LEGISLATIVE COUNCIL

Thursday 13 September 1984

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

PETITIONS: X RATED VIDEO TAPES

Petitions signed by 975 residents of South Australia praying that the Council will ban the sale or hire of X rated video tapes in South Australia were presented by the Hons J.C. Burdett, K.T. Griffin, and Diana Laidlaw.

Petitions received.

ADMINISTRATION OF THE LAW

The PRESIDENT: In accordance with the resolution agreed to by the Council yesterday I table the report by W.A.N. Wells, Esq. on the Administration of the Law.

MINISTERIAL STATEMENT: MEMBERS' SHAREHOLDINGS

The Hon. C.J. SUMNER (Attorney-General): I seek leave to make a statement.

Leave granted.

The Hon. C.J. SUMNER: In the past few days the Opposition has sought to make various allegations concerning certain conduct of the member for Elizabeth (in another place) and the Hon. Anne Levy and the Hon. K.L. Milne in the Legislative Council. Those allegations, stemming in particular from the Leader of the Opposition in another place and the Hon. K.T. Griffin here, have attempted to impugn the propriety and legality of the conduct of those members of the South Australian Parliament in having sold various of their respective shareholdings in Festival City Broadcasters Ltd to the Totalizator Agency Board. It is further alleged that those members have contravened certain provisions of the Constitution Act and, thereby, have forfeited their legal entitlement to sit in this Parliament.

In response to these developments I sought and obtained advice of the Solicitor-General of South Australia, the memorandum of which I now table in this Chamber. Although it is not customary to table advice from Crown Law officers, I have decided to make an exception in this case. The conclusions of the learned Solicitor-General are, in essence, twofold. First, he concludes that, even assuming there has been a breach or contravention of the relevant provisions of the Constitution Act by the members in question, the proper forum for hearing and determining the question of any Parliamentary vacancy that may arise is the respective Houses of Parliament to which the members belong.

Secondly, the Solicitor-General concludes that, in any event, there is no cause to raise in the respective Houses the question of any vacancy. Put simply, the Solicitor-General advises that there has been no breach or contravention of the relevant provisions of the Constitution Act by the members in question. The Solicitor-General's advice is based on the following considerations:

(i) the Full Court of the Supreme Court of South Australia in the 1939 case of *Stott v. Parker* concluded that the effect of section 43 of the Constitution Act was to leave to the Houses of Parliament the right to hear and determine the question of any vacancy;

(ii) the Statute law of South Australia does not contain provisions like those found in the Commonwealth Electoral Act whereby questions of vacancies are to be referred to the Court of Disputed Returns;

(iii) Parliamentary precedents show quite clearly that it is, in the absence of Statute law which ordains otherwise, for the Houses and the Houses alone to hear and determine the questions of vacancies;

(iv) the history of provisions like section 49 (1) *(a)* and section 50 of the Constitution Act—the provisions which the Opposition has largely sought to rely upon in this matter—shows that the acts of the members in question (that is, selling shares) are not, and were never, intended to be the subject matter of them;

(v) the former Chief Justice of the High Court, Sir Garfield Barwick, in the 1975 case of *In re Webster,* considered the effect of the analogous provisions in the Commonwealth Constitution and concluded that they had only a very limited scope or area of application which would indicate they do not apply to the present circumstances;

(vi) the Supreme Court of Queensland had concluded, in a 1959 decision, that it would be wrong to conclude that any contract with the Crown or a State instrumentality is a contract 'for or on account of' the Government of the State. That court concluded 'for or on account of'—the same phrase that appears in our Constitution Act's section 49 (1) *(a)*—does not mean 'with'; instead, it relates to the subject matter of the contract and it must be established that such subject matter deals with a matter of the Government of the State, such as the supply of goods, money or labour for the benefit of the public. Private contracts for the sale of shares in 5AA just do not fit that description; and

(vii) the fact that there exists, and has existed since 1981, an opinion of a former Crown Solicitor to the effect that the Totalizator Agency Board is not a Crown agency or instrumentality.

I would like especially to dwell on some of the comments made by Sir Garfield Barwick in the 1975 case to which the Solicitor-General has referred. The former Chief Justice of the High Court indicated that, for contracts to be caught by the provisions of a law whose purpose is identical to that of sections 49 and 50 of the Constitution Act, they must be:

(i) 'executory contracts', that is, contracts under which at the relevant time something needs to be done by the contractor in performance of the contract;

(ii) contracts which 'have a currency for a substantial period of time'; and

(iii) contracts 'under which the Crown could conceivably influence the contractor in relation to Parliamentary affairs by the very existence of the agreement'.

His Honour went on to observe:

> In the climate of the eighteenth century, the likelihood of such influence upon a Government contractor could well be thought to be high. Accordingly, the mere existence of a supply contract justified the disqualification. But, in modern business and departmental conditions the possibility of influence by the Crown is not so apparent;

His Honour also considered that the provisions ought to be interpreted strictly, because penal consequences are attached to them. (I need only refer honourable members to section 53 of the Constitution Act.) In accord with ordinary rules of statutory interpretation, this strict view ensures the liberties of the person are not unduly affected. His Honour also

made the following observations, on the facts before him, which are pertinent to the present facts:

> After a good deal of consideration, I have come to the conclusion that the agreement so formed does not come within the operation of section 44 *(v)*. The agreement really has no term. It is not continuing: it is really casual and transient. I cannot conceive that, in these days, the Crown could exert any influence in Parliamentary affairs by anything it could do, properly or improperly, in relation to such an agreement. There are but bare theoretical possibilities unrelated to the practical affairs of business and departmental life, but these are not really conceivable.

The result of this opinion of Sir Garfield Barwick is that provisions on Government contractors (that is, sections 49 and 50) do not—and were never intended to—deal with the sort of fact situation that the members in question have found themselves in. Their contracts for sale of shares are not executory: nothing remains for them to do. Their contracts did not have a long life-span. They were transient. And the suggestion or implication that the Government could in some way be or be seen to be influencing these members of Parliament in relation to the affairs of Parliament is untenable. Where is the fairness in denying these members, or penalising them for the exercise by them of, the right to divest themselves of shares in 5AA in common with others?

I ask what would have happened if the provisions of the Companies (Acquisition of Shares) Code had applied. This would be so if the TAB had acquired 20 per cent of the 5AA shares on the basis of fair market dealings. In such a situation, these members (assuming they had not already divested themselves of their holdings and were part of the remaining 80 per cent) would have been entitled to a similar offer from the TAB. Would it have been fair to deny these members the right to entertain such an offer when all other remaining shareholders would have had that right? Surely basic notions of justice would be disturbed if they were denied that right.

Is the Opposition suggesting that a member of Parliament must involuntarily retain against his will his shareholding for so long as he remains a member of Parliament? Let me draw the attention of honourable members to another point. The Electricity Trust of South Australia is a Crown authority or instrumentality (see *Electricity Trust of South Australia v. Linterns Ltd* [1950] S.A.S.R. 133—a decision of the South Australian Supreme Court).

ETSA's constituting Act was introduced in 1945 by the Playford Government and vested in ETSA the undertaking of the Adelaide Electric Supply Company. By section 31 of the ETSA Act it was provided that payment to shareholders of the superseded company was to be made by ETSA: that payment was fixed at the market value of the shares as at 1 August 1945, plus interest computed in certain ways, depending on the nature of the shareholders. Two recipients of ETSA moneys were LCL members of the Legislative Council, namely Messrs J.L.S. Bice and Collier Cudmore. Mr Bice admitted in Parliament he was a shareholder (he had perhaps £400 invested; his wife had several small parcels). Mr Cudmore, it appears, had a far larger holding than Bice's. I assume that Messrs Bice and Cudmore were compensated by ETSA. It appears from the Parliamentary debates that no comment was made by anybody as to the propriety or legality of Messrs Bice and Cudmore having received moneys from a Crown authority for their shareholdings, which I assume occurred.

It is also worth noting that the combined shareholding of Messrs Duncan and Milne and Ms Levy was 3.1 per cent. There had been more than 90 per cent of shareholders who had accepted the TAB offer, there being in fact only five shareholders with 1.12 per cent of the shares who refused to sell. Accordingly, had the members concerned not accepted the offer, under the provisions of the Companies (Acquisition of Shares) Code, it is possible (probable, in fact) that the TAB could have moved to compulsorily acquire their shares in any event. Honourable members should ask themselves what the view of the ordinary person on this matter would be. The Government cannot believe that the ordinary South Australian's sense of justice and fairness would be disturbed by what these members have done in these circumstances.

In the terms of the mischief at which the legislation was originally aimed, surely the TAB could not be seen as exercising undue influence over these members, corrupting their deliberations, warping their Parliamentary judgment—such that the full exercise of their privileges, rights, and liberties as Parliamentarians is either impeded or negated. In these circumstances the Government is not called upon to raise in the respective Houses the question of any vacancy in either House consequential upon the facts alleged by the Opposition.

QUESTIONS

MEMBERS' SHAREHOLDINGS

The Hon. K.T. GRIFFIN: I seek leave to make a brief explanation before asking the Attorney-General a question about the Constitution Act.

Leave granted.

The Hon. K.T. GRIFFIN: In the short time that I have had to look at the opinion I am of the view that it contains some defects, particularly in its reliance on cases which in no way relate to the facts in the case being considered at the present time. I repeat for honourable members that in the case of Festival City Broadcasters Limited a number of shareholders received an offer which commenced at $10 per share. Over a period that offer was progressively increased up to the final figure of $19 per share paid by the TAB. The TAB received its money to buy those shares—some $4.6 million, from memory—from the South Australian Government Financing Authority, which is an instrumentality of the Crown, as is the TAB.

The fact is that these members of Parliament have in fact received Government money from a Governmen agency. It is that point which the opinion does not addres It is all very well to argue about what would happen i certain circumstances like application of the Companies (South Australia) Code and the Takeover Code, and what would have happened in other circumstances, but those facts are irrelevant in the present case. I am not satisfied that the opinion resolves the matter. Accordingly, in the light of the opinion, will the Government initiate proceedings in the Supreme Court to put the question beyond any doubt at all? Secondly, what is the Government's position in respect of section 53 of the Constitution Act, where any person in South Australia can sue in the Supreme Court or in a court of competent jurisdiction for $1 000 in the event that a person occupies a Parliamentary seat when ineligible to do so?

The Hon. C.J. SUMNER: Once again, the honourable member has made certain assertions which are not necessarily correct. He has asserted that the TAB is a Government agency. I have already indicated that an opinion of the former Crown Solicitor in 1981—

The Hon. K.T. Griffin: He said it was a preferred opinion.

The Hon. C.J. SUMNER: It is an opinion—a preferred opinion. It was the opinion of the Crown Solicitor in 1981, when the Hon. Mr Griffin was the Attorney-General in this State. At that time the opinion of the Crown Solicitor was that the TAB was not a Government agency. Like many questions in this sort of area it is possible to have different opinions. If the honourable member has a different opinion

in respect of this matter, he is entitled to that opinion. However, I do not think the honourable member should make an assertion in this Council that the TAB is a Government agency, because that is clearly open to doubt.

Clearly, as has now been indicated in the statement that I have given to the Council, the then Crown Solicitor in 1981—Mr G.C. Prior, QC (now a judge of the Supreme Court), who was Crown Solicitor when the Hon. Mr Griffin was Attorney-General—was of the opinion that the TAB was not a Government instrumentality. Of course, if the TAB is not a Government instrumentality, the Opposition's argument fails entirely; it does not get to first base. That is the first assertion made by the honourable member, and I refute it in the light of the statement that I have made. There is room in this area for different opinions. The honourable member should be straightforward and honest enough to say that the situation that I have outlined was the situation in relation to a former Crown Solicitor.

Secondly, concerning the receipt of these moneys, the important point which needs to be made and which perhaps has not been emphasised sufficiently is that these members received the money for the sale of their shares in common with all other shareholders. As I said in the Ministerial statement, had they not offered to sell when the takeover—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: I am just saying that had they not offered to sell their shares to the TAB and, as is likely on the facts that I have given today, had the TAB reached 90 per cent of the shareholdings of Festival City Broadcasters, then the TAB under the takovers code could in all probability have moved to compulsorily acquire their shares. So the same result would have been achieved.

The important point to realise is that they sold their shares in common with everyone else. It is also worth noting that had the bid for 5AA—for instance, of the Consolidated Press-Packer group—or any other private offer been successful (it was not, as I understand it, the TAB that started the bid to take over 5AA, but other private interests; the market place eventually settled down, with the TAB making the final offer, which was accepted, because it wanted a radio station to protect its interests in racing in this State) this would not have been an issue. It became an issue only because the TAB wanted, for the reasons that I have outlined, to get into the marketplace to get the 5AA shares.

Importantly, the question of whether the TAB is a Government agency is a matter of opinion about which there is a Crown Solicitor's opinion from 1981 that it is not a Government agency. If that is the case there is nothing more to the Opposition's argument. Secondly, in terms of assessing whether there is any wrongdoing in what the honourable members were involved in, one must consider the fact that the Hons. Ms Levy, Mr Milne and Mr Duncan sold these shares—3.1 per cent of them—in common with over 95 per cent of the other shareholders who had shares in 5AA.

The other point that is worth bearing in mind is that, at least with respect to two of the members—I am not sure about the other one—the share purchases were made before they were members of the Parliament. Can it seriously be suggested that, having acquired shares in that way, they then, as I said in the Ministerial statement, are obliged for as long as they are members of Parliament to hold on to those shares. That would seem to be an odd result.

I also refer to the cases mentioned in the Solicitor-General's opinion. I particularly emphasise the comments that I have already read from Sir Garfield Barwick in the case of *In re Webster,* which dealt with a similar provision in the Commonwealth Constitutional Act, a different fact situation—

The Hon. K.T. Griffin interjecting:

The PRESIDENT: Order! If the Hon. Mr Griffin wants to continue questions he may, but he should not interject.

The Hon. C.J. SUMNER:—but in many respects stronger fact situation than the one with which we are dealing at the moment. I also, therefore, emphasise the remarks of Sir Garfield Barwick.

As to the honourable member's comments as to whether proceedings will be initiated in the Supreme Court, in the light of the Solicitor-General's opinion that is not a course that the Government will take. I can say that the Solicitor-General's opinion is quite clear following the decision of the Full Court of the Supreme Court of South Australia and, in particular, the judgment of Mr Justice Napier, a person who is well regarded in this community and who was later Chief Justice of the Supreme Court of this State for many many years.

His conclusion was in the case involving, as it turned out, Mr Tom Stott, a man probably well known to some members. His conclusions involved an argument whether or not Mr Stott had become an insolvent debtor. The matter was taken to the Supreme Court which, in its decision (with Napier J. in the majority judgment), determined that the question, under section 43 of our Constitution Act, of the vacancy or otherwise of members' seats in the Parliament was a matter for the Parliament to determine, so it referred the matter back to the Parliament.

If honourable members research the matter they will see in minutes that it was dealt with by the Parliament and that, in fact, Mr Stott retained his seat. This is quite clear from the opinions in the cases that I have mentioned, in the case of *Stott v Parker,* and in particular in the decision of Napier J. I refer to the opinion again and to May's *Parliamentary Practice* where similar thoughts are outlined in the case of *In re Samuel* in the United Kingdom in the House of Commons in 1913, again referred to in Erskine May's *Parliamentary Practice,* seventh edition at page 35. The law being that the question of any determination of vacancy or otherwise is a matter for the Parliament—that being the opinion—there is no case for the matter to go to the Supreme Court.

If it did go to the Supreme Court, on the basis of the decision in *Stott v Parker,* and if that decision were followed in the Supreme Court, the matter would be referred back to the Parliament to determine. In the light of the opinion and of the fairness and justice of the situation where these members sold their shares in common with 95 per cent of shareholders of Festival City Broadcasters, the Government does not believe that this matter needs to be pursued any further.

The honourable member also raised the question of section 53, the section dealing with the Supreme Court's capacity to deal with someone sitting in a seat that has been declared vacant. Of course, that begs the question, because the seats have not been declared vacant by the Parliament. If those proceedings were taken in the Supreme Court under section 53, on the basis of the decision in *Stott v Parker,* the Supreme Court would refer the matter back to the Parliament for it to determine whether or not the seats were, in fact, to be declared vacant. That is the clear decision in that case of Mr Justice Napier, as he then was. In those circumstances, the Government does not believe that there is a case for taking the matter further.

FINGER POINT SEWAGE DISPOSAL

The Hon. M.B. CAMERON: I seek leave to make a brief statement before asking the Minister of Agriculture, representing the Minister of Water Resources, a question about Finger Point sewage disposal.

Leave granted.

The Hon. M.B. CAMERON: Members will recall that last year the present Government scrapped the plan to construct the Finger Point sewerage works, which were designed to treat sewage emanating from the City of Mount Gambier.

The scrapping of this proposal planned by the former Tonkin Government has meant that raw sewage has continued to flow unabated into the sea off Finger Point. This has given rise to enormous potential health problems and seriously polluted the beach and waters around Finger Point. In fact, I understand that the Government has recently sought to extend the area involved.

In this year's Budget, notwithstanding the urgent need to construct the Finger Point sewage treatment plant, the manpower and financial allocations, both capital and recurrent, for country sewage, have been cut. This will place enormous constraints on country sewage treatment and, of course, it means that there is no way, unless the Government reverses its decision, that the Finger Point project will be commenced until the return of the next Liberal Government.

Last week the Premier proudly highlighted the use of $93 million for short term job creation. However, he has overlooked a relatively fertile use that could have been made of taxpayers' funds. Had funds been made available for this project, a substantial number of permanent jobs would have been created and, of course, a very serious problem on the beaches of the South-East would have been abolished.

Will the Minister of Agriculture make urgent representations to his colleague, the Minister of Water Resources, to obtain a reversal of the decision to scrap this project which is vital tor the South-East and the State?

The Hon. FRANK BLEVINS: I will refer the honourable member's question to my colleague in another place and bring back a reply.

BRAIN DAMAGED CHILDREN

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister of Health a question concerning the care of brain damaged children?

Leave granted.

The Hon. J.C. BURDETT: As the main example of what I wish to explain I will refer to a letter written by Ms Elvira Bryant to Senator Messner on 11 June 1984. It is a long letter and I will refer only to so much as I think is necessary to explain the question, but I will make the entire file available to the Minister afterwards. Ms Bryant starts her letter by saying:

> The purpose of this letter is to try to enlist your support for my daughter Tracy Blake, and for many others—

I stress many others—

> like her who are the victims of long-standing brain damage due to head injury. I am in the position that many parents find themselves in: that of wanting to be reassured of human accommodation being made available for the on-going support of people like Tracy. I have received a great deal of help from professional staff in hospitals and other organisations, but, the frustration is, that it now seems that no organisation has been identified and given the resources to provide on-going and very necessary care for people like Tracy.
>
> In January 1984, Tracy was admitted for a period of assessment to the Julia Farr Centre. This led to the conclusion that, although she is in need of ongoing personal care, she is not so disabled as to warrant full-time professional nursing care, therefore not suited for admission to the Julia Farr Centre or any other nursing home. Hostel or group home type accommodation was recommended as more appropriate but, as you may or may not know, there is none of the type available for persons as heavily dependent as Tracy and others like her.

Ms Bryant then refers to frustrations in connection with an application under the Handicapped Persons Equal Opportunity Act. She was told that the application was unacceptable under that Act. This has also applied to a considerable number of other people. Ms Bryant further says:

> This alone is a matter for concern amongst the professionals as the letter from Mr D. Simpson to the Chairman of the SAHC, and the article in the *Advertiser* of Wednesday 6 June 1984 in which Dr P. Last publicly airs his concern for these people demonstrate. I have enclosed a copy of each for your reference.
>
> If the present Act does not allow such a sensible and humane solution to the problem, such as Tracy and others have in the matter of accommodation, as I suggest in my letter to the Crippled Children's Association housing division, then I appeal to you to bring pressure to bear upon the Minister for Social Security for the Act to be amended. I know that it is at present under review. Nor do I believe that it would be inappropriate for the Minister of Health to commit his department to state its policy, and I would appeal to you to obtain that commitment . . . Simply as a citizen, I am becoming very cynical at being told by a State bureaucrat that this is a matter for the Commonwealth, only to be told by the Commonwealth bureaucracy that the State should provide resources. Obviously a programme is needed . . .

A considerable number of other parents have come to me in similar circumstances. For example, I wrote to the Minister about one such case in July. The solution to the problem is not easy. A large number of parents are in similar situations: they are parents of brain damaged children who need care. That care is not classified as being nursing care, but it is care which very often the parents are not able to provide on a full-time basis. I realise that this is a difficult question.

Will the Minister examine this particular case and the general issue? Concerning the general issue, will the Minister inform the Council at the appropriate time what can be done? I repeat what I said previously, that I will give the Minister my file on this case, which was too long to be read in full to the Council.

The Hon. J.R. CORNWALL: The simple answers to those two questions are, 'Yes' and 'Yes'. However, nothing is ever quite that simple in politics. I will take a little of the Council's time to give some details about this subject, because it is a matter that has been of very real concern to me for a number of years, so much so that, during that diligent period when I was the shadow Minister of Health in Opposition, I initiated investigations of my own which enabled us to make specific statements regarding the problem in the fighting platform that was produced on 29 June 1982.

When conducting those investigations, I took the trouble of talking to Professor Dennis Smith, who holds the only Chair in rehabilitation in this country. He is regarded as an international expert, and we are very fortunate in having him. It is true that there is a problem regarding Federal legislation in the case to which the Hon. Mr Burdett referred. So, in that sense, it is not a direct responsibility of the State Government.

However, I have said on very many occasions, and I will repeat as often as I have to, that these are people problems and as such it does nobody any credit or good to try to categorise them as being a problem of the Federal Government, the State Government or local government. So, I have been very anxious to address this substantial problem ever since I became Minister. The fact is that there is a large, although unquantified, number of young brain injured people in the community. Seven out of eight of those people are young males whose head injuries resulted from road trauma. So, a large number of them fit into that group of young males who were between the ages of 16 years and about 25 years at the time the head injury occurred.

Of course, there are also those who are brain injured from birth for one reason or another. Their patterns of behaviour are very difficult; in fact, sometimes they are almost bizarre. There are several very well known cases, and I will not go into details or names, but there is no doubt that they require special attention. Included in that range of people are those

for whom the Hon. Dr Ritson has expressed particular concern in his study of the notion of diminished responsibility.

We are addressing that problem of how to put in train what we hope will be a way of addressing it by appointing the former and very distinguished judge of the Supreme Court, Dame Roma Mitchell, to look at the problems concerning behaviourally disturbed people. Some of, and in fact a significant proportion of, these people (and they are an identifiable group) have that behaviour pattern and the marginal IQ that often goes along with it because of road trauma and the head injuries resulting from road trauma. There is a suggestion that, with at least some of these people and perhaps a significant percentage of them, long-term secure hostel accommodation with behavioural retraining may be an option.

Certainly, we have been looking at the whole question of rehabilitation, not just in respect of the young brain injured but rehabilitation generally in this State. That was begun at my behest very early in my period as Minister of Health. It proved to be rather a bigger project than might originally have been envisaged. It was no real problem to get a summary of the physical facilities and the personnel in South Australia, but it was a much larger problem to look at the assessed needs and how we could best rationalise and optimise the existing resources and what additional resources might be required. At present the Chairman of the Health Commission, Professor Gary Andrews, is heading up a team of very distinguished experts in the rehabilitation field to look at the question of brain damaged young people along with a host of other areas of rehabilitation.

So, these matters are all under active consideration. I am urging the committee to the extent possible or desirable to come up with some recommendations as soon as it can. Once they are available—and I would hope that that would be before the end of this calendar year—they will be immediately taken on board and processed. There will be positive reactions and responses developed. I give a firm undertaking that, to the extent that the State is able to find the sort of additional funding that may be necessary, they will be put into the very earliest Budget bids or pre-Budget bids for 1985-86. With regard to the particular question, if the honourable member will let me have the file, as he said he would, I will get my senior officers to investigate the matters raised immediately. I will respond with regard to the particular case confidentially to the Hon. Mr Burdett, but in all the other matters as soon as there are further things to report to the Council I can give a firm undertaking to do so.

SPEECH PATHOLOGY

The Hon. R.J. RITSON: I seek leave to make a brief explanation before asking the Minister of Health a question about speech pathology services in South Australia.

Leave granted.

The Hon. R.J. RITSON: As the Minister of Health will know, the professional discipline of speech pathology goes far beyond mere elocution and assisting people with fluency. It involves the retraining of stroke victims, of post laryngectomy patients and the retraining of post head and neck cancer and trauma patients. The majority of speech pathologists in South Australia are under much pressure of work, and it is a fact of life that it is almost impossible to get relatively non-urgent cases seen in a public institution for the lesser forms of speech impediment because speech pathologists are so committed to the more urgent hospital-based work.

There is a small amount of privately practised speech pathology, but my information is that it would not be able to relieve the strain on the public systems and, in fact, I am informed that many medical practitioners and members of other caring professions do not even try to refer less urgent work to public institutions because they are aware of the long delays. My question concerns training of speech pathologists, because I am informed that proposals are in hand to reduce the number of advanced college training places for speech pathologists. I do not know on what basis that reduction has been planned—whether it is a matter of Federal cost cutting or what it is—but I would hope that our State Minister will be sufficiently concerned for the wellbeing of speech pathology patients to go in to bat for our State and for at least the maintenance of existing levels of training of speech pathologists. I am aware that it may be a matter for various other portfolios such as education; it may be a matter for the Federal Government in some areas but, as the Minister just said a moment ago, regardless of the compartmentalisation of areas of responsibility within Government, it is a people problem and I ask the Minister to examine the position and see what he can do to sustain speech pathology training at least at its present level.

The Hon. J.R. CORNWALL: I would have to confess that I am not aware of any specific proposal to reduce the number of students admitted for training as speech pathologists. Of course, that does not mean that there may not be such a proposal. Speech pathologists are trained in South Australia, from my recollection, at the Sturt campus of the South Australian CAE. There was some reorganisation about and within the faculty or the school responsible for their training. I am aware of that and some representations were made to me, although my role in that area is of course peripheral. Colleges of advanced education, like other tertiary institutions, rather jealously guard their autonomy in the literal sense. Nevertheless, I am aware that there is a shortage of speech pathologists, rather than any remote suggestion of there being an oversupply. If there is any proposal to reduce the existing number I would certainly protest very strongly. I will investigate the matter immediately and make my voice heard very quickly and loudly if there is any such proposal. It would concern me quite seriously. I would have thought that there is a need to increase the number rather than decrease it. As the Hon. Dr Ritson has pointed out, the need seems to be increasing rather than diminishing. Since the population is living longer and since the incidence of chronic debilitating diseases is thus increasing, it is obvious that in the longer term we will need more and not fewer speech pathologists. Certainly, I will investigate the matters that have been raised by the Hon. Dr Ritson and bring back a more formal and informed reply as soon as I reasonably can.

HUMAN SERVICE PROGRAMMES

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking you, Mr President, a question about a reply to be inserted in *Hansard.*

Leave granted.

The Hon. ANNE LEVY: I have received by letter a reply to a question I asked of a Minister in another place. I would like to have it incorporated in *Hansard.*

The PRESIDENT: I can see no reason why that cannot be done as Minister's replies have been incorporated in *Hansard.*

The Hon. ANNE LEVY: Therefore, I seek leave to have inserted in *Hansard* a reply to a question I asked of the Minister of Community Welfare on 20 October last year on human services programmes.

Leave granted.

Reply to Question

It is assumed that the reference to human service programmes refers to the Department for Community Welfare project entitled 'Community Response Teams'. The Community Response Teams project is expected to employ 278 people during the course of its existence. It is anticipated that 65 of these positions will be male and 213 female positions. The project will be working within the jointly agreed Commonwealth/State guidelines which provide preference for the long term unemployed where they are suitable to undertake the work offered. With respect to disadvantaged groups it is anticipated that 16 Aboriginal people will be employed, seven migrants, and 10 disabled people.

ADULT LITERACY

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Minister of Agriculture, representing the Minister of Education, a question on adult literacy.

Leave granted.

The Hon. I. GILFILLAN: The following stark piece of information was provided by the Friends of Adult Literacy. It states: 'One in 10 adult Australians could not read this sentence'. I find that quite devastating information. The following further statement is made:

For some Australians the thought of an adult who cannot read or write is incredible, even intolerable. Concern about the large numbers of adults living in Australia who are illiterate has been voiced increasingly over the past years. The Department of Technical and Further Education in South Australia has conducted adult literacy programmes throughout the State since 1976. It recognises the pursuit of universal adult literacy as one of the foundation stones of our society which must appear as a high priority in adult education in this state.

They are sentiments with which everyone would agree. Friends of Adult Literacy received from the Minister of Education in January a statement as follows:

My Government has a basic philosophy of concerning itself with trying to promote equality of opportunity for all. We are committed to producing the infrastructure for literacy and numeracy education to adults in our State, mainly through the Department of TAFE.

Unfortunately, the commitment is not reflected in funds to TAFE colleges. For example, I am advised that the Elizabeth programme has been cut by 50 per cent and Croydon Park by 30 per cent, and other colleges are also suffering from cuts in an already over-stretched area. In 23 colleges only 8 per cent of staff are permanent. I suggest that TAFE does not appear to be addressing this problem and, before asking questions of the Minister, I will quote a letter received by Ms Branson, President of Friends of Adult Literacy, from Mr Fricker, Director-General of TAFE, as follows:

I refer to your letter dated 30 July 1984, relating to proposed reductions in Adult Literacy programmes offered through the Department of Technical and Further Education. The Department is required to significantly curtail its expenditure in the 1984-85 financial year and colleges have been asked to identify areas of potential savings. In most cases this saving will come through a reduction in allocations previously made for part-time instructors and contingencies.

As you are aware, the Adult Literacy programme is largely dependent on the allocation for part-time instructors and present indications are that reductions will occur in this programme area. The extent of the reduction is yet to be determined and your assertion that a 50 per cent cut will occur in the Elizabeth programme must be considered speculative at this time.

That letter emphasises a concern that we all have about adult literacy and my questions to the Minister are as follows:

1. Has the Department of Technical and Further Education in South Australia reduced the resources allocated to community literacy programmes and, if so, how does the Government justify that, particularly in light of the statement made by the Minister in January?

2. If not, how does the Minister explain the letter from Mr Fricker of TAFE to the Friends of Adult Literacy explaining the likely and inevitable cuts in TAFE allocations?

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

RABBIT CONTROL

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister of Agriculture a question about rabbit control.

Leave granted.

The Hon. PETER DUNN: A couple of weeks ago a Mr R.P. Lang was reported in the *News* as saying:

Vast tracts of land in the State's North-West are being overrun by rabbits.

He went on to say that the main area affected belonged to Aboriginal communities at Indulkana, Fregon, Ernabella, and Amata. He also said that the rabbits were ring-barking the trees and killing them and added that large parts of the land were becoming barren. In reply the next day the Minister stated that the rabbits were doing little harm and would die when the area was eaten out. It is quite obvious that they will die when the area is eaten out, but does the Minister really understand what a problem rabbits can cause? If he were to reflect on the early and mid 1940s, he would realise the problems that rabbits were causing in those days prior to the introduction of biological control through myxomatosis. Much of the clearance of that scrub in an endeavour to control rabbits that was taken on in those days would not have been necessary had biological control been available sooner.

I am not sure that the Minister really sought any advice before making the statement to which I have referred. I can understand that the Minister, being a former tug boat operator, would be all at sea in trying to understand rabbit breeding and the damage that rabbits cause. Rabbits ring-bark trees, and it takes many years for the trees to return to that area. There is nothing more destructive than a plague of rabbits. They are more destructive than any other vertebrate in this area. Therefore, my questions to the Minister are as follows:

1. What guidance did the Minister seek before making that statement?

2. Has the Minister given direction to the Vertebrate Pests Commission to investigate and report to him with the object of discovering whether the rabbit damage is increasing or decreasing?

3. Is there a necessity to control rabbit populations in that area?

The Hon. FRANK BLEVINS: The Hon. Mr Dunn engaged in quite an interesting debate with himself. There is a word for that, but I cannot think of it off hand. He was asking himself questions, answering them and getting himself into a fine old tizzy. The basis on which the Hon. Mr Dunn appears to be acting is a report in the Adelaide *News*. I cannot be held responsible for what the Adelaide *News* prints. I have no control whatsoever over that, nor do I want it.

Members interjecting:

The PRESIDENT: Order!

The Hon. FRANK BLEVINS: Of course, I gave a much more detailed statement to the *News* than appeared, but the *News* quite properly exercised its judgment as a publisher and chose only to publish part of the statement I gave it. That is its right, and I have no complaint about that whatsoever. I would have thought that the Hon. Mr Dunn, having been a member of Parliament for a number of years

now, would realise that the report in the *News* was obviously truncated. However, that does not appear to be the case.

The Hon. Peter Dunn: I will remember that in future.

The Hon. FRANK BLEVINS: I hope the honourable member does that. I am delighted to be of service to the Hon. Mr Dunn and to add to his education. To get to the substance of the honourable member's question, I am very much aware of the damage caused to agricultural and pastoral land by rabbits. I am very aware of that indeed. I am not sure what the Hon. Mr Dunn would like me to do about the problem personally—whether he wants me to go up there and strangle the pests on my own. If that is the case, I think that he is being a little unreasonable. A method to control rabbits will be found in the laboratories, not by me but certainly by the Vertebrate Pest Commission.

The fact is that the Department of Agriculture has a considerable programme to develop a control agent. The Hon. Mr Dunn would be aware, as I am, that one of the strains of rabbit flea used at the moment is reasonably effective in agricultural areas but it is not so effective in the pastoral zone. Eventually, the problem will be controlled by the development of a strain of rabbit flea which will be effective in the pastoral zone. I am happy to inform the Hon. Mr Dunn that officers of the Department of Agriculture have informed me that they are quite encouraged with the progress that they have made so far. I could further develop my reply, but in deference to other members of the Council I will not do that. However, I repeat my caution to new members of the Council not to rely entirely on press reports which, by the very nature of journalism, are abbreviated at times perhaps because of the boredom of certain topics to many people. In deference to that very principle, I will conclude my reply.

STAMP DUTY

The Hon. L.H. DAVIS: I seek leave to make a brief statement before asking the Attorney-General, representing the Treasurer, a question about stamp duty on fixed interest transactions.

Leave granted.

The Hon. L.H. DAVIS: Both the New South Wales and Victorian Governments recently announced the removal of stamp duty on the transfer of private sector fixed interest securities, including debenture stock issued by industrial and finance companies. No doubt the decision to remove stamp duty from the sale of fixed interest securities was prompted by the fact that no stamp duty applies to the transfer of Commonwealth and semi-governmental securities and, more particularly, because the removal of stamp duty from such transactions will encourage the development of a secondary market.

No doubt honourable members will be aware that many people invest in industrial and finance company debentures during their working life and in retirement; the development of a secondary market for those people and for investing institutions will be of benefit to all parties. Indeed, finance company debentures on issue amount to about one-third of the value of Commonwealth bonds currently on issue. However, it is disappointing to note that the South Australian Government to date has not acted to remove stamp duty on the transfer of private sector fixed interest securities.

The Government claims that it wishes to strengthen Adelaide as a significant capital market, but it is disturbing that in matters such as this Adelaide trails the Eastern States which have the existing advantage of a much broader and stronger capital market. I understand that the State Government collects about $1 million annually in stamp duty from share and fixed interest transactions on the Stock Exchange of Adelaide. The transfer of fixed interest transactions, securities on the exchange, has steadily increased in recent years. However, I imagine that only a small portion of the $1 million in stamp duty would be collected from fixed interest transactions. Will the Treasurer investigate this area as a matter of urgency and act to remove stamp duty on the transfer of private sector fixed interest securities, so encouraging the development of a secondary market in these securities in South Australia and at the same time thwarting the potential loss of business to the New South Wales and Victorian Stock Exchanges?

The Hon. C.J. SUMNER: I will refer the honourable member's question to the Treasurer and bring down a reply.

PUBLIC SERVICE SUPERANNUATION FUND

The Hon. R.C. DeGARIS: Does the Attorney-General have a reply to the question I asked on 14 August about the Public Service Superannuation Fund?

The Hon. C.J. SUMNER: The figure of $572 882 000 quoted in Appendix VIII of the Actuarial Investigation of the South Australian Superannuation Fund as at 30 June 1983 is not a current liability of the Fund, but the present value of the long term liabilities of the Fund in respect of current members of the Fund (that is, current pensioners and those current employees who are contributing to the Fund).

The Government's liability is assessed (in paragraph 4.1 of the actuarial report on Government costs) as a projected series of annual costs in terms of constant salary levels. The following table shows the equivalent series of costs for the Fund in respect of the Fund's present liability for current members. I seek leave to have a table incorporated in *Hansard* without my reading it.

Leave granted.

Costs of benefits paid by Fund in terms of 1983-84 salary levels

Year ending 30 June	($ million)
1984	18.67 (actual)
1990	22
1995	22
2000	23
2005	26
2010	25
2015	18
2020	11
2025	7
2030	5
2035	3

The Hon. C.J. SUMNER: In 1983-84, 49 per cent of the Government's costs were in respect of supplementation. Over the period covered by the projections and on the projection assumptions, the percentage fluctuates within the range 42 per cent to 52 per cent.

WORKERS COMPENSATION

The Hon. K.L. MILNE: I seek leave to make a brief statement before asking the Attorney-General, representing the Minister of Labour, a question about workers compensation.

Leave granted.

The Hon. K.L. MILNE: I read in the Australian *Financial Review* of Monday 20 August 1984 that the Prime Minister has written to all State Premiers offering assistance in the development of no-fault compensation schemes. The Com-

monwealth Government evidently plans to introduce something like the New Zealand scheme, but in four stages, as follows:

> First, the introduction of a no-fault motor accident compensation scheme accompanied by the abolition of common law claims arising from such accidents. Secondly, expansion of workers compensation benefits under existing statutory powers to match the benchmark set by motor accident schemes.
>
> Third, extension of workers compensation to 24-hour-a-day cover for earners, with abolition of common law claims. Fourthly, 24-hour-a-day cover for non-earner, non-road accident victims.

I understand that the State Government is preparing legislation to drastically revise our present expensive and unsatisfactory workers compensation scheme, and the Democrats are very pleased to hear it. In our view, a drastic change in the present system is vital for South Australian industry—now—and action should be taken here without delay.

Will the Commonwealth intervention mean that the review of our own workers compensation scheme (which is urgent) be delayed because of negotiations with the Commonwealth? Or will the State Government proceed with its present plans as a matter of urgency and seek financial assistance from the Commonwealth Government, hoping to integrate our scheme with a national scheme at a later date?

The Hon. C.J. SUMNER: I will obtain information on the matter for the honourable member and bring down a reply.

TAB

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Attorney-General a question about the Constitution Act.

Leave granted.

The Hon. R.I. LUCAS: The Attorney-General today has quoted an opinion from the Solicitor-General in 1981 that argued that the TAB was not a governmental agency. The Attorney-General would be aware that in 1971 the then Labor Attorney-General, Len King (now the Chief Justice), introduced amendments to the Constitution Act and, in particular, to section 51 (i) of that Act, which now reads:

> Nothing contained in the preceding two sections shall extend—
> (i) to any contract or agreement in respect of any bet made in the ordinary course of business with the South Australian Totalizator Agency Board, whether as principal or as agent;

Such a move would appear, at least to me as a layman, to indicate that Len King and the Labor Government at the time considered that the TAB was covered and was in effect a governmental agency. If the TAB is not a governmental agency, as the Attorney appeared to argue today, based on that opinion that he proferred from the Solicitor-General, why was the amendment moved by the Labor Government in 1971 to exempt one type of agreement with the TAB?

The Hon. C.J. SUMNER: It needs to be borne in mind that these are not clear-cut issues on all occasions and that there is room for differences of opinion. It is not always easy to determine with certainty, unless one takes the matter to court, whether or not a particular agency is an agency of the Crown. All that I am saying to the honourable member is that in this case there is an opinion that the TAB is not an agency of the Crown. The Hon. Mr Griffin apparently has another view of the situation—

The Hon. R.I. Lucas: And Len King.

The Hon. C.J. SUMNER: —and he has put the view to this Council. It is not necessarily the case in relation to His Honour, Chief Justice King—

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I refer the honourable member to the opinion of the Solicitor-General, which addresses this point. He says in paragraph 15 of his memorandum:

> I have not overlooked the effect of arguments that the Totalizator Agency Board is the Crown or that section 51 (i) of the Constitution Act, 1934, impliedly brings all contracts with the TAB other than betting contracts within the purview of section 49—*expressio unius exclusio alterius est.*

The Hon. R.I. Lucas: What does that mean?

The Hon. C.J. SUMNER: It means that, if one expresses in an Act of Parliament, such as was done in this case, that the TAB, as it is in section 51, is referred to specifically as an agency that is excluded from the operation of that section, by its very nature it must be an agency of the Crown, but of course that does not automatically follow. The argument is as I have said. It is interesting to note that the Solicitor-General says that he has not overlooked the effect of arguments that the TAB is the Crown. So, while he says earlier in his opinion—and I have outlined that to the Council—that one of the factors that has to be taken into account is that there is an opinion of the Crown Solicitor in 1981, to which I have referred in my Ministerial statement, the fact is that the Solicitor-General in his opinion raises the question whether or not the TAB is the Crown, and he says that he has not overlooked those arguments.

The Hon. R.I. Lucas: And the introduction of that amendment.

The Hon. C.J. SUMNER: And he has not overlooked the introduction of that amendment: that is right. He goes on to say:

> Those arguments seem to me to be subsidiary to the matters to which I have referred in the preceding paragraph.

In the paragraph, he deals with the decisions of the Queensland Full Court and of the Chief Justice of the High Court, Sir Garfield Barwick. He goes on:

> In any event I think it is arguable that the Totalizator Agency Board is not the Crown.

That is what the Solicitor-General says, and there is also the opinion of the Crown Solicitor in 1981 that the TAB is in fact not the Crown. The Solicitor-General goes on to say:

> The previous Crown Solicitor has expressed an opinion given on 24 September 1981, that as a matter of law the preferred view is that the Totalizator Agency Board was not an agency of the Crown and, in particular, not such an agency for the purpose of holding its property. It is, of course, possible that a body can be regarded as the Crown in the performance of some of its functions and not others (see *Victorian Railways Commissioner v. Herbert* [1949] V.L.R. 211 at 213). That seems to reinforce the view that I have taken that these circumstances are not relevantly governmental.

So, that is the Solicitor-General's discussion of whether the TAB is the Crown or an agency of government. He addresses the argument that the honourable member has addressed, but he then goes on to talk about the amendment that was made in 1971. Paragraph 16 reads:

> The enactment of section 51 (i) in 1971 to exclude betting contracts with the Totalizator Agency Board from the operation of sections 49 and 50 does not, in my opinion, mean that all other contracts with the TAB are included in that operation. Section 51 appears to have included as in effect a proviso to the operation of sections 49 and 50 disparate and eclectic topics that may or may not in any event have been excluded from sections 49 and 50. The history given by Erskine May as to the reason for the enactment of the predecessor to section 51 *(a)* shows this (see paragraph 7 of this memorandum). I would adopt as appropriate in this case the comment by Professor Pearce in *Statutory Interpretation in Australia* (2nd ed.) at page 56:
>
> > On the other hand, it may be that a proviso was inserted out of abundant caution to make it perfectly clear that a section is not to apply in certain circumstances or to certain persons when there is really little doubt that it would not have done so anyway. In these cases care must be taken not to be too ready to apply an *expressio unius exclusio alterius* approach on the basis that because the proviso has excluded one circumstance or person from the operation of the section, all others are thereby necessarily included.

So, he is saying that the very fact that the capacity to bet with the TAB was excluded as a situation covered by sections 49 and 50 does not necessarily mean that all other transactions were covered by it. The honourable member raises the point, and it is a point that is worth making, but it is addressed here and, in the light of the other discussion and of the history that has been outlined by the Solicitor-General of sections 49 and 50, it is reasonable to think that the present Chief Justice (then Attorney-General) in 1971 moved for that subsection to be placed in section 51 in an abundance of caution to ensure that there was no doubt about that particular dealing that many people might have with the TAB.

JUSTICES ACT AMENDMENT BILL

In Committee.

(Continued from 12 September. Page 777.)

Clause 3—'Application for postponement, suspension of warrant.'

The Hon. C.J. SUMNER: Questions were raised yesterday by the Hon. Mr Griffin as to whether or not this Bill was vesting too much power in a Clerk of the Court, who would effectively be acting in an administrative capacity by agreeing to defer the execution of a warrant. I have given consideration to the matters that the honourable member raised, and while I concede that they are worthy of some further consideration, I do not believe that this should hold up the Bill at this stage.

The honourable member was concerned that too much power is being given to Clerks of Court in allowing them to order payment by instalments or to give security. Present section 83(1) provides that any justice may, if he deems it expedient to do so, postpone the issue of a warrant for such time and on such conditions, if any, that he thinks just. Thus, we are not in fact giving justices who are Clerks of Court any more power than they have now—just allowing them to exercise it at a later time. In other words, prior to the issue of a warrant.

At the present time any justice may postpone the issue of a warrant and may do so on any condition. Presumably a condition could be that some security is provided or that the person attempts to make payment on an instalment basis pending issue of the warrant. In my submission, all the Bill is doing is delaying the capacity of the justice to interfere with the execution of the warrant to a period after the warrant has been issued. I submit that this amendment was designed to regularise a practice which operates informally as an interim measure while the wider question of imprisonment in default of payment of fines is looked at.

It may be that no warrant for default should be issued, in fact, except by a court, which I think is a version of the argument put by the honourable member. This was, in fact, the Mitchell Committee's recommendation. However, the cost of this recommendation needs to be ascertained as it would obviously place an additional burden on the courts, as do a number of other matters that I foreshadowed yesterday in answer to a question from the Hon. Mr Griffin as to what we were doing about Community Service Orders in this area. I see this amendment as an interim measure giving the Clerks the power to defer the execution of a warrant—a similar power to that which justices now have to defer the issuing of a warrant.

Of course, Clerks of Court at present often defer the issue of warrants and request defendants to make payment in the meantime. I see this as regularising a practice which exists at the moment but which creates some difficulties. We will certainly be looking at the whole question of non-payment of fines and what should exist by way of proceedings to enforce the payment of those fines, or what should happen in the case of default of payment of a fine. I hope that the matter can be further addressed at some later time as part of a more comprehensive package on this topic.

The Hon. K.T. GRIFFIN: I thank the Attorney-General for his answers and comments. I do not propose to take the matter any further. I hope that it is an area of administration that will be kept under review in the light of the comments I have made. On that basis I raise no further objection.

Clause passed.

Clause 4 and title passed.

Bill read a third time and passed.

JURIES ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 September. Page 780.)

The Hon. R.I. LUCAS: I wish to refer to only one aspect of the Juries Bill as most other aspects have been adequately covered by the shadow Attorney-General, the Hon. Trevor Griffin. The only aspect to which I wish to refer relates to the matter raised by two other members, the Hon. Mr DeGaris and the Hon. Mr Milne, during this debate and relates to the age limit for jurors and, in particular, the proposal in the Bill to reduce the minimum age for jurors from 25 to 18 years. Members will be aware that both the Hon. Mr DeGaris and the Hon. Mr Milne, opposed the proposition that I rise to support; that is, the proposition in the Bill to reduce the required minimum age of jurors to 18 years. I will quote briefly from the Mitchell Report 'Criminal Law and Penal Methods Reform Committee of South Australia, Third Report', Chapter 6, page 108:

> However, it seems to us that the lower limit should be reduced to 18. At 18 a person is now a full majority. He can vote and if he offends against the criminal law he is tried as an adult. A large number of offenders that come before the Supreme and District Criminal Courts are aged between 18 and 25. We can see no reason why persons under 25 should be disqualified from being members of a jury. We think that the jury system would benefit from an influx of persons between those ages and we recommend an amendment accordingly.

The recommendation of the Mitchell Committee was that the minimum age limit be reduced from 25 years to 18 years. We accept as a community and as a Parliament that persons under age 25 are sufficiently mature to take on a wide range of responsibilities. Those who are opposing this, and the Hon. Mr Milne to a degree, argue that this proposal is different from those other propositions because the decisions that are taken are really going to affect the lives and livelihood of other people who have to be judged by the particular juries.

It is my argument that the community and the Parliament has accepted that persons under age 25 have been given responsibility in their actions that will affect many other people already. The argument concerning conscription, when persons of age 20 were being conscripted to fight battles overseas, was that they had the responsibility not only for their own lives but the lives of their comrades and, obviously, could take responsibility for the lives of enemies in battle. We accept that persons under age 25 are entitled to drive motor vehicles. I think we all accept that in that they have the responsibility not only for their own lives but also those of their passengers and other motor vehicle users.

We accept that persons under age 25 can enter into a marriage contract. In that respect they have the responsibility not only for themselves but for their immediate families

and, in particular, their children until they reach the age of majority. Most importantly, I think that we accept as a society and as a Parliament—and I have not heard the Hon. Mr Milne or the Hon. Mr DeGaris arguing against this—that persons under age 25 and over age 18 are now entitled to vote for members of Parliament in all our electoral systems and, as they are also entitled to sit in this Parliament, they are entitled to help decide on the whole range of matters that members of Parliament have to decide on: they may be called on to make decisions with respect to the introduction of capital punishment and they may be called on to vote on matters such as the destruction of embryos under the *in vitro* fertilisation programme. There are a whole range of decisions that members of Parliament must take that will affect the lives and livelihood of all other persons in our community. If we accept that persons aged 18 to 25 have the maturity and have sufficient responsibility to make those decisions, then why cannot we accept that those same people are mature and responsible enough to serve on juries?

None of those who have opposed this particular provision have offered any evidence to argue against the propositions in the Bill. The Hon. Mr DeGaris very succinctly indicated his position—he opposed it—but offered no reason. Perhaps he may do so during the Committee stage. The Hon. Mr Milne spoke for a little longer but once again did not really make it clear why he thinks we should oppose this particular provision. He said that just because people aged between 18 and 25 years have the responsibility of serving in a war does not necessarily mean that it should flow on to jury service.

My argument in response to that is that if it should not flow on, it is up to the Hon. Mr Milne to put forward a persuasive argument as to why it should not flow on. The Hon. Mr Milne hints, although he does not really come out and say it, 'Not just because of the implied immaturity of people of 18 years.' He does not come out and say that they are immature or not mature enough to make these decisions—he hints at it. He then goes on to say:

> Jury duty involves a great strain.

That is true. Once again, he offers no argument as to why the strain would be any greater on a man or woman of age 22 than it might be on a man or woman of age 55. The Hon. Mr Milne then goes on:

> We have to distinguish between decisions that 18-year-olds have to make when things are normal and putting them on a jury when decisions are made on matters that are not normal.

Frankly, I am not sure what the Hon. Mr Milne means by that. Suffice to say that it certainly is not persuasive enough to convince me that his argument that we should oppose this provision is solid. With those few words I support, in particular, that provision in the Bill, and support the position that the Hon. Mr Griffin has put down in relation to the other matters.

The Hon. I. GILFILLAN: I support the second reading of the Bill and the substance in its entirety to the limited ability of my non-legal interpretation. I wish to speak on one particular point because it is an area where there is clearly a division of opinion not only in this Parliament but also in the general public at large concerning the capacity of younger people to fulfil certain roles. The Leader of the Democrats (Hon. Mr Milne) has expressed his point of view and I will now express mine, which disagrees with his. For us that is no particular trauma and I feel that it adds to the sincerity and integrity of debate in this place. I wrote to the Youth Affairs Council of South Australia to seek its opinion, which I expected would show some support for 18-year-olds to 25-year-olds being accepted for jury service. It would be naive to expect a completely objective reaction from that organisation. It wrote a letter which I felt was significant as a comment on the matter. The reply states:

> Dear Sir,
>
> As an initial reaction, YACSA views the proposal to extend the age range for jury selection to include 18-25-year-olds as a very positive development, for at least the following reasons.
>
> The involvement of young people (18-25) in decision making processes within the judicial system would be a very significant step in improving the perception and understanding of the legal system by young people. At present, young people only experience the system as offenders and witnesses and have no opportunity to participate in a positive way. The benefits would be derived through the personal development of each individual and through their communication with peers about the experience.
>
> The key principle in the jury system is peer assessment, and involvement of young people as jurors would be consistent with it. Further, the rationale for the jury system applies as much to young people as it does with adults and other population groups such as women, Aboriginals and migrants.
>
> Notions regarding the immaturity of young people may well be raised. The assumption, however, that young people may be viewed as an homogenous group is not sound. Young people, like the rest of the community, are individuals with individual differences. If one was to generalise, I would suggest that young people would very often approach matters with a fresher and perhaps more open mind than many older people.

That letter is signed by David James, Executor Director. I feel that letter partly expresses my own attitude, and I therefore welcome the extension of those eligible for jury service to include the 18 year to 25 year age groups. I support the second reading.

The Hon. C.J. SUMNER (Attorney-General): I thank honourable members for their contributions and will hopefully comment briefly on some of the matters raised. In regard to the question of trial by judge alone, all I can emphasise about that is that it is not the thin edge of the wedge as far as the jury system is concerned; it is not designed for that. It is designed to provide an accused person with another option as recommended by the Mitchell Committee. There may be some circumstances in which that option can and should be exercised in the interests of the administration of justice. One could imagine some cases in which that election to trial by judge alone was desirable. Adverse pre-trial publicity is one situation in which doubts could exist as to the proper trial of a case, and we get that drawn to our attention in prosecution from time to time when there has been pre-trial publicity. That may be one case in which an accused person might elect a trial by judge alone.

In respect of the trial by judge alone the Hon. Mr Griffin said that there was no indication of what the rules of court were likely to contain in relation to the election to be made by an accused. The principal matter to be dealt with by the rules of the court will be the time at which the election must be made by the accused. It is envisaged that the election be made before the identity of the trial judge is known. The ability to elect mode of trial will not therefore give rise to judge shopping, as the Hon. Mr Griffin put it.

The second question raised by the honourable member under this topic concerned what rights of appeal there might be against a decision of the judge. If a jury acquits that acquittal is incapable of challenge in any way. The proposed section 7 (4) makes clear that the decision of the judge shall for all purposes have the same effect of a verdict of a jury, so that an acquittal will be incapable of challenge. It is not considered that any right should be vested in the Crown to appeal against an acquittal. In other words, an acquittal by a judge alone should have the same force and effect as an acquittal by a jury.

The other point that the honourable member raised was that judges will become more the focus of anger and antagonism where the issues are highly emotive and a judge alone makes a decision. South Australian judges try many

emotive civil cases, and pass sentence on those who plead guilty and who are found guilty by juries. In the case of people who plead guilty, it is the judge alone who really comes into contact with the prisoner and there is no jury involved. It is doubtful that judges, as triers of fact in criminal cases, in the relatively few cases in which I imagine an accused will exercise this option, will experience more anger and antagonism than is the case at present.

The next question concerns disqualification from jury service. The Hon. Mr Griffin said that anyone who had any term of imprisonment imposed whenever should be ineligible for jury service. The Bill provides that a person is disqualified from jury service if he has been sentenced to a term of imprisonment exceeding two years. A person who has served less than two years in prison will be eligible for jury service provided that during the 10 years immediately preceding the date of the jury service he or she has not been imprisoned. The rationale behind the proposed amendment is that there must be a time after which a person's prior criminal record no longer has implications for the activities and the responsibilities which a person can undertake. The Bill makes clear that persons sentenced to certain terms of imprisonment will be eligible for jury service after a stated period following the imprisonment. I do not believe that that is an unreasonable proposition.

In regard to the question of age for jury service, the Opposition is willing to support the reduction of the age to 18 years but wants the maximum age increased from 65 years to 70 years. The Mitchell Committee considered that the upper limit of 65 years should be retained and stated:

> It is true that many persons, after retirement from their occupations, would be capable of deciding the issues of fact which go before a jury. Judges in the Supreme Court and District Criminal Courts continue to sit until the age of 70. Nevertheless, there must be some point at which a person is deemed to be too old for jury service. We think there is no reason to interfere with the upper limit.

The honourable member raised the question, and I assume that he will place an amendment on file to give effect to the comments that he made about the upper age limit for jury service. It is not an issue about which I feel particularly strongly. The current maximum age is 65 years and there may be a case for increasing it to 70 years, but I am not able to indicate at this stage what the Government's attitude to that would be. Nevertheless, I will consider it.

The Hon. Mr Griffin raised the question of eligibility for jury service and suggested that the spouse be included in all categories in the third schedule. At present the list in the third schedule—that is, the schedule that determines those who are ineligible for jury service—of persons ineligible for jury service are the Governor, the Lieutenant-Governor and their spouses, members of the judiciary and magistracy and their spouses, justices of the peace who perform court duties and their spouses, and members of the Police Force and their spouses. But there are others, such as members of Executive Council, where spouses are not to be ineligible for jury service. The present third schedule indicates that there are only two categories—judges and magistrates and police officers where spouses are exempted. If one peruses the current third schedule, one sees that reference is made to wives and not spouses. In all other categories, including members of Executive Council, members of either House of Parliament, barristers, solicitors and the like, the exemption does not extend to spouses. In general, it is not considered desirable that a spouse be excluded from performing jury service simply because of the nature of his or her spouse's employment or position. Therefore, I cannot accept the problem that the honourable member sees in this clause.

The honourable member also wanted to see public servants who within, say, the previous two years from the date on which they would otherwise be eligible for jury service, excluded from service because within Government departments, particularly those referred to in the third schedule, officers may take an active part in relation to certain persons who come up for trial, sentence or review of sentence, or for parole. Therefore, it would be quite wrong for a public servant, the Hon. Mr Griffin argues, who has recently been transferred from such a department to be eligible for service on a jury.

If a public servant had been actively involved in a case in the way the honourable member suggests, then the proper course would be for that fact to be disclosed to the trial judge before the empanelling of the jury to try the particular matter. It could seem harsh to provide a disqualification for jury service for a two-year period on the basis that a person had worked in a particular Government department.

The other matter raised by the honourable member was his concern that officers of departments responsible for the supervision of offenders should be ineligible to serve on a jury. In the proposed third schedule the exemptions from jury service are of persons employed in a department of the Government that is concerned with the administration of justice and the punishment of offenders. I believe that this definition is wide enough to cover the Department of Community Welfare, which administers the South Australian Youth Training Centre.

I believe that this definition is wide enough to cover the Department of Community Welfare, which administers the South Australian Youth Training Centre.

As to the matter of the questionnaire, first, the Sheriff believes that the questionnaire should be contained in the regulations, not in the Act. The honourable member also asked what sort of material would be covered in the questionnaire. I am happy to make available to the honourable member a copy of a memorandum prepared by the Sheriff, together with the form that the Sheriff believes will form a basis for preparation of a questionnaire in this case, based as it is on the report of the departmental committee on jury service in April 1965 in relation to jury service in the United Kingdom.

It is intended that the questionnaire will avoid the high replacement rate, provide a service to potential jurors by way of early notification, give the option of time of service most convenient, and refer to the confidential disclosure of information. It will assist the Sheriff's Office in providing a better administrative service to the courts and the public. I would welcome any further comments the honourable member may have about the questionnaire following his perusal of the minute and the proposed questionnaire with which I will provide him.

The honourable member then raised the question of the Sheriff's excusing potential jurors from attendance. I refer the honourable member to the effect of the present third schedule. The Crown Solicitor advised the Sheriff in 1978 and reaffirmed the advice in 1982 as to the meaning of the provision in section 13 of the Juries Act that 'persons described in the third schedule shall be exempt from serving as jurors'. The Crown Solicitor advised:

> That the word exempt in this context means precluded from being required to serve as a juror . . . section 13 does not provide that persons may be exempt if they ask to be so, but rather provides that the persons described in the third schedule shall be precluded from serving as jurors . . . As a result, it is my opinion that persons described in the third schedule should not be included on the annual jury list. If it should come to the attention of the Sheriff that a person described in the third schedule is on the annual jury list, that person's name should be removed from the list. The effect of section 13 is to effectively preclude those persons from service as jurors.

It is therefore not the case as the honourable member suggests that persons listed in the third schedule 'are exempt

from jury service if they so wish'. They are not liable to serve at all.

The Government has taken the view that all members of the community except a limited number should be liable for jury service. There should be no category of persons who can serve if they wish. Jury service may be an inconvenience to most of those summoned to serve. There should be no occupational group which is advantaged over another and does not have to serve if it does not want to.

The Hon. Mr Griffin complains that the Sheriff has a discretion to exempt for 'reasonable cause'. The current section 16 provides that, onroof to the satisfaction of the Sheriff that any person summoned as a juror ought to be excused from attendance by reason of ill health, conscience or any matter of special urgency or importance, the Sheriff may, if he thinks fit, excuse the person from attendance. The Sheriff advises that the most common reason for which he excuses people from jury service are: a mother with young children with no-one to look after them; and a one man business—where one month of jury service may mean the business is unable to operate, for example, a subcontractor in the building industry who would lose work and customers and livelihood.

e Sheriff advises further that students often defer service to a time suitable, and those that are in a busy period at work or have started a new job defer to any time more suitable to them in the next 12 months. Only one person in the 6½ years that the present Sheriff has been in office has appealed against a decision of the Sheriff. The present system works well and there is no reason to suppose it will be any different under the proposal that excused may be for reasonable causes. The safeguard is of course the reconsideration of the decision by a judge. No guidelines for reconsideration are set out in the current section 16 and none is considered necessary in the proposed section.

Finally, the honourable member raised the question of interference with jurors and the secrecy of jury room deliberations. This is an issue about which concern has been expressed by the judiciary, but it is not a matter that the Government has yet finally considered. The honourable member has raised the matter, and presumably will address the question in amendments that he intends to move. I will provide the Council and the honourable member with further information on the Government's view on the topic at the Committee stage. I thank the honourable member and the Opposition for supporting the second reading.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

FAMILY RELATIONSHIPS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 September. Page 784.)

The Hon. R.J. RITSON: When I obtained leave to conclude my remarks previously I had made the point that the question of a married couple receiving medical assistance to overcome infertility, using their own genetic material, was something that did not raise any real objection that would cause that much of the Bill to be opposed in this Chamber. I also made the point that in other matters the Bill was not really encouraging, discouraging, permitting or forbidding any practice but was merely determining the legal status after the event.

I then went on to say that, nevertheless, parts of the Bill raised, by implication, matters of moral and ethical concern throughout the community. It is appropriate in the context of this Bill to touch on those other matters. I want to say at this stage that I have some concern about the effect of the new definition of 'husband' as it appears in the Bill.

In other legislation in this State the word 'husband' has included a putative husband, that is, a person who has cohabited for five years or has a cohabitive arrangement which has resulted in the birth of a child. When I first looked at the Bill I thought that, if a couple have a child, that would make the husband a putative husband in any case. However, it does not do that, if one looks at the definition of 'putative husband'. In effect, it refers to a *de facto* husband where a child has been born as a result of sexual relations. I presume that that means sexual relations between the two individuals claiming putative spousedom.

In the case of, say, artificial insemination by the use of semen from outside a *de facto* couple, it could hardly be said that a child had been born as a result of sexual relations between the two persons; rather, it would be as a result of medical procedures using semen from outside the *de facto* arrangement. Obviously, the notion has been introduced of a relationship far more tenuous and far less clearly defined than the definition of 'putative spouse' as it stands elsewhere in the law. That causes me concern. One can imagine very unstable situations being classed as genuine domestic relationships.

Without at this stage dealing with the question of what should or should not be done, I am a little anxious that in some circumstances we will see quite anomalous results. For example, I ask the Council to consider a woman who leaves her husband and enters into a genuine domestic relationship with another man for some weeks or months. Let us say that the other man is infertile and the woman undergoes an IAD procedure using semen from her lawful husband. She then has the baby and it is deemed to be the child of the *de facto* husband in accordance with the provisions of the Bill. The relationship may turn out to be unstable and the woman may return to her lawful husband. The woman now has a child born of her own ovum and her lawful husband's semen. She is living with her lawful husband having brought back into the family the child which is deemed to be, for inheritance purposes and other matters, not her lawful husband's child but the child of the other man with whom she no longer lives. At least the previous definition of 'putative spouse' required some form of demonstrable stability in terms of the five-year provision or, alternatively, it required real parenthood or a very strong likelihood of real parenthood on the part of the *de facto* father.

Under the provisions of the Bill where a woman bears a child from an entirely donated embryo the child is deemed to be the child of the man living in a genuine domestic relationship, whatever that may mean, even though it may be an unstable relationship and the woman may have returned to her lawful spouse bringing back into the marriage the child she has borne who has no genetic relationship to the supposed spouse. I am not sure how much that will matter. I suppose that one day a large inheritance could be involved, generating some argument and a sense of injustice. This is one matter that I would like to see not passed by the Council at this stage but dealt with by the Select Committee proposed by the Attorney-General.

The Hon. C.J. Sumner: I haven't.

The Hon. R.J. RITSON: The Attorney-General has reminded me, by way of interjection, that he has not proposed that. I keep forgetting that the Hon. Mr Griffin is no longer the Attorney-General. It seems like only yesterday. Some of the ethical questions raised by implication in this Bill include the question of pregnancy resulting from entirely donated genetic material, that is, where the woman who is

to bear the child does not provide the ovum and the husband of the woman does not provide the sperm. Where people seek assistance to reproduce using their own genetic material, I am sure that one could say they were exercising something of a right in reproducing themselves. Indeed, although some people would see the use of half extraneous genetic material as a form of adultery, the law does not prevent the somewhat more exciting and less highly motivated form of adultery.

I find it hard to argue that the Legislature should concern itself with the ethics and morality of the use of donated sperm or eggs as such. After all, if a single woman wishes to bear a child, she merely has to go out and copulate, and the law does not seek to prevent that. Therefore, I would resist any legislation which interferes with the rights of people to reproduce using some of their own genetic material and some genetic material from outside the bonds of marriage. That is not to say that there is not a substantial body of opinion in the community that believes that to be wrong. I think that people with strong religious convictions on such subjects should reflect upon the fact that churches flourish and prosper more obviously in democratic societies which do not legislate in moral and theological matters. The corollary of that is that everyone is free to preach and practice what they wish. However, a completely different question arises when a person or persons seek to embark on a pregnancy using none of their own genetic material.

They can hardly be said to be exercising a right to reproduce; rather, they are asking for the privilege of adopting an embryo. If this practice is to become common—and I hasten to add that there is not much evidence in Australia that this sort of thing is happening to any extent—and we end up with embryo banks, I honestly believe that the primary consideration is for the future of that child. An embryo is not a plaything with which to treat the anxieties of a prospective parent.

I would wish to see the tests of suitability that are currently applied to couples who wish to adopt a full term baby applied to the adoption of an embryo. It is not every infertile woman's right to have an embryo of completely extraneous origin. If there is to be such embryo donation, society has a duty to that child to place it in the womb of a woman who lives in a stable married relationship with her husband, both of whom have been adjudged by the adoption authorities as being suitable to bring up that child.

The first thing that we must do in discussing the question of surrogacy is to clarify terms. My view of the term 'surrogacy' is that it applies to the relinquishing of the child once it is born. It matters not whether the baby was conceived naturally or with artificial assistance: it matters not whether the baby was one of these adopted embryos or the product of the woman's own ovum. The question of surrogacy is a question of a contract to relinquish the child made before birth, usually for valuable consideration.

I found myself very sympathetic to the views expressed by the Hon. Anne Levy when she spoke on this matter yesterday. She said that she considered that the idea of renting uteruses was objectionable to her. So do I. There are many practical reasons why the contracts signed before birth are likely to be broken or frustrated. A very strong maternal instinct is produced by pregnancy and women possess very strong innate instincts. They can be suppressed or denied to a certain extent, but not until a child is born will the woman really understand her feelings towards that child. The whole question of surrogacy is peppered with disputes in regard to women who sign a contract to relinquish the child and then find that they are emotionally unable to do so.

There are problems of the totally rejected child. When a surrogacy contract is entered into, perhaps the child will be born in some way deformed and wanted by neither couple. If that situation is to be permitted, a whole legal system of working out the methods of litigation and dispute solving will have to be created to deal with the sorts of disputes that will arise in this area, which is beset with powerful emotions. I believe that surrogacy should be prevented.

On the face of it, this Bill appears to discourage surrogacy because of the provision that the child will be the child of the mother who bore it, regardless of the origins of the embryo, but I would like to see the matter go further with a prohibition entirely of surrogacy contracts. The question of how to enforce that is a matter of conjecture. Obviously, where artificial methods are used the prohibition could be aimed at the professionals who employ those methods. Other questions have been raised as to who is the guilty person: the person who enters into the contract or the person who aids and abets it? That is a matter with which our lawyer members can help us a bit.

Because the question of embryo destruction has been raised and has caused some perturbation in the community, I will address a few remarks to that matter. There is no doubt that an embryo is a form of human life. It cannot be denied: a human embryo contains human tissue and only human tissue, and there can be no doubt that it is alive. It is said that an alternative definition of human life is 'consciousness and useful human life' and that it is that useful human life that is especially sacred and protected, but I wonder whether, if one is to pursue that argument, it therefore follows that old people who are demented are not human life.

The embryo, indeed, can be said to be more nearly that type of human life than an old, demented or decerebrate person, because the person who is damaged or worn out does not have the potential to recover the fullness of human life, whereas the embryo has the potential to grow to the fullness of human life. I think, and I am sure that a number of people in the community share this belief with me, that embryonic human life must be regarded as at least as inviolate as the life of the elderly or the demented and should not lightly be discarded.

I appreciate the anomalous way in which people will concentrate on the fate of one or two very immature embryos and become extremely upset at the prospect of those embryos being discarded, completely forgetting the 4 000 much more mature embryos that are discarded each year in this State by the process of therapeutic abortion. Nevertheless, it is true that people are concerned at the loss of even one laboratory-stored embryo, and that is something with which again the hoped-for Select Committee will have to deal.

I must say that the present situation in South Australia, as I understand it, is that there is absolutely no evidence that the medical profession has done anything except very professionally, conscientiously, and selectively with full counselling, used couples' genetic material to overcome infertility. There is no question of their acceding to bizarre demands for donated embryos for lesbians, or any of the sorts of things that people have expressed anxiety about. Therefore, I think that there is no urgency to draft legislation to prevent those sorts of practices.

There is a matter that I think is urgent and that is the matter of sex discrimination and other forms of discrimination on the basis of marital status. I believe that the medical profession dealing in this area has exercised sincere, conscientious and competent discretion in deciding whom to select in the achievement of a pregnancy. It has always been traditional, emergencies aside, that not only are patients free to choose their doctors but doctors are free to choose their patients. If there is any likelihood that anti-discrimination legislation will force a doctor to accede to a request for embryo transfer against his better judgment, to force him to do this in order to avoid suffering a penalty for

discrimination on the grounds of sex or marital status, then I would be extremely alarmed about that.

I think that that may be a matter of some urgency, because it is possible that quite unsuitable people will demand these procedures. At present doctors assume that they have complete discretion in making professional judgments as to the suitability of particular people and they counsel them accordingly. However, if there is any possibility that anti-discrimination legislation may require the medical profession to carry out a procedure in these areas that is not in accordance with their better judgment then I think that that needs to be dealt with now. Therefore, I urge support for that part of the Bill which legitimises in terms of the status of the child the product of pregnancies of committed couples assisted in this way. I support any of the shadow Attorney-General's amendments which transfer a number of other matters to the consideration of a Select Committee. I would like an assurance that no anti-discrimination legislation will force a professional person to perform one of these procedures against his better judgment. I support the second reading.

The Hon. C.J. SUMNER (Attorney-General): I thank honourable members for their contributions. This is an important Bill. Although fairly narrow in its compass, it deals with some very important issues that have to be determined by the community. Honourable members have taken this opportunity during the debate on this Bill to expand on some of those other issues. Honourable members opposite have amendments that will have to be considered during the Committee stage of the Bill. There may be other matters that I will need to respond to then, so I seek leave to continue my remarks later.

Leave granted; debate adjourned.

COMMISSIONER FOR THE AGEING BILL

Adjourned debate on second reading.

(Continued from 12 September. Page 786.)

The Hon. R.I. LUCAS: Yesterday I argued that this Bill is a form of rampant tokenism by the Government, so I will not go over that ground again. What I will do is look in detail at the provisions of the Bill and, in particular, start with clauses 6 and 7, which respectively outline the objectives and functions of the new Commissioner. The objectives of the Commissioner are certainly laudable. I will quote just one:

> *(c)* to create a social ethos in which the ageing are accorded the dignity, appreciation and respect that properly belong to them;

There are four other objectives given that are equally laudable. How achieveable they will be by a Commissioner and his or her officers is a moot point. Clause 7 gives 12 functions of the Commissioner all along the lines of: 'to advise'; 'to monitor'; 'to ensure as far as practicable'; 'to research'; 'to keep under review'; 'to consult and co-operate'; 'to assist in the co-ordination'; 'to report'; 'to research'; 'to compile data'; and 'to disseminate information'. That brief explanation of the types of functions that clause 7 outlines for the Commissioner makes it clear that it is not a regulatory QUANGO. I suppose, in terms of functions, it is research and advisory oriented and in some instances, I guess, a servicing body, when one looks at the reporting and dissemination of information in some aspects.

Under clause 8 the Commissioner will be subjected to the general control and direction of the Minister. I think that it is important to note that, as some advocates have argued, the Commissioner will be able to take an advocacy role for the ageing in our community. I do not really believe that that will, or can be, the case. It was the same argument as that proffered for the Small Business Corporation—that it was to be an advocate for the small business community. I did not believe that, and said so. I do not believe that the Commissioner, equally, will be able to be the effective advocate that a truly independent organisation like the South Australian Council of the Ageing (SACOTA), which comprises volunteers and professional staff for the ageing, can be.

Under clause 9 the Commissioner will be able to appoint staff. I made this point yesterday—that QUANGOS like these, once set down in Statute, have that inbuilt momentum that will enable them to outlive all of us. When each and every one of us comes to leave this place there is no doubt that the Office of the Commissioner for the Ageing will be going on stronger than ever. As we see now with the Ombudsman's Office, we are likely to see pressure for a Deputy Commissioner for the Ageing because of the increased amount of work that the Commissioner's office will see for itself in this area.

It is quite clear from the functions and objectives of the Commissioner that the office will really not be able to act in a regulatory way at all. In fact, that is not intended, and I accept that. In effect, it means that the only results that it will be able to achieve will be through, hopefully, persuading the decision makers that the results of the work of the Commissioner for the Ageing ought to be instituted. So, there are no powers at all for the Commissioner. In effect, it is a toothless tiger. As I have argued, it is a token to the pressure groups that descend on political Parties—and on the Parliament in this case—and the Parties respond because they want to be seen to be doing something for the particular pressure groups.

The SACOTA submission given to the Minister supports the proposition, but highlights some of the possible problems. Page 2 of the attachment to its submission under the heading 'The Real Dangers' states:

> The position could be considered a 'sop to the electorate' if:
> - it had insufficient resources to initiate, encourage and evaluate programmes and services.
> - it had insufficient power to influence and effect policy.
>
> At the very least, the position must be placed within a department which ranks well in Cabinet and at a level which enables the appointee to relate effectively to and influence senior members of respective departments such as health, welfare, housing, transport, education and recreation and sport.

As I indicated, SACOTA has supported the proposition but I think in that section it highlights some of the possible problems, and they are the weaknesses and problems I see in the provision before us. The SACOTA submission raises an interesting question as to who will be the Minister responsible. There is certainly pressure growing within pressure groups related to the ageing for the Commissioner to be associated with the Premier's Office. Once again, that is typical of many of the pressure groups that confront political Parties. The Early Childhood Services Office is a good instance where there was a discussion or argument as to whether that should be attached to the Minister of Education or the Minister of Community Welfare, and in the end the Premier took it over. There are many other instances where pressure groups have argued that they do not want to be attached to respective Ministers and that they want to be attached to the Premier because they see status and kudos associated with being attached to the Premier's Department.

The Hon. R.J. Ritson: This means that he will have less time.

The Hon. R.I. LUCAS: That is exactly the situation. The Premier is an important and busy person. If more of these offices and bodies are attached to his Department, it will mean that he will not be able to oversee their operations. The Hon. Mr Hill instanced some months ago the problem

associated with the Premier's being involved with the arts, for example, and the problem he has in keeping a finger on the pulse of what is occurring in the arts portfolio.

That is exactly the problem that will occur with the Early Childhood Services Office and the Commissioner for the Ageing, if the pressure groups are successful in having that office attached to the Premier's Department. It seems a problem that no-one wants to be attached to the Department for Community Welfare. Those who support bodies like the Early Childhood Services Office and the Commissioner for the Ageing argue that they do not want to be attached to a welfare department. In their minds there appears to be some sort of stigma concerning the question of welfare.

The simple answer to the problem is not hiving everything off from community welfare and popping it into the Premier's Department or some other department, but renaming the Department for Community Welfare. That was one of the policy promises of the previous Liberal Government prior to 1982 that, in effect, the Department for Community Welfare would be no more and that it would be the Department for Community Services and the Ageing, I think. Personally, I am not attracted to the attachment 'and the Ageing' but something like Community Services or, as has been suggested in Victoria, Human Resources or Human Services may well be an alternative that will take away the perceived stigma of being called a welfare department.

It may well mean that all these bodies that are, in effect, welfare or community service related can be attached to that department and not want to be running off to be under the wing of the Premier and the Premier's Department. One problem related to the proposition of a statutory office or a new QUANGO—the Commissioner for the Ageing—is the delay in decision making. We already have a quite effective body becoming more effective by the years—the South Australian Council for the Ageing (SACOTA). That body seeks to be the umbrella group for all pressure groups involved with the ageing. It is the body that is generally consulted to seek the views of the ageing in our community. In the future that body will still be involved in collecting the views of the respective pressure groups but now, with the creation of a further independent QUANGO (the Commissioner for the Ageing), there will be the temptation and, I suggest, the likelihood that once a submission comes from SACOTA to the Minister it will be referred to the Commissioner for the Ageing for comment and report, rather than the Minister involved making the necessary decisions based on the submission from SACOTA.

I believe that all it does is institute in the decision making framework another layer that will only serve to delay decision making when necessary decisions must be taken to solve the many challenges and problems that confront the ageing in South Australia. In conclusion, I see significant problems with the proposition before us. There are significant challenges that must be confronted by the community, this Parliament and the Government. I believe that they can be tackled more effectively in many other ways than by creating a new QUANGO and a new Commissioner for the Ageing. I believe that the money can be better spent on the actual delivering of services in the community, for example, the payment of this money to people in the community to assist the aged to stay in their own homes with respect to domestic services, cleaning, bathing, and perhaps even cooking.

I believe that the money that will be spent on the Commissioner for the Ageing and his or her office, with staffing and facilities, would be better spent in the actual delivery of services. I have suggested one particular way in which it would be better spent than in creating this new glossy QUANGO that has no real authority. Notwithstanding that this Bill will be supported by the majority of the Opposition, I do not support it. I oppose the second reading of the Bill.

The Hon. K.L. MILNE: I support the Bill, which is a definite step towards enabling pensioners, retired persons and ageing people generally to make their presence felt at a proper level. The submission by the South Australian Council on the Ageing was well thought out and positive, and I can see the need for someone to take its side. People are inclined to forget that it is difficult for old people to muster political power, to demonstrate in large numbers and take the action that other younger and more active people are able to take. Older people, particularly pensioners, are often hampered by lack of mobility, lack of money, poor health and purely being tired out. It is difficult for them to be able to protest or bring matters to the attention of the public or Parliament in the way that others can. The powers and duties of the Commissioner seem to me to be appropriate and sensible if the Government is going to have a Commissioner. However, I will be moving an amendment to paragraph *(h)* of clause 7 on page 3 of the Bill to change the word 'subgroups' to 'individual groups'. In some areas this word may be misunderstood. Paragraph *(h)* provides:

> to keep under review the special needs of subgroups of the ageing (including those who suffer from physical or mental disabilities and those who are economically disadvantaged)...

I know what the Government and the draughtsman have in mind, but it might be more tactful to say 'individual groups' rather than 'subgroups', because the word 'subgroups' to some people has a connotation indicating smallness or relative insignificance and perhaps less importance. That is not what is meant; some smaller groups may be much more important. I will ask the Council to consider that amendment. I am sure that what many people might understand from the word 'subgroups' is not intended.

I have been speaking to some of the groups of the ageing and SACOTA, and one of the organisations that has a big part in the future of pensioners is the South Australian Consultative Council for Pensioner and Retired Persons Association. It is partly SACOTA and partly other organisations that presently do not belong to SACOTA. My impression is that one of the problems that concerns them most is finance and investment. These people are having great difficulty in finding responsible advice either free or at a minimum cost. Some groups have members who are retired bank officers or business people who give financial advice, but they are ageing themselves and, having retired, soon get out of date. Some even work on a roster basis, but this is a big sacrifice for retired people. Also, they may be liable for damages if they give wrong or careless advice. That is a great risk and is not fair.

This is a recurring problem, as one sees in the press from time to time. It is a great worry to many retired people, especially when they are dealing with their life savings. Therefore, I will be suggesting the insertion of an additional function or duty of the Commissioner; namely, to see that financial and investment advice is available to the ageing. Obviously, this would require part-time or full-time experienced and qualified staff, but I hope that if the advisers did their job properly the increased income and income tax levied on the increased returns would help to offset the cost of the service. In any case, I believe that such a service would be welcomed because the adviser would be working for aged people and not for a bank, a firm of stockbrokers or accountants and the like, and people could have confidence in such persons specifically engaged to look after them. In some specific cases there could be a nominal fee. In many cases retired people are not necessarily pensioners and that could be dealt with on a different basis altogether. Also, this need not interfere with the volunteer advisers who could in turn receive advice from advisers who were still in the business world and who were engaged by the Commissioner. I am certain that pensioners and others

would be grateful to know that such up to date advice was available.

I can see the point of much of what the Hon. Mr Lucas has said. Here is another QUANGO, here is bureaucracy of a kind; but it is of a different kind and I believe it is well worth a trial because these people are not able to take the sort of action that other groups who are more active and who are younger can take. On balance, and as I said earlier, I will support the Bill and I hope that the Council will support it as well.

The Hon. DIANA LAIDLAW: This Bill to establish a Commissioner for the Ageing is the first Bill of its kind in Australia. This fact alone will raise expectations among the aged in our community, assuming of course that by the time individuals have reached the age of 60 years or 65 years they are not utterly cynical about every promise any political Party would ever make. The expectations placed on the person appointed as Commissioner and the work of the office itself will be all the more intense because of the wide-ranging objectives and functions that have been assigned to the Commissioner in clause 6 of the Bill and the fact that South Australia has such a high proportion of elderly citizens in its community. Dr Tony Radford, President, South Australian Council of the Ageing, when speaking at a seminar organised by SACOTA in June to discuss this proposal of the Government to establish a Commissioner for the Ageing, addressed the question of the difficulty of defining who are the aged, the elderly or the ageing. He identified the following problem:

> It has been said that the old are those who are 15 years older than ourselves.

Another definition he said he gleaned from the *Readers Digest* says that 'senescence begins and middlescence ends the day your relatives outnumber your friends'. Both those definitions may well define to some extent the ageing. Bureaucrats and Governments themselves are inclined to be more specific and, for convenience, have chosen at random the age of 65 years. However, I note the National Womens Advisory Council (disbanded by the Hawke Government late last year) defined elderly women as being over 60 years in view of the fact that women at 60 or over may be eligible for the pension. This discrepancy in age limits between men and women is not something that I want to address further at this stage, especially as I understand that it is the subject of the first application for resolution under the Federal Sex Discrimination Act.

Notwithstanding the resolution of that matter, the fact is that the proportion of elderly citizens in our society is growing, and in South Australia we are leading the rest of the country in this respect. In his second reading explanation on this Bill, the Minister referred to the fact that 4 000 people each year are reaching the age of 65 years. Currently about 11 per cent of South Australia's population is over the age of 65—an increase of 1 per cent over the past decade—while the predictions for this age group to the year 2000 vary between 13 per cent and 14.4 per cent, as against an Australian average of 11.9 per cent.

In 1971 the Australian Bureau of Census and Statistics claimed that the aged throughout Australia were fairly evenly distributed. That is not the case today as South Australia leads the way, and it appears that we will continue to enjoy this distinction at least until the year 2000. In this context it is also important to remember that the proportion of elderly in South Australia are not evenly distributed throughout this State. There are areas such as Glenelg and Victor Harbor where the proportion of people 60 years and over is now in excess of 30 per cent, while in development areas such as Ingle Farm and Christie Downs it is only 1 to 2 per cent. That figure of 1 to 2 per cent was a national figure for those aged over 60 just some 100 years ago.

While the aged above 65 years have been increasing and will continue to steadily increase in relation to the general population, Dr Don Rowland, a demographer with the Australian National University's Ageing and Family Project, has cautioned that the most important of all statistics in respect of the aged is the disproportionate increase in those over 75 years. He has predicted that this group will increase in absolute terms by 70 per cent in the year 2000 and that they will face the greatest difficulties.

The growing proportion of our population that is aged has a number of very important connotations for our policy makers and planners in our community, not the least of which will be the increasing demand that will be placed on Government sponsored and assisted welfare services. Although I understand that by world standards Australia has a low aged dependency rate, there is an already growing concern throughout the country about our ability in the future to provide the services necessary to meet the projected demand by our aged in the future. Our future capacity to do so is a very real concern, especially when we reflect on the fact that we in South Australia are experiencing an acute difficulty in finding sufficient funds to meet the immediate needs of those seeking welfare services.

I am sure that members will recall a letter they received earlier this year from the President of SACOSS, Mrs Judith Roberts, drawing our attention to the alarming number of voluntary agencies that are finding that their grants and subsidies are not sufficient to cover the cost of maintaining existing services, let alone provide any expansion of those services to meet increasing public demand.

Above and beyond the immediate needs of voluntary agencies in South Australia for increased funding from Government sources is the capacity of the community to provide the services that the aged will need in the future. This problem will be more keenly felt in South Australia than perhaps anywhere else in Australia. Data provided by the Department of Social Security identifies South Australia as having the highest proportion of welfare recipients of any Australian State or Territory. This characteristic will be exacerbated as the proportion of our aged population increases. This question of Governments providing sufficient funds to help voluntary agencies and for those agencies in turn to help the aged in our community will be a task that the new Commissioner for the Ageing can address as a matter of priority.

Another question which I hope the Commissioner will address is that of the need to put to rest the many misconceptions that exist in the community in respect to the aged. They are not a homogeneous group; they mirror the divisions within society. An umbrella concept of the aged is becoming an increasingly relevant concept. One of the most popular misconceptions is that the aged are uniformly poor and uniformly in need of special care and welfare. While that was largely true in the past, increasingly, as the Federal Government has become aware, both in respect of the changes made in relation to superannuation handouts and also with the assets test, there are aged people with very healthy superannuation benefits and other investments.

Another misconception is that age is necessarily a short and bitter period of life. However, a 60-year-old woman today can look forward on average to another 20 years of life—a stage at least as long as young adulthood. Further, as more people retire or, unfortunately, are retrenched early, a traditional definition of the aged as people who have finished their useful working lives is also becoming outmoded. Because of the range of misconceptions that exist at present in respect of the image of the aged, I believe the Commissioner for the Ageing could be instrumental in ini-

tiating a public relations campaign to dispel the many negative attitudes about the aged that exist in the community at the moment. This campaign could seek to sell the positive contributions that the elderly citizens in our community play in enriching our whole society.

One such matter that should be broadcast to add to the positive image of the elderly is the substantial contribution which aged people make to the welfare of the young. The ANU project on the Ageing and the Family, to which I referred earlier, found in a survey conducted in 1982 that the aged are more likely to loan money to their children rather than the reverse, and that they offer substantial help in baby sitting and other chores. Considering the fact that we live in an age that places such emphasis on the young, some effort to redress this imbalance would not go astray. I believe that that effort could be initiated by the Commissioner for the Ageing.

A further task for the Commissioner in fulfilling the Commissioner's role and objective will be to look specifically at the needs of older women in our society. I want to address this point specifically because women form a statistically important proportion of the State's older population.

I seek leave to incorporate in *Hansard* without my reading it a statistical table which shows the increasing proportion of women compared to men over the ages of 50, 65 and above.

The PRESIDENT: Is it statistical?

The Hon. DIANA LAIDLAW: Yes, Mr President.

Leave granted.

South Australian Population Over 50

Age (in years)	Males	Females	Family Head Only Households Males	Females
50-54	35 665	34 264	2 661	2 594
55-59	34 250	34 448	3 042	4 400
60-64	27 012	29 318	2 687	5 891
65 and over .	56 272	78 617	8 263	28 159
Total ...	153 199	176 647	16 553	41 044

(Source: ABS 1981 Census data)

The Hon. DIANA LAIDLAW: The table clearly shows that in the 50-54 years age group, the number of women and men is about the same—2 500 in 'family head only households'. However, in the 65 years and over age group there is a dramatic difference in the 'family head only households' with 8 263 households headed by men and 28 159 headed by women. Those figures come from the Australian Bureau of Statistics 1981 census data. As people in our community grow older and as there are increasingly more women compared to the number of men, those facts must be addressed by the Commissioner for the Ageing.

I refer to material provided by the former National Women's Advisory Council which referred to the special needs of women over 60, as follows:

> Because women generally live longer than men, there are more women left on their own who have to learn to cope with life skills and situations which often they have not had to face while their partner was alive. As is now being widely acknowledged, the trend towards the nuclear family, and away from the extended family system which provided care and support for ageing family members, isolates older women in particular. Their traditional dependence on men means that they are usually ill-equipped to become financially independent or to make decisions about their daily lives and their future. Older women thus tend to have a greater need of Government assistance than do elderly men. As the population continues to age, there will be a greater demand for Government and other support services, which makes it vital to plan how to meet both existing and future identified needs.

This need for vital planning must be addressed by the Commissioner. I am pleased to note that among the functions of the Commissioner there will be a capacity to liaise with Government departments and Ministers to ensure that within their programmes the needs of elderly women can be addressed.

I also mention that there are many other factors which will have to be addressed by the Commissioner. I refer to the Advisory Council for Inter-Government Relations, report No. 6 on 'The Provision of Services for the Aged: A Report on Relations Among Governments in Australia', published in 1983. The foreword to the report notes:

> ACIR has found that there are too many separate programmes for the aged and that the objectives of programmes are not always clearly defined. An improved balance is necessary between domiciliary or community based services and institutional services. Improved co-ordination in policy development and programme administration is needed between the Commonwealth and the States.

The provision of services between the States is a further matter that the Commissioner will have to address. I have highlighted the fact that the functions and objectives of the Commissioner, as outlined in the Bill, are very broad and all-encompassing. That is ideal. I have also tried to highlight specific areas that must be addressed by the Commissioner, and I have done that because I believe that the Government has made inadequate provision for the Commissioner to try to undertake all the tasks assigned to the office.

As I said at the beginning of my remarks, I believe that the Government, in introducing this Bill and suggesting that all these tasks should be undertaken by the Commissioner, has raised expectations in the community. I question whether the Commissioner will have the capacity to realise these expectations, let alone to realise the objectives that have been outlined in the Bill, some of which I have addressed. In relation to the resources that the Government has seen fit to assign to the office for the ageing, I refer briefly to a comment made by the Minister when summing up the debate in another place. He indicated that the Government would provide to the Commissioner the resources that it saw fit and had available so that the office could realise all the tasks that it had been assigned. If the Government feels that it can provide only $75 000—which is all that has been assigned in this Budget—to realise all the objectives and to satisfy the expectations of the community in this respect, I feel that it has grossly underestimated the expectations of the community in this respect. In fact, I suggest that it is an insult to the elderly.

There is no reference at all to the office of the ageing in the programme performance budgeting. As I indicated, under the Estimates of Payments from Consolidated Account, it is noted that only $55 000 will be directed towards salary, with $20 000 directed towards contingencies. Turning the page, one notes that $494 000 has been allocated for the office of Aboriginal affairs. If one compares the sum allocated for the office of Aboriginal Affairs with the $75 000 allocation for the office for the ageing, one can see where the Government's priorities lie. One could certainly question the Government's commitment to the ageing through the introduction of this Bill. Despite my cynicism towards the Government's move in introducing this Bill and establishing the office of the Commissioner for the Ageing, I appreciate that there is widespread support for this measure in the community. On that basis alone I am inclined to support the second reading and the Bill.

The Hon. M.S. FELEPPA: I rise to express my support. In doing so, I wish to place on record my personal appreciation for the introduction of this Bill, which will set out in legislation, passed in this Parliament, provision for the appointment of the Commissioner for the Ageing. I also wish to thank the Minister, the Hon. Mr Crafter, for accepting alterations to clauses 7 (1) *(a)* and 7 (1) *(h)* of the original draft that was tabled in the House of Assembly on 2 May 1984, as well as for including a new subclause 6d, which alterations, I am sure, are welcomed by the community at large and in particular by the minority groups. Having said that, I fully support the Bill.

The Hon. L.H. DAVIS secured the adjournment of the debate.

ADJOURNMENT

At 5.26 p.m. the Council adjourned until Tuesday 18 September at 2.15 p.m.