LEGISLATIVE COUNCIL

Thursday 18 October 1984

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

PETITION: UNSWORN STATEMENTS

A petition signed by 278 residents of South Australia praying that the Council amend the Evidence Act to abolish unsworn statements was presented by the Hon. K.T. Griffin.

Petition received.

QUESTIONS

SAPFOR

The Hon. M.B. CAMERON: I seek leave to make a short statement before asking the Minister of Forests a question concerning the Government take-over of the Southern Australia Perpetual Forests Company.

Leave granted.

The Hon. M.B. CAMERON: I am sure that honourable members are aware of the interest being shown in the purchase of the Southern Australia Perpetual Forests Company (SAPFOR) in the South-East by various interests. I have received information that the South Australian Government has plans to finance the acquisition of this company even though I am sure that the majority of South Australians would agree that it would be more appropriately owned and managed by private enterprise. A takeover of SAPFOR by the Government would lead, in my opinion, to an undesirable Government monopoly of supply, eliminating healthy and important competition. To concentrate the important forestry industry in Government hands would inevitably be as disastrous as the other Government monopolies we have witnessed. It would cause particular problems in the haulage industry where private operators could fall foul to the whims of the bureaucrats. We could have a situation where a South-East haulage contractor, if he was on the wrong side of the bureaucrats, could not have any position in that industry.

Is the Minister aware that the SAPFOR company is on the market and that from my information the Director of Forests has recently approached the company or its selling agents with a view to putting in a bid for the business, which is currently valued at about $26 million? If that is the case, who authorised this apparent action by the Director? If it is successful, from which account would the required funds be drawn for such a takeover by the Woods and Forests Department through its subsidiary the South Australian Timber Corporation? If the Minister is unaware of this situation, will he investigate the alleged matter and report to the Council on its next day of sitting?

The Hon. FRANK BLEVINS: The Hon. Mr DeGaris tells me that the short answer is always the best. As to the question of whether I am aware that SAPFOR is on the market, the answer to that question is 'Yes'. As much as I could pick out a second question, I assume it is whether the Government is going through the South Australian Timber Corporation to bid for SAPFOR, and the answer is 'No'.

FOOD BILL

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

Leave granted.

The Hon. J.C. BURDETT: The Council will be aware that Parliament passed the Controlled Substances Act in the last session. It repeals both the Narcotic and Psychotropic Drugs Act and also the Food and Drugs Act for the good purpose of putting drugs legislation in one place and food legislation in another place—and it does that. Until a food Bill is passed the Controlled Substances Act cannot be proclaimed. I have received a number of inquiries over a period from people with interests in regard to the Controlled Substances Act about when it is likely to be proclaimed. They are finding it difficult to operate in a state of ignorance on that subject, and more recently I have had a number of people in the food area who have approached me because of their concern about what the state of that Bill is. Can the Minister give this Council such information as he can about when the food Bill is likely to be introduced?

The Hon. J.R. CORNWALL: It is not entirely accurate that the Controlled Substances Act cannot be proclaimed before the passage of the food legislation. In fact, some parts of the Controlled Substances Act can be proclaimed, I am told, and will be proclaimed, and some of the planning for the establishment, for example, of the Drug Assessment and Aid Panels is well advanced and planning for the establishment of the Controlled Substances Advisory Council is also well advanced, to give just two examples.

However, it is perfectly true that the Food and Drugs Act in its entirety cannot be repealed and replaced by the Controlled Substances Act and the proposed new food Act until the food Bill becomes an Act. A great deal of consultation has taken place with regard to the food Bill. I am sure that the honourable member will be aware that there was a model food Bill produced quite some time ago, indeed, some years ago, but the only State that has actually passed that into legislation is Queensland. It is a very sensitive area. It is highly desirable that we achieve as much uniformity between the States as we possibly can—and we are working on that at the moment. Otherwise, South Australia as one of the less populous States could impose significant disadvantages on manufacturers in this State, who wish to sell their products interstate, and of course on manufacturers interstate who wish to sell their products in South Australia.

That has been a difficult and vexed problem which has been addressed constructively now for a long time. I am pleased to say that the good work that has been done is now close to fruition. Of course, there is also the difficult problem and in other circumstances, if it were not handled carefully, the potentially controversial problem of the future of the Metropolitan County Board and the future of the Central Board of Health, *vis-a-vis* local boards of health—the replacing of a structure which basically was put into place in I think 1908 when food distribution was very much at the neighbourhood and local level.

Of course, things are vastly different in 1984 when much of the processed food production and distribution is on a national and transnational basis. All of those matters have had to be addressed. I am pleased to inform the Council that at the moment we have the very active co-operation of the current President of the Local Government Association, Mr Des Ross, who apart from being a very pleasant person is also very competent and I believe a born negotiator. We have come a long way down that path in recent months and negotiations are actively proceeding at the moment.

I had, perhaps somewhat optimistically, expressed the opinion some months ago that I hoped to have the legislation before the Council prior to the end of the Budget session. It was my intention that it should then lay on the table for consideration by all interested parties during the Christmas recess. That is still my intention. I am unable to give a firm undertaking that that is achievable, but the Bill will certainly

be in here if it is humanly possible before the Christmas recess. If not, I would certainly give a very firm undertaking that it will be introduced early in the autumn session. A number of areas still remain to be resolved, but meetings are actively occurring at the moment. Negotiations are going on at the moment and, as a result, if the Bill does not appear before the Christmas recess it will certainly be introduced very early in the autumn session.

COLIN CREED

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

Leave granted.

The Hon. K.T. GRIFFIN: On 2 October Mr Kelly, SM, in the Adelaide Magistrates Court was reported to have dismissed a charge of murder against former South Australian detective Colin James Creed. I suspect that the report should have read that the magistrate found that there was no case to answer on the basis of the magistrate's ruling that certain notes of a deceased police officer were not admissible. The newspaper report of the next day stated that in view of Mr Kelly's ruling the Assistant Crown Prosecutor said he had instructions to tender no further evidence. I will not embark upon any consideration of the evidence, because there may well be other charges pending and because, according to the report, Mr Creed has been committed for sentence in respect of two robbery charges.

Obviously, the fact that certain evidence was declared by the magistrate to be inadmissible is a matter of concern. I wonder whether the Attorney-General has received any further advice from the Crown Prosecutor in respect of that, particularly as to whether or not an *ex officio* indictment could be laid in the Supreme Court, if the Crown Prosecutor disagreed with the final decision made by Mr Kelly in relation to the admissibility of the evidence.

There may also, as a result of that case, have been a decision to amend some police procedures. It may be that consideration is being given to some amendments of the law, not with a view to prejudicing an accused but with a view to ensuring that all evidence that is relevant is capable of being admitted. As I say, I do not want to canvass the merits of Mr Creed's position, but merely to ascertain some information about any course of action that the Attorney-General and the Government may take in the light of the magistrate's decision. My questions are:

1. Has the Attorney-General received any advice as to whether or not he can lay an *ex officio* indictment in the Supreme Court against Mr Creed for murder?

2. Are any changes in police procedure proposed in consequence of the magistrate's decision?

3. Are any changes proposed in the law in consequence of that decision?

The Hon. C.J. SUMNER: The Crown Prosecutor was of the view that, if that, evidence that was ruled inadmissible by the magistrate was not available to the Crown in this case, the Crown had no alternative but to not tender further evidence in the matter. That being the case, there would not be a situation involving the filing of an *ex officio* indictment by the Attorney-General. I have not received any formal advice on that matter, but I have discussed the matter with the Crown Prosecutor. He was of the view that if that evidence was inadmissible the matter probably could not proceed. Certainly, he has not put any case to me for the filing of an *ex officio* indictment. From my discussions with him, I believe that he would consider that that is not a course that is available to the Crown on the evidence in this case.

The police have procedures that where possible ensure that there is more than one witness to evidence that is to be tendered in court, whether that be statements obtained or other evidence. Forensic evidence is more difficult because of the resources required. Certainly, I will take up the matter with the Commissioner of Police to see whether the procedures in this case relating to the forensic evidence in particular can be improved on.

Following the report of Dr Currie, whom the honourable member when Attorney-General arranged to come to South Australia from the United Kindom to look at our forensic science methods in South Australia, and following the Splatt Royal Commission report, a report will be issued shortly by an interdepartmental committee, which was chaired by the Deputy Crown Solicitor, Mr Cramond, on what should be the future structure of the forensic services in this State. Honourable members will recall that the Government accepted a principal recommendation of Dr Currie in December 1982 that, while evidence should be collected by the police at the scene of the crime, the police technician should not be responsible for filtering the material that is to go for scientific inquiry.

That question is addressed in the Cramond Report, which should be available publicly shortly. It also addresses the other recommendations of the Currie Report along with suggestions made by Commissioner Shannon in the Splatt Royal Commission. No doubt that report can also be considered with any changes that might be required in police procedure arising from problems in regard to admissibility of the evidence of the deceased police officer in this case.

I will ascertain from the Crown Prosecutor whether he considers any changes in the law are desirable as a result of this matter, but my own view is that there was no defect in the law. The law provides for the admission of the evidence of deceased persons in some circumstances, but ultimately it is a matter of discretion for the magistrate or the judge concerned. In exercising that discretion the magistrate must take into account the probity of the nature of the evidence, and in this case I think it was a matter not of the law but of the exercise of the magistrate's discretion, bearing in mind the fundamental principle that the evidence presented by the Crown must be such as to ultimately establish the guilt of an accused person beyond reasonable doubt. Until that time the person is presumed innocent.

For that reason, there are checks, balances and safeguards to ensure that the principle is upheld in the discretion of magistrates and judges in admitting evidence. In this case, while I believe that the law might have allowed admission of evidence of this kind in certain circumstances, the magistrate felt that it would be unsafe to admit the evidence in this case. Therefore, the Crown Prosecutor was of the view that, without that evidence, the matter ought not to proceed. That is the advice I have received. In that light, I do not believe that there is a case for filing an *ex officio* indictment in these circumstances.

APPRENTICESHIP REVIEW COMMITTEE

The Hon. ANNE LEVY: Has the Attorney-General, representing the Minister of Labour, a reply to a question I asked on 21 August about the Apprenticeship Review Committee?

The Hon. C.J. SUMNER: The Deputy Premier and Minister of Labour released the report of the committee reviewing all aspects of Government apprenticeship training in August. The findings of the survey referred to were used to assist with the formulation of recommendations contained in the report. A summary of the main findings of the survey is included in the report; a copy of the survey questionnaire

is also included in the report. The report is available from the Department of Labour.

POLICE SERVICE

The Hon. ANNE LEVY: Has the Attorney-General, representing the Minister of Emergency Services, a reply to a question I asked on 22 August about the police service?

The Hon. C.J. SUMNER: The Deputy Premier and Minister of Emergency Services has advised me that the three-year time limit on service in the vice and drug squads still applies. The two members who had 28 months and 32 months service respectively as reported in answer to the earlier question nine months ago have been allocated duties elsewhere and are no longer members of these squads. Six other members who will shortly complete three years service will be transferred at the completion of that period.

VICTIMS OF CRIME

The Hon. R.J. RITSON: I seek leave to make a brief explanation before asking the Leader of the Government in this place a question about restitution for victims of crime.

Leave granted.

The Hon. R.J. RITSON: On Thursday 28 September one of my constituents, an elderly retired person who lives in a country town, was awakened at 11.45 in the evening by the sound of a crash. Suspecting that there had been an accident on a nearby highway, he and his wife drove their utility to the highway and, sure enough, they found an overturned car off the road and in the scrub.

They also found some young people who had minor cuts and appeared intoxicated. They parked their car on the highway and went to the assistance of the young people, who made a claim that one of their fellows was missing, presumed injured, in the scrub, and they asked my constituents to help in the search for this other victim. However, the victim turned out, in the event, to be fictitious, as the elderly couple discovered when they heard the sound of their vehicle engine start, their vehicle being illegally taken away by the victims of the accident. They walked home and obtained transport from a friend to go searching for their car, which they found several miles up the highway totally wrecked.

These people did not have comprehensive insurance and are not in the financial position to have their vehicle repaired. This offence is one that ranks with kicking a beggar, robbing a blind man or stealing from the church plate. My question to the Attorney-General is based on his obvious desire to see some form of restitution for victims of crime. I direct his attention to the community service order scheme and ask whether he considers it feasible for the Government to examine the possibility of orientating community service orders so that some sort of restitution in kind is made by people with suitable skills serving those orders, that restitution being specifically directed at the more deserving victims who have suffered at the hands of criminals.

The Hon. C.J. SUMNER: It is a good point that the honourable member raises and one to which considerable attention is being given. As honourable members appreciate, there is a Criminal Injuries Compensation Act in South Australia which enables a victim of a crime of physical violence to make a claim for compensation up to a maximum of $10 000. That money is a charge on the public purse in the first instance, but may be claimed subsequently from the perpetrator of the offence. The problem, of course, is that the recovery rate is very low because many people involved in the commission of crimes of violence against other people find themselves in prison, or are of little means. Therefore, the criminal injuries compensation scheme for personal injury is primarily a charge upon the taxpayer.

Although it can appear unfair to people injured by that means that they can receive a maximum amount of only $10 000 while someone injured in a motor vehicle accident as a result of the negligence of someone else may receive a much higher award for damages, the reason for that is simply that no universal insurance scheme operates in Australia and the criminal injuries compensation scheme is funded as a direct charge on the taxpayer with, unfortunately, only a small amount able to be claimed from offenders.

There is no similar scheme relating to property damage. The point that the honourable member raises is an important one. The problem that we are faced with is how one would fund a claim for compensation in the case of loss or damage to property in the event that there is no insurance covering it. At present the Government is looking at the Criminal Injuries Compensation Act and the original report on victims of crime that was produced in, I think, 1981.

The Government is also involved in support for a United Nations declaration on the rights of victims of crime which is being prepared and will be considered at a conference in the United Nations Congress on the prevention of crime in Milan next year. That declaration, if eventually adopted by the United Nations, will form a set of standards that Governments can aim towards in their treatment of victims of crime. At this stage I am not in a position to outline the full details of that declaration, but we have established a small working party, which includes Mr Whitrod from the Victims of Crime Service and an officer from the Attorney-General's Department, to look at the declaration and promote it through the Federal Government and eventually through the United Nations.

It may be that that declaration will have something to say about the topic that the honourable member raises. But, in the area of property damage there is the difficulty of how to fund any payment of compensation. The honourable member raises the very important question of whether Community Service Orders can be used to ensure that offenders make some restitution to victims in the circumstances he has outlined. I believe that that is well worth further consideration. Trying to ensure that offenders take more personal responsibility for the results of their crime, as far as the victim is concerned, should be one of the underlying policy objectives in procedures and sentencing policies that are adopted for offenders. I believe that the Community Service Order system is one way that may be addressed.

The question of how we can ensure that victims' rights are adequately protected, not just in the physical injury area but also in the loss or damage to property area, is important. It is important that, in considering that, we try to develop mechanisms whereby offenders can be called more to account to the victims themselves for the actions that they are responsible for. That is just in broad terms; obviously, in practical terms, it requires a lot more working out. But, I believe that it is an area to which we should give more attention.

TOW TRUCKS

The Hon. G.L. BRUCE: I seek leave to make a short explanation before asking the Minister of Agriculture, representing the Minister of Transport, a question concerning tow truck company phone numbers.

Leave granted.

The Hon. G.L. BRUCE: There are now new tow truck regulations operating and advertisements are appearing in

the papers with phone numbers such as 51 5555 to ring in case of an accident. I find it most confusing to remember a phone number, and I am sure every other driver at the time of an accident also finds this virtually impossible. As tow trucks are now not flocking to the scenes of accidents and the onus is on the person involved in the accident or a witness to ring for a tow truck, it would be very convenient for phone numbers to be readily available. Will the Minister consider a suitable sticker that could be placed on the glove box of a motor vehicle showing the phone number so that that number will be readily available to owners of vehicles should they be involved in an accident?

The Hon. FRANK BLEVINS: That sounds like a very good suggestion. I will draw it to the attention of my colleague, the Minister of Transport, in another place and bring back a reply.

CAFHS

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of Health a question about the Child, Adolescent and Family Health Service.

Leave granted.

The Hon. L.H. DAVIS: The establishment of the Child, Adolescent and Family Health Service (CAFHS) brought together the Mothers and Babies Health Association, the School Health Services and Child Psychiatric Services, with the object of providing a fully integrated and comprehensive child health service. One particularly important service offered by CAFHS is through its clinics which provide essential health care in a non-threatening way for mothers and babies. The location of these clinics is based on the needs of the community. In other words, the locations of clinics may vary from time to time.

In the metropolitan area the clinics are staffed by one person, who is a fully qualified triple certificated nurse. These nurses provide important advice and assistance to mothers with children under four years of age, although invariably the children are under two years of age. Some clinics will open for as little as half a day a week, others for up to three days a week.

I have received a most serious complaint about the operation of CAFHS clinics. I am told that every week in the metropolitan area several of these clinics will be closed because of staff shortages. If nurses are on leave or sick there is simply not enough relieving staff to cope. Mothers with babies who, as I said, are more often than not under two years of age and many, of course, are under 12 months, will arrive at a clinic to find it closed. The nearest clinic may be several kilometres away. Of course, many mothers will not have motor vehicles or convenient public transport to travel to another clinic.

Not surprisingly, this staff shortage, brought about by lack of adequate funding, has made the staffing of CAFHS clinics in the metropolitan area an administrative nightmare. There have been complaints about this crisis in the delivery of health care to mothers and babies. Undoubtedly, this has caused much distress, particularly during the recent winter months. I am particularly concerned to hear that this situation has apparently deteriorated over the past 12 months—notwithstanding the Minister's oft repeated claim that single-handedly in less than two years he has taken the South Australian health system from being the worst in Australia to the best.

The PRESIDENT: That is hardly part of an explanation.

The Hon. L.H. DAVIS: You are quite right, Mr President. I am aware that there is currently an inquiry into the role and function of CAFHS. However, the critical situation that exists in CAFHS today is sharply at odds with the Government's commitment to adolescent health and the fact that 1985 will be International Youth Year. My questions are as follows:

1. Is the Minister aware of this crisis in CAFHS?
2. Will the Minister confirm or deny that CAFHS has complained about the shortage of funds that has resulted in these staff shortages?
3. Will the Minister undertake to take such action as may be required to immediately rectify this serious short-fall in the delivery of health services to mothers and babies?

The Hon. J.R. CORNWALL: There was a good deal of rhetoric in that explanation; there may have even been a little comment, I suspect—

The Hon. L.H. Davis: But most importantly there were some facts.

The Hon. J.R. CORNWALL: There was not a lot of fact at all. Let me give the Council the facts, because they are important. After going on at some length about the alleged problems that were facing the service to mothers and babies that used to be delivered by the traditional Mothers and Babies Health Association, the honourable member quite inexplicably moved to describe that as a deficiency in the delivery of adolescent health services. I really cannot follow that. It is true that CAFHS was formed by the amalgamation the honourable member described something more than three years ago. It was formed with some difficulty, because it was a marriage between an existing voluntary organisation, on the one hand, and two quasi Government professional organisations, on the other.

So, it was arranged with some difficulty, and I am not sure that it has always worked as well as it might have. It was always envisaged that after about three years there would be a full review of the services offered by CAFHS. As the honourable member rightly pointed out, that is currently under way. A very representative working party chaired by the Director of the southern sector, Mr Ray Sayers, is currently looking into all aspects of the financing, administration and operations of the Child, Adolescent and Family Health Services generally. The principal executive officer to that is a senior person also in the southern sector.

With regard to alleged staff shortages and the lack of adequate funding, these matters certainly have not been brought to my attention directly as Minister of Health. What has been brought to my attention on several occasions in recent months is a number of administrative problems that exist within that organisation. So, it is not true to say that there is a crisis—but it certainly is true to say that there are some administrative problems. These are being addressed by the senior working party. As to whether there is a shortage of funds, at this stage that is no more than a matter of opinion, and I would suggest that the honourable member's opinion probably is not the most valuable opinion that we could seek in this particular area.

The Hon. L.H. Davis: Are you aware that clinics have been closing?

The Hon. J.R. CORNWALL: People do get the flu from time to time—I am certainly aware of that. When you are running a series of clinics, whether it be in the suburban situation or in the country on a visiting or sessional basis, of course when there is a high incidence of illness in the community—whether it be through a flu epidemic or the other sorts of illnesses that one tends to get in epidemic proportions, particularly in winter—difficulties can arise.

With regard to adolescent health, I am pleased to inform the Council that at this very moment not only is the working party reviewing the whole operation of adolescent health which has been a matter of particular concern to me and which I wish to give the highest priority as we approach the International Youth Year, but we have in the central sector and the southern and western sectors two working

parties examining adolescent mental health in particular. So that, as a result of these deliberations, there will be a number of significant initiatives taken in the field of adolescent health for International Youth Year in 1985.

I am afraid that the honourable member will have to be a little more patient. I do not wish to announce those initiatives prematurely until that time. However, I can assure him that they will be significant and that they will grasp the nettle in what around the world has been a neglected area. There is no question that both public and private sectors have done rather poorly in delivering adolescent health services. I can certainly assure the honourable member that with regard to the traditional services delivered to mothers and babies I also have a very special interest, and I would repeat that there have been some administrative problems. These are acknowledged, and one of the specific terms of reference of the working party reviewing the whole operation of the CAFHS organisation is how those problems can not only be addressed but solved. It is not only a question of money. Indeed, I wish that the honourable member and all of his colleagues would stop trying to perpetuate the big lie that there have been cuts in the health area under this Government. In fact, the reverse is very much the true situation.

In the metropolitan public hospital area alone we have supplemented budgets by about $7.4 million in the last two years. We have supplemented the Intellectually Disabled Services Council by an amount of new money of $2.4 million. It has been one of the major growth areas. That is to mention just two, and I assure the honourable member that there is a series of announcements coming up in the next two or three months of additional funding in other areas as well. Let us put to rest for all time the fact that there have been any cuts in the health area. The fact is that under the Bannon Government there has been a substantial injection of funds in a significant number of important areas.

HOUSE PURCHASE

The Hon. M.S. FELEPPA: I seek leave to make a brief explanation before asking the Minister of Health, representing the Minister of Housing and Construction, a question about the purchase of a South Australian Housing Trust home by the present occupant.

Leave granted.

The Hon. M.S. FELEPPA: The occupant of a Housing Trust house approached the Trust in October 1983 with the intention of purchasing the house that he had been renting for many years. On 3 November 1983 he was advised by a senior officer of the Trust that it was estimated that the sale price of his rental property would be about $28 000, taking into consideration of course the sale price at that time. The occupant subsequently—within 15 days—on 18 November 1983 lodged an official application to the Trust requesting the current market valuation of the property. The Trust conducted an inspection of the property on 13 July 1984—eight months later—and the market valuation was then placed at $46 400. That was $18 400 more than the price given eight months earlier. Why did the Trust wait almost eight months before the valuation was carried out? What prevented the Trust from carrying out the valuation within a reasonable time after the application was lodged by the occupant? How can the increase of $18 400 be justified in this case? Does the Trust realise that this enormous and unexpected increase has created extraordinary difficulties for the occupant in getting a much larger bank loan, because the occupant is an invalid pensioner aged 50 years for whom repayment is almost an impossibility? Finally, will the Minister request the Trust to consider every possibility of reducing the price because the Trust was responsible for that long and perhaps unnecessary delay in the valuation of the house?

The Hon. J.R. CORNWALL: I will refer the question to my colleague the Minister of Housing and Construction in another place and bring down a reply as soon as I reasonably can.

PICKETS

The Hon. I. GILFILLAN: Has the Attorney-General a reply to my question asked on 7 August about the picketing of the Mabarrack Brothers Furniture Factory some months ago?

The Hon. C.J. SUMNER: The answer to the honourable member's question asked recently is that my colleague the Deputy Premier, Minister of Labour and Minister of Emergency Services has provided answers to the specific questions raised in respect of the removal from Roxby Downs of persons involved in the Roxby Vigil Group and the circumstances of the industrial dispute at the Mabarrack Brothers Furniture Factory.

Both the Federal and State Conciliation and Arbitration Acts facilitate the organisation and growth of unions and it is not illegal, in itself, for a union to attempt to persuade employees to join a union.

Secondary boycotts are *prima facie* illegal under section 45D of the Federal Trade Practices Act. It should be noted, however, that, where there are proceedings pending before a Federal or State Industrial Commission, then any application for an injunction may be deferred by the court to allow the settlement of the dispute by conciliation. Any remedy under section 45D is by way of a civil action. It is not a criminal matter which might involve prosecution by the police. Whether the purported action by postal workers in relation to the Mabarrack dispute was illegal was never determined by the court.

Those involved in the Roxby vigil were not interfering with other people going about their lawful business. However, their occupation of Crown lands was unauthorised and structures erected by them were illegal.

The picket line at Mabarrack Bros furniture factory was established in furtherance of an industrial dispute. There was a suggestion that some individuals involved in the picket line might have interfered with other people going about their lawful business. However, police intervention and negotiation prevented any further acts of people being prevented from pursuing their lawful business.

Solicitors on behalf of Mabarrack Bros initiated a civil action and obtained an injunction against the union and 'unknown persons' to prevent them picketing. A writ of attachment was lodged by the Mabarrack Bros solicitors with the Sheriff. However, when he attended the site on 24 July to serve this on the picketers he found that the picketing had ceased. Subsequently, the Sheriff was asked by Mabarrack Bros solicitors not to proceed further with the matter. Any purported illegality, therefore, was never finally determined by the court. This was a civil action and not a criminal matter which might involve the police.

Police, in their capacity as Crown Lands rangers and with the authority of the Minister of Lands, attended the Roxby site to remove all unauthorised persons and to arrange demolition of illegal structures. Police attended the industrial dispute at Mabarrack Bros furniture factory to ensure that a breach of the peace did not occur.

ELECTRICITY TARIFFS

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister of Agriculture, representing the Minister of Mines and Energy, a question about electricity tariffs.

Leave granted.

The Hon. PETER DUNN: On 1 November ETSA will increase electricity charges and restructure the steps from four to three, thereby increasing electricity tariffs. The Minister has said that two-thirds of domestic consumers will pay less than the 12 per cent rise and that an average family using electricity will experience a negligible rise. That is based on the average consumption per consumer in 1983-84 of 1 307 kilowatts (less hot water heating). Taking into account the new structure, the increase based on that amount of consumption will amount to 12.2 per cent. I ask members to remember that the average rate of consumption is said to be 1 307 units and point out that I live in a house for about 230 days of the year and I use between 2 500 and 2 800 units per year. That is considerably more than the average tariff.

The change from three steps instead of four means the increase will place a burden on the average and slightly above average consumer. Most country people are above average users of electricity because they do not have gas piped to their homes to heat their water or for cooking. Therefore, country people have no choice but to use all electricity.

The Hon. Anne Levy: What about firewood?

The Hon. PETER DUNN: We are not allowed to burn trees, because they are native vegetation. I will demonstrate my point by referring to my own tariff. In the February 1984 quarter I used 2 702 units (and, for the honourable member's information, I have a solar hot water system) which cost me $203.70; if I had lived in the city it would have cost $185. In November this year that same tariff will cost me $229.99, which is an increase of $26.29 from February last year to November this year; had I lived in the city the increase would have been $19.79. It is quite obvious that people living in 'all electric' homes will pay a very large increase in their total electricity bills. People living on Eyre Peninsula and in the small area to the north already pay 10 per cent more than the city tariff, anyway.

As the Minister has said, the increase is largely due to the increase in gas and coal prices. Is it fair to increase the cost of electricity by 12 per cent over and above the 10 per cent already being paid by country people over and above the standard ETSA tariff? Will the Minister endeavour to have this unfair practice offset by increasing the small subsidy to the area affected by the 10 per cent surcharge, because the Government receives a large increase in its revenue from the 5 per cent levy it charges ETSA on the total sales of electricity?

The Hon. FRANK BLEVINS: It was fascinating to hear the domestic problems of the Hon. Mr Dunn. I will draw his housekeeping problems to the attention of the Minister of Mines and Energy and see whether a reply can be brought forward. It may well be that the Hon. Mr Dunn has a very good case to take to the Salaries Tribunal. I will be interested to see whether he does that at the appropriate time.

ENVELOPES

The Hon. ANNE LEVY: Has the Minister of Agriculture, representing the Minister of Education, a reply to the question I asked on 28 August about envelopes?

The Hon. FRANK BLEVINS: For a private purpose such as this, no approval would be given for the use of Government stationery. Such instances are a cost against the funds available for provision of education in South Australia and accordingly are not approved. Where appropriate, suitable disciplinary action is taken when misuse of Government stationery is detected. In this particular instance the person involved ran out of his own envelopes on a Sunday evening and used a very small quantity of Government envelopes to complete a community project. As a result of this indiscretion he will be reminded of these responsibilities in the conservation of Government resources.

LONG SERVICE LEAVE

The Hon. R. I. LUCAS: Has the Attorney-General a reply to the question I asked on 9 August about long service leave?

The Hon. C.J. SUMNER: The replies are as follows:

1. My colleague, the Minister of Labour, has advised me that the Department of Labour has instructed its investigation officers that the provisions of the Long Service Leave Act, 1967-1972, apply to all workers who work on a regular week-by-week basis under an ongoing continuous contract of service. This covers casual workers as well as full-time and regular part-time workers. This instruction follows a number of Industrial Court decisions including: *Lanyon v. Lockleys Hotel; Haseldine v. Blue Moon Caterers;* and *Stewart v. Port Noarlunga Hotel.* Although these decisions relate specifically to the hospitality industry, the general principles apply to casuals in any industry including those employed on domestic duties.

Persons engaged on casual domestic duties could become entitled to long service leave under the Act only where it can be shown that an employer/employee relationship exists and that the employment is on a regular week by week basis for a continuous period of service of at least seven years. This can be distinguished from situations where domestic assistance is engaged under a contract of service for short periods of time or on an occasional non-regular basis where an employer/employee relationship does not exist.

2. My colleague has advised that there is no need to amend the Long Service Leave Act in this area. The Act is intended to cover all those persons engaged in regular employment under a contract of service that is of long term duration. To amend the Act to provide for exemptions or establish a minimum number of weekly hours of employment before any entitlements accrue would be to arbitrarily treat workers on an unequal basis, and the proposal is therefore unacceptable.

QUESTIONS ON NOTICE

WORKERS COMPENSATION

The Hon. DIANA LAIDLAW (on notice) asked the Attorney-General: In respect of the changes that the Government proposes to introduce for workers compensation arrangements in South Australia during this session of Parliament, is it the Government's intention to retain the present provision whereby companies and instrumentalities can self-insure if they meet certain criteria?

The Hon. J.R. Cornwall, for the **Hon. C.J. SUMNER:** This matter was raised during the Estimates Committee examination of 1984-85 expenditure allocations to the Department of Labour. During those discussions my colleague the Minister of Labour made it quite clear that no final decision has yet been made as to whether self-insurers will be absorbed within the proposed new scheme or accom-

modated in some special way such that they might continue to operate in much the same manner as at present.

In this respect I am advised that the Minister of Labour recently received a comprehensive submission from the Employer Managed Workers Compensation Association and it is currently receiving consideration as part of the development of the Government's draft proposals, which will be circulated for comment possibly later in the year.

The Hon. DIANA LAIDLAW (on notice) asked the Attorney-General:

1. What is the criteria that companies and instrumentalities must meet to be eligible to self-insure for workers compensation?

2. What are the names of the companies and instrumentalities that have secured approval to self-insure for workers compensation and in what year did they receive that approval?

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

1. The Workers Compensation Act in fact gives very little guidance as to what criteria should be applied in determining whether an employer should be exempted from the insurance requirements of the Act. Section 118b (7) simply talks of:

> any employer who, in the opinion of the Minister, has adequate financial resources to meet all probable claims under this Act . . .

The main criteria applied in assessing applications are of a financial nature and are mainly concerned with financial stability and ensuring that the enterprise will have sufficient liquid funds to meet its likely liabilities arising from claims under the Act. Exemption is granted on a 12-monthly basis and in each year companies are expected to make provision for future liabilities pertaining to claims made in that year and for claims incurred in that year but not yet reported. In addition, exempted companies are expected to take out catastrophe insurance to limit the risk for any one occurrence. The size of this coverage generally varies with the workforce concerned.

Apart from financial considerations, the Minister is also concerned that the safety practices of the applicant company are of a good standard. Accordingly, the past industrial injury performance of the company is analysed and an inspection of the industrial premises undertaken with the appropriate safety inspector. During this visit the proposed arrangements for the administrative handling of workers compensation claims and facilitating the rehabilitation of injured workers are discussed and the company made fully aware of its obligations should exemption be granted.

2. An alphabetical list of organisations currently holding exemption certificates has been prepared. I seek leave to have it incorporated in *Hansard.*

Leave granted.

Workers Compensation Act, 1971
Employers Exempted from Insurance Requirements
Alphabetical List—1 October 1984

Adelaide and Wallaroo Fertilizers Limited (1975)
The Adelaide Steamship Co. Ltd (Ritch and Smith Division)
Allied Rubber Limited (1982)
Australia and New Zealand Banking Group Limited
Balfour Wauchope Pty Ltd (1983)
Bridgestone Australia Limited (1981)
The Broken Hill Associated Smelters Proprietary Limited (1974)
The Broken Hill Proprietary Co. and wholly owned subsidiaries
The Colonial Mutual Life Assurance Society Limited
CSR Limited
CSR Limited—Ready Mix Farley Group (SA) (1982)
C.P. Detmold Pty Ltd (1984)
The Electricity Trust of South Australia
General Motors-Holden's Limited (1976)
Gerard Industries Pty Ltd (1984)
Hills Industries Limited (1978)
John Lysaght (Australia) Limited (1983)
John Martin Retailers Limited (1982)
John Shearer Limited (1983)
Kelvinator Australia Limited (1980)
Levi Strauss (Australia) Pty Ltd (1984)
Mayne Nickless Limited (1980)
Metro Meat Limited (1976)
G.H. Michell and Sons (Australia) Pty Limited (1976)
Mitsubishi Motors Australia Limited (former Chrysler Australia Limited, exempted 1977)
Mobil Oil Australia Limited (former Vacuum Oil Co. was a long standing exemption)
National Commercial Banking Corporation of Australia Limited (former National Bank was a long standing exemption)
T. O'Connor & Sons Pty Ltd (1984)
Rubery Owen and Kemsley Pty Ltd and wholly owned subsidiaries (1979)
Sabco Limited and wholly owned subsidiaries (1983)
S.A. Brewing Holdings Limited and wholly owned subsidiaries (1983)
Sagar Industries Pty Ltd (1981)
State Bank of South Australia (former Savings Bank of South Australia was a long standing exemption)
Softwood Holdings Limited (1981)
Sola Optical Australia Pty Ltd (1981)
South Australian Gas Company (1983)
South Australian Housing Trust (1978)
South Australian Institute of Technology (1984)
South Australian Meat Corporation (1974)
Southcott Pty Ltd (1984)
State Transport Authority
T.R.W. Carr Pty Limited (1977)
United Motors (Holdings) Limited (1984)
Westpac Banking Corporation (former Bank of New South Wales was a long standing exemption)
W.H. Wylie and Co. Pty Limited (1980)
Woodroofe Group of Companies (1982)

The Hon. J.R. CORNWALL: Where the information is readily available, the first year of exemption is shown in brackets. However, as many of the exemptions date as far back as 1925, there would be some considerable difficulty in ascertaining in exactly which year exemption was granted.

COUNTRY FIRES ACT AMENDMENT BILL (No. 2)

Second reading.

The Hon. J.R. Cornwall, for the **Hon. C.J. SUMNER (Attorney General):** I move:

That this Bill be now read a second time.

This Bill seeks to give legislative endorsement to the changes to the organisation and management structure of the Country Fire Service, which have already been outlined in another place. First, the Bill removes from office the existing members of the CFS Board and establishes a restructured membership for the Board. Honourable members will note that the new membership of the Board reflects a greater importance on financial and corporate management skills and is in accordance with the corporate review recommendation

that the size of the Board be reduced to enable it to operate as a more cohesive unit.

In this context, I give an assurance that the Chairman will be a person with practical management skills and experience. The Bill does provide that the Board will include a representative of local government and a person representative of volunteer fire fighters. This has been done because of the very significant interest which both these groups have in the administration of the CFS.

It has not been possible to provide for all interested parties to be represented on the Board. To have done so would have defeated part of the purpose in restructuring the Board. The restructured Board is intended only to be an interim measure pending the establishment next year of the statutory Bushfires Authority. This Authority will be fully representative of the various groups concerned with the threat of bushfires and will play a prominent role in fire prevention strategies for South Australia.

However, it will have only an advisory role in respect of the management of the CFS. Following the establishment of the Bushfire Authority, the interim CFS Board established by this Bill will be abolished and the Director of the CFS will be responsible to the Minister for the day to day administration of the Service and solely responsible, with the volunteer brigades, for the fighting of fires.

This will bring the benefits of professional fire service management, which the same change has brought to the Metropolitan Fire Service following the report of the Select Committee into the operation of the MFS. In order to ensure that a wide range of applicants with various backgrounds and professional qualifications can be considered for the position of Director, it is proposed to amend section 18 (2) of the Act to broaden the requirements which the person appointed as Director must fulfil.

However, the Bill still lays down that the Director must have relevant qualifications and experience such as would best equip him to undertake the duties of Director under the Act. In this context, experience has shown that the Director must not only be competent in the area of fire fighting but must also have corporate management skills. In order to ensure that the senior person in the Service who has the day to day management of the fire fighting arm is suitably qualified, the establishment of the position of Chief Officer was recommended by the corporate review.

The Government has decided to incorporate this position in the Act and to require that the person appointed to the position be fully qualified and experienced in the fighting of fires. The Director will remain fully accountable to the Board for the performance of the Service. However, his is a broad responsibility and in accordance with modern management practices he will naturally delegate his responsibility in specific areas and in particular circumstances to his senior line management officers.

The Government believes that this significant restructuring of the Country Fire Service is necessary to ensure that the volunteer brigades receive the headquarters support that is an essential part of the protection they provide to the community. While the changes which are planned in the longer term represent a major shake up in the management structure of the CFS, the circumstances do not permit us to simply tinker at the edges; significant changes are demanded and the Government has responded accordingly. The Bill also substantially increases penalties provided by the principal Act. Maximum prison terms are included for the more serious offences. I seek leave to have the explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clauses 1 and 2 are formal. Clause 3 inserts a definition of 'Chief Officer' into section 5 of the principal Act. Clause 4 repeals sections 9 and 10 of the principal Act and replaces them with two new sections that provide a new constitution for the board, revised provisions as to vacation of office and for the appointment of a chairman. The Director and the Under Treasurer will be *ex officio* members. The other three members will be appointed by the Governor on the nomination of the Minister. One member will be appointed to represent the interests of councils and another will be appointed to represent the interests of volunteer firefighters. Section 9 (5) provides that the existing members of the board will cease to be members when the amending Act comes into force.

Clause 5 makes a consequential amendment to section 11. Clause 6 amends section 18 of the principal Act to provide for the appointment of a Chief Officer. The appointment will be made by the Board with the approval of the Minister. Clause 7 makes a consequential amendment to section 25. Clauses 8 to 20 increase penalties provided by the principal Act in sections 32, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50 and 51.

Clause 21 amends section 52 (6) to make it clear that a fire control officer to whom the Director delegates his power to assume command at a fire under subsection (7) will have authority on a Government reserve. That this is the effect of the existing provision is recognised by subsection (9), which limits the Director's power of delegation in relation to a fire on a Government reserve. Clauses 22 to 29 increase penalties provided by the principal Act in sections 53, 54, 55, 57, 58, 61, 62 and 68.

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

STATUTES AMENDMENT (COMMERCIAL TENANCIES) BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Landlord and Tenant Act, 1936, and the Commercial Tribunal Act, 1982. Read a first time.

The Hon. C.J. SUMNER: I move:

That this Bill be now read a second time.

This Bill introduces significant reforms into the law which presently governs the relationship of landlords and tenants in shopping centres and similar commercial contexts. In late May 1983 this Government established a working party on shopping centre and commercial leases, largely as a result of the introduction, by the member for Hartley, of a private member's Bill to amend the Landlord and Tenant Act, a Bill which sought to regulate commercial leasing in a number of ways.

Each member of Parliament was invited to make a submission to the working party and this invitation resulted in a collection of constituents' comments and grievances. Major landlords were also invited to make submissions. The report of the working party on shopping centre leases was published in November 1983. A preliminary draft Bill was subsequently prepared earlier this year and circulated for comment. Further submissions were received from interested parties, such as Westfield Limited, the Law Society of South Australia, the Real Estate Institute of South Australia Incorporated, the Australian Institute of Valuers, L.J. Hooker Limited, the Building Owners and Managers Association of Australia Limited, and others. Indeed, nearly 20 detailed and thought-

ful submissions were received and, where pertinent, their substance incorporated in various provisions of this Bill.

The working party report highlighted a number of major concerns and oppressive practices which have arisen in the context of shopping centre leases. Crucial elements of commercial tenancies which were the focus of the working party's attention included security of tenure, responsibility for outgoings (for example, insurance, repairs and management expenses), payments for or on account of goodwill on the assignment or sale of a business, key money, security bonds and rental in advance, and hours of trading, and the resolution of disputes. Some of the major recommendations of the working party were that legislation should provide:

1. That any parties wishing to provide for payment of goodwill, disincentive payments or payments of a similar nature in a lease shall be required to make application to the Tribunal for authorisation to insert any such clause in a lease;
2. That every lease shall itemise the outgoings payable by the tenant in respect of the tenancy;
3. That where a security bond is required in respect of a commercial lease it shall not exceed one month's rental and shall be lodged with the Tribunal;
4. That the tenant shall be provided with a copy of the lease upon signing. Upon signature by the landlord a fully executed copy shall be provided to the tenant within a prescribed period.

It was eventually decided that the resolution of most disputes arising from commercial leases of certain prescribed kinds would fall to be heard and determined by the Commercial Tribunal, constituted of a Chairman or Deputy Chairman, a representative of retail landlords and of retail tenants. The Commercial Tribunal thus constituted will have powers that include the power:

- to conciliate and jurisdiction to deal with disputes relating to leases or former lease agreements;
- to make orders;
- to require compliance with the terms of the lease agreement;
- to prevent a party to the agreement from taking certain action; and
- to require either party to make payment of moneys.

Regulations will eventually be promulgated which will define precisely the commercial tenancy agreements to which this Bill applies. It is intended at this time that, where the rent payable under such agreements does not exceed $60 000 per annum, the Bill will apply. This will ensure that the Bill will not apply to situations where the probability is very high that the parties have negotiated and entered their commercial tenancy agreement at arm's length.

The whole object and purpose of this Bill is to outlaw or regulate certain practices which have placed an unfair burden on the small retail tenant. To that end, therefore, this legislation provides mechanisms to ensure that oppressive or unconscionable conduct cannot be countenanced any longer in the realm of commercial tenancies. This initiative is being undertaken in pursuit of the Government's continuing recognition of the importance of small business to the South Australian economy.

Recognition of the role of small business was highlighted during the 1982 election campaign strategy, announced by the Premier. It has remained central to the development of the Government's economic strategy. Small business dominates the retailing, wholesaling and manufacturing sectors in South Australia. It is a major employer of labour in our State, providing about 60 per cent of total employment in the private sector. Small businesses will be the major beneficiaries of this legislative initiative; they are the tenants in large retail complexes who are providing employment, creating opportunity and delivering goods and services to the community. Until now, they have not been afforded the rights enjoyed by other tenants. The significant contribution of small business to production and employment has also been recognised by the Government in a range of other initiatives, for example:

- the indexed lifting of pay-roll tax exemptions;
- the establishment of a Small Business Corporation;
- the establishment of the South Australian Enterprise Fund; and
- the overall impetus given to the level of economic activity in South Australia by initiatives in the building and housing sector which have contributed greatly to the lifting of demand.

These initiatives have contributed to the current economic position of South Australia, where unemployment is falling and employment has increased. The approach adopted by this Government with these initiatives has been that there must be a partnership between the public and private sector in planning for economic growth and development.

Regulation has not and will not be introduced or maintained by the Government simply for the sake of it. There has to be demonstrable need or questions of fairness and equity which have to be resolved between different sectors of the community before the Government would intervene. Industry and business regulation must not and, in this case, does not interfere with the capacity of business to develop entrepreneurial opportunities and create a competitive commercial environment. The legislation simply gives effect to Government policy in the small business area—to provide basic guarantees, minimum conditions and a dispute resolution procedure to enable retail and commercial tenants to be secure about the extent of their liability to their landlords.

Its major reforms include:

- that the lease should clearly indicate the method of calculation of rental and the frequency of its review;
- that the lease must state the length of its term and whether any right of renewal or option is provided;
- that outgoings must be clearly itemised and responsibility for their payment be clearly specified;
- that any clause in a lease requiring payment of goodwill upon sale or assignment, disincentive payments or payments of a similar nature must be submitted to the Tribunal for approval before being inserted in a lease agreement;
- that where the lease requires payment of a security bond it not exceed one month's rental and be deposited with the Tribunal;
- that a landlord be required to provide a tenant with a copy of their agreement for perusal before signing and upon signing the agreement the tenant should be provided with an executed copy of that agreement within a specified period; and
- that a landlord should give a warranty relating to the suitability of the premises for the purposes of the tenant's business.

Finally, it should be noted that the Government will, and will continue to, monitor the developments in this area once this Act comes into operation; in particular, the efficacy and efficiency of these reforms will be closely scutinised to ensure that what this Bill seeks to achieve will be fairly and adequately realised. Any necessary adjustments will then be made in light of the exigencies of the Act's operation. I commend this Bill to members and I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 provides for the commencement of the measure. Clause 3 is formal, relating to the part of the measure dealing with amendments to the Landlord and Tenant Act, 1936. Clause 4 provides for amendment to the long title to the Landlord and Tenant Act, 1936. The long title will now refer to the inclusion of provisions to regulate certain aspects of the relationship between landlord and tenant. These provisions are being included principally upon the recommendations of a working party established by the State Government in 1983.

Clause 5 is a revamp of formal provisions in the Landlord and Tenant Act, 1936. Clause 6 amends the section setting out the arrangement of the Act to include reference to a new Part that is to relate to commercial tenancy agreements. Clause 7 provides that the provisions are to bind the Crown.

Clause 8 inserts a new Part in the principal Act. Proposed new section 54 provides the definitions required for the new Part. The definition of 'business' has been cast so as to include any undertaking involving the manufacture, sale or supply of goods or services; it is not necessary that the business be carried on with a view to profit. A commercial tenancy agreement is an agreement granting a right of occupancy, whether exclusively or otherwise, for the purpose of carrying on a business. This definition will therefore include licences. Accordingly, the difficult distinction between leases and licences will not apply for the purposes of the new Part. Persons occupying premises under licences will be able to expect the same treatment as those holding leases.

Proposed new section 55 relates to the application of the new Part. Its application is to be restricted to agreements that relate to shop premises, or premises of a prescribed kind (such as premises in shopping centres). In addition, the rent payable under an agreement must not exceed a prescribed amount. The new provisions will apply to agreements entered into after the commencement of this Part and agreements that are extended, renewed, assigned or transferred after that commencement. Tenancies or premises may be excluded by prescription. Under proposed new section 56 the Commercial Tribunal is to have exclusive jurisdiction in relation to matters arising under or in respect of agreements under the new Part. However, claims for amounts exceeding a prescribed level (initially five thousand dollars) may, upon the application of a party, be removed to a court. By using the Commercial Tribunal the provisions of the Commercial Tribunal Act, 1982, will apply to proceedings under this Part. That Act will provide for the constitution of the Tribunal in relation to those proceedings, will regulate the procedures to be followed by parties to a dispute, may provide for procedures that may facilitate the settlement of disputes, and provides for a right of appeal to the Supreme Court. However, by virtue of new section 56 (4) the Tribunal will not be able to act simply according to equity, good conscience and the substantial merits of a case and will accordingly be obliged to apply ordinary principles of law to determine the disputes that are brought before it.

Proposed new section 57 provides that a landlord may not receive from a tenant or prospective tenant in relation to entering into or continuing a tenancy any monetary consideration apart from rent and a security bond. Accordingly, a landlord will not be entitled to receive payments such as premiums. This provision has been included in conjunction with the provisions relating to security bonds as there would appear to be little advantage in restricting the use of bonds without also including measures relating to premiums. However, the section will not apply to options or to certain payments or to payments of prescribed classes. Proposed new section 58 regulates the payment of rent in advance. Again, this provision is included in conjunction with the measures relating to security bonds for, as was stated by the working party, if security bonds are required to be regulated the requirement to receive rent in advance must be similarly regulated. It is therefore proposed that the landlord be permitted to require payment of rent no more than seven days in advance.

Proposed new sections 59, 60 and 61 relate to security bonds. A landlord will be able only to demand one security bond (other than one relating to rates and taxes), and that bond may not exceed an amount equal to one month's rent or, if the rent may fluctuate from month to month, the bond may not exceed one-twelfth of the annual rent. The bond will have to be paid into the Tribunal and the procedures for its payment out are to be prescribed by section 61.

Proposed new section 62 sets out various requirements relating to commercial tenancy agreements prepared by the landlord or his agent and to the supply of agreements to tenants. The working party was obviously anxious that various important matters that usually arise in relation to any tenancy be clearly set out in the tenancy agreement. Accordingly, the provision will require an agreement to specify the term of the tenancy, any agreement that has been made in relation to an extension or renewal, the rent payable or its method of calculation, the times for rental reviews or alterations, and the nature of any other payments that the tenant may be required to make under the agreement. In addition, the tenant will be entitled to receive a copy of the agreement at the time of execution by him, and a fully executed copy after stamping.

Proposed new section 63 carries forward the recommendation of the working party that parties wishing to provide in a tenancy agreement for payment of goodwill, disincentive payments or payments of a similar nature upon the sale of a business or the assignment of a tenancy should be required to make application to the Tribunal for authorisation to include such a provision in the agreement. Under the proposed new section, the provision would be void and of no effect unless approved by the Tribunal and the Tribunal would not approve the provision unless it was satisfied that the provision was fair and reasonable. The parties would therefore be able to enter into an agreement containing such a provision without first having to apply to the Tribunal, but a tenant could not be required to make a payment under it unless it had been approved. Proposed new section 64 is included on the recommendation of the working party that a landlord not be able to compel a tenant to trade within certain hours. However, it will not apply to shopping centres of six or more shops.

Proposed new section 65 is included in response to the working party's discussion in relation to complaints from some tenants that they have been required to carry out structural work on the premises in order to comply with orders of Government authorities. It is proposed that a landlord who knows that a tenant requires premises for a particular business should, unless he provides otherwise, give a warranty that the premises are structurally suitable for that business. At first instance, landlords are responsible for the structure of the premises by reason of their ownership of the building. If a landlord considers that the premises may not be structurally suitable for the business that the tenant is to engage in, the tenant will be put on notice if the landlord gives a statutory notice that the warranty is to be excluded. Both parties will therefore know what there respective positions are in relation to this issue.

Proposed new section 66 is concerned with options to extend or renew tenancy agreements. It is proposed that if the tenant has applied for an extension or renewal but at the expiration of the term the negotiations between him and the landlord have not been completed, the tenancy may

continue until the matter has been resolved by agreement or a determination of the Tribunal. The provision will therefore allow the parties to complete their negotiations without the tenant being uncertain of the status of his tenancy in the meantime. If an impasse occurs, a party will be able to apply to the Tribunal for the resolution of the matter. However, the provision should not be seen as making available a ploy for tenants to delay paying rent increases on a renewal, and so on. All rental variations will be retrospectively applied from the date of expiration of the agreement being extended.

Proposed new section 67 empowers the Tribunal to hear and determine claims that a party to an agreement has been guilty of a breach, and to act in relation to disputes. The working party envisaged that the Tribunal would be the most effective and efficient body to act in relation to disputes and breaches, acting as both conciliator and arbitrator. Under the Commercial Tribunal Act, the Tribunal will be empowered to attempt to settle a matter by conciliation and agreement but, in the event that it is unable to do that, it will be required to determine the matter according to the law of landlord and tenant. In this fashion, the parties' rights and liabilities are to be preserved, but there will also be the facility for attempting to obtain agreement amongst the parties.

Proposed new section 68 provides for the creation of a Commercial Tenancies Fund for the receipt of moneys paid under security bonds. Under new section 69 the moneys are to be invested and the income derived applied for specified purposes. Section 70 requires that proper accounts be kept and annually audited.

Proposed new section 71 prohibits parties attempting to avoid the operation of this new Part by agreeing or arranging their affairs in a manner that is contrary to the new provisions. A party will not be able to forego or waive a right conferred by this Part. It will be an offence to attempt to evade the provisions. Under section 72, the Tribunal is empowered to exempt particular agreements, class of agreements or premises from the operation of all or any of the new provisions. Accordingly, if an extraordinary situation arises where the provisions are causing some injustice or quirk a party to an agreement can apply to the Tribunal for relief. Proposed new section 73 provides that proceedings for an offence against this Part shall be summary proceedings. New section 74 is a regulation making power.

Clause 9 is formal, relating to proposed amendments to the Commercial Tribunal Act, 1982. These amendments are to provide for the constitution of the Tribunal when hearing matters under commercial tenancy agreements. Clause 10 provides for amendment to the arrangement of the Act by the inclusion of a new item, 'Schedule'. Clause 11 is a consequential amendment to section 6 of the Act. Clause 12 provides for a schedule to the Act. As the Commercial Tribunal Act envisages the constitution of panels to represent the interests of persons who are to be licensed, registered or otherwise regulated under a relevant Act, special provision must be made for panels of people who are to represent the interests of landlords and tenants when the Tribunal is exercising its jurisdiction under the Landlord and Tenant Act. The schedule makes such provision and is similar in form to sections 6 and 8 of the principal Act. The provisions of those sections dealing with term of office, grounds for removal, and so on will apply to members of the panels established under the schedule.

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

FAMILY RELATIONSHIPS ACT AMENDMENT BILL

In Committee.

(Continued from 20 September. Page 1039.)

Clauses 2 to 4 passed.

Clause 5—'Presumption as to parenthood.'

The Hon. K.T. GRIFFIN: I oppose this clause, which to some extent relates to subsequent amendments to the Bill. The Opposition seeks to limit application of this Bill to the children of married couples who are born as a result of *in vitro* fertilisation and artificial insemination by donor programmes and to exclude reference to unmarried couples. During the second reading debate, I referred to the way in which clause 6 extends the operation of the Bill to unmarried couples. The fact is that under the *in vitro* fertilisation programme at present, and although there are unmarried couples on the waiting list, no unmarried couples have participated in the programme, so there are no children of unmarried couples that have been born as a result of *in vitro* fertilisation procedures for us to be concerned about.

As the question of marital status is one of those issues to be considered by the Select Committee established yesterday, ho harm will be caused by limiting the operation of the Bill to those children born to married couples as a result of *in vitro* fertilisation procedures. To the extent that artificial insemination by donor has been used by married couples and children result from the use of those procedures, the Bill, so far as the Opposition is concerned, appropriately deals with the status of those children. The Attorney-General mentioned in his reply during the second reading debate that there may be children born to unmarried couples as a result of private use of artificial insemination by donor procedures. However, he did say that he and the Government are not aware of any such children. In the off chance that there are such children, the Attorney-General is seeking in this Bill to deal with children born to couples who live in a genuine domestic basis, which is not defined.

I have already referred extensively to the difficulties with that definition. As the question of marital status and children born to unmarried couples will be an issue before the Select Committee, I do not think it appropriate to anticipate what may or may not be the recommendations of the Select Committee by extending the operation of this Bill to those couples who are not married but who live in a genuine domestic basis, whatever that may mean. The amendments that follow limit the operation of the Bill to children of married couples born as a result of the use of these procedures.

We are specifically providing that, where a woman bears a child as a result of these procedures, whoever contributed the genetic material, that woman is at law deemed to be the mother and where that woman is married the husband who has given consent to the use of the procedure is the father of the child for the purpose of identifying the obligations towards the child and the child's rights against the father. There is one other area of amendment to which I will refer later in relation to an amendment to the Sex Discrimination Act. Clause 5 of the Bill, which I oppose, is to some extent consequential on more substantive amendments being moved at a later stage, but I must address remarks to this subject now in order to deal with that consequential amendment later. Therefore, I oppose clause 5.

The Hon. K.L. MILNE: I support the Hon. Mr Griffin, because what happens in relation to this clause affects the rest of the amendments proposed by the Opposition and what I understand it is trying to do in relation to this matter. We must make up our minds right at this moment what

we are going to do with this Bill. I believe that it should be amended because it is dealing with only a small part of the enormous subject of the technology of assisted reproduction of human beings in our society. In simple terms, we are dealing with legislation concerning the artificial breeding of people. A question we have to decide on this clause is how far we will go with this matter. We have become accustomed to the artificial insemination—

The Hon. C.J. Sumner: You've missed the point of the Bill.

The Hon. Anne Levy: It's to do with the status of children.

The Hon. K.L. MILNE: I realise that. The artificial creation of people has taken us by surprise. Consequently, new problems are still arising. This Bill as it stands could pre-empt the effect of legislation that will certainly follow to regulate medical practices in this technology. That would be a pity. Therefore, I think it should be confined as much as possible. I add that the closing date for submissions in relation to the Connon/Kelly Report has been extended to 31 October 1984, so I do not understand why we are debating this Bill now.

The Hon. C.J. Sumner: Because you don't understand the Bill.

The Hon. K.L. MILNE: Yes, I do. This Bill covers cases where the genetic parent of a child is not a parent in the family into which the child is born. The legal position at this time is that children born using the sperm and ovum of the husband and wife are already regarded as children of the marriage, so this legislation is not needed to cover such cases. It is intended for those cases where sperm or ovum is provided by a person who is not one of the partners of the relationship into which the child would be born. I understand that the amendments foreshadowed by the Hon. Mr Griffin are to achieve two purposes: first, that these artificial breeding schemes are available only to legally married couples and, secondly, to make sure that medical practitioners and clinics are not caught by the Sex Discrimination Act whereby they may be forced by the courts to make this service available to other than married couples. That is as I understand it. They are interim measures that may be reconsidered when the Select Committee has brought down its report. I support the Hon. Mr Griffin in seeking to delete this clause.

The Hon. C.J. SUMNER: The Hon. Mr Milne seems to have the same misconception about this Bill as the Hon. Mr Griffin.

The Hon. K.T. Griffin: I have no misconceptions about it.

The Hon. C.J. SUMNER: I disagree. We really should bring this debate back to what the Bill attempts to achieve. This Bill does not say anything about the morality or otherwise of providing these procedures to *de facto* couples or single people. All the Bill says is that if a child is born as a result of these procedures then the child is the legal child of the social couple—not the child of the donor of the sperm (that is what it is so far; we have not yet come to the donation of female ova). That is all it does. The Bill does not go any further than that. What the Hon. Mr Griffin has done is introduce something that is extraneous to the Bill. If the honourable member wants to prohibit certain procedures from occurring, then that is another issue. This Bill is very narrow and does not deal with the broad issues that the Select Committee will look at. All it says is that if these procedures occur then the child that results is the child of the social couple—not the child of the donor of the sperm. There is a real problem with the honourable member's amendment. The scope of the Bill is limited to the determination of status. AID has been available in the community for a long time. By supporting this amendment the Hon. Mr Milne is saying that, if a person donated sperm in a doctor's surgery 10 years ago to artificially inseminate a woman who, at that time, was not married but may have been living in a *de facto* relationship, then the donor of that sperm some 10 years ago is the father.

The Hon. K.L. Milne: How do you work that out?

The Hon. C.J. SUMNER: That is the effect of what the honourable member is doing. If you support the amendment, in effect, you are not destroying, but certainly reducing, the comprehensiveness of the Bill, which is to deal with status.

The Hon. K.T. Griffin: You haven't presented any arguments as to the need for that comprehensiveness.

The Hon. C.J. SUMNER: I have. These procedures have been going on—

Members interjecting:

The Hon. C.J. SUMNER: If all the Bill does is deal with the status of children, then surely we should ensure that that status is covered comprehensively. Whether one likes it or not, AID procedures—and I agree that IVF procedures are carried out in recognised hospitals—are being carried out in medical practitioners surgeries. Someone can go to a surgery tomorrow and have such a procedure carried out. It may be possible to do it at home. That is why I say that the amendment is misconceived, because it deals with a problem of the broader issue of whether these procedures should be available when all we are talking about is the status of the children who may happen to be born as a result of them.

Let us look at the consequences of the amendment. It could create a hiatus in the law whereby an AID child born to a married couple is deemed to be the child of the mother and social father, and the donor has no responsibility for the child. However, if a *de facto* couple has an AID child—and that is quite likely to have occurred over the past 10 years—the donor of the sperm would be the legal father and the social father would have no legal rights or responsibilities towards that child. This could have significant results in the event of the death of the *de facto* father. Subsequently, the *de facto* couple may have married but, because the donation of the sperm occurred when the couple were living in a *de facto* relationship and not married, the child would have no claim on the estate of the social father.

So, if the family has lived as a unit for 10 years and the *de facto* husband or the husband leaves something to his children in the will (the man being infertile and donor sperm being obtained from another man) that child will be left out and would have no claim unless this Bill is passed. That is precisely why the Bill has been brought in—to clarify status. It does not say anything about the morality of it and whether this procedure should be provided through publicly funded hospitals. All it says is that if it does occur—and it has occurred with AID—then the status of the children is in accordance with the Bill, that is, a legitimate child of the social couple—not an illegitimate child who could fail in a claim if the will referred to a 'husband's child'. So, given that at least the AID procedure has been available and is carried out in doctor's surgeries, and possibly even at home—

The Hon. R.C. DeGaris: Maybe not even in a doctor's surgery.

The Hon. C.J. SUMNER: That is right. Presumably one could do it oneself. The point is well taken; it has probably occurred. If it occurred at the time that the relationship was *de facto* then the Hon. Mr Milne is saying that this Bill should not touch that situation. Quite frankly, I think that that is untenable. If the honourable member wants to say something about the morality of the situation, that is fine: that can be said. But, do not import into a Bill that clarifies the status of children the broad, general, ethical and moral issues. The Hon. Mr Milne is not resolving the moral issues: he is just making it tougher for children of a family unit of which the father may not be the genetic father.

On this point—and there is the other point of the Sex Discrimination Act that we have to address—that is the effect of the honourable member's amendment. I believe that that is an unjust situation to allow us to get into. For that reason I think that honourable members should concentrate their minds on what the Bill does: it talks about status. These proceedings occur and certain consequences flow. It does not say anything about the ethical or moral issues of whether it should or should not occur.

They will be addressed by the Select Committee. In the meantime we should not leave kids out on a limb and potentially discriminate against them. I believe that the example of the will is really a compelling example of what could happen if it were determined that in a *de facto* relationship the man left in his will something to his children. He might refer to 'my children' and someone could want to challenge it subsequently who found out that a child, although born from the woman in the relationship, was not the legitimate child because the sperm had been donated by someone else. That child could have lived for 10 or 15 years in the social unit but would be deprived of any claim to the estate. I would be surprised if any honourable member believed that that was just. As I said, the amendment is misconceived because honourable members are using this Bill to achieve an objective for which other Bills and other means should be used. This Bill is about status—and status alone.

The Hon. I. GILFILLAN: I do not think that I would have picked this inference of the Bill unless I had read the Attorney's second reading explanation. It was only then that I realised what I now accept is the actual skeleton of the Bill. The problem has been how easy it is to misinterpret it, and how difficult it is to portray to people who have not studied the Bill what its real implications are. Quite specifically, with IVF and AID procedures being available to people who will be described as a married couple, with this flexible term of *de facto* spouses in a genuine domestic basis, the debate is really on, regardless of how intelligent and logical the statement is. The general public already are triggered off on the track of making a moral judgment about it, and the Bill itself appears to be *carte blanche* approval for these procedures to be available for *de facto* spouses.

I accept entirely the logic of the point that the Attorney makes. It may well be that the Hon. Mr Griffin has points in the Bill that need looking at from a different perspective and that there may be other minor aspects that need addressing but, for the sake of the public's acceptance of it, there has been much play made of AID. That appears to be where the crunch comes. If that were not the case it would seem to me that we could stall that Part of the Bill dealing with *de facto* couples to a later date. The Attorney is arguing quite cogently—but I am curious to know and have it reinforced elsewhere that in fact that is the case—that there are AID children who are identifiable and who are at risk legally. If that is the case, I would appeal to the Hon. Mr Griffin, when he gets a chance, to explain why this particular problem pointed out by the Attorney does not exist or is irrelevant to the Bill.

I would like to recapitulate my attitude. Until I read the second reading explanation, I was swept along with the tide that this was the sort of avalanche of IVF and AID procedures being available to any couple who fronted up for them. I know that it is great to be wise now but, until I had read the second reading explanation, my superficial interpretation was quite genuinely held—I think it is genuinely held by many other people.

The Hon. C.J. Sumner: I cannot be responsible for that.

The Hon. I. GILFILLAN: No, but we are all responsible for what happens at the end of this debate. I am curious to get a response from the Hon. Mr Griffin—I respect his judgment. If there is logic in what the Attorney is saying we could delay to another date the debate on the moral and ethical value of whether *de facto* couples should be involved in the procedure. I have been assured by Professor Cox that IVF procedures are being made available only to legally married couples. So, I do not see that as being a problem in the immediate future. The AID situation is a different problem altogether. Unless I am persuaded otherwise (that may sound a little weak-kneed, but I am willing to listen to the argument) the logic of the Attorney's point of view is presentable to the public not as a judgment of moral ethics but dealing with a very human problem that has arrived because of previous situations.

As to the other side of the coin and what is proper for society to do—recognition of couples—is a different issue to be debated and determined elsewhere. As I am currently situated, I believe that the Attorney has made a logical point that persuades me not to support the Hon. Mr Griffin's amendment.

The Hon. DIANA LAIDLAW: I have a few general questions which I would like to ask the Attorney and to which possibly I should have ascertained the answers some time ago. The Attorney keeps repeating that he is not actually aware of any children born by AID procedures, but he assumes that there are a number and it is on that basis that we are seeking to address this subject that is causing concern. If children have been born by AID procedures and their status is uncertain, what is actually happening when their birth is registered? Who is being registered at the moment as the father of the child? What is the status of the birth certificate in law if there is a challenge to the will later on? Does that birth certificate have status in the law? If that person is given the wrong father—given the social father and not the natural father—are there legal problems arising in regard to the person who actually registered the birth because of making a false declaration? What are the consequences?

The Hon. C.J. SUMNER: Of course, we do not know exactly what has happened in regard to the situation.

The Hon. K.T. Griffin: You are legislating in a vacuum.

The Hon. C.J. SUMNER: No, we are not legislating in a vacuum. It is not possible to carry out a survey of the whole population and of doctors' surgeries to determine when these procedures were done and determine how many children there might be in that category. The Bill merely says that if they have occurred—as is likely, because the service has been available for a considerable time—this is the result. However, it is quite probable that the person registered as the father in the AID situation is the social father. That is probably what has happened in these cases but, of course, that is not conclusive proof of paternity.

The Hon. Diana Laidlaw: You mean that it does not have status?

The Hon. C.J. SUMNER: It does not have conclusive status. It can be argued about if it ever got to that point. Of course, one is talking about the situation where there is a dispute about a certain situation. I suppose in the situation I have outlined perhaps the infertility of the husband came about subsequently. Perhaps the woman and the husband had a legitimate child without any sperm being donated. The child may consider in a contest about the will that the rights of the child born under AID procedures ought to be ignored. They might end up in court with a contest of one child saying, 'I was born as the legitimate child of this couple. I was born first and was born as part of the family. I do not want this younger brother of mine. I have never got on with him and he is really the bastard son of someone else because the sperm was donated. I was born as part of the family. I do not want him to have any part of the will, and I am going to challenge it.'

We can get to such crunch situations. If everyone agrees, there is no need for such laws. We do not need laws in the community if everyone agrees and co-operates—but you get to the point where legal disputes arise. As I understood it, if that happened the paternity of a social father for a child born as a result of an AID procedure could be challenged irrespective of what the birth certificate says. That is the problem, and the Bill is designed to clarify that situation.

The Hon. R.I. LUCAS: Clause 10a (1) provides:

'married woman' or 'wife' includes a woman who is living with a man as his wife on a genuine domestic basis;

Why does the clause refer to 'genuine domestic basis' rather than the definition of 'putative spouse', which is the definition used in the parent Act? I refer to an article entitled 'Legal Recognition of *De facto* Relationships' by Rebecca Bailey in the *Law Journal* of 1978. The article indicates that the definition of 'putative spouse' is used in many other South Australian Statutes including the Inheritance (Family Provisions) Act, the Succession Duties Act, the Administration and Probate Act, the Wrongs Act, and quite a few others.

We have used the definition of 'putative spouse' in those Statutes, and also in the parent Act. I think the definition was also used recently in the Members of Parliament Pecuniary Interests Act. In fact, Labor Governments in the past have used the definition of 'putative spouse' to cover *de facto* relationships. People such as Rebecca Bailey have developed the argument that problems exist at State and Commonwealth level as a result of differing definitions of *de facto* relationships between the States and the Commonwealth. This Bill introduces the phrase 'genuine domestic basis' rather than 'putative spouse'. Why has the Attorney chosen to use the new definition instead of 'putative spouse', which has been used by Labor Governments in nearly 10 other South Australian Statutes?

The Attorney explained the potential problem and gave the example of a couple living in a genuine domestic basis where the male partner is infertile and an AID procedure was used at a local surgery. In his example the Attorney pointed out that, if the Hon. Mr Griffin's amendment is carried, the donor at the surgery (whether it is a university student or whoever) will remain the father. I refer to a hypothetical situation where a man and woman lived together, say, five years ago on a genuine domestic basis for one month (the Attorney-General's example involved five, 10 and 15 years, and that pertains to my earlier question about 'putative spouse') and the man concurred with the woman undertaking an AID procedure. The Attorney wants that man, who agreed to the procedure, to be the legal father of the child and to take all the rights and responsibilities in relation to the child of the partnership.

Does the Attorney believe that that is fair—that someone who lived with a woman for perhaps only one month should be placed in this situation? It is retrospective. The man involved may have legally married in those five years and may have had his own or adopted children. Is the Attorney saying that the legislation will mean that the now happily married man with perhaps three legally recognised children would be the father of a child of a 'genuine domestic basis' relationship of one months standing perhaps five years ago? They are the questions that arise in my mind as a result of the Attorney's use of 'genuine domestic basis', rather than the relatively accepted concept of 'putative spouse', which already exists in South Australian law.

The Hon. C.J. SUMNER: It may be possible to consider an amendment which incorporates the concept of putative spouse. The problem is that 'putative spouse' deals with the relationship between the putative husband and the putative wife; whereas this Bill deals with the status of children born of a relationship. I think that is the distinction. There could be a problem with the status of children if we only had the 'putative spouse' definition and the couple had not lived together for, say, five years. It could be a situation where the putative spouse criteria had not applied but a child was born of the relationship as a result of an AID procedure, and there would then be a hiatus in the law again. I think we could probably amend the Bill to pick up the concept of putative spouse in this context, but there is still the problem that I just outlined. We are not dealing with the relationship between the spouses, which is what the relationship—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: It is basically the status of the child.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: I am not saying that we cannot look at the Bill and somehow or other import into it the concept of 'putative spouse'. However, I do not think that that will carry the matter much further than the present position, that is, 'a genuine domestic basis'. That does not imply any time limit. It simply means that when a man and a woman live on a genuine domestic basis, and I suppose that would be a matter for determination by the courts as to exactly what—

The Hon. R.I. Lucas: It could be one month.

The Hon. C.J. SUMNER: I think that is a bit unlikely. If a woman decided to undergo a quick AID procedure while living with a man and after one month she then kicked him out and subsequently told him he was the father of the resultant child and would have to pay maintenance, I do not think that a court would view that scenario with any particular favour. I think that 'a genuine domestic basis' imports a living together in what is generally considered to be a *de facto* relationship and not just a one night stand or shacking up together for a couple of weeks. I think 'genuine domestic basis'—

The Hon. K.T. Griffin: The problem with 'genuine domestic basis' is deciding what it means.

The Hon. C.J. SUMNER: I think people know what that means. It is essentially a *de facto* relationship between a common law wife and a common law husband. There are many existing criteria in the law. I am not saying that we cannot fiddle around with the drafting of the Bill to import the 'putative spouse' concept, but that will not solve the Hon. Mr Griffin's problem, although it might possibly help the Hon. Mr Lucas. The Hon. Mr Griffin objects to the procedure being available at all to people who are not legally married. I am saying that may well be an objection that he can sustain on moral grounds, and it may well be an objection that he may wish to argue in terms of the Sex Discrimination Act. Fine—that is something that he can do at the appropriate time. I am saying that this Bill does not say anything about the morality or otherwise of the procedure; it just says that, if it happens to have occurred (as may well be the case), this is the result.

The Hon. R.I. Lucas: If it is deemed to be a domestic relationship, is the man liable for maintenance payments?

The Hon. C.J. SUMNER: Yes, he would be considered to be the father of the child.

The Hon. R.I. Lucas: The legal father?

The Hon. C.J. SUMNER: That is right.

The Hon. R.J. Ritson: Consent is presumed, isn't it?

The Hon. C.J. SUMNER: I cannot imagine it being a genuine domestic basis in the sense of living together as a *de facto* couple if the woman went off and had this procedure without telling the man at any time. That would certainly undermine the notion of their living together on a genuine domestic basis.

The Hon. R.J. Ritson: He would have to prove lack of consent, wouldn't he?

The Hon. Anne Levy: You don't get AID unless the male is shown to be sterile.

The Hon. C.J. SUMNER: I do not think that the honourable member is quite correct. One may want to, for some bizarre reason. Admittedly, we are getting down to some fairly odd situations.

The Hon. R.J. Ritson: No, the husband might have Huntington's chorea and not want to propagate that gene. It doesn't have to be a very odd situation.

The Hon. C.J. SUMNER: In that situation the consent would be known to the doctor. Members are postulating a bizarre situation, in which the woman—

The Hon. Diana Laidlaw interjecting:

The Hon. C.J. SUMNER: One cannot find out. I am not trying to suggest that the issue is easy.

The CHAIRMAN: A lot of questions are being asked. I appeal to honourable members to give the Attorney a chance to answer them.

The Hon. C.J. SUMNER: Confining it to married couples does not resolve the problem that one has of children whose status is indeterminate. We are trying to come to grips with determining the status of children who may at the moment be considered as illegitimate. That is a real difficulty.

The Hon. K.T. Griffin: Even you haven't covered that.

The Hon. C.J. SUMNER: I think that we have covered it as far as we can. A genuine domestic basis imports what is considered to be a *de facto* relationship. If the honourable member is inclined to support the principle of the Bill by looking at some notion of putative spouse that might firm that issue up a bit, I have no objection to looking at that as a matter of drafting, but, as I understand the Hon. Mr Griffin, that would not satisfy him in any event. He does not want it available; he does not want the status of the children determined except in relation to married couples.

That is the difficulty that we have. If members opposite are prepared to accept the notion of the status being determined even for *de facto* couples but would prefer to do that by the way of the putative spouse definition, that is something that certainly could be examined. We have to get over the principle first. If the honourable member is prepared to make that concession about the principle, I am happy to go back and look at the drafting, but we do not have that concession of principle from the honourable member.

The Hon. R.C. DeGARIS: I do not quite know how to tackle this question except to say that if the Attorney-General is right in what he says I oppose the amendment moved by the Hon. Trevor Griffin; if the Hon. Mr Sumner is wrong in what he says I still oppose the amendment.

The Hon. B.A. Chatterton: You're easily satisfied.

The Hon. R.C. DeGARIS: I am easily satisfied, but I would like to explain my reasons for it. If the view put by the Attorney-General is correct the amendment should be opposed, but there is a very strong case that he might not be correct. I want to make one thing clear: I do not believe that we should restrict the application of these new procedures—one of which is new (IVF); AID is a very old procedure—beyond that which occurs at present. There is no restriction on a married woman, a *de facto* couple, a married woman living in a *de facto* relationship with a man while they are still married, or an unattached single woman having a child. I do not believe that any legislation that affects the application of modern medical technology should move away from that position. Once we do that we are in very grave difficulty as far as the law is concerned.

The Hon. K.L. Milne interjecting:

The Hon. R.C. DeGARIS: As a new medical procedure comes along, how can one say that that will apply only to certain people in the community?

The Hon. K.T. Griffin: It's extraordinarily expensive, for a start.

The Hon. R.C. DeGARIS: It need not be extraordinarily expensive; it can be paid for in total by a person. I cannot see how we as a Parliament can make a new set of rules and laws that relate to people who are not affected in that way in the normal circumstances. I do not think that that will work, and it would be a very grave change of direction if we took that view.

We come to the next stage if we say, 'Only married women can be involved in this programme.' People would get married just to get this done, and be divorced straight afterwards. Whatever one does, there is no way in which one can apply that law. I suggest to the Council that we follow the explanation given by the Attorney-General. Even if he is wrong, to change the application of our law in relation to these matters because there is a new procedure is a very dangerous position to take.

The Hon. K.T. GRIFFIN: We are not changing the procedures. The Attorney-General, even on the explanation that he has given, admits that there may be a residue of children who are not catered for in this Bill because he has indicated that he is not sure how a genuine domestic basis will be defined. It is possibly because of the way in which he has described the ready availability of artificial insemination by donor that there are people who have used that procedure, resulting in the birth of a child, where by no stretch of the imagination can even a so-called genuine domestic relationship be established. So, there is no guarantee that one will be able to clarify the status of all children born as a result of AID.

When I spoke in the second reading debate, I indicated a concern that the reference to the children born as a result of IVF procedures and the status of those children in respect of unmarried couples may be taken to be a presumption that those procedures should in future, even though they are not now, be available to unmarried couples; so I expressed that concern. The limitation that I am proposing in respect to the status of children to married couples as a result of IVF procedures creates no hardship to anybody.

This is because no children are born to unmarried couples as a result of the IVF programme. The area of artificial insemination by donor has created some difficulties. In the second reading debate I indicated that the Select Committee should examine that matter because of the difficulty of defining the relationship outside marriage that would determine who was the father of a child born as a result of AID procedures. The amendments clarify who is the mother—the woman who bears the child is always deemed to be the mother. I do not see that that creates any problem. There is a difficulty in respect of who is to be the father. Where the couple is married, the law clearly identifies that a person is the husband; provided there is consent, whether on the basis provided in the Bill or otherwise, then the husband is the father. There is a clearly legally defined relationship that is capable of ready identification.

Then we come to the putative spouse. Whatever one might think about the moral basis, the fact is that it is provided in the law and has been in the law since 1975. A putative spouse is clearly defined in the Family Relationships Act, but the Attorney-General has not chosen to use that clearly defined basis for identifying who should be the father. He has chosen genuine domestic basis, and in the way in which the provision is drafted that genuine domestic basis outside marriage is on the same legal footing as marriage. This is because of the way in which the draftsman has defined 'married woman', 'wife' and 'husband'. That is a drafting problem, and I commented on that because I took some exception to it.

However, it does not go to the heart of the matter: the heart of the matter is—what is a genuine domestic basis? The Hon. Robert Lucas referred to a relationship of one

month and chose to categorise that probably in some circumstances as a genuine domestic basis. But that begs the question—will the courts determine (and it will have to be done by litigation) whether in that circumstance there is a genuine domestic relationship if for six weeks, three years or whatever there is not a genuine domestic basis? That is the problem. Nothing is clearly defined in the legislation as to what determines fatherhood other than this vague reference to genuine domestic basis, and that will end up in the courts and be litigated. Until the matter goes to the courts and the courts establish some precedence, no-one will know what genuine domestic basis is. That is the major problem.

If, as I indicated earlier, children are born to women where there has not been such a genuine domestic basis, we still will not have resolved the question of fatherhood of the child, and that is the problem. On the Attorney's own facts and assertions, there could well be a residuary group of children whose fatherhood is not resolved. That is the problem. It is a difficult question of definition, and for that reason I particularly wanted the Select Committee to endeavour to come to grips with defining more clearly the circumstances in which a male will be deemed to be the father of a child born, particularly by the use of AID, outside marriage. If we exclude all children other than those born to married couples we will certainly not create problems with IVF. A substantial group of children born as a result of AID procedures will be covered. On the Attorney's own admission, a group of other children may be covered by the Bill if they come within that nebulous reference to genuine domestic basis, and there could well be another group of children who would not be covered by the Bill in any case because they would not be born to a couple who could be established in law as living in a genuine domestic relationship. It was that area that I believed created potentially such problems that it should go to a Select Committee for a darned good look.

I saw a press report only last week that stated that the Western Australian Government had decided to introduce legislation dealing only with the status of children born to a married couple as a result of either AID or IVF. I am not sure of the position in other States. I believe that Victoria has gone further and I am not sure about New South Wales, but at least in Western Australia the same sort of position that I am putting has been adopted by the Labor Government. I am not saying that we should discard those children forever and a day or at all: I am saying that there must be greater clarity in the way in which the father is identified. The Attorney-General has referred to wills. It is correct that, if a man makes a will leaving property to his children and if there is a child for whom he has cared but who is not the product of his sperm, there could well be a difficulty, although my recollection is that, under the Inheritance (Family Provision) Act, there are bases upon which such a child may be able to claim. I have not had an opportunity to examine that. It may also be that in circumstances where a male leaves property to his children and where he has donated sperm for the use of another woman, that child then has a claim in respect of his estate—it is possible, but probably remote. On the same basis as the Attorney has indicated that he does not know, and I can understand that he does not know because I do not think that anyone would know how many if any children were born as a result of the private use of AID procedures—

The Hon. Anne Levy: I know of one.

The Hon. K.T. GRIFFIN: I am referring to what the Attorney had to say. He has indicated that he did not know, and—

The Hon. C.J. Sumner: I didn't say that I didn't know: I said that we can't carry out any surveys.

The Hon. K.T. GRIFFIN: The Attorney said that he did not know whether any such children had been born and, if they had, how many.

The Hon. C.J. Sumner: We know that no figures are available, but it is fair enough to assume that there are children in that situation.

The Hon. K.T. GRIFFIN: I am not sure about that.

The Hon. Anne Levy: I tell you I know one.

The Hon. K.T. GRIFFIN: The Hon. Anne Levy can talk about that later. It is likely that a person drawing a will, if there are complexities such as those I have mentioned, may refer specifically to the legal technical difficulty.

If the Attorney-General comes up with a specific provision that clearly defines the circumstances in which a male will be the father where AID has been used outside marriage, then I am certainly prepared to consider it. I have some difficulty generally with the procedures being available through the hospital system, for example, to unmarried couples. However, we will address that matter later in relation to the Sex Discrimination Act. Again, that is an issue that I acknowledge is something that exists, or may exist, within the community, not in relation to IVF, but is to be considered by the Select Committee.

I think that it is a matter that ought reasonably to be considered by the Select Committee. However, if the Attorney-General can come up with something more specific I am prepared to consider it. However, I am not prepared to consider a reference to 'genuine domestic basis' when it is so vague that no one knows what it is and is likely to lead to more confusion than clarity and is likely to lead only to more work for lawyers—I suppose I should not be protesting about that, but I do not see any justice in it—and very little, if any, certainty for the children the Attorney-General is trying to assist. I make that offer on the basis that I certainly do not want to see fatherless children born as a result of AID. I believe that this Bill does not come to grips with this issue and that some further work needs to be done on it. That is why I believe that it should go to a Select Committee.

The Hon. C.J. SUMNER: I cannot accept what the honourable member says. I draw his attention to the model Artificial Conception Bill contained in the so-called Connon/Kelly Report at page 36, where there is reference to a married woman or wife including a reference to a woman who although not married to him is living with a man as his wife on a *bona fide* domestic basis and says that for the purposes of that Act that man shall be deemed to be her husband to the exclusion of any other man. It is interesting to note in the Victorian Status of Children legislation—

The Hon. Diana Laidlaw interjecting:

The Hon. C.J. SUMNER: It is effectively the same. The Bill introduced in Victoria provides:

> (2) A reference, however expressed in this Part, the husband or the wife of a person—
>
> *(a)* is, in the case where the person is living with another person of the opposite sex as his or her spouse on a *bona fide* domestic basis although not married to that other person, a reference to that other person;

Again, one sees the words 'domestic basis', which are the words that appear in appendix 2 of the Connon/Kelly Report, the model Artificial Conception Bill appears in the Victorian legislation. It is worth while noting that the Artificial Conception Bill, 1983, in New South Wales provides:

> A reference in this Act to a married woman includes a reference to a woman who is living with a man as his wife on a *bona fide* domestic basis although not married to him.

It is worth while looking at the Bill before us, which provides:

> 'married woman' or 'wife' includes a woman who is living with a man as his wife on a genuine domestic basis; and 'husband' has a correlative meaning.

Each of those Bills, and the model settled by the Standing Committee of Attorneys-General after considerable toing and froing over many years—including a period with which the Hon. Mr Griffin was involved—

The Hon. K.T. Griffin: We couldn't get on with New South Wales.

The Hon. C.J. SUMNER: I am not being critical. I am saying that the issue has been up and down through the Standing Committee of Attorneys-General over a considerable period of time, but that we now have in the New South Wales and Victorian Bills a formulation based on decisions reached by the Standing Committee of Attorneys-General after Parliamentary Counsel throughout the country had examined the question. They have all come down with slightly different wording for basically the same proposition. Our Parliamentary Counsel has used the word 'genuine' instead of *'bona fide'*, being of the view that 'genuine' is the modern version of *bona fide,* which is an old fashioned Latin tag. I think common to all the definitions is this:

> A woman who is living with a man as his wife on a genuine domestic basis.

This does not refer just to people living on a genuine domestic basis, because I suppose all sorts of people could live on a genuine domestic basis.

The Hon. Anne Levy: My daughter and I.

The Hon. C.J. SUMNER: Yes, Ms Levy and her daughter. Therefore, it is not just people living together on a genuine domestic basis but a woman living with a man as his wife. Therefore, it goes further than a genuine domestic basis, and refers to living as man and wife on a genuine domestic basis. I think that it is worth while referring to some comments that passed between Parliamentary Counsel during debate on this issue when it was before the Standing Committee of Attorneys-General. The following comments were made:

> Our law and society recognise that a man has only one wife at a time and a woman has only one husband at a time.

They were there addressing the question of polygamy, but I think the comments are pertinent. The comments continue:

> When a man and a woman are spoken of as living together as husband and wife those words are to be construed in their ordinary and natural meaning, having regard to the societal and legal factors that apply in the jurisdiction in which the laws expressing that concept operate.

It then goes on to deal with the question of more than perhaps living with or having relationships with more than one male. In that situation it is clear that the woman is not living with the man as his wife. The report continues:

> It is a contradiction in terms to speak of a woman who lives with two or more men, all of them as members of a commune, or of your promiscuous female mariner with a husband in every port, as living as the wife of the men whom she favours with her generosity. The fact that she shares her bed with them (whether simultaneously or successively) or 'does for them' in less titillating ways makes no difference. She is not living with either or any of them 'as a wife'.
>
> In *Lambe v. Director-General of Social Services* (1981 Social Security Report 5, 6), the Administrative Appeals Tribunal said:
>
> > Before a woman can be said to be living with a man 'as his wife', there must, in our view, be elements both of permanence and of exclusiveness in the relationship, as these elements are of the essence of a marriage relationship.

I think that does define what we are talking about reasonably concisely in an area of the law that sometimes does provide difficulties. All I put to the Committee is that this issue has been debated at length, to say the least, by the Standing Committee of Attorneys-General. It has been picked up in this definition in New South Wales and Victoria as a result of the model Bill prepared for the Attorneys and as a result of considerable toing and froing between Parliamentary Counsel throughout the country. Therefore, I suppose it is conceivable that some different result might be arrived at, but I doubt it very much.

I think that it is true to say that the various possibilities in this area have been thoroughly examined. I think that what I said before about a genuine domestic basis in effect means a *de facto* relationship with a couple living as man and wife and does not involve some of the more esoteric and odd situations, and that given the organisation that has already been dealt with in this area in a number of forums, including the Standing Committee of Attorneys-General and the Committee of Parliamentary Counsel, I believe that the definition is a satisfactory one. I bring people back to the original point that we are really dealing with the status of children and not the extraneous although important issues.

The Hon. K.L. MILNE: Once we leave the situation of a genuinely legally married couple, it becomes so complicated. There are so many versions of what would have to be covered next that there would be thousands of different cases of people having this service granted to them when they are not married. I cannot understand the logic of the clause where it says:

> A reference . . . to the 'husband' of a woman shall, where the woman has a lawful spouse—

that is, has a husband living somewhere else—

> but is living with some other man as his wife on a genuine domestic basis . . .

That is gobbledegook to me. If we are going to legislate we should legislate for something we can all understand, even if we have to bring in another Bill next week. We should tidy this Bill up to the extent that we can understand it in relation to a married couple. Are there any children, as a result of this service being provided, of a woman who is living with some other man as his wife, not on a genuine domestic basis?

The Hon. C.J. SUMNER: I am not sure what the honourable member is putting. We do not know, except in general terms, if procedures have been available and people have been born as a result of these procedures. We have not been able—

Members interjecting:

The Hon. C.J. SUMNER: If they are not covered now, they are not covered by the existing law.

The Hon. K.L. Milne: Why put it in at all?

The Hon. C.J. SUMNER: For the reason I have outlined. The Hon. Mr Milne obviously thinks it is fair for a child who has lived in a social unit, but who was conceived by an AID procedure, to be excluded from a will.

The Hon. K.L. Milne: That is not my responsibility; that is the parents' responsibility.

The Hon. C.J. SUMNER: That is the height of irresponsibility. If a couple are not living as man and wife in a genuine domestic relationship, then presumably the law would be the same as it is now. I am sure that there are women who bear children and may not know who the father is. That child will be the legitimate child of the woman; that is the existing law. I understand that some women do not want to get married but want to have children. These women have relationships with men in order to conceive but do not want to impose any burden on the male. But, the child is the legitimate child of that woman.

If there was a dispute as to paternity that arose later, that would have to be determined. Similarly, if a woman on her own wanted to have a child by an AID procedure, the child would be the legitimate child of that woman, but as to who the father is, the situation would remain as it is under existing law. All I am saying is that the Bill tries to define the status of children born by these procedures in the same way as the status of children born by natural procedures in existing married or *de facto* relationships.

If a child is born now in a *de facto* relationship then the child, because of the paternity and genetic material used from the male in that *de facto* relationship, will be illegitimate

but, nevertheless, the legal child of that male. All we are saying is that, when AID procedures are used, the end result is that that child is the child of that woman and that man.

The Hon. G.L. Bruce: Even if he is not the natural father?

The Hon. C.J. SUMNER: Yes, she may not even know the natural father. The natural father may be a student who popped into the doctor's surgery and got a bottle of beer or something like that, just as the Hon. Mr Milne used to get when he went to the Red Cross to give blood when he was a student. He used to think that was a lot of fun; it may have been. This is being flippant about a serious topic, but it may be that all that the donor of the sperm got from the doctor who carried out the procedure was a bottle of beer or $10. If we do not pass a Bill of this kind and if per chance the child knows who the father is (that is another issue) there may be a paternity suit against that student who donated his sperm. I agree that the whole area is a morass.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: That is not the fault of the law. The law is trying to cope with the existing situation, however unsatisfactory that may be. Maybe 10, 12 or 15 years ago we should have said to the scientists or doctors, 'Before we go down this track, let us sort out the legal, moral and ethical issues.'

The Hon. R.C. DeGaris: You can't do that, either.

The Hon. C.J. SUMNER: One may not be able to do it. We have not done that. There are children whose status is indeterminate. Those children may have claims of paternity against the donors of the semen on the one hand and, on the other, the children want to know who they really relate to. Unless one passes a Bill of this kind which clarifies the situation one continues the legal morass that we are in. All I am saying, in response to the honourable member's question, is that the situation is no different under this Bill from the situation where a woman conceived by natural means—not artificial means.

The Hon. PETER DUNN: There appears to be quite a distinct definition in time: past and future. The Attorney-General keeps saying that we are fixing up this morass, as he calls it, of legally, determining what the parents of children born under this method were in the past. How many cases have come before the courts? Is it a problem? If it is not, then all the Attorney is doing is legislating for the future. If there have been no cases, there is no point in legislating.

The Hon. C.J. SUMNER: That is not true. We know that people have been conceived and born as a result of these procedures. That is a fact. One estimate in a document I read says that it is running into thousands.

We have not carried out a survey, because that is not the purpose of the Bill. Its purpose is to define status. Given that all we are doing is defining status—and that is why we are acting now—we do not want to end up next week with a case in the Supreme Court about the construction of a will where a child is involved who was born as a result of artificial procedures. The whole purpose of the Bill is to prevent an unjust situation arising in the courts. That is the purpose of the legislation.

The Hon. Peter Dunn: What about someone who is not in a domestic situation?

The Hon. C.J. SUMNER: I will respond to the honourable member: of course it does not change. That is the same as the situation now. It does not change the situation. I refer to a woman who might be keen to have a baby. She might sleep with two or three people in a week at the time that she believes is most propitious in order to conceive. Assuming that happened, that child would be the legal child of the woman but there would still be a dispute as to paternity if it ever arose, even as the law stands now. That would still be the situation if there was no legal or *de facto* husband of the woman.

The Hon. ANNE LEVY: It might perhaps be worth making a point that may be relevant to the concerns of the Hon. Mr Milne. Human relationships can be messy things. Completely ignoring the whole question of AID, children are born now to married couples, to people living in *de facto* stable relationships, to single women who have one night stands, to women who are married to one man but living with another man on a more or less permanent basis, and so on. I am sure that there are many different situations where children are born in today's society. It is not a question of whether or not we approve of the different relationships that people enter and the different patterns of living that they have.

It is a fact that these things occur. I do not see how we can possibly prevent them—whether we approve or not. Our law has had to come to terms with the status of children resulting from these different possible unions. At present under the law if a woman has a child and is living with a man, he is presumed to be the father of that child. Even if she happens to have other lovers and the like, he is presumed to be the father of the child. Of course, he can deny that he is the father and perhaps have blood tests done and so on to exclude paternity if he does not acknowledge it. But the presumption is that he is the father unless shown otherwise.

As I see it, the law has coped with defining the legal status of children in all the various combinations and permutations of domestic or sexual relations that occur in our society. All this Bill is doing is putting the AID children into the same categories. If you have AID where a man and woman are married—

The Hon. K.T. Griffin: You are introducing an external ingredient: that is the problem.

The Hon. ANNE LEVY: Obviously, you are introducing sperm that does not come from the man that the woman is living with.

The Hon. K.T. Griffin: It is not delivered by the male.

The Hon. ANNE LEVY: It is not the sperm of that man. The end result is that we are putting AID children into the same status with regard to their social parents as all the other children in the community, however these children may arise. If AID has occurred then the status of that child will be the same as the status of a child would be if AID had not occurred but where the provider of the sperm is also the social father. Without AID the biological father is not the social father. Obviously, for a single woman the child has no social father if she lives on her own. There is a biological father. The child has a legal father, but under this Bill we are saying that we are putting the child conceived by AID into the same legal status as if AID had not occurred. There are messy situations that come under the auspices of the Bill because there are messy situations that occur naturally.

The Hon. K.L. MILNE: Can you make a better definition that can be accepted by the two eminent lawyers? The Hon. Mr Griffin said that he was willing to consider a compromise that would clear up the matter. You said you were willing to consider it. Is there not some definition that would suit everyone? We are getting more complicated and no nearer the solution.

The Hon. Anne Levy: I thought I was being helpful.

The Hon. K.L. MILNE: Not to me. The honourable member probably is improving it. What could solve the problem would be if we could do something to cover the bulk of the children about whom we are all worried. We do not believe that the Bill as it is provides the answer. Perhaps we could pause and consider the matter, because I do not believe we will get it right here. If we reported progress and had a conference with the eminent lawyers

who understand the matter and perhaps some other interested people, it might prove worth while.

The Hon. I. GILFILLAN: I think that we are foreshadowing the debate that the Select Committee will deal with. I hope not to appear over optimistic, but it appeared to me that there were indications from the Attorney and the Hon. Mr Griffin of a reworded definition of 'married couple' or whatever it is in the Bill to embrace a definition of a putative spouse—recognising that this is an interim situation. The Select Committee report will be definitive and probably the Government will be under some persuasion to legislate to cover its findings.

I am pleading that we are debating an issue that does not apply to the Bill and we have already seen signs of sensible co-operation between the two major protagonists, with a third one thrown in. That strikes me as the right ingredient for a pause so that an amended version can be drafted and considered or in some way proceed past that point and go on with the rest of the matter covered in the other amendments. If I am wrong, I know that I will be corrected, but the other matters can be proceeded with, regardless of the exact wording of this area if we have good intentions amongst us to try to get a compromise.

The Hon. C.J. SUMNER: Before proceeding down that path I seek an unequivocal assurance from members opposite that the principle of clarifying the status of children born of IVF and AID procedures in a *de facto* relationship is accepted. If that is accepted by members opposite as a matter of principle, we can then look at the definitions. I do not know whether we can improve on the definitions. As I said before, it may be we can look at some concept of putative spouse, but I do not know whether that will take us much further, and it may still leave a hiatus because a putative spouse requires a relationship of five years standing and a declaration by the courts.

What happens if the AID procedure occurred over 20 years ago in another country and the couple migrate to Australia with their children and they have never declared a putative relationship in Australia because they were living in another country? Are we going to say that the children of that relationship should not be defined in terms of their status in this country because they were born as a result of an AID procedure in, say, West Germany?

The Hon. I. GILFILLAN: I understand the problem being confronted by the Attorney is to define a relationship, in a paternal sense at least, which will carry the burden of the legal responsibility for a child. There are areas that will not be defined, as has been recognised. I cannot see a gap so wide in what is acceptable to both sides of the argument that it cannot be solved by an attempt at rewording.

The Hon. C.J. SUMNER: I understand what the honourable member is saying. If there is an unequivocal commitment from honourable members opposite that they accept the principle, I am prepared to look at the definition. While we may be able to look at the putative spouse notion, the more I think about it the less likely it appears to me as being tenable. I say that because the definition has been debated up hill and down dale through the Standing Committee of Attorneys-General for about five years, including Parliamentary Counsels from all the States involved. As a result, I do not think that we can improve the definition. However, if the Hon. Mr Griffin is now prepared to give a commitment that his Party accepts the notion that this Bill should define the status of children born in *de facto* relationships (however they are defined), I am happy to give him time to consider the definition and I will make Parliamentary Counsel available to him. There is no point in going down that track if there is no agreement on the principle.

The Hon. I. GILFILLAN: I agree. The putative spouse situation may be more flexible and applicable than one might think. It is also a putative spouse arrangement for a couple who have a child naturally. The putative spouse time frame can be the hallmark as to whether legal responsibility exists. A child could be born as a result of AID in the first six months of a relationship. Personally, I think it is impossible to debate the wording of the definition in the Chamber. It might be appropriate for the Hon. Mr Griffin to respond to the suggestion that there is room for compromise.

The Hon. DIANA LAIDLAW: The Attorney has asked for the Opposition and the Australian Democrats to make a commitment in relation to putative spouse. During the second reading debate I said that I had some sympathy for that notion, and I repeat that. I understand the case that the Attorney has put to the Committee, but I have great difficulty with his argument. The Attorney has said that this Bill does not approve IVF or AID procedures for *de facto* couples. The fact is that it does give approval in the future for IVF procedures to be available to *de facto* couples. I have heard Professor Lloyd Cox speak on a number of occasions and he has said that there are *de facto* couples on the waiting lists for this procedure. However, they are not being accepted at the moment because there is a worry about the legal status of children born as a result of the procedure. If we resolve that matter in the Bill, we confirm that *de facto* couples can use the procedure. The professor has said that several times. In that situation I cannot accept the Attorney's statement that the two things are not related.

The Hon. C.J. Sumner: I can't help it if the professor doesn't understand the Bill.

The Hon. DIANA LAIDLAW: The ethics committee has said—

The Hon. C.J. Sumner: That situation should be covered by the Sex Discrimination Act. It is another issue. We are not debating that issue at the moment; we are debating the status.

The Hon. DIANA LAIDLAW: I cannot see why the Attorney is so blinkered and is persisting to say that the two are not related.

The Hon. C.J. Sumner: Because they aren't.

The CHAIRMAN: Order!

The Hon. DIANA LAIDLAW: The Attorney and the Government may continue to maintain that the two are not related, but I will continue to insist that they are. That is my great difficulty with accepting the definition of putative spouse.

The Hon. K.T. GRIFFIN: At the least there is a tacit acceptance that IVF procedures will be available. Although the Bill deals with the status of children, it deals with the status of children born as a result of artificial insemination and/or IVF procedures to married couples or to those living in a genuine domestic relationship. The fact is that at present the IVF procedures have not been made available to unmarried couples or single women. To that extent the Bill is superfluous. The fact is that the Bill provides recognition for children born as a result of the procedure. If it is not going to extend to future children born as a result of IVF procedures, we should say that and incorporate it in the legislation.

The Hon. C.J. Sumner: They will, if it happens. It doesn't say anything about whether it should happen.

The Hon. K.T. GRIFFIN: That is the problem. The Attorney is legislating now in the event that it may happen. That is giving at least tacit acceptance or recognition.

Members interjecting:

The Hon. K.T. GRIFFIN: The legislation can be amended in the future if there are those children.

The Hon. Anne Levy: What if a couple misleads a hospital by saying they are married when they are not? We have to cover the children.

The Hon. K.T. GRIFFIN: They may not even be living on a genuine domestic basis, and, therefore, they are not covered, anyway.

The Hon. C.J. Sumner: All that you are doing is putting the child in the same position as someone born by natural means, because these artificial procedures are available. If you don't like the artificial procedures, attack them, legislate against them, stamp them out, have an inquiry—

The Hon. K.T. GRIFFIN: You get up and speak if you are going to speak.

The Hon. C.J. Sumner: You finish; I will respond.

The Hon. K.T. GRIFFIN: What has been said highlights the extreme complexity of this whole issue and focuses again on the point that I was making earlier: that there is no definition of 'genuine domestic basis'. All along, I have been saying that we should legislate where we can guarantee certainty. We should not brush the other issues under the carpet, but the Select Committee, in the context of IVF, AID and ET procedures, will look at those issues where it has the opportunity to sit down and think and talk through the issues, gain information and come up on a rational scheme and a clear definition. That is not what is happening at the moment.

I am saying that we should deal with the areas where there can be certainty, and with the other areas after they have been considered by the Select Committee. If it is a matter of pressing urgency—and I do not believe that it is—the Select Committee can deal with this issue first and can present an interim report. There is no problem about that, but at least the committee has before it submissions and information, and people who can think it through rather than launching off as we are now doing into an area of considerable legal uncertainty.

The Hon. R.I. LUCAS: I support the comments of the Hon. Ian Gilfillan to a degree. His understanding of where we are is pretty close to mine; that is, that both the Attorney and the shadow—

The Hon. C.J. Sumner: No, he won't give a commitment, but he accepts—

The Hon. R.I. LUCAS: Let us get into that in a tick. I understand that the Hon. Trevor Griffin said, 'In this Bill, let us deal with certainty.' In my definition, that would include at least a consideration of something like a putative spouse because that would involve certainty.

The Hon. C.J. Sumner: No.

The Hon. R.I. LUCAS: It does not have to be exactly that definition, but it would involve a length of time.

The Hon. C.J. Sumner: What happens if a child is born in that situation? We still have to think about the child.

The Hon. R.I. LUCAS: No-one is saying, 'Let us delay the thing for months.' It is now Thursday; let us look at it on Tuesday. Nothing will happen over the weekend that will destroy the basis of the Attorney's argument, whether people give commitments or not. There appears to be at least the possibility of some sort of compromise on the matter. If the Attorney was to press ahead, I am concerned with the situation that we discussed earlier of a genuine domestic basis of something less than six months, which the Attorney accepts may well be accepted by the court—he did not say that it would be. If a man and a woman were together for a relatively short time many years ago (10 or 15 years ago), all of a sudden by this we are retrospectively saying to that fellow who shared a genuine domestic basis with that woman—

The Hon. C.J. Sumner: As man and wife.

The Hon. R.I. LUCAS: A genuine domestic basis, whatever that means, as man and wife. Now, 10 years later, that fellow is possibly responsible, as the Attorney agrees, for maintenance payments. I presume the situation will also apply with respect to a will: the child of that relationship of three months standing on a genuine domestic basis 15 years ago has a chance of a bite at that person's will. We are retrospectively making those decisions. That fellow 15 years ago, sharing a genuine domestic relationship for three months, had no idea what would happen to him 10 or 15 years later. That fellow, in his understanding of the law at that time, would have believed that the legal father was the donor of the sperm and that he had no responsibility.

We are saying that 10 or 15 years later that fellow is now legally responsible for maintenance payments, but, possibly more importantly, that child of that relationship of 10 or 15 years ago will be able to take a chunk out of the will. That fellow may well have established a legally recognised marriage with someone else.

The Hon. C.J. Sumner: We aren't talking about the relationships between the partners; we're talking about the children.

The Hon. R.I. LUCAS: That child will now have legal access to that fellow's will.

The Hon. K.T. Griffin: The status depends on the relationship.

The Hon. R.I. LUCAS: If that person now was to leave his assets to his children, unnamed, would not the child of that genuine domestic basis of 10 years ago, under the Attorney's genuine domestic basis—

The Hon. C.J. Sumner: Man and wife.

The Hon. R.I. LUCAS: Yes, but under that relationship of 10 years ago, would he not now have a chunk of the will? That person 10 years ago made a decision to share with that woman a genuine domestic basis for six months.

The Hon. C.J. Sumner: As man and wife.

Members interjecting:

The CHAIRMAN: Order! We have had a fairly easy and perhaps informative debate, but we must not have two debates at one time.

The Hon. R.I. LUCAS: That person shared a genuine domestic relationship for six months.

The Hon. C.J. Sumner: As man and wife.

The Hon. R.I. LUCAS: As man and wife. That man and woman made that decision 10 years ago to go away and have an AID service on the basis, possibly, that he knew that legally at the time he had no responsibility, that that child would have no access to his will in the future, and that he would have no responsibility for maintenance payments. There are some thoroughly disreputable men in this community—I am sure that the Hon. Anne Levy will agree with that—and that person made decisions 10 or 15 years ago. In this we are saying retrospectively that all the decisions that he made then are no longer valid. We wipe that out. He may well have become a wealthy man now and that child of that union has access on his death to a chunk of his assets. All that I am saying is that if there has been a really genuine relationship over some time—five years, as per, say, the putative spouse argument—and that is a concept that a Government of the Attorney's own political persuasion introduced in 1975, and I do not know whether the Hon. Anne Levy was here at that time to support it—

The Hon. Anne Levy: 1977.

The Hon. R.I. LUCAS: The honourable member probably supported it, then. That is a concept that was introduced. It has now been introduced, as I understand from Rebecca Bailey, into eight or 10 other bits of legislation since. It is a concept of some period. So, if a man and a woman have shared together a relationship for five years there is some expectation that the man ought to take some legal responsibility for maintenance, and possibly the child ought to have access to a will or to the assets of that male.

That is at least an arguable concept about which we ought to think. That is where I thought we were getting to: that the Attorney was at least prepared to discuss it and that the Hon. Trevor Griffin said that he would be prepared to look at something with at least a degree of certainty in it. The Hon. Mr Gilfillan and the Hon. Mr Milne siad, 'Let us sit down and have a think about it'.

The Hon. C.J. Sumner: He won't accept the principle.

The Hon. R.I. LUCAS: He has not given an unequivocal commitment, which is what the Attorney wants. The Attorney is being a little unfair. We are saying that we should wait until next Tuesday. Nothing will happen over the weekend to throw the Attorney's plans into disrepair. Let us wait until Tuesday to see whether we can come up with a concept. I hope that the Attorney will stop all this prolonged debate and accept that he will probably have the numbers to pass the Bill in the end.

The Hon. C.J. Sumner: You are prepared to accept it?

The Hon. R.I. LUCAS: I am prepared to say that I am very keen on looking at a compromise, but at this stage I am not prepared to accept what is in the Bill. If the Attorney presses ahead with the provision regarding genuine domestic basis, I will vote against it for the reasons I have outlined. I am prepared to give a commitment (and I thought that this is what the Hon. Mr Griffin said) to consider a possible compromise. I am not prepared to give a commitment that we will come up with a compromise, because possibly we cannot.

The Hon. C.J. Sumner: You accept the principle?

The Hon. R.I. LUCAS: I accept the principle of at least coming up with a compromise: that is what I am saying.

The Hon. C.J. Sumner: The only question I want answered is: are you prepared to accept that the status of children born by artificial procedures to a *de facto* relationship should be covered by the Bill? If you are prepared to accept that in principle, then I am happy to look at the definition.

The Hon. R.I. LUCAS: I have just told the Attorney that, if there is some definition along the lines of what I would call stability (that is, involving a period of roughly five years) but not what the Attorney would call stability (which is perhaps two or three months) of a genuine domestic basis, I would consider it. If a man has been with a woman for a substantial period, he must take some legal responsibility for maintenance; that child may get a chunk of his will and other things. If a man has been with a woman for, say, less than six months and if he gave permission for certain procedures on the basis that he would not be legally responsible for anything, and 10 or 15 years later we make him—

The Hon. C.J. Sumner: That would be pretty irresponsible.

The Hon. R.I. LUCAS: There are irresponsible people in the community.

Members interjecting:

The CHAIRMAN: Order!

The Hon. R.I. LUCAS: I am prepared to give the Attorney that commitment—we should wait until Tuesday; we can resolve the matter then, and we can look at a compromise.

The Hon. G.L. BRUCE: I cannot follow the reasoning of the Hon. Mr Lucas on the argument he put forward. If 10 years ago a couple shacked up together in a *de facto* relationship and if the man consented, because they could not conceive, to artificial insemination or some artificial device so that the woman became pregnant, the honourable member is saying that 10 years down the track that man does not have to accept any responsibility for the decision. Is that what he is saying? If so, I cannot accept that.

The Hon. R.I. LUCAS: I am saying exactly that. If a genuine domestic basis can be established on the fact that two people have been together for three, four or five months, and if the man made a decision on the basis that he knew at the time that the law said that he was not responsible (which is quite correct: he was not responsible)—

The Hon. G.L. Bruce: If it was at his instigation, if he wanted a family and the woman became pregnant—

The Hon. R.I. LUCAS: No, it might not have been the man at all.

The Hon. G.L. Bruce: The woman might not have wanted to get pregnant but he could have convinced her that she should conceive, perhaps because a family would bind them together; surely he must accept responsibilty even if he is not the natural father.

The Hon. Anne Levy: If he was the natural father, it would be obvious.

The Hon. R.I. LUCAS: I would have thought that it is probably more likely that the woman would want a child, even if the man was infertile, and that is what I am attempting to consider. I am saying that, if a man has been with a woman for a while, he should take some responsibility, but how one defines 'a while' I do not know. However, I do not think that the definition of 'genuine domestic basis' could be a relationship of six months, but that is what the Attorney believes. I do not believe that people who made decisions a long time ago knowing that they were not legally responsible (and quite rightly at that time) should be told 10 or 15 years later, 'You were all right 10 years ago when you agreed; you weren't legally responsible, but now we will make you legally responsible. Your assets and your will will be open to the child of that relationship.'

The Hon. ANNE LEVY: I think I would disagree with what the Hon. Mr Lucas is saying, and I come back to my point that this Bill will put the AID child into the same category as a naturally conceived child. If a couple lives together for a time, even if it is only six months, and if a child is conceived in that time, even if the man then leaves the relationship and has nothing further to do with the woman, he is still legally the father of that child and is responsible for maintenance. The child could be entitled to a hunk of his will. This Bill puts the child conceived by AID into the same position as a child conceived naturally—that is all it is doing. One can think of many different situations, and the Hon. Mr Lucas is thinking of one situation specifically. If a child was conceived naturally in that situation, the man has certain rights and responsibilities, whatever his subsequent history may be.

The Hon. R.I. Lucas: The father knows, doesn't he?

The Hon. ANNE LEVY: Not necessarily. Plenty of men walk out on women who are pregnant not knowing that they are pregnant, although more often they walk out because the woman is pregnant—that is the usual situation. This Bill provides that, whatever the messy situation may be (and there are lots of messy situations in human relationships), if a child is conceived naturally there are certain legal responsibilities and rights that flow from that conception, and the child has a certain status. This Bill provides that, if a child is conceived by AID in any of those messy relationships, its legal status and the rights and responsibilities of a male towards the child will be the same as if the child was conceived naturally. That is all the Bill is doing: it is certainly not expressing approval for the numerous messy relationships that people may get themselves into. It is acknowledging that these messy situations can and do occur. The status of the children who may result will be the same under this Bill as the status of a naturally conceived child in the same messy relationship.

The Hon. C.J. SUMNER: I can only repeat that I do not know that the putative spouse proposition is one that is tenable. I think that the five-year period mentioned has problems, and let us not forget the fact that there has to be a declaration and the fact that the putative spouse clause does have a provision in it related to a child of the rela-

tionship, which is really the situation we are talking about here. The honourable member in a sense is saying that this bounder who consented to the AID procedure and only lived with the woman for six months and then disappeared is not, in his view, to be held responsible. I cannot completely accept that. It seems to me that even in what seems to be a genuine domestic relationship as man and wife for six or 12 months there ought to be consequences that flow from that relationship, even though it has not lasted for five years, if the male has agreed to the woman undergoing the AID procedure. I think that that is quite reasonable.

The Hon. R.I. Lucas: If you believe that, why do you maintain the putative spouse period at five years? Why don't you get rid of the concept from the parent Act?

The Hon. C.J. SUMNER: Where there is a child there is a putative spouse—that is what the honourable member is talking about.

The Hon. K.T. Griffin: Subject to the amendment I have on file that consent is presumed in the absence of evidence to the contrary so that the six months instance—

The Hon. C.J. SUMNER: I think that if there were no consent and the period were only six months, that would go to whether or not there was a genuine domestic relationship—a consensual relationship of people living together in a situation of permanency. The words referred to are 'permanency' and 'exclusiveness' so far as that relationship is concerned. I understand what the honourable member has said and I suppose the problem with the debate is that we have got down to the most esoteric examples that we can find around the place. I guess that the difficulty we have is that it is a difficult area of the law because we are trying now to catch up with a social and medical situation that has occurred for perhaps the past 10 or 15 years.

It may not be possible, I suspect, to resolve every little potential difficulty. The honourable member has picked the example of a bounder who knew at the time he did not have any obligation but agreed for the woman to go ahead and have the procedure done. I would think that in such circumstances that male person ought to have some moral and legal obligations to the woman and to the child. It may be different if a woman had the procedure performed without telling the man, but I am not quite sure how one can overcome that difficulty. I understand from what has been said that members opposite are prepared to accept the principle of clarifying in this Bill the status of children born from IVF or AID procedures to people in *de facto* situations.

The Hon. K.T. Griffin: Not IVF, because it is not applicable.

The Hon. C.J. SUMNER: We do not think it has been applicable. That is what the hospitals tell us here in Adelaide, but there are other situations where perhaps people said that they were married and they were not. That is why I come back to the thing that I think is continually being overlooked in this Bill—that it deals with status, and status alone. If the honourable member's Select Committee wants to go away and say that AID and IVF procedures should be banned, or whatever it likes about AID and IVF procedures, that will not have any effect on this Bill, because all it says is that if by some chance those procedures occur, this is the result that follows. I think that the problem with the debate is that we have confused those two concepts.

The Select Committee can address the moral and ethical issues in all these things and if it makes certain decisions about them, fine; it can recommend prohibiting the procedures even, if that is what is desired—that is one option that is open, but that will not affect this particular Bill. However, in the light of undertakings given by honourable members opposite—at least by some of them—that they are prepared to look at this definition, then I am prepared to make Parliamentary Counsel available for some sort of conference with them about this matter. I know that I raised the question of whether the concept of putative spouse could be brought into this legislation. Having thought about it, I am less sure that it can be and I am reinforced in that thought by the knowledge of the amount of discussion that has gone on about this clause, in any event, over a series of years at meetings of the Standing Committee of Attorneys-General. However, there seems to be some notion that at least some members opposite will look at the principle. That being the case, I will move that consideration of clause 5 be postponed and taken into consideration after clause 8.

Further consideration of clause 5 deferred.

Consideration of clauses 6 and 7 deferred.

Clause 8—'Amendment of certain Acts.'

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

Page 3, after line 40—Insert new subsection as follows:

(4) The Sex Discrimination Act, 1975, is amended as indicated in the fourth part of the schedule to this Act.

Clause 8 deals with the amendment to certain Acts: Adoption of Children Act; Community Welfare and Guardianship of Infants Act. I want to add to that the Sex Discrimination Act, 1975. This amendment is to be considered in conjunction with the amendment in the Schedule which will, in fact, become the Fourth Part if it is passed. What this amendment seeks to do is exclude AID or IVF procedures from the definition of 'service' in the Sex Discrimination Act so that that Act cannot be used by any person to compel the application of these procedures to a person. I indicated at the second reading stage that it had been suggested to me that there was a single woman who was likely to make an application to the Sex Discrimination Board and, if necessary, ultimately to the Supreme Court for an order compelling Flinders Medical Centre and the Queen Elizabeth Hospital to allow her to be included in the programme.

That raises fairly serious questions as to whether the procedure should be available in those circumstances and in the interests of the child to be born as a result of the procedures to that single woman, as well as to unmarried couples. So, as a sort of holding procedure, I want to exclude the operation of the Sex Discrimination Act from applying to these procedures. Obviously, this is a matter that the Select Committee will look at: it is in its terms of reference. Because of that and because some months at least will elapse, I think any application of the Sex Discrimination Act to these procedures should be forestalled. If the Select Committee comes back and says that it should apply, we can amend the Act.

The Hon. C.J. SUMNER: The effect of the honourable member's amendment is to take out of the ambit of the Sex Discrimination Act the carrying out of fertilisation procedures. At present both South Australian hospitals offering IVF procedures restrict access to the programmes to married couples only. There are now more than 700 couples on the waiting list for IVF programmes at the Queen Elizabeth Hospital and the Flinders Medical Centre. The waiting time varies from 18 months to three years. No complaints have been made to the Commissioner for Equal Opportunity concerning access to the IVF programmes. Some control must be exercised over the access to the waiting list for IVF and AID treatment. In particular, IVF programmes are expensive to operate and strict criteria for entry must be applied. Presently access to the programme is restricted to married couples: *de facto* couples and single people are excluded.

However, it may be that this type of distinction is a breach of the South Australian Sex Discrimination Act, which makes discrimination in the provision of some specified services unlawful. If 'the services of any provision' includes IVF programmes offered at Government hospitals or if those programmes are 'services provided by any public

authority' then a complaint under the Act may succeed. However, I make clear that I do not necessarily concede that the services referred to in the Sex Discrimination Act in fact include the service of offering a fertilisation procedure.

The Hon. Mr Griffin's amendment wants to make clear that it does not include that. I suppose that that is a matter of principle, about which there can be debate. However, the matter is complicated by the existence of the Commonwealth Sex Discrimination Act. This Act could have application regardless of the provisions of the Sex Discrimination Act or anti discrimination legislation in this State. Section 22 of the Commonwealth Act makes it unlawful for a person to discriminate against another in the provision of services on the grounds of marital status, and marital status includes the status of being single.

So, the Commonwealth Sex Discrimination Act would override the State Sex Discrimination Act and also override this provision if it were passed and challenged. If the Commonwealth Sex Discrimination Act was held to cover and refer to fertilisation procedures conducted in hospitals, then the clause that the honourable member seeks to insert in the Bill would be struck down as inconsistent with the Commonwealth Sex Discrimination Act. The current practice of the hospitals in giving preference to married couples is arguably now a breach of both the Commonwealth and State sex discrimination legislation.

The amendment proposed by the honourable member would remove fertilisation procedures from the ambit of the South Australian Sex Discrimination Act, but it is at least arguable that such procedures are not services within the meaning of the State Act or, indeed, the Commonwealth Act. Even if the amendment to the Sex Discrimination Act is accepted to exclude these services there may still be a problem with the operation of the Commonwealth Act in this State. I believe that a prudent approach in this case is to allow the Select Committee to examine the issue and make its recommendations and then, if need be, to tackle the problem.

The problem would then need to be tackled on two fronts. If the Select Committee recommended to this Council that these procedures should be available only to married couples and not to *de facto* couples or single people, then that would not be the end of the matter. That issue would then have to be tackled through our sex discrimination legislation but, more importantly, it would need to be tackled through the Commonwealth sex discrimination legislation, and representations would have to be made to the Human Rights Commission for exemption or the Commonwealth Parliament for an alteration to the legislation.

It should be noted that no State inquiry yet completed has recommended that single people should have access to IVF or AID programmes. Victoria has an Infertility Medical Procedures Bill currently before the Legislative Council which effectively bans the availability of IVF and AID to single persons, but allows married and *de facto* couples access. The applicability of the Commonwealth Sex Discrimination Act is a potential problem which all States will have to address in due course and, indeed, Victoria will have to address it if that Bill becomes law. So, I believe that we are not talking about a particularly pressing practical problem at the moment. The waiting lists are substantial and apparently the only people on them at the present time are married couples.

The Hon. Diana Laidlaw: That's not right.

The Hon. C.J. SUMNER: That was the information I had, that hospitals only offered it to married couples in any event.

The Hon. Diana Laidlaw: That's different from being on the waiting list.

The Hon. C.J. SUMNER: I understand that they adopt a fairly practical procedure to *de facto* couples being on the waiting list, which usually results in their entering into the bonds of matrimony. Whether that is something that is enthusiastically applauded by the Commisioner for Equal Opportunity, I do not know. If the matter was just for South Australia, I guess we could debate the issue in principle now and make a determination on it. However, it is complicated by the existence of the Commonwealth Sex Discrimination Act and it may be that whatever we do here could lead to challenges and potentially to this clause that the honourable member wishes to insert being struck down. I believe, in the light of the paramountcy of Commonwealth law, it is better to leave the situation as it is. Once the Select Committee has reported, and if it reports on a firm basis to the Council that it should not apply to *de facto* couples or single people, we would have some basis for mounting an argument to the Human Rights Commission or before the Commonwealth Parliament to alter the legislation. But, in the interim and in the light of the fact that I do not believe it is a substantial practical problem and will not be while the Select Committee is sitting, I oppose the amendment.

The Hon. K. T. GRIFFIN: The information that has been given to me indicates that there are unmarried couples on the waiting list but that priority is given to married couples on a fairly practical basis. I understand that the difficulty is with the Commonwealth Sex Discrimination Act. I do not think that that ought to prevent us from expressing a point of view on this provision, which is not to deny access but to indicate that, so far as the programmes are concerned, they are not subject to the Sex Discrimination Act. If the amendment is carried and introduces a new issue to the debate about the *in vitro* fertilisation programme, that does not particularly worry me.

I think the debate is going to occur anyway and, as I have indicated, some information was given to me that there was a single person preparing herself for a challenge to the way in which the programme is administered anyway. To support the amendment will at least indicate the way in which we believe the programme ought to be administered, that is, not necessarily being subject to all the criteria of the Sex Discrimination Act. For that reason we ought to support the amendment. I am not worried about the Commonwealth's becoming involved, but I do think it is a more pressing problem than the Attorney has suggested in his response.

The Hon. I. GILFILLAN: I believe the amendment is worth while if certainly not clear cut in its future because of the supervening of Federal legislation, but I believe it is an effective expression of the opinion of this Chamber. I believe that the delay for which the Attorney has argued would only defer the complications. If the contradiction between Federal and State legislation will occur, it will occur after the Select Committee reports, or now. I do not see that that is a particularly persuasive argument not to consider the amendment as it is now before us. Without going into an expansive argument as to the reasons, I am persuaded that it is a worthwhile amendment and I intend to support it.

The Hon. ANNE LEVY: I sincerely ask the Hon. Mr Gilfillan to reconsider his attitude. He is a member of the Select Committee that has just been set up, one of whose terms of reference is to look at the question of eligibility and conditions for admission of individuals to artificial reproduction programmes, with particular reference to social issues such as marital status, the patient's ability to pay and the provision of adequate counselling services. That is specifically one of the terms of reference that as a member of the Select Committee the honourable member would be

looking at. We should not prejudge the findings of the Select Committee, which will be taking evidence on this very point. Arguments will be presented and, to express an opinion of this Chamber now' is pre-empting, first, the evidence that we will receive on the Select Committee and, secondly, any conclusions that the Select Committee may make. It is also prejudging. The Select Committee may well say that single people should not be eligible for these medical procedures.

The Hon. K.T. Griffin: The Attorney said it is available only to married couples at present.

The Hon. ANNE LEVY: I agree. Also, there is a two-year waiting list so that even if someone goes on the waiting list it will be two years before they will come to the top of the list. While I do not imagine that the Select Committee will reach conclusions in a great hurry, I hope it will not be two years before conclusions are made. This is just the sort of thing that the Select Committee must look at.

The Hon. I. Gilfillan: I give a personal assurance that it is not a prejudgment as far as I am concerned. My support is not a prejudgment of the issue—it is a protection from its being involved in anti discrimination legislation.

The Hon. ANNE LEVY: You will come to the Select Committee quite openly in regard to any evidence that we may get on this point?

The Hon. I. Gilfillan: Yes.

The Hon. ANNE LEVY: If the Select Committee comes to the conclusion that such a clause should be removed from the Sex Discrimination Act you would support its removal?

The Hon. I. Gilfillan: If I have been persuaded by that evidence, yes; I certainly go open minded to the Select Committee without any prejudice.

The Hon. ANNE LEVY: It is dangerous for this Committee of the Whole to take a decision that could in any way be regarded as pre-empting one of the very things that the Select Committee is to look at—who should be eligible for admission to the programmes.

The Hon. Barbara Wiese: It would seem better to leave it out now and put it in later.

The Hon. ANNE LEVY: It would seem better to leave it out now. If the Select Committee feels it should go in when it has looked at the evidence, the Council will put it in, but to put it in now when it is one of the matters that the Select Committee is to look at seems to be prejudging it, and it will make it very difficult for members of the Committee to take part in the deliberations of the Select Committee on this very point as to who should be admitted to the programmes. It is one of the key terms of reference of the Select Committee of which the Hon. Mr Gilfillan, myself and others are to be members. These are just the issues that we are going to have to confront, and to prejudge them beforehand seems to me utterly ridiculous.

The Hon. K.T. GRIFFIN: I moved this amendment in this case because I will also move it in the Anti Discrimination Bill. That is a Bill that the Government has introduced to repeal the Sex Discrimination Act, and it is an appropriate Bill in which to give further consideration to this issue. All I am doing in moving the amendment is to ensure that the *status quo* holds for the time being. I said that when I was moving it. I said it is an issue that is going to the Select Committee and, if the Select Committee decides that some change is necessary, we can repeal this or otherwise amend it then. I said that. All that the amendment is designed to do is ensure that the IVF programmes are not subject to litigation, pressure and the application of the Sex Discrimination Act. The point I make is that it is designed to ensure that the *status quo* is maintained, and that when the Select Committee has considered and reported on the matter the position can be reviewed. That is all it is doing.

The Hon. ANNE LEVY: If the Hon. Mr Griffin really wants to indicate that he is not prejudging the issue, he should make it a sunset clause. If it is not made a sunset clause, it will apply until changed.

The Hon. K.T. Griffin: I am pleased to hear that you support sunset clauses.

The Hon. ANNE LEVY: We had a great fight to get one through the Council last November, over the opposition of the Hon. Mr Griffin. I think that is a remarkable interjection on his part.

The Hon. K.T. Griffin: What sunset clause did you do in November?

The CHAIRMAN: Order!

The Hon. ANNE LEVY: To put a clause into legislation without a sunset clause means that one can be taken to have prejudged the issue in relation to what the Select Committee is to report on. The Select Committee has its terms of reference and surely this is one of the most important areas that it will look at. I think it is totally unnecessary to give the impression that one is prejudging the issue.

The Hon. K.T. Griffin: That is nonsense.

The Hon. ANNE LEVY: I suggest that the honourable member should make it a sunset clause, which will then make it quite clear that the honourable member is not prejudging; otherwise, I can only view it as prejudging the issue before the Select Committee has taken one word of evidence.

The Hon. R.C. DeGARIS: Although I am not a member of the Select Committee, I do not prejudge the issue in any way whatsoever. My view has been quite clear: in these procedures I believe that we can not have a different process in relation to what happens normally. However, I will support the amendment, because I can see no great difficulty with it at this stage. In relation to the discrimination Bills, we will need to face this question on a number of occasions where we exclude certain legislation from their operation. I support the amendment.

The Committee divided on the amendment:

Ayes (10)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, R.C. DeGaris, Peter Dunn, I. Gilfillan, K.T. Griffin (teller), Diana Laidlaw, K.L. Milne, and R.J. Ritson.

Noes (7)—The Hons G.L. Bruce, B.A. Chatterton, C.W. Creedon, M.S. Feleppa, Anne Levy, C.J. Sumner (teller), and Barbara Wiese.

Pairs—Ayes—The Hons C.M. Hill and R.I. Lucas. Noes—The Hons Frank Blevins and J.R. Cornwall.

Majority of 3 for the Ayes.

Amendment thus carried; clause as amended passed.

First schedule.

The Hon. K.T. GRIFFIN: I presume that the question of surrogacy will involve some debate. Surrogacy is raised in the context of this Bill because it seeks to amend the Adoption of Children Act, and the question of surrogacy is pertinent to the *in vitro* fertilisation procedures and artificial insemination procedures. Honourable members should note that it does not deal with the wider question of surrogacy generally. It is an issue which has attracted attention in the United Kingdom, in Victoria and New South Wales, and there has been some comment on it in South Australia. In the United Kingdom recently there was reference to a 'rent-a-womb' proposal, where a British mother rented out her womb for $13 000. There was debate because there was some question as to whether the persons who had contracted to take the child born as a result of the surrogacy agreement would in fact do so.

In New South Wales there is the specific instance of a child born to a woman where she had agreed to hand over the child at birth, but on birth had decided that she would

not do so. That was an agreement that had been entered into for monetary consideration.

There is also the instance of four couples in Victoria going ahead with surrogate pregnancies notwithstanding that the contract that they had entered into was most likely unenforceable at law and there would not be any capacity for any of the parties to litigate the contract if there was a breach of it.

In the *Advertiser* of 30 July the Minister of Health made some comments about the IVF and AID programmes and commented, particularly, on the Connon/Kelly Report and the Government's decision in relation to a variety of issues addressed in that report. That report, incidentally, recommended that the law be made clearly against the practice of surrogacy. In the *Advertiser* report the Minister of Health said that he had made a recommendation that Cabinet had accepted that surrogacy would not be permitted. He said:

> Whatever the arguments for and against surrogacy, we are simply not in a position to make decisions on all the issues that would have to be determined before surrogacy could proceed.

I am at one with the Minister of Health on the issue of surrogacy, which in the amendment that I am moving is limited to the IVF and AID programmes and places a penalty on a woman who undergoes a fertilisation procedure for the purposes of a surrogacy agreement or with a view to entering into a surrogacy agreement, and places a penalty on a person who carries out the fertilisation procedure knowing that the woman has entered into a surrogacy agreement, and provides that notwithstanding any other law a surrogacy agreement is void and of no effect.

This is in the nature of a holding provision because aspects of surrogacy will be considered by the Select Committee. Notwithstanding that, it is an issue that is growing in importance and, for that reason with the opportunity of this Bill before us, we ought to make clear that surrogacy in those programmes is not something that this Parliament supports.

The Hon. C.J. SUMNER: The Waller Committee in Victoria recommended that surrogacy arrangements (commercial or voluntary) should in no circumstances be made at present as part of the IVF programme in Victoria. The special committee in Queensland considered that it would not be desirable, at least at present, to make surrogacy arrangements criminal offences. It considered that the lack of enforceability of surrogacy contracts would probably suffice to prevent widespread encouragement of surrogate motherhood arrangements. However, the committee did recommend it should be made illegal to advertise to recruit women to undergo surrogate pregnancy or to provide services for persons who wish to make use of the services of such women.

The Warnock Committee in the UK, which I understand that the honourable member has referred to, recommended that the creation of agencies to make surrogate arrangements should be illegal, and that professionals who assist in the establishment of a surrogate pregnancy should be criminally liable. In addition all surrogacy agreements should be illegal and unenforceable. So it is fairly comprehensive.

The Hon. R.C. DeGaris: I do not think that you are quite right in that. I thought that the Warnock Committee really reported that surrogacy for profit was so arranged in that way.

The Hon. C.J. SUMNER: That may be. It may have confined itself to profit.

The Hon. Anne Levy: It says profit or non profit. I have it here.

The Hon. C.J. SUMNER: I thank the honourable member for that information. The Kelly/Connon Report recommended that there should be no change to the law to enable surrogacy to be practised in South Australia. Following the receipt of this report, Cabinet approved a recommendation by the Minister of Health that surrogacy not be permitted in this State. As the law stands at present it is likely that a surrogacy agreement would not be enforced by the courts as it would be found to be contrary to public policy. The Select Committee will consider the question of surrogacy. It would seem premature to legislate in relation to surrogacy agreements if it is to be the topic of the Select Committee's consideration.

Given that in the Adoption of Children Act at the moment there is effectively a prohibition on entering into surrogacy arrangements that might lead to adoption, and in the light of the fact that there have been different approaches to this topic, whether one makes the contract clearly void and unenforceable or attaches criminal penalties to it or applies it to surrogacy arrangements for profit or to voluntary arrangements, they are all matters that need to be addressed very carefully. In some sense, the Hon. Mr DeGaris made a legitimate point when he said that surrogacy arrangements not for profit sometimes occur and are quite legitimate and would probably be accepted by the community in some circumstances. All those issues ought to be looked at.

I believe in the light of the fact that at present surrogacy contracts would probably be void and unenforceable and also that a surrogacy arrangement that ultimately led to an adoption would be contrary to the Adoption of Children Act, it is probably a matter, in view of the uncertainties in the area and the report that will be forthcoming specifically on this topic, where the amendment should be opposed at this time, subject to the report of the Select Committee, and given the fact that such contracts are probably already unenforceable.

The Hon. ANNE LEVY: Apart from the fact that reference No. 8 of the Select Committee is specifically to look at the desirability or otherwise of surrogate motherhood, using artificial reproductive techniques or otherwise, and the methods to achieve any control recommended, the proposal put forward in the amendment is unacceptable. The Attorney has certainly indicated that surrogacy is not occurring now and that we need not worry about its occurring before the Select Committee reports. The method of control is certainly a subject to which the Select Committee should give very careful consideration.

Neither the Waller nor the Warnock Committees have suggested that there should be any criminal penalty for a woman who is part of a surrogacy arrangement. They have recommended penalties for people who take part in a fertilisation procedure that is part of a surrogacy arrangement and that such people should be liable to penalties.

Certainly, they recommended that surrogacy arrangements should be null and void as contracts in law, but nowhere else has there been a suggestion that the woman should be liable to a criminal penalty. The Waller Committee in Victoria did not suggest that, nor did the Warnock Committee in the United Kingdom. This is the first time I have ever heard a suggestion that with surrogacy being illegal the woman who goes through the procedure and gives birth to a child is then liable for a criminal penalty. That has not been recommended anywhere. It reminds me only too much of the situation in regard to prostitution, where the woman alone cops any penalty.

The Hon. C.J. Sumner: It is not just the woman alone.

The Hon. ANNE LEVY: It is the woman and the people who carry out the procedure. There is no penalty for people on the other side of the contract. However null and void the contract may be, it is a contract that has been entered into, and the honourable member is saying that the individual on one side of the null and void contract will cop a criminal penalty but the people on the other side are not subject to a penalty. I am afraid that the analogy with prostitution is

one that sprang to mind immediately. I certainly feel that, before the Select Committee has considered the question, we should not make rapid decisions as to whether the woman is to suffer a criminal penalty when no other inquiry anywhere in the world has suggested that, although they have all unanimously believed that surrogacy should not be permitted.

Progress reported; Committee to sit again.

The Hon. C.J. SUMNER (Attorney-General): I move:

That Standing Orders be so far suspended as to enable the sittings of the Council to continue beyond 6.30 p.m.

Motion carried.

PUBLIC SECTOR SUPERANNUATION

Adjourned debate on motion of the Hon. L.H. Davis:

That without detracting from the need for the State Government to act immediately on the recent recommendations of the Acting Public Actuary, this Council urges the State Government to establish forthwith an independent public inquiry into public sector superannuation schemes in South Australia with the following terms of reference—

1. The adequacy of present provisions for the management of all South Australian public sector superannuation schemes, including:
   (a) structure and management of schemes;
   (b) representation of contributors;
   (c) actuarial assessment and valuation;
   (d) reporting to Government and contributors, and contributors' access to information, and
   (e) auditing requirements

   in terms of the efficient operations of these funds and the protection of the interests of contributors and the Government.
2. Whether existing administration of schemes is efficient and administrative costs are reasonable.
3. Whether the terms and conditions governing eligibility for membership of various schemes are reasonable in comparison with other schemes in Australia and whether these terms and conditions are equitable between different employees.
4. The appropriateness of the current benefits, having regard to—
   (a) the needs of contributors, superannuants and beneficiaries;
   (b) comparable benefits for public sector employees in other States and in the Commonwealth Government and those prevailing in the private sector, also having regard to any differences in salary packages and to the role of superannuation in the recruitment and retention of South Australian Government employees, and
   (c) vesting

   and including the reasonableness of provisions governing breaks in service, resignation, early retirement, ill health, retirement, retrenchment or redundancy.
5. The suitability of the present basis of Government funding of the various schemes including the funding of administrative costs, and the future financial implications for Government of the existing basis of funding.
6. Whether the existing investment powers and pattern of investments of these schemes is optimal from the point of view of contributors and of the Government; and whether existing arrangements provide the most efficient mechanism for maximising the investment income of the schemes.
7. The adequacy of the existing legislative and regulatory framework for the operation of schemes and the appropriate legislative framework for any recommended changes in the structure and operation of the schemes.

and that such inquiry should report to Parliament by 30 September 1985,

to which the Attorney-General had moved the following amendment:

Leave out all words after the word 'That' in line 1 and insert in lieu thereof the following:

'this Council urges the State Government to establish an independent inquiry into the public sector superannuation schemes in South Australia. The Council urges the Government to ensure that the terms of reference of such an inquiry take into account the concerns raised in New South Wales and Victoria, and the relevance of those concerns to the South Australian schemes,'

and to which the Hon. Diana Laidlaw had moved to add at the end thereof the following:

'and that such inquiry should report to Parliament by 30 September 1985.'

(Continued from 17 October. Page 1166.)

The Council divided on the question:

That the words proposed to be struck out by the Attorney-General stand part of the motion.

Ayes (4)—The Hons J.C. Burdett, M.B. Cameron (teller), K.T.Griffin, and Diana Laidlaw.

Noes (11)—The Hons G.L. Bruce, C.W. Creedon, R.C. DeGaris, Peter Dunn, M.S. Feleppa, I. Gilfillan, Anne Levy, K.L. Milne, R.J. Ritson, C.J. Sumner (teller), and Barbara Wiese.

Pairs—Ayes—The Hons L.H.Davis, C.M. Hill, and R.I. Lucas. Noes—The Hons Frank Blevins, M.B. Chatterton, and J.R. Cornwall.

Majority of 7 for the Noes.

Question thus negatived.

The Council divided on the Hon. Diana Laidlaw's amendment:

Ayes (7)—The Hons J.C. Burdett, M.B. Cameron, R.C. DeGaris, Peter Dunn, K.T. Griffin, Diana Laidlaw (teller), and R.J. Ritson.

Noes (8)—The Hons G.L. Bruce, C.W. Creedon, M.S. Feleppa, I. Gilfillan, Anne Levy, K.L. Milne, C.J. Sumner (teller), and Barbara Wiese.

Pairs—Ayes—The Hons L.H. Davis, C.M. Hill, and R.I. Lucas. Noes—The Hons Frank Blevins, B.A. Chatterton, and J.R. Cornwall.

Majority of 1 for the Noes.

Amendment thus negatived.

The PRESIDENT: The question is that the words proposed to be inserted by the Attorney-General be so inserted.

Amendment carried; motion as amended carried.

ADJOURNMENT

At 6.45 p.m. the Council adjourned until Tuesday 23 October at 2.15 p.m.