at the time of the application but extends to any subsequent asset or liability that may at a later date be ascertained. To ensure that disclosure is complete provision has been made that no asset can be disposed of that has not been disclosed.

In addition, it will be unlawful to deal with an asset unless the asset of the estate has been disclosed. The Registrar of Probates will issue a certificate in relation to each estate asset disclosed. The form of inventory will be provided by Rules of Court.

4. Miscellanous Amendments.

In 1979 amendments were made to the Income Tax Act which have the effect of severely penalising trusts held on behalf of infants where one or both parents die intestate if the children do not obtain a vested interest on the death of the intestate. At present only children who reach 18 obtain a vested interest in an intestate estate. In all States except Tasmania and the Northern Territory children obtain a vested interest on the death of the intestate.

In view of the taxation position, section 72d of the Act has been deleted. Section 105 of the Administration and Probate Act provides for the settlement of property upon a female under the age of 18 years who marries. This section has been made applicable to all persons under the age of 18 years who marry.

Clause 1 of the Bill is formal. Clause 2 provides for the commencement of the measure. Clause 3 provides for the repeal of sections 43 and 44 and the substitution of new sections. New section 43 will replace the existing sections, being cast in a more appropriate form. New section 43 (1) will replace present section 44 (1), providing that the revocation or rescission of probate or administration does not expose the legal representative to liability for acts done in good faith in reliance of the probate or administration. New section 43 (2) replaces present section 43, relating to persons who deal with assets of a deceased estate in good faith and in reliance of a grant of probate or administration. New section 43 (3) re-enacts section 44 (2). New section 44 is included in conjunction with proposed new section 121a. The effect of the new measure is that a person dealing with assets of an estate must satisfy himself that the asset has been disclosed pursuant to section 121a. Failure to do so will be an offence.

Clause 4 provides for the repeal of section 72d of the principal Act. The repeal is proposed by virtue of the operation of provisions of the Commonwealth Income Tax Assessment Act which severely penalise trusts in relation to property held on behalf of infants where they do not immediately obtain a vested interest in the property. Section 72d was inserted before the relevant Commonwealth provisions were enacted. Its repeal will restore the position that existed prior to the enactment of Part IIIA of the principal Act.

Clause 5 is an amendment to section 77 of the principal Act. This section prescribes the various capacities in which the Public Trustee may act, but the Public Trustee may in some cases find himself acting in conflicting capacities. For example, the Public Trustee might be acting as administrator of an estate of a mental patient who has a claim against a deceased estate of which the Public Trustee is an executor. Section 77 does not address such a problem. Inability to act in both capacities lengthens proceedings and makes them more costly. The State of Victoria allows the Victorian Public Trustee to act in proceedings in more than one capacity and there would seem to be no reason why this principle should not be adopted here. However, it is considered that the Public Trustee should not be given an unfettered power to act in conflicting capacities and so it is proposed that the Public Trustee only be able to act in conflicting capacities if he has the approval of the court and he complies with any direction that may be given.

Clause 6 effects an amendment to section 105 of the principal Act, which provides for the settlement of property upon a female under the age of 18 years who marries. It is proposed that this section apply to all persons under that age who marry. Clause 7 is the first of several proposed alterations to that Part of the principal Act that relates to the administration of the estates of the mentally ill and mentally handicapped. The clause proposes the insertion of a definition of the Guardianship Board in order to facilitate the operation of other provisions that are to be inserted.

Clause 8 proposes a series of amendments to section 118m of the principal Act, a section which is concerned with the powers of an administrator who has been appointed in respect of the estate of a patient under the Mental Health Act, 1976. It is proposed that apart from the power to sell real property of the patient, the administrator be given power to purchase real property, either solely in the name of the patient or jointly with other people. The power to purchase property is obviously necessary as an administrator may be required to purchase a house in which the patient may live. Presently, the administrator must obtain the permission of the court to do so. This may be incongruous in some cases. It is therefore appropriate to provide a specific power. However, to guard against imprudent action on the part of an administrator, it is proposed that purchases of real property of a value not exceeding a prescribed amount be subject to the approval of the Board, and that those in excess of that amount be subject to the approval of the court.

At the same time, it is proposed to reform the provision relating to the purchase of real property so as to provide conformity in relation to both sale and purchase. Furthermore, it is sometimes necessary for the administrator to make lump sum payments on behalf of the patient in respect of arranging accommodation for him. An example of such a case is where the patient is required to make a payment to an institution in order to secure an aged person's unit or the like. It is appropriate that the administrator be able to do this on behalf of the patient under section 118m. However, as a precaution against the imprudent expenditure of large amounts of money, it is proposed that the administrator not be able to expend more than a prescribed amount except with the approval of the Board.

In addition, it is proposed to provide that the administrator may lease property on behalf of the patient (it is envisaged, again, that this power be used, where appropriate, to secure residential accommodation for the patient), and that the administrator be able to lodge a caveat on behalf of the patient (a power that is presently provided in respect of protected persons under the Aged and Infirm Persons' Property Act, 1940). Finally, in relation to section 118m, it is proposed that the limit of $2 000 on the amount that may be spent by an administrator on improving the property of the patient be altered to a limit prescribed by regulation. The present amount has lost some significance since it was first enacted and it is thought that it will be more appropriate to allow the limit to be prescribed by regulations made from time to time.

Clause 9 corrects a typographical error in section 118o of the principal Act. Clause 10 provides for the insertion of a new section 118oa. Section 118o of the principal Act authorises an appropriate authority outside the State to request the Public Trustee to administer the South Australian assets of a mental patient under the control of that authority and for the Public Trustee to carry out that request. However, there is no formal authority for the Public Trustee or any other South Australian administrator to request another authority to act on its behalf in relation to assets of a South Australian patient that are situated elsewhere. The proposed new section will therefore allow the Public Trustee to authorise an appropriate authority in a proclaimed state to administer the assets of a patient in that State. Similar provision has been made in Victoria.

Clause 11 provides for the repeal of section 118q of the principal Act and the substitution of a new section. Section

118q provides that a contract entered into by a patient is voidable at the option of his administrator. However, a case may arise where it is appropriate to avoid a gift made by a patient. Section 118q is therefore to be recast to include gifts. Otherwise, the section remains substantially in the same form.

Clause 12 proposes that a new section 118s be enacted. This section is concerned with the preservation of interests in a patient's property. Under section 125b of the old Mental Health Act, where an asset of the patient was converted by the administrator the identity of the asset was maintained in order to preserve the rights of beneficiaries under the patient's will. This provision was not carried forward, with the result that either the patient's testamentary wishes may be frustrated if an asset is converted into a different form or disposed of, or the administrator may be frustrated if he feels obliged to leave unconverted an asset in order to preserve the interests of beneficiaries. Accordingly, a new provision has been included to relieve this situation.

It is proposed that beneficiaries be able to apply to the court for an order to redress any imbalance that may have occurred during an administration. An order of the court will have effect as if made as a codicil. Applications will need to be made within six months of the grant of the relevant probate, unless the court allows an extension of time. It may be noted that this provision was inserted in preference to one modelled on the old section 125b as it was considered that that section was unduly complicated and would not provide a just result in all circumstances. In contrast, the proposed new section will allow the court to ensure, upon application to it, that all beneficiaries are affected in equal proportions by the administration of a patient's estate.

Clause 13 provides for the insertion of a new section 121a. This section would require an inventory of the assets and liabilities of an estate of a deceased person to be lodged with applications for probate or administration under the principal Act. This information would then be available to persons who have an interest in the estate. In the past, this information was provided by virtue of a provision in the non-contentious rules which prior to 1977 required an applicant for a grant of representation to swear the gross value of assets of the deceased in South Australia, and set forth those assets in an inventory.

In addition, succession duty statements contained detailed information on the assets of the deceased and were readily available to beneficiaries. It is thought that not only would the requirement to disclose assets assist beneficiaries in ascertaining the exact content of the estate but it would also discourage fraud on the part of an executor or administrator. In order to provide complete disclosure, the proposed section also requires the disclosure of an asset that comes to the knowledge of the personal representative while he is acting in that capacity. He will be prevented from disposing of an asset that has not been disclosed under the section. It will be an offence to breach a provision of the section. It is proposed that the section would operate in respect of the estates of deceased persons who died after the commencement of the section.

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

AGED AND INFIRM PERSONS' PROPERTY ACT AMENDMENT BILL (No. 2)

By leave, the Hon. Frank Blevins, for the Hon. C.J. SUMNER (Attorney-General), obtained leave and introduced a Bill for an Act to amend the Aged and Infirm Persons' Property Act, 1940. Read a first time.

The Hon. FRANK BLEVINS: I move:

That this Bill be now read a second time.

The Act has been amended in the same way as the Administration and Probate Act to provide for the preservation of interests in a protected persons' property by application to the Supreme Court. The power to avoid the disposition of property made by a protected person is also included in this amendment. Protection is provided for the other party to the transaction where that person did not know and could not reasonably be expected to have known that the person with whom he dealt was a protected person. Special powers are also given to the court to exempt certain transactions from the operations of the section. Provision has also been made for the administration of extra state assets of a protected person, and the South Australian assets of a protected person elsewhere. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 provides for the commencement of the measure. Clause 3 amends section 3 of the principal Act by inserting a definition of 'proclaimed state' and by making provision for the proclamation of such a state by the Governor. These amendments are related to later amendments to the principal Act.

Clause 4 proposes the enactment of a new section 16a in place of sections 16a and 16b of the principal Act. The present sections of the Act are intended to facilitate the preservation of interests that exist in property of a protected person. The proposed new section 16a will be similar in form to a proposed new section that is to be inserted in the Administration and Probate Act, 1919, in relation to patients under the Mental Health Act, 1976. It would provide that beneficiaries may apply to the court if they consider that their prospective interests under the will of a person's estate that was subject to management under this Part were disproportionately affected by that management. Applications can be made, unless the court otherwise orders, within six months of the relevant grant of probate. An order of the court will have effect as if it were a codicil to the deceased person's will.

Clause 5 proposes the enactment of a new section 27. The new section 27 would correspond to a new provision that is proposed for the Administration and Probate Act, 1919, in relation to mental health patients. It would provide that any disposition of property made by a protected person, or any contract, would be voidable at the option of the manager. Similar provision is presently made by section 27 (1) of the principal Act, although that renders a disposition or contract void. It is submitted that it is preferable to allow the disposition or contract to be voidable. Under proposed subsection (2), a manager would not be able to avoid a transaction if the other party did not know and could not reasonably have been expected to have known that the person with whom he dealt was unable to manage his affairs (and was accordingly subject to a protection order). It may be noted that the test in subsection (2) is different to that applying under the present provision in two respects.

First, the new provision does not refer to 'valuable consideration'. As the provision would operate in relation to both gifts and dispositions for consideration, it would be inappropriate to draw a distinction when providing a power to avoid a transaction. The decision to allow the provision

to operate to all types of dispositions should be consistent in all respects. Furthermore, the recipient of a gift may have altered his financial position as a result of its receipt. He should not be subject to a test that is different to a person who has dealt with the protected person for valuable consideration.

Secondly, the new provision refers to the other party acting without knowing that the person with whom he dealt was unable to manage his affairs. This may be compared to the present provision which refers to notice of a protection order. It is submitted that the more appropriate consideration is whether the party knew, or should have known, that the person was unable to look after his own affairs, as evidenced by age, infirmity, unusual acts or whatever, not whether the party knew, or should have known, that he was the subject of an order made under a particular Act of Parliament.

Clause 6 proposes an amendment of section 28 of the principal Act, a section concerned with the registration of protection orders. Under subsection (2), an order may be registered under the Real Property Act, 1886, but there has been uncertainty as to the manner and form that an application for registration should take. Accordingly, it is proposed that the section provide for the use of a form that has been approved by the Registrar-General, and for application to be made in an approved manner.

Clause 7 proposes amendments to section 29 of the principal Act. The effect of the amendments would be to alter reference to 'testamentary dispositions' to 'testamentary provisions'. It has been submitted that the word 'disposition' may be too narrow, and is certainly ambiguous, because 'disposition' is usually understood to refer to the disposal of property and not to such matters as the revocation of previous wills, the appointment of new executors and the appointment of a testamentary guardian. Obviously, the word was intended to convey the wider meaning and so it is proposed to replace it with the word 'provision' in order to put the matter beyond doubt. The amendment would also provide greater consistency between section 29 and a proposed new section of similar purport in the Mental Health Act, 1976.

Clause 8 proposes the insertion of new sections 32a and 32b in the principal Act. Section 32a would allow the Public Trustee to act on behalf of an authority situated in a 'proclaimed state' in the management of the property of a person who is incapable of managing his own affairs that is situated in South Australia. A similar provision exists under the Administration and Probate Act, 1919, in relation to mental health patients. Section 32b would allow the Public Trustee to request an appropriate authority in a proclaimed state to manage the property of a protected person living in South Australia that is situated in that state.

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

JUSTICES ACT AMENDMENT BILL

By leave, the Hon. Frank Blevins, for the Hon. C.J. SUMNER (Attorney-General), obtained leave and introduced a Bill for an Act to amend the Justices Act, 1921. Read a first time.

The Hon. FRANK BLEVINS: I move:

That this Bill be now read a second time.

I seek leave to have the detailed explanation of the Bill inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

It makes two amendments to the principal Act, the Justices Act, 1921. The first amendment empowers a justice to suspend the operation of a warrant of distress or commitment. Section 83 of the principal Act provides that, when any application is made to issue a warrant of distress or commitment to enforce payment of any fine or sum of money adjudged or ordered to be paid by any conviction or order, the justice may, if he deems it expedient so to do, postpone the issue of a warrant for such time and on such conditions (if any) as he thinks just.

When a fine remains unpaid after the due date has elapsed the usual procedure is for the complainant to apply to the court for the issue of a warrant, which is then referred to the police for execution. No action is taken to check with a defendant why he has not paid the fine or to have any discussions with him as to his ability to pay. The defendant only knows of the existence of a warrant when he is approached by the police, told that a warrant has been issued and that he must pay the overdue fine or serve out the amount of the fine in prison. In practice the police usually allow a defendant some little time to raise the money. He raises it, pays out the warrant and that is the end of the matter.

However, there are situations where a defendant just does not have the money to pay the fine—he may be unemployed, sick or have heavy family commitments. In such situations there is no way of dealing with such a situation, for once a warrant has been issued there is no way of suspending the execution of the warrant. There have been a number of instances in recent years where this situation has posed problems. Defendants unable to pay fines temporarily have found themselves faced with warrants of commitment, have had to either serve out the amount of the fine, borrow money and put themselves further into financial difficulties, or change their address and try to dodge the police and the warrant.

The introduction of provisions giving a justice power to defer the execution of a warrant, so that a defendant could make arrangements to pay the fine, will provide greater flexibility and reduce the need for people to go to prison to serve out a warrant. The second matter dealt with by the Bill relates to section 106 of the principal Act which deals with the manner in which depositions of witnesses are to be taken at a preliminary examination for an indictable offence. The section provides (*inter alia*) for the submission of written depositions to the examining justice. The current practice is for the prosecution to hand a copy of the written deposition to the defendant or his counsel at the hearing. He must then read the statement and decide whether he wants the witness to appear to be examined personally on the matters to which the deposition relates. This procedure has some disadvantages. It means that, on occasion, witnesses attend the court only to find that oral evidence is not required of them and it is sometimes necessary for the defence to seek adjournments in order to make inquiries and take instructions.

The present Bill proposes that where a written deposition is to be tendered at a preliminary examination the informant should supply the defence with a copy of the deposition and a notice explaining the method by which he may secure the attendance of the person who made the deposition, at least 14 days before it is to be tendered in evidence. If the defendant or his counsel wishes to examine the witness he must make a request to that effect of the prosecutor. Where, at least seven days before making the request, the defendant informed the prosecutor in writing of his intention to make the request, then the defendant or his counsel may examine the witness.

Where a justice is satisfied that there is good reason for excusing the defendant for failure to give the written notice, he may permit the defendant to call the witness for oral

examination notwithstanding that failure. This new procedure should mean that both sides are better prepared for the preliminary examination. The question of which witnesses will be required for the purposes of giving oral evidence can be resolved in advance. This should eliminate a good deal of inconvenience and delay.

Clauses 1 and 2 are formal. Clause 3 provides for the repeal of section 83 of the principal Act and the substitution of new section 83. New section 83 provides in subsection (1) that for the purposes of the new section 'order' means a judgment, conviction or order of a court; and 'pecuniary sum' means a fine, pecuniary forfeiture, compensation costs or any other sum payable under an order. Under subsection (2), a person against whom an order for the payment of a pecuniary sum has been made may apply to a justice, being a clerk of court, for relief. Subsection (3) provides that where the justice thinks there is good reason for doing so, he may postpone the issue of a warrant of distress or commitment or suspend its operation (as the case requires). Under subsection (4), such a postponement or suspension shall be subject to such conditions as to payment of the pecuniary sum as the justice may impose and may be revoked by a justice for breach of a condition. Under subsection (5), the conditions may require payment by instalments or require that specified security for payment be given.

Clause 4 provides for the amendment of section 106 of the principal Act. The passage 'and a copy thereof has been received by the defendant or his counsel' is struck out. This is consequential upon the striking out of subsections (5) and (6) and the substitution of new subsections (5) and (6). Under new subsection (5), no statement shall be submitted under subsection (2) and no affidavit submitted under subsection (4) unless not less than 14 days before the submission, the informant gives or causes to be given, personally or by post, to the defendant or his counsel, a copy of the statement or affidavit and a notice drawing his attention to the provisions of this section under which the personal attendance at the preliminary examination of the person by whom the statement or affidavit was made, may be served; or the defendant consents to the submission notwithstanding the failure of the informant to comply with those requirements.

Under new subsection (6), where a written statement has been submitted under subsection (2) or an affidavit submitted under subsection (4), and the defendant before the completion of the prosecution case requests the personal attendance for examination of the person who made the statement or affidavit, and either the defendant, at least seven days previously, gave written notice of his intention to request the personal attendance of the person or the justice is satisfied that there is good reason to excuse the defendant for his failure to give such written notice, then, subject to subsection (6a) the person to whom the request relates shall be called or summoned to appear for oral examination.

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

LIBRARIES ACT AMENDMENT BILL

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

The Hon. FRANK BLEVINS (Minister of Agriculture): I move:

That this Bill be now read a second time.

It makes a minor amendment to the Libraries Act, 1982. During the two years since the enactment of the Libraries Act, the Libraries Board has been able to provide the public with more effective library services. The Board has also monitored the operation of the Act. The Bill makes a single amendment which is desirable to ensure the availability of a wide cross section of expertise for Board membership.

At present there is an undue restriction placed on local government representatives on the Board. The Act envisages that all of these members be members or officers of councils, and accordingly, provides that their membership of the Board ceases upon the expiry of that membership or office. This can lead to frequent changes in membership of the Board. It also prevents the appointment of persons who, having retired from local government, have had wide experience inthe field which would be of great benefit to the Board. Accordingly, the Bill provides that only one member of the Board need be a member of officer of a council, and that he be nominated by the Local Government Association. Two other members may but need not be members or officers of councils, but both must have experience in local government. Of those two, one shall be nominated by the Local Government Association.

I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 amends section 9 of the principal Act. A new subsection (2) is substituted, pursuant to which the membership of the Board must include one member who is a member or officer of a council, nominated by the Local Government Association, and two members with experience in local government of whom one must be nominated by the Local Government Association. Clause 3 makes a consequential amendment to section 10 of the principal Act.

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

DOG FENCE ACT AMENDMENT BILL

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

The Hon. FRANK BLEVINS (Minister of Agriculture): I move:

That this Bill be now read a second time.

It is the culmination of lengthy negotiations, negotiations between a group of dog fence owners and their immediate cattle lessee neighbours regarding the maintenance of that part of the dog fence that is their common boundary. The problem has been that for several years the cattle lessees on the northern side of the fence have not contributed to the maintenance of the fence. This has been the case even where the fence forms a common boundary with the sheep lessees, who have traditionally undertaken responsibility for the fence. However, in recent times pressure has been brought to bear for a change in circumstances. This has probably occurred because the Dog Fence Board has been placing increased pressure on dog fence owners to upgrade their sections of the fence and because cattle lessees have increased the erection of subdivision fences using the dog fence as a base.

In response to a letter from the Hon. A.M. Whyte in 1982, the then Minister of Lands initiated an inquiry by the Dog Fence Board into the matter. Correspondence was entered into with the United Farmers and Stockowners of S.A. Incorporated and a discussion paper prepared. As part of the consultation process, three meetings were convened by the United Farmers and Stockowners of S.A. Incorporated

between the interested parties. The result was an agreement that is now reflected by this legislation. In particular, it was agreed that the cattle lessees would contribute to the maintenance of the fence at the rate of $37.50 per kilometre of dog fence per annum.

The commencement date would be November 1984, for the 1984-85 financial year. The funds would be paid into the Dog Fence Fund for distribution to the dog fence owners who are the immediate neighbours of the cattle lessees. The rate of payment would be reviewed every five years. It is pleasing to note that the agreement was reached at an open meeting by a unanimous decision, and all parties are to be commended for their fair-mindedness and willingness to assist to resolve the matter. It may also be noted that the arrangement will affect seven cattle lessees who occupy land abutting the dog fence for an approximate distance of 900 kilometres. It is therefore expected that the contributions will total approximately $33 750 per year during the first five years. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 makes consequential amendments to the interpretative section of the principal Act. Clause 3 amends section 24a of the Dog Fence Act to clarify the application of Part III of the Act so that it will accord with accepted practice, being that the owners of land inside the fence are, for the purpose of this Part, to be regarded as the owners of the fence.

Clause 4 proposes the insertion of a new section 28. This proposed new section allows the Board, in respect of any financial year, to charge an occupier of land immediately outside the dog fence to pay an amount towards the costs of maintaining the fence. The charge is to be assessed according to a prescribed rate per kilometre of dog fence that is adjacent to the land being occupied. It will be due and payable within 28 days and recoverable as a debt.

Amounts received by the Board are to be paid to the owners of land inside the dog fence in proportion to the length of fence that they own that is contiguous to land occupied by the persons who have been charged under the section. It is proposed that the rate per kilometre of dog fence that may be charged initially be $37.50, and that the Board then be required to review that rate on a five-yearly basis after consulting the United Farmers and Stockowners of S.A. Incorporated. The section will apply to the 1984-85 financial year, and every financial year thereafter.

The Hon. M.B. CAMERON secured the adjournment of the debate.

PRICES ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

SELECT COMMITTEE ON LOCAL GOVERNMENT BOUNDARIES OF TOWN OF GAWLER

The House of Assembly imtimated that it had agreed to the Legislative Council's Address.

COMMISSIONER FOR THE AGEING BILL

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

The Hon. FRANK BLEVINS (Minister of Agriculture): I move:

That this Bill be now read a second time.

I seek leave to have the second reading explanation incorporated in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

The purpose of this Bill is to establish the position of Commissioner for the Ageing and to define the objectives and functions of that office. In short, it is the Government's intention to create a focal point for information and advice about the ageing in South Australia, and for the co-ordination and support of services for this important section of our community.

Over recent years, South Australia has seen a marked increase in both the numbers and the proportion of the older members in its population. The number of people of 65 years of age is increasing by more than 4 000 every year. In 1983 there were more than 147 000 people over 65 years in this State, or about 11 per cent of the population. By the turn of the century it is likely that there will be nearly 200 000 people over 65 years, comprising 13 per cent of the State's population. It is predicted that this trend will continue beyond that time producing even more significant changes to this State's population structure.

Within the older population, there are many other important social and demographic characteristics which warrant the interest of governments and the wider community. For example, it is estimated that between 1981 and 1986, the number of Italian born aged people will increase by one-third, and those from Greece and Germany by one-half. Women comprise 65 per cent of people over 65 years of age and 72 per cent of people over 80 years. 70 per cent of women over 65 years do not have the support of a husband, and many lack other family ties.

For many people there are good things to be enjoyed in their older years—independence from family and employment responsibilities; increased time in which to expand one's knowledge, skills and experience; new opportunities for community service; more time to spend with one's friends or to relax after a busy period of life. For many it is also a time of loneliness, boredom, impaired physical and mental health, increased dependency, fears, anxiety and poverty.

It is this Government's strongly held commitment that neither the numbers of older people in this State nor the difficulties which they may experience will be viewed as a burden upon the State, but rather as a responsibility to be addressed by the Government and the community as a whole. Furthermore, we will seek to foster those attitudes, structures and practices in our society which enhance the role and status of the ageing and not merely sustain them in their latter years.

To help fulfil this commitment the Labor Party, in its election platform, stated its intention to appoint a Commissioner for Aged Care and Services. It was envisaged that the Commissioner would provide a prime contact point for issues concerning the ageing and co-ordinate services and assistance available to them.

Following the Premier's announcement in October 1983 that the Government would proceed with this intention, a widespread public consultation was undertaken to define the objectives and functions of the proposed Commissioner. A support group of prominent people from services and organisations for the ageing was appointed to guide the consultation and comment upon a final report. 1 250 copies of an ideas paper were distributed to departments, organisations and individuals with an interest in the ageing. Dis-

cussion groups were held with aged people and leaders of organisations in city and country areas. Interviews were conducted with key people involved with policy making and administration of services. Reports and other literature were analysed and information and comments were sought from social science research bodies and the State Office on Ageing, Wisconsin, U.S.A. One hundred and thirty-five submissions have been received from diverse organisations and individuals throughout the State. There was widespread support for both the proposal and the consultative process. The information, comments and recommendations received have strongly influenced the legislation which is presented to the Parliament now.

In addition, as a part of the process of developing the proposal that there be a Commissioner, the Government was confronted with the question of whether to establish the office of the Commissioner by the enactment of special legislation, whether to provide for a statutory office by amendment to the Community Welfare Act, or whether to establish an office by administrative act. Obviously, it would have been possible simply to appoint a person within the Public Service to perform the functions that are to be prescribed by legislation. However, the Government has perceived that many people in the community think that it would be appropriate that the functions of a Commissioner be contained in legislation, and it is certainly the case that an office prescribed by Statute will acquire a status that is, in the opinion of Government, desirable because of the special needs and position of the ageing within our community. Accordingly, the decision has been made to provide for the office by legislation, and that decision will culminate in the passage of this Bill.

It will be immediately apparent that the Commissioner's title has been changed from 'Commissioner for Aged Care and Services' as originally proposed, to 'Commissioner for the Ageing'. The new title more clearly represents the Government's intention that the Commissioner will have responsibilities to all the ageing with their skills, experience, enterprise and resourcefulness, whilst giving special attention to their need for 'care and services' when required.

The objectives for the Commissioner also reflect this broader mandate. They have a three-fold focus—the ageing themselves; the programmes and services for the ageing; and the community of which the ageing are a part.

The term 'the ageing' has been given lengthy consideration and whilst it will not appeal to all, seems more acceptable than other terms including 'the aged' and 'the elderly'. It is also receiving more widespread usage (viz Councils on the Ageing; studies on 'The Family and the Ageing', etc.) and is in common use in the United States. It has been decided not to limit the term to a particular age group but to follow customary usage as referring to the older members of the population.

The primary responsibility of the Commissioner will be to provide informed advice and commentary to State Government Ministers, departments and instrumentalities and programmes and services affecting the ageing. Such advice will also be available to other levels of government, service agencies, non-government organisations and the general public.

Many policies and services separate old people from others in our society. This is not the philosophy of this Government, nor the intention of this legislation—nobody should be subject to society's intended or unintended rejection. The Commissioner will try to identify and promulgate inclusionist rather than exclusionist practices at all times. The Commissioner will have access to all Government Ministers and heads of departments and instrumentalities on matters concerning the ageing.

For the Commissioner's advice to be fully informed, it will be necessary for the Commissioner to study and consult widely. Information about the ageing needs to be brought together, analysed and applied to the South Australian situation. Local research on the ageing and the services provided for them needs to be encouraged. The Commissioner will promote such research, compile data and ensure its dissemination thoughout the community.

The Commissioner will consult widely with individuals and organisations about issues and needs of the ageing. These will include policy makers, service administrators, professional workers, academics, and organisations for the ageing. In particular, the Commissioner will consult with the ageing themselves, and will seek to ensure that society adjusts to the needs and aspirations of older people. Obviously, the process cannot be all one way and one of the tasks of the Commissioner will be to pursue that balance, taking into account other considerations and expectations.

Conceptions abound about older people being unproductive and dependent. Nothing could be further from the truth. The Commissioner will seek to ensure that the skills and experience of elderly people are recognised and used for the benefit of both the community and individual elderly people. Wherever possible, the Commissioner will seek their wider participation on government committees, boards of management and in other community structures—particularly where decisions and actions are being taken which affect them.

There is a highly complex array of government authorities, non-government organisations, private practitioners, local communities and other bodies involved with the ageing. The Commissioner will liaise with such bodies and support the co-ordination of their endeavours. Some attempts at co-ordination are already occurring at local and regional levels in the State. This has led to a sharing of information and ideas, greater support and co-operation between agencies, more awareness of the needs of the ageing, and an identification of gaps in services.

The Commissioner will work closely with such organisations and support their development in other areas. At the State level, the Commissioner will facilitate the greater co-ordination of government policies and services for the ageing and in relations between the State and Commonwealth Governments, the Commissioner will provide an important channel of communication and represent the State on influential advisory and co-ordinating committees.

Whilst there is a considerable amount of information for and about the ageing, it is not always in a form accessible to the elderly. The Commissioner will seek to ensure that information for the elderly is comprehensive and well-presented and available through those channels with which they have regular contact. In time it is expected that the Commissioner will provide a clearing house of information for service providers and policy makers so that they have the latest research data as well as information on such matters as funding sources and priorities, departmental responsibilities and procedures, programme ideas and practices.

It is not the Government's intention that the Commissioner should be responsible for the administration of services for the ageing. As far as possible, this Government will provide policies and services which are inclusive—for all the people—and it will be the task of the Commissioner to seek to ensure that they are sensitive to the needs and aspirations of older people. Whilst inclusive policies and services run the risk of fragmentation, the Government will look to the Commissioner to identify gaps and assist with co-ordination on behalf of the ageing.

Finally, it is not intended that the Commissioner should have a regulatory function. Almost certainly the Commis-

sioner will receive personal complaints about treatment received or not received from service givers. Such complaints will provide important information to the Commissioner for advising about services. However, if the Commissioner becomes an investigatory and enforcement agency for personal complaints, there are dangers of duplicating the existing avenues of investigation as well as providing a conflict of roles *vis-a-vis* those of advising, liaising, support and co-ordinating. Where existing standards of care and enforcement mechanisms are found to be ineffective or insufficient, the Commissioner may be asked to advise the Government on more adequate measures.

As members would be aware, this Bill was introduced into the Parliament during the last session so that interested individuals, organisations and other bodies could comment before the Bill was fully debated. This period of consultation has been a worthwhile time for people to explore the contents of the Bill and comment accordingly. It may be noted that the consultation did not, however, necessitate any alteration to the Bill as it was initially drafted. I commend the Bill.

Clause 1 is formal. Clause 2 provides for the commencement of the measure. Clause 3 contains the definition of 'the Commissioner' for the purposes of the proposed new Act. Clause 4 provides for the office of Commissioner for the Ageing. It is proposed that the Commissioner be appointed for a term not exceeding five years. He is not to be appointed under the Public Service Act, but the conditions of his appointment will be determined upon the recommendations of the Public Service Board in order to ensure some consistency with comparable appointments in other areas of government. In the event that a Commissioner is appointed from the Public Service, his existing and accruing rights to leave are to be preserved.

Clause 5 provides for immunity from liability for the Commissioner in the performance of his functions under the Act. Any liability shall attach instead to the Crown. Clause 6 sets out the objectives of the Commissioner. It is proposed that the Commissioner should work to achieve a proper integration of the ageing within the community, to create social structures within which the ageing may realise their full potential, to advance a desirable social ethos in relation to the ageing, and to achieve a proper understanding of the problems of the ageing within the community.

Clause 7 relates to the functions of the ageing. The Commissioner is to advise upon programmes and services designed to assist the ageing. It is intended that he monitor all aspects of the effect of government action upon the ageing. He will be able to initiate appropriate research, collect data, and provide information to the ageing. He should assist in the co-ordination of services for the ageing. He will be required to keep under review the special needs of various groups of people who comprise the ageing in our community. Associated with the performance of his functions, the commissioner will be expected to consult with the ageing and represent their views to the Minister. He will be specifically empowered to establish committees to assist him in any aspect of his work.

Clause 8 provides that the Commissioner shall, in the performance of his functions, be subject to the general control and direction of the Minister. Clause 9 allows for the appointment of staff to assist the Commissioner. The Commissioner will be able to arrange to use facilities of the State Government. Clause 10 provides a delegation power. However, delegations will be subject to Ministerial approval and will not derogate from the powers of the Commissioner to act in any matter himself. Clause 11 provides for the presentation of an annual report by the Commissioner by the end of September in each year.

The Hon. M.B. CAMERON secured the adjournment of the debate.

SUPPLY BILL (No. 2)

Adjourned debate on second reading.
(Continued from 23 August. Page 508)

The Hon. M.B. CAMERON (Leader of the Opposition): This is the normal Supply Bill which is introduced at this time of the year. The Bill is considered by this Council, being a Chamber of equal power in this State with the other place. In its history the Legislative Council has never taken any action to restrict the passage of the Supply Bill in any way. They would be extraordinary circumstances indeed in which that occurred. When the Governor opened Parliament I noted that he said that there would be some attempt by the Government to move into this field. I suppose one develops a certain cynicism in this game. I get the feeling that this is an attempt to resurrect the old bogie of the Legislative Council and to start another fight on that issue. I assure the Government that it will not win on that point, because the Council is now regarded very highly in the community and within the Parliamentary system, because it is considered to be the more democratic Chamber. That is evidenced by the Select Committees established in this Chamber, because we have reasoned debate here.

Any attempt by the Government to weaken this Chamber will be met with very grave reaction indeed from the community. This Chamber is accepted in its role as a reasonable Chamber, a Chamber where the heat of politics, although present, is not present in the same form as it is in another place. I am a strong believer in this Chamber having equal powers with the other place in every aspect, as was confirmed by both the founders of this Parliament and by the processes of history since then. I will not go into that debate any further. However, I have no doubt that it will come up again in the future when the Government attempts to hide from its problems of broken promises and other things.

Coming up to the next election I am sure the Government will try and bring up some bogie out of the woodwork and say, 'Goodness me, this is the big issue. We are going to take on the removal of the Council's ability to block Supply.' The debate will be very boring and it will not get the Government anywhere. This issue will not get the Government off the hook in answering for its sins, of which it has many. Any attempt to do that will be treated with laughter by the community, because the community understands that this is a very reasonable Chamber and one that is doing an excellent job within the Parliamentary system. The Government will introduce its Budget tomorrow and all members will be watching with great interest to see what it contains.

The Hon. Diana Laidlaw interjecting:

The Hon. M.B. CAMERON: That is right; thank you. That is a point on which I want to say a few words. On 27 April 1984 the Premier put out a press release saying that business assistance was on the way with this Government and that the State Government was undertaking a major review of its industrial and business incentives. I would be delighted if we saw some incentives in the Budget tomorrow and if we saw reductions in the 135 State taxes and charges that have been put up, but we will wait and see whether the money that this Parliament will be asked to help raise from the taxpayers will give some assistance to the business community. At the Premiers' Conference this year South Australia had a very raw deal indeed. I have no doubt that part of the problem will be—

The PRESIDENT: Order! I must bring the member back. He is debating the Supply Bill.

The Hon. M.B. CAMERON: I am right off the Budget now; I am talking about Supply. I hope that the amount that we are now being asked to provide the Government is not additional to what would normally be needed because of the very raw deal that we got in the Premiers' Conference this year. The necessity for Supply has been increased because of the very raw deal that we as a State got when our percentage of funds was reduced to the lowest level of any State. It is not the intention of the Opposition to continue this debate unnecessarily. It is part of the normal procedures of this Parliament that we pass Supply. We have that power to do something about it in case a Government goes beserk. This Government has gone overboard in some issues, but we are still willing to wait on the decision of the community. We will certainly do it in this case, and we will see what comes up next year. I support the Bill.

Bill read a second time and taken through its remaining stages.

ACTS INTERPRETATION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 23 August. Page 508.)

The Hon. M.B. CAMERON (Leader of the Opposition): This Bill gives me cause for some concern. I am not disturbed by all that the Bill seeks to do; a number of its provisions merely confirm existing practice or understanding. In his second reading explanation, the Attorney set out the basis and nature of changes. He explained that in the case of a provision, about which the courts have made an interpretation and which is subsequently re-enacted (for example, in a new consolidating Statute), it cannot be presumed that Parliament supports the same interpretation applying. I support this, believing in the case of re-enactments that we are facing new circumstances and that old perspectives or interpretations will not be necessarily relevant.

The Attorney also indicated that this Bill provides that the schedule and headings should be considered as legitimate parts of the Act. Footnotes and marginal notes, however, should not have the same status. I agree with this viewpoint. I also agree with the view that, where a provision can reasonably be open to more than one interpretation, a construction that would promote the purpose or object of the Act should be preferred to a construction which would not.

The fourth area where, again, I have no difficulty is that of gender, namely, that masculine is taken to mean feminine and *vice versa*. It is the final area of change that is proposed in this Bill about which I am most concerned. This amendment aims to give courts the capacity to consider material which does not form part of the Act to help in the construction of a provision. Such material which would assist in the construction of a provision includes reports of the debates and proceedings of Parliament.

I frankly do not know how any person, particularly a judge, reading reports of the debates of Parliament could possibly find very much to assist him. Of whom would he take notice? Would it be the second reading explanation? If that is the case and if that will form an opinion, I would want to be able to amend some of the second reading explanations, as would some of the Ministers because in a lot of cases at the end of the debate they do not really believe what they said in the first place. It would make *Hansard* a best seller. It would have to—because everyone in the legal profession would have to buy it.

An honourable member interjecting:

The Hon. M.B. CAMERON: This might, because every lawyer in town would have to buy and read *Hansard*. I would feel sorry for them, because sometimes the Government members in this Council are very boring. It is a different matter with the Opposition; they would really enjoy that, but the Government speeches would be very boring indeed.

An honourable member: Does that include Lance?

The Hon. M.B. CAMERON: The Hon. Mr Milne from time to time makes a reasonable contribution. It would be very interesting to see all the lawyers of this city going home for their homework carrying their *Hansard* at the end of each week and spending their whole weekend reading it. Out of that, what sort of defences would we get in court? Some of the lawyers in this town would construct the most incredible defences. We know some of them; I will not name them; they are very good at their job and at defending people. We would get some extraordinary defences, and I would in the long run feel very sorry for the Judiciary at having to interpret the various meanings that would be gained by lawyers for use as a defence by using *Hansard*. That would have to be the case. Debates are in *Hansard* and they would have to use that as the basis of defence. One would not know where the defences would come from: what section of *Hansard* and what section of the debate, whether it was a member of this place or of another place, and which one they would prefer. How on earth would one arrive at a decision as to what one would use? I do not believe that the Attorney really thought that one through. Material which would assist in the construction of a provison also includes reports of Parliamentary committees. That is a step away from the normal. What happens if the committee's report is not accepted by the Government or Parliament? It can still be used; it is tabled here. Then the judge would have to go back to the Government and say, 'Did you accept this?' and work out whether it was acceptable or not and whether he would accept it even though Parliament had not.

The material also includes commissions. The same thing applies to those. It also includes treaties and international agreements. What will we do? Will we go off and have a treaty with Malaysia and bring that back as a defence within the court system in South Australia?

We cannot have international treaties, I know, but what sort of area of the law would this open up. We would have to amend the marginal notations all the time in Bills, because we could not just leave that. The courts do not now take, and have not taken for many many years, account of outside material such as that to which I have just referred in interpreting laws passed by Parliament. They may well read them to try to get some view, but they certainly have not used them officially. What has been used as the document signalling Parliament's intention has been the Statute, and this is as it should be.

They are the final words passed by the Parliament after we have been through what we have just gone through and the words 'That this Bill do now pass' have been uttered and the Bill has been passed to later become a Statute. We know exactly what Statutes are. The courts then have their job. What the Government is really setting out to do in this circumstance is bring the courts in to assess the whole of the Parliamentary procedure. That is not on, in my view. The Statute is the item that has been debated, ultimately passed and received assent. It is the Statute that incorporates the final position of Parliament on a matter. The speeches, the emotion, the individual slants and biases are kept quite separate from the Statute. What Parliament has passed is the only sensible ground on which to base interpretations.

What the Attorney proposes differs dramatically from this long, and I believe effectively, established principle. A Bill which passes the Parliament to become a Statute does so after a thorough process. The final product is the result of a majority agreement in both Houses. If the courts begin

to take into account other than that which has specifically been debated and passed, enormous problems could result. Debates in Parliament can feature many, often extraneous, matters. All sorts of issues are raised which could confuse the issue. But it is only the Bill that is voted on. It is, therefore, only the Bill which adequately reflects Parliament's intention on a matter.

I have known people in this Council to take their record of debate and make alterations to it. How on earth can we know what it is that they said? There is not a member here who does not know of somebody who has not made alterations, in some cases massive alterations, because they have either been embarrassed about their speech or thought that the *Hansard* record did not reflect their views. I have never thought that, because I think the *Hansard* reporters are accurate and very good at their jobs. However, there are members who from time to time make alterations to the record. I think that judges would have to be given access to original tapes of the Parliament to ensure that that was exactly what was said, because they could not always take the written word as being absolutely what was said. This is an aside, but a serious one, because what I have outlined often happens.

Should general debate be taken into account a whole new set of circumstances will evolve. Views and counterviews would be put by members with even more gusto. I can imagine the effect within this Chamber if we knew that judges were going to read what we had said and take that into account in arriving at a judgment. We would not be persuading each other; we would be trying to persuade the judiciary. We would be trying to put words forward to influence and persuade them. I guarantee that that would lead to far longer debates and a greater desire on everybody's part to have the last word in case that was the bit that the Judge read. The impression could be created during debates that measures have greater support than the final vote indicates simply by the length of argument on one side or the other. I am sure that that would be the case. Members would make longer and longer speeches, not because they were trying to convince each other or the other Party but because they would have the feeling that if they did not say certain things a judge might take the wrong view of a certain matter.

This could happen. How on earth do we know what would be in the mind of a judge if he or she were reading debates on a certain matter? The other problem the judge would have would be in deciding what we had in mind. He or she would get terribly confused because of the countervailing views put forward in this Parliament. Whatever the situation, there would be enormous problems, which could give rise to more injustices than would be righted. Then, if a matter went to appeal, there would need to be a new assessment of the *Hansard* record and a new group of people selling *Hansard*. I appeal to the Government to withdraw that clause of the Bill that will inevitable make *Hansard* a best seller. The Government Printer might even make a profit because everybody who has anything to do with the legal system will be buying *Hansard*.

The Hon. Frank Blevins: Back door taxation.

The Hon. M.B. CAMERON: It might well be called that. I appeal to the Government to drop that clause because it will bring the judiciary into too much direct contact with the Parliament. Let the judges do their job on the legislation that we pass. Let us do our job here and let them do their job of interpretation, and let us not get the two mixed up or we will end up with a terrible mess with the judicial system in this State.

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

FAMILY RELATIONSHIPS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 28 August. Page 543.)

The Hon. R.I. LUCAS: The *Advertiser* editorial of 19 June 1984 stated:

> Society needs laws which cover all foreseeable contingencies. Governments, while they may be helped by reports and conferences, must take some bold responsibilities, acting on their perception of informed public opinion, before those problems arise. And they must not fear the fact that whatever they legislate, given the wide range of community feeling, no law will be universally acceptable. But modifiable law is better than none. And the community, while it must weep for those who are childless and cheer when humanitarian science helps, must keep questioning science, not blindly to stop its progress, but to remind it that its goals and ours should be the same.

That editorial, in my view, is quite right. It states that Governments and Parliaments must be bold and must attempt to foresee problems. They must question continually the progress of medical science. Most importantly, it says that Governments and Parliaments must legislate to control the problems of today and the future. The current IVF and AID programmes have already thrown up a significant number of ethical questions, to which the Hon. Trevor Griffin and the Hon. Ren DeGaris have attended already. They included whether embryos should be frozen, whether surplus embryos should be destroyed, whether unmarried couples should have access to the programme, and whether surrogacy should be allowed. However, the problems of the future will be mind-boggling and will raise equally important ethical questions.

What will the year 2000 be like? Unless the ethical questions are confronted now by legislators such as ourselves it may well be a society where professional surrogacy agencies, offering to have babies for those couples who want them, are rife. Already in the United Kingdom surrogacy services are being offered for a price to couples, particularly involving professional women who wish to make use of the services of a surrogate. It may well be a society in which glass wombs are available and for hire for those couples who want them. It may well be a society in which human embryos are grown for experimentation and transplantation, and it may well be a society in which genetic manipulation, sex selection and cloning are common practice.

That may sound fanciful now but the possibility of glass wombs and the removal of the role of women from childbearing is already being discussed by researchers and medical scientists. Dr Robert Edwards, one of the pioneers of the British IVF programme, has already grown an embryo in the laboratory for 13 days. An article in the *Age* on 23 June this year states:

> The door may soon be open to allow scientists to grow an embryo in a test tube for six weeks.

The article went on to point out that modern incubators have already kept alive premature babies born after only 23 weeks of pregnancy, instead of the normal 40 weeks. The article continues:

> That awesome question that the world may soon have to face is whether the 17-week gap between six weeks [in the test tube] and the 23 weeks [before modern incubators can operate] should be closed.

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: No, they have not. The Hon. Ms Levy says that they have not solved the problem of artificial placenta and I will touch on that matter in a moment. Dr Alan Trounson, who is at the forefront of research in this area, is quoted as saying that he believes there are significant problems, but he does not say that those problems are insurmountable. Dr Helga Kuhse, the Acting Director of

the Monash University Centre for Human Bioethics, was reported in the *Age* of 23 June this year discussing the advantages of glass wombs and the potential market for babies in glass wombs.

The article went on to describe the potential market among some women—ballet dancers and models whose figures were of paramount importance to their livelihood, professional women who did not want to interrupt their career, and women who were genuinely afraid of childbirth. Victorian social psychologist, Dr Robyn Rowland, who resigned from a research project at the Queen Victoria Medical Centre over ethical questions, is quoted as saying that the only existing barrier to a glass womb is a lack of commitment of both human and financial resources.

In response to the earlier interjection from the Hon. Ms Levy, I can say that at the moment she is right—a solution has not yet been found to the problem of artificial placenta. However, Dr Robyn Rowland, who has been prominent in this research work, believes that the only existing barrier is a lack of commitment of both human and financial resources. That possibility and the others I listed earlier, are, in my view, quite frightening. These are major issues and must be debated and decided by the supreme law-making body—the Parliament. If that debate occurs, there can be no criticism that the people, through their elected representatives, have not had an opportunity to participate in that decision making. While the eventual decision of the Parliament might not be compatible with my personal beliefs or the personal beliefs of other members, I will at least have had the opportunity, as will other members, of putting our views and seeing the majority view prevail.

What is happening in South Australia at the moment? The Cabinet, which has not one woman member, is making critical decisions by administrative fiat about some of these ethical questions, without giving Parliament and the people a chance to help to decide. We have an Attorney-General who says that the Minister of Health will be introducing comprehensive legislation soon, yet we have a Minister of Health who denies that. We have Ministers who say that we do not need another committee report, as enough information is currently available.

However, if those Ministers believe that enough information is available, why won't they introduce comprehensive legislation in the short term to cover the major ethical questions and let the Parliament decide. If, in the view of Ministers and, particularly, the Attorney-General, there is sufficient information, it can only be described as an act of political cowardice that such legislation has not been introduced. Are they frightened of the controversy that would or might arise from the introduction of such legislation?

In June this year the Minister of Health announced that certain administrative guidelines had been approved by Cabinet for the operation of IVF programmes. The *Advertiser* of 19 June, in a front page article under the heading 'South Australia sets new rules on stored embryos', stated:

> Frozen human embryos stored in South Australian hospitals will be destroyed if the domestic relationship of the 'parents' is terminated through death or separation. And special hospital consent forms exercising strict control over the use of frozen human embryos in South Australian hospitals will be introduced soon.
>
> All couples seeking to enter the *in vitro* fertilisation programme will be required to sign the forms, which also will set a 10-year limit for frozen embryo storage. The embryos will be destroyed before 10 years if a shorter maximum period has been agreed to in advance by the parents.
>
> The Minister of Health, Dr Cornwall, said yesterday the South Australian Health Commission was notifying the Queen Elizabeth Hospital and the Flinders Medical Centre, the two hospitals involved in the programme, immediately to introduce the forms.

My understanding of the situation is that the Minister of Health has administratively put in motion recommendation 20 and recommendation 23 of the South Australian Working Party Report on *in vitro* Fertilisation and Artificial Insemination by Donor, a report referred to earlier by other speakers. Recommendation 20 states:

> That storage of fertilised gametes should be maintained until such time as any of the following events occurs:
>
> *(a)* A couple wishes to use the fertilised gamete(s) themselves in a subsequent treatment cycle.
>
> *(b)* A couple requests in writing that storage of their fertilised gamete(s) be ceased.
>
> *(c)* The relationship of a couple ceases through death or any other reason; or
>
> *(d)* At the exploration of an agreed period of time but in any event no longer than 10 years from the date of commencing storage.

Recommendation 23, which, I understand, has also been implemented, states:

> That no change to the law be made to enable surrogacy to be practised in South Australia.

I have been told this week by a member of one of the IVF teams that this decision was never communicated in writing to members of the teams other than indicating that the consent forms must be used for all potential participants in the programme. I am also informed that at this stage at the Queen Elizabeth Hospital programme no embryo has yet been destroyed. However, it is clear that under the guidelines imposed by the Government that position could arise at any time. In particular, recommendations 20 *(b)*, 20 *(c)*, and 20 *(d)* could all be activated at any time, and result in the decision for the destruction of embryos.

The Government's decision in June caused some controversy in the community. In fact, the head of the programme at the Queen Elizabeth Hospital, Dr John Kerin, has declared publicly that he will not take part in embryo destruction. The *Advertiser* of 21 June this year, under the heading 'I won't take part in embryo destruction: doctor', states:

> The head of the test-tube baby programme at the Queen Elizabeth Hospital, Dr John Kerin, said yesterday he could not follow State Government regulations for destruction of frozen embryos. He said he would have to resign from that aspect of the programme if the Government refused to change its stand.
>
> 'For personal, ethical and reasons of logic I consider the frozen embryo is destined to develop as a human being and I could not participate in embryo destruction,' he said.

I agree completely with Dr Kerin. I do not and will not support the destruction of such embryos. While I must accept any decision taken by a majority of Parliament to decide otherwise, I cannot accept the decison taken and administered by a group of 13 men comprising Cabinet. If there is to be a delay before the introduction of comprehensive legislation in the South Australian Parliament, in my view the lowest common denominator or least resistence rule should be followed.

The controversial aspects of the programme, such as embryo destruction, should be put on hold until Parliament has decided either to continue or not to continue. If there is to be a Select Committee or a delay in the introduction of comprehensive legislation, I urge the Minister of Health and Cabinet to declare, in effect, a moratorium on the embryo destruction guidelines that he and Cabinet have issued and rescind that administrative instruction.

A related ethical question to the future of spare embryos is whether donor embryos should be allowed. In fact, Dr Kerin has publicly called for this to be allowed in an article of 20 June this year, as follows:

> Doctors at the Queen Elizabeth Hospital's *in vitro* fertilisation clinic want 'spare' frozen embryos to be available to childless couples who cannot have children by other methods. The QEH's University of Adelaide clinic—SA's biggest IVF unit—'feels that consideration should be given to embryo donation under certain circumstances,' the unit's leader, Dr John Kerin, said yesterday.

It can be argued that embryo donation can be looked on as being analogous to a form of pre-birth adoption. In fact

Rebecca Bailey, Senior Lecturer in Law, Adelaide University, in a paper entitled 'The Legal Position of Children Born as a Result of Artificial Insemination and *In Vitro* Fertilisation' delivered to the South Australian Health Commission Seminar on 28 July 1984, at page 8 of her paper, stated:

A frozen embryo could be given by implantation to another couple (that is, both partners genetically unrelated to the embryo). This procedure would pose no great problems for the law relating to status of children. The law could simply deem the child to be the child of the 'social' parents, and sever any legal relationship the child might have had with the biological parents.

That is similar in concept to the recommended changes in the legislation now before us. The paper continues:

In passing, it is worth noting that this process, although it has given rise to such controversy, is in reality very closely analogous to adoption, whereby the adopted child, becomes the legal child of the adoptive parents 'as if he had been born to the adoptees in lawful wedlock' [Adoption of Children Act, 1966 (S.A)], section 30 (1). Adoption has been accepted in all civilised countries for many years.

The problems that exist in South Australia are that the Cabinet's and the Minister of Health's administrative instruction to IVF programmes does not allow embryo donation, but it does allow embryo destruction. Personally, I am attracted to the possibility of donor embryos as a means of preventing the destruction of embryos. Of course, I would much prefer the problem of the frozen embryo not to arise. That is why I believe the Government must provide as a matter of some urgency sufficient research moneys to allow further research into the possibility of freezing ova. That is, in effect, one of the recommendations of the working party's report. I am advised that the expenditure of about $30 000 to $40 000 would allow the employment of one additional scientist in the Queen Elizabeth Hospital programme and sufficient research materials as would allow a reasonable level of research to continue into the freezing of ova.

The Hon. Anne Levy: There's no guarantee of success.

The Hon. R.I. LUCAS: The honourable member is right: there is no guarantee of success, but 10 years ago they were saying the same thing about the freezing of embryos. Whilst there is no guarantee of success with any research project, I believe that for the expenditure of such a small sum from the total health budget a possible solution to the ethical problems that arise from decisions to freeze embryos would be well worth the expenditure. If ova can be frozen there is then no need to freeze embryos. At the moment I am advised by representatives of the Queen Elizabeth Hospital programme that one scientist is working on research matters related to the IVF programme, but that person is fully extended in a range of research that does not include the freezing of ova at this stage.

The Hon. Anne Levy: Is it undertaken anywhere else in the world?

The Hon. R.I. LUCAS: I forget in which country, but I understand that research is being conducted overseas into the freezing of ova. We have been in the forefront of research in this area, and I believe that for the expenditure of such a limited amount from the total health budget we as a Parliament or the Government would be well advised in making that limited amount available for a scientist to continue research in that area.

Another question related to the destruction of embryo question is the question of experimentation on embryos, and in this regard I intend to quote from two articles in the Melbourne *Age*, the first of 23 June and the second of 19 June. At page 15, the article of 23 June states:

There is already an early indication that Dr Edwards will be allowed to go ahead [with embryo research].

A working party set up by the influential Council for Science and Society has suggested that embryos should be allowed to develop for six weeks but only for use in medical research.

Their report, Human Procreation—ethical aspects of the new techniques, suggests six weeks because this is the earliest stage at which an embryo begins to grow a head or limbs. It is also earlier than the stage at which it develops a nervous system equated to sensitivity to pain.

The report further states:

As such, the working party members concluded they could not object to experimentation on embryos which were so early in development that there was no possibility of pain.

The *Age* of 19 June contained an article by Dr Helga Kuhse, Acting Director, Centre for Human Bioethics, Monash University, as follows:

These embryos could be used to examine a myriad of as yet unanswered questions regarding early human development, including the causes of various birth defects and their prevention. For example, embryos could be used to test drugs and other chemicals with a view to preventing defects, such as those caused by thalidomide.

They could also be used for the production of embryonic or foetal tissue. Scientists claim that immunological rejection is less with foetal tissue than with adult tissue, and it appears that experiments have been successful in which foetal pancreatic tissue has been transplanted into adult mice. This would make human foetal tissue a most valuable resource because it could be used to alleviate disease or disability in more mature human beings. It could be used to treat diabetes in children and adults, and it might even be possible to repair spinal injuries, giving back to paraplegics the mobility they have lost. So far, embryonic or foetal tissue has been available only from spontaneous or therapeutic abortions. *In vitro* fertilisation techniques offer the possibility of growing embryos specifically for such purposes.

In my view, that raises a horrifying possibility. I concede that the researchers have the best of intentions in mind. To be fair, I thought that I should at least place on the record the reason why they want to conduct this research. I think we must all agree that in most cases their intentions are very noble. In my view, the concept of embryo farms providing sufficient resource material so that researchers and scientists can go about their business of experimenting and transplanting is, as I have said, too horrifying a prospect to contemplate.

It seems paradoxical to me that most people, including the working party that I mentioned, express abhorrence at the prospect of experimentation on embryos. However, in virtually the same breath they are happy to endorse the destruction of the very same embryos. The logic of expressing abhorrence at experimentation and then endorsing the destruction of embryos is lost on me. It seems to me illogical that those who take the view that the destruction of an embryo is proper—and I accept that there are many in this Chamber and in another place whose personal beliefs will be such—would then express abhorrence at the prospect of experimentation for the very noble reasons given, as outlined in Dr Helga Kuhse's article in the *Age*.

In conclusion, I will make a few brief comments on the question of surrogacy. I will expand a little more on my thoughts on surrogacy when we debate amendments to be moved by the Hon. Mr DeGaris. Suffice to say at this stage that I cannot support those amendments. However, equally, I see great difficulty in supporting those who want to outlaw surrogacy completely. Many questions must be answered before we can go down that track. If we are going to outlaw surrogacy completely, it would appear that we would have to make it a criminal offence, as has been recommended by the Warnock Committee research study released in the United Kingdom. If it is to be a criminal offence, upon whom does the criminal offence rest? Is it just the participants in the programme, is it the doctors, or is it those who assisted in the programme?

The Hon. Anne Levy: You are talking about surrogacy with artificial fertilisation, not surrogacy with natural fertilisation.

The Hon. R.I. LUCAS: Not at this stage. Are we talking about penalties including gaol? If we are, what are we to do with the baby that results from the surrogate contract? It may well be that, if we are to prevent professional surrogacy agencies, we will have to go down this particular track. However, at this stage I do not believe that there is any evidence to compel us down that path. In my view it is obviously an important matter with many questions as yet unanswered which will have to be considered by the Select Committee. As an interim measure this Bill can stop the involvement of surrogacy arrangements in the IVF programmes currently operating in South Australia. If there are to be amendments of that nature, I will certainly consider them most closely. I support the second reading and in general terms will support the position with respect to amendments and referral to a Select Committee as set down by the Hon. Mr Griffin.

The Hon. ANNE LEVY secured the adjournment of the debate.

ADJOURNMENT

At 5.20 p.m. the Council adjourned until Tuesday 11 September at 2.15 p.m.