LEGISLATIVE COUNCIL

Thursday 25 October 1984

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

DISTINGUISHED VISITOR

The PRESIDENT: We have with us today the Clerk of the Norfolk Island Parliament, Mrs Robin Graham. If any members wish to have a chat with her, I am sure that they will find her delightful and interesting.

QUESTIONS

ARCHIVES

The Hon. M.B. CAMERON: I seek leave to make a brief explanation before asking the Minister of Health, representing the Minister of Local Government, a question about the Archives.

Leave granted.

The Hon. M.B. CAMERON: During my speech on the Appropriation Bill I drew attention to problems that I believed and continue to believe existed with the fire system that is installed in the South Australian Archives. Honourable members may recall that I indicated that during a recent visit to the Archives the fire door closed and extreme concern was shown by a member of the staff who was accompanying me that the firefighting system might be activated. When I say 'extreme concern' I mean a look of panic, and I can well understand that, following additional information that I have received (if that information is correct, and I have no reason to believe that it is not). I understand that the system involves the automatic closing of the doors and the release into the room of carbon dioxide in a matter of seconds: I believe that the figure is 15 seconds.

That carbon dioxide is of such quantity as to completely evacuate all oxygen. I also indicated in my speech—and I understand that this is the case—that there is the potential of a very rapid lowering of temperature and the room becoming enveloped in darkness and absolutely devoid of oxygen. The results of those two things on human life do not need to be described. Naturally, this poses a threat to the safety of staff members who are unable to evacuate the building in the few seconds that are available to them.

I proposed an alternative safety system which, I understand, is used elsewhere in Australia, using halon gas, which is non-toxic and which extinguishes fires effectively. In today's *News* the State Librarian indicated that he did not believe that there was a risk to life from the present system. I have great respect for the State Librarian, but this is completely contrary to all advice that I have received, which has not come from local people but from people involved in Archives in other States of Australia. My questions are:

1. On what basis did the State Librarian make his claims?

2. Will the Government seek a report from the State Librarian and from other Archives as to the effectiveness and safety potential of the methods of the fire-fighting system that is installed in our Archives at present?

3. If the Government finds that the present system is unsafe, both to people and to records, will it review the present system and consider an alternative system such as the one involving the use of halon gas?

The Hon. J.R. CORNWALL: I will be pleased to refer that question to my colleague and bring back a reply.

VINDANA PTY LTD

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

Leave granted.

The Hon. K.T. GRIFFIN: Late in 1981, the then Opposition (the present Government) directed questions to me as the then Minister of Corporate Affairs on the investigation into Vindana Pty Ltd and its promoter, Mr D. Morgan. That company carried on business as a winery, and it bought grapes from Riverland growers. However, it went into liquidation leaving growers in the lurch with substantial amounts owing to them. Mr Morgan formed other companies (I think at least one or maybe two) for the same purpose and with the same result. A liquidator was appointed and I instituted an inquiry which, by the nature of the matter and the time taken by the liquidator to conclude his task, took some time. As a result of the investigations Mr Morgan was prosecuted successfully.

Questions were raised at that time about Vindana's avoiding the provisions of the minimum grape prices legislation, and incidentally I understand that the Department of Public and Consumer Affairs at Berri has a lot of information about this aspect of the case. Notwithstanding replies that the then Minister of Consumer Affairs and I gave and the priority that we required from our respective departments to do something effective to protect growers and prevent the dissipation of assets, members of the then Opposition raised the issue periodically. Since November 1982 there has been a deathly hush: the boot is on the other foot, and the present Government does not appear to have given the matter any priority, perhaps hoping that it would quietly go away. But it will not go away.

The growers are still concerned about their losses. Three weeks ago the Hon. Peter Arnold, the member for Chaffey, led a deputation to see the Attorney-General and Minister of Corporate Affairs to ascertain what he would do in this matter. Those growers are still anxious to get hold of any assets that may be in the hands of the directors or of Vindana or under their control and to take action to ensure that those growers are not taken in again by the company, any of its successors or the promoter and that the minimum grape price laws are not circumvented. In this light, I ask the Attorney-General the following questions:

1. What is the Attorney-General doing to assist the Riverland growers to resolve the problems arising from dealings with Vindana Pty Ltd?

2. What action, if any, will the Attorney take to ensure that the minimum grape price laws are not circumvented in relation to these or any other growers?

3. Generally, what is the current position regarding Vindana Pty Ltd and related companies?

The Hon. C.J. SUMNER: Following the deputation (about which the honourable member has obviously been advised by the member for Chaffey, Mr Arnold), I asked the Department of the Corporate Affairs Commission to provide me with a comprehensive report on the current situation dealing with Vindana, the related companies and Mr Morgan. I expect to receive that final report soon and I will make it available to the Parliament. However, the difficulty is that the companies with which Mr Morgan was associated are in liquidation. Mr Morgan is bankrupt, and there are problems, which will no doubt be outlined in the report from the Corporate Affairs Commission, in obtaining redress for growers as unsecured creditors. There will be a report outlining the situation relating to Mr Morgan's bankruptcy and the liquidation of the companies with which he was concerned, but from the information I have to date there do not appear to be sufficient assets in either the companies

or in Mr Morgan's estate to satisfy the demands of unsecured creditors.

As the honourable member has said, a prosecution was launched and heard on 27 September for a breach of section 124 of the Companies Act. The offence related to Mr Morgan's failure to act honestly in relation to appropriation of a debt due to the company and he was fined $1 000. Mr Morgan appealed against the conviction and penalty to the Supreme Court. The appeal was argued before Mr Justice White on 9 December 1982 and judgment delivered on 18 February 1983. The appeal was dismissed, but the fine was reduced to $500. I suppose that raises a question about the adequacy of penalties in this area.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: That is right. I would be interested to hear the honourable member's views on whether or not he considers the new penalties to be adequate.

During the period from the date of his conviction until early 1983 Mr Morgan acted in the capacity of director and was involved in the management of Monash Winery Proprietary Limited—activities prohibited for five years after conviction under section 124, except by leave of the court. Complaints were laid against Mr Morgan in respect of his alleged management and direction of Monash Winery Proprietary Limited. That prosecution proceeded in the Berri Court of Summary Jurisdiction. My recollection is that Mr Morgan was convicted and fined, I think, $1 500.

The Corporate Affairs Commissioner has advised me that the activities of Mr Morgan and his related companies have been thoroughly investigated over a considerable period of time, as the honourable member has mentioned. Following the deputation I instructed the Corporate Affairs Commissioner to prepare a report on the current situation and to indicate whether any further action was possible. I am happy to make that report available to the Parliament. However, at this stage I can only indicate—and no doubt the report will provide additional detail about this—that the situation is difficult because the companies are in liquidation, Mr Morgan is bankrupt and there appear to be insufficient assets available to satisfy the demands of the unsecured creditors.

In relation to minimum grape price laws, I understand that Mr Morgan is not involved in the industry at the present time. Again, that can be confirmed or otherwise by the information that will be in the report being prepared by the Corporate Affairs Commission. There is a problem at the general level with minimum grape price legislation. That is a matter, of course, of some controversy in the industry, both from a philosophical point of view as to whether or not it is beneficial to the industry to have minimum grape price legislation and from the practical point of view in terms of the enforcement of that legislation. However, the Prices Commissioner has on previous occasions written to the parties involved indicating that action would be taken if there were attempts to avoid the legislation. One of the difficulties in this area is obtaining evidence of a breach of the legislation. Obviously, those who might wish to sell their grapes at lower prices will not be willing to provide statements to the Prices Commissioner, or to give evidence to help pursue a prosecution.

Those people who complain about breaches of the minimum grape price legislation, but who have not been involved in it themselves, do not often have the direct evidence. The Government has, however, taken whatever steps it can in terms of indicating to the industry that, while this legislation is in existence, it should be adhered to. That is a matter of more general moment, rather than relating particularly to Mr Morgan at this time because, as I understand it, he is not involved in the industry at present. As I said before, that can be looked at when the report that I have commissioned is made available to the Parliament.

The Hon. K.T. Griffin: There was some suggestion of breaches of the minimum grape price legislation.

The Hon. C.J. SUMNER: The honourable member raises a supplementary question by way of interjection, that there was some suggestion of breaches of minimum grape price laws by Mr Morgan. That is not a matter that the Corporate Affairs Commission would necessarily address. I will find out whether any complaint has been lodged with the Prices Commissioner in relation to Mr Morgan, in relation to his company's potential breach of these laws. When I have the final report of the Commission I will also attempt to provide information to the honourable member about that allegation.

FERTILISATION PROGRAMMES

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Minister of Health a question on IVF programmes.

Leave granted.

The Hon. R.I. LUCAS: Yesterday I asked a question of the Minister on the possibility of Government support for ovum freezing programmes in South Australia. In the terms of the Minister's reply, he indicated general support for the concept of ovum freezing in this State. He also indicated that he had been approached by the Flinders Medical Centre with regard to support for an ovum freezing programme there. The Minister indicated that that was now being considered by the Health Commission for the possibility of a grant under section 16 of the Health Commission Act. He finally said:

> So, the question as to whether I as the Minister or the Government might assist or whether this programme would be appropriate for a section 16 or any other research grant is a matter on which I will take the advice of the Commission in the near future and on which I will then make a considered decision.

So, the Minister indicated that he will take advice from Health Commission experts and then he will make a decision. I presume that means that he, together with the Cabinet, would make a decision. The interesting part of the reply, from my viewpoint, is that only the Flinders Medical Centre was mentioned in the Minister's reply. He made no mention of the Queen Elizabeth Hospital, even though that hospital has the only team in South Australia at the moment to be currently using embryo freezing technology. The Flinders Medical Centre is presently not employing embryo freezing technology, whereas the Queen Elizabeth Hospital is at the forefront of national research and, in effect, international research and practice in the embryo freezing programme. I had hoped that the possibility of the Queen Elizabeth Hospital team becoming involved in any ovum freezing programme in South Australia would be investigated before any decision being taken by the Minister.

Has the Minister or the Chairman of the Health Commission received any indication of interest by the Queen Elizabeth Hospital team to become active in the area of ovum freezing? Has the Minister or the Health Commission Chairman received any request from the Queen Elizabeth Hospital team for support for an ovum freezing programme? If the Minister cannot respond today I wonder whether he would be prepared to give an undertaking to bring a reply back to the Chamber to those questions. Will the Minister give an assurance that before any decision is made on the submission from the Flinders Medical Centre the merits of the Queen Elizabeth Hospital team becoming involved in the ovum freezing programme will be fully considered?

The Hon. J.R. CORNWALL: Quite obviously I cannot say with great certainty whether the Chairman of the Health

Commission has been approached about ovum freezing or any other matter, and I do not intend to do so. I have not been approached by the QEH expressing any interest whatever in ovum freezing research. The honourable member also asked whether I would give an absolute assurance about begging them to make a submission to me about ovum freezing before I make some decision about Flinders Medical Centre. No, I will not.

The Hon. R.I. LUCAS: I desire to ask a supplementary question. Will the Minister bring back a reply? The Minister indicated that he could not answer for the Chairman of the Health Commission. Will he undertake to make some inquiries of the Chairman to see whether there has been any request from the QEH team? If there has been a request, will the Minister give an assurance that the merits of the QEH team's becoming involved in the programme will be considered before a decision is made to grant moneys to the FMC team?

The Hon. J.R. CORNWALL: That is an extraordinarily convoluted set of questions. We have a Select Committee of which I am Chairman on IVF, ET and AID. I hope to convene the first meeting of that Select Committee as soon as possible. The Hon. Mr Lucas in a series of convoluted questions in the meantime is seeking all sorts of assurances from me that I cannot give. He is seeking all sorts of assurances from me on behalf of the Chairman of the South Australian Health Commission that I cannot give.

NATURAL GAS

The Hon. K.L. MILNE: I seek leave to make a brief statement before addressing some questions to the Minister of Agriculture, representing the Minister of Mines and Energy, about natural gas prices and the increase in electricity prices.

Leave granted.

The Hon. K.L. MILNE: Yesterday, I referred to the question of natural gas prices and their effect on electricity tariffs in this State. Although the situation is very complicated and somewhat obscure, I think the trouble started when Mr Dunstan introduced the Cooper Basin Ratification Act in 1975 authorising regular reviews of gas prices. However, that does not alter the fact that the agreement entered into between the Tonkin Government and the Cooper Basin producers in October 1982 not only allowed escalation of prices far beyond the rate of inflation but was far more generous to producers than the New South Wales agreement that followed in 1983. There were probably two reasons for that. One was that the producers at that time said they did not have much money and they wanted to explore, and the State thought it was a good idea.

Secondly, there was an agreement to build a petrochemical works at Port Augusta or Port Pirie that has never materialised. What I did not explain yesterday was that one of the attractions for industry to come to South Australia was relatively cheap electricity. Moreover, the cost of electric power in the total cost of manufacturing items such as steel and cement, for example, is about equal to the wages cost. Few people realise this, and that the cost of electricity is just as important as wage rates.

The PRESIDENT: Order! I ask honourable members to reduce the volume of conversation across the Chamber so that the Hon. Mr Milne can be heard.

The Hon. K.L. MILNE: We in South Australia had an advantage over the Eastern States in respect of costs of wages and electricity (as well as water rates, land, housing and one or two other costs) but, as honourable members know only too well, the wage differential was eroded by the introduction of Federal awards and by the action of the various unions, aided and abetted by the State and Federal wages tribunals, which never really understood their role, and the Chambers of Commerce and Industry in the Eastern States, which knew exactly what their role was.

Now we are paying $1.33 a gigajoule, which is 32 per cent higher than New South Wales pays, and the price is to rise again in January, as agreed by the Tonkin Government in 1983, to $1.62 per gigajoule. This is Alice-in-Wonderland stuff, or Alice-in-Wonderland-in-the-Cooper Basin. I do not think it is worth going back and blaming one side or the other—

The PRESIDENT: Order! That would not be explaining the question, either.

The Hon. K.L. MILNE: My questions are as follows:

1. In view of the fact that Mr Dunstan opened the flood gates when Santos was nearly insolvent (or so it is said) and in view of the fact that this suited the Liberal Government which followed, what steps does the Government intend to take to rectify the method of negotiating natural gas prices in the future? Will the Minister share this secret with the members in this Parliament who are elected by the people of this State, who are paying the Cooper Basin Producers for natural gas?

2. In view of the fact that much of the profit of the producers is now coming from the liquids pipeline at Port Bonython, and in view of the fact that the position has changed completely since the 1976 and 1982 agreements were made, does the Government intend to continue as if nothing has changed?

3. In view of the fact that millions of dollars are involved, will the Premier tell Parliament what the Government has in mind regarding future natural gas price negotiations?

4. In view of the fact that Mr Dunstan was taken to the cleaners, that Mr Goldsworthy was done like a dinner, and that Mr Carmichael is still the negotiator for the Cooper Basin Oil and Gas Producers, will the Minister please tell us what yardstick he is using to negotiate new prices?

5. Now that the situation between the Cooper Basin Producers and the South Australian taxpayers has drastically altered, does the Minister intend to continue negotiations with the producers as if it was all the same as it was 10 years ago? If so, why? If not, what different agreements will he be using and will he let us all into the secret? Better still, will the Minister consult Mr Hugh Hudson and Sir Ben Dickinson to assist him in these negotiations because both of those gentlemen have a great deal of experience in relation to these matters?

The Hon. FRANK BLEVINS: I shall be happy to refer the question to the Minister of Mines and Energy. While the honourable member was asking his question I think I detected several references to the Premier. I will have someone go through the question to see whether it contains questions that should be directed to the Premier and, if that is the case, I will have them directed to the Premier and I will bring back replies eventually.

NURSE EDUCATION

The Hon. DIANA LAIDLAW: I seek leave to make a short explanation before asking the Minister of Health a question about nurse education.

Leave granted.

The Hon. DIANA LAIDLAW: I asked a question about nurse education on 10 May last year. In reply, the Minister noted that he believed that it was the single biggest problem facing him in his first term as South Australian Minister of Health. In view of that, can the Minister provide some further information to that with which he provided me some months ago with respect to his success in negotiating

with the Federal Government funding arrangements that would ensure that an expanded programme of nurse education could commence next year at the Sturt CAE?

The Hon. J.R. CORNWALL: To be fair, before raising this to the status of the greatest problem facing me as Minister of Health, we have to put it together with the claims for a 19-day month in the nursing area. When we put the two together we start to really see some problems in terms of simply having enough nurses in the wards, let alone the additional financial considerations that arise from those programmes. I am sure that the honourable member is aware that we are currently negotiating with the Nursing Federation, which is not only looking for a 19-day month but is making some fairly unreasonable claims around the edges. I hope that that matter can be resolved in the near future. However, there are a number of matters which we cannot concede.

Specifically referring to the question of nurse education, the Federal Government took a decision about six weeks ago that nurse education in this country should move fully to being tertiary based by 1993. It has made the States an offer that involves $1 500 funding per student nurse per year. The estimated cost is about $6 500; so it is asking us to pick up the tab for $5 000 each. It is also prepared to pay full TEAS allowances. We not only have to pick up the $5 000 in the Federal Government's scenario but also have to provide the capital works funding.

The Hon. Diana Laidlaw: That is a generous offer.

The Hon. J.R. CORNWALL: The RANF was dancing in the streets when it was announced, but I am not sure that it had read the fine print. From our point of view, it is far from a generous offer, although in the short term it may be an offer that we cannot refuse. The proposal for 1985 in this State is fairly modest. We are actively considering at this moment a proposal to provide 50 new places in 1985 and to continue negotiations with the Federal Government *apropros* the other two years of the 1985-87 triennium.

We do not think that it is terribly generous at all to ask us to pick up the tab for $5 000 per head plus the capital funding, although it costs a very substantial amount of money to train nurses in a hospital based school. It is true that we get some work value out of them because they spend a good deal of time in the wards, but it is also true that between block release periods and other periods when they are at lectures they spend a lot of time out of wards as well, and they are paid full award rates for student nurses. So there is an element of swings and roundabouts, and we have to do our sums very carefully.

In summary, at the moment Cabinet is considering, for 1985 only, a modest proposal for 50 new places on the shared funding basis that has been put to us by our colleagues and friends in Canberra. While those 50 places should be proceeded with in 1985, I am strongly of the opinion that we must go back and knock down a few doors in Canberra to try to improve the offers for subsequent years because, ultimately, we will look over the decade at having as many as 800 student nurses per year going into tertiary based education. In the event that we have to find $5 000 in 1984 moneys for each of those, as W.C. Fields might have said, that is a lot of hay, brother.

LOCUSTS

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

Leave granted.

The Hon. PETER DUNN: It is that time of the season when plague locusts are hatching. I understand that they are building up in the North of the State. These locusts are cyclical: they come around, not in even seasons, but when the season is good in the North. They then hatch, multiply, grow and eventually come into the South of the State. They can render considerable damage to the crops, and it is very debilitating to have spent all the year growing a crop and then have it eaten by locusts. Not only that, they do considerable damage in fouling the water supplies and kill the chooks if too many locusts are eaten. They also destroy the gardens. My questions, therefore, are:

1. Where are the plague locust hatchings being reported? In what area are they?

2. At this time, does the Department of Agriculture believe that the nymph count is a threat to the pastures and crops in southern Australia?

3. What action is the Department taking to monitor the problem?

4. If there is a problem, what control methods are anticipated and what staff, equipment and chemicals are available to control the outbreak of locust nymphs?

The Hon. FRANK BLEVINS: Some of the problems associated with locusts when they develop to plague proportions have been well outlined by the Hon. Peter Dunn in the explanation to his question. I confirm that the Department of Agriculture has moved into the second stage of its battle against locusts by declaring a moderate outbreak of plague locusts in the State's North and Mid North. During the past month, survey teams have made numerous sightings of hoppers, that is, the developing form of the plague locust.

At a meeting at Jamestown, the Department's Plague Locust Policy Committee decided to declare the moderate outbreak because concentrations of hoppers have been found in several areas, most notably west of Lake Frome and around Hawker and Blinman. It is a very expensive operation. The Government has already spent $270 000 on the first stage, which included the surveys and the purchase of insecticides. The second stage has a budget of $203 000 to cover the cost of spraying hopper bands, using a fixed wing aircraft, as well as a helicopter for up to the minute surveys and control.

The Department's normal locust control policy was to provide assistance to landowners to control locusts on their own properties. Where locust plagues reach proportions beyond an individual landowner's control, the Department has mounted a direct control operation with aerial spraying. Misting machines and knapsacks have already been distributed to district councils and some insecticides are now being delivered to depots around the threatened area.

I appeal to all landholders to co-operate with us to the utmost of their ability; it is in their interests to do so. They should report all sightings of locust infestations to their local councils so that prompt action can be taken to contain any outbreak.

Combined with the South Australian operations, the Australian Plague Locust Commission, the $1.5 million budget of which is partly funded by the South Australian Government, has started a programme of aerial spraying in the Riverina area in a bid to prevent the heavy densities of locusts in that area from swarming into South Australia.

All members would appreciate that there is a very serious problem, it is very expensive to control, but it is certainly one that the Government is quite prepared to undertake. So far the programme has cost about $500 000 and we anticipate that, before the danger is fully controlled, it will cost a minimum of $750 000.

GLUE SNIFFING

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister of Health a question about glue sniffing.

Leave granted.

The Hon. ANNE LEVY: I am sure that everyone here recognises the serious social problem caused in some areas by glue sniffing, particularly by teenage children, and the consequent damage that can result. I believe there was a tragic death yesterday of a 14 year old in Adelaide as a result of glue sniffing. Will the Minister say what additional administrative or legislative measures are proposed by the Government over and above those it is already undertaking?

The Hon. J.R. CORNWALL: I will not comment on the case raised briefly by the Hon. Ms Levy. I understand that an autopsy has been conducted and that the normal procedures will follow, and they are areas outside my direct control. However, this presents for me a cruel dilemma. Research here and overseas has shown that, whenever publicity is given to the obvious problems of glue sniffing, whenever awareness is heightened, if it is done in any sort of sensational way at all this in turn leads to increased solvent inhalation and abuse. So I hope that my remarks will be taken in the maximum responsible way.

Glue sniffing, or solvent abuse generally (whether glue, a number of other volatile solvents or petrol), is a serious social problem. I am pleased to say that the figures suggest that the great majority of 10 to 17 year olds who get into glue sniffing experiment for a time and then leave it, never returning. But there is also clear evidence that from time to time there is a tragic death and in some cases there is also clear evidence of brain damage. The problem occurs mainly in depressed areas, in low income areas where poverty is common. Significantly in suburban Adelaide, for example, instances of abuse tend to involve glue and other commercial volatile solvents, but in the North-West of the State or in Aboriginal areas the problem tends to be petrol, because that is readily available.

As to what the Government is proposing over and above the procedures that are in place, principally through the Department for Community Welfare, first, the Controlled Substances Act (which was passed by this Parliament a few short months ago) will be proclaimed in stages in the near future. One of its sections provides a penalty for a person who sells volatile substances to a person if there is reason to believe that that substance may be used for sniffing or abuse: the penalty is $2 000 or two years imprisonment. Secondly, there are proposals before me at this very moment that have come forward from the Food and Drugs Advisory Committee, which recommends that warning labels be placed on a number of aerosol products presently available in pharmacies, and I will take that matter to Cabinet in the very near future. They would be quite specific warnings that inhalation of the product can have very harmful effects on health and can cause death.

Thirdly, we have the power to extend application of the Public Intoxication Act from alcohol to a number of prescribed substances that are commonly inhaled or are subject to abuse. Under those circumstances, the police or other authorised persons would be able to take into custody young people, who are clearly intoxicated as a result of substance inhalation, without charges being laid—the whole application of the Act has nothing to do with the criminal law—and take them home to their parents, making the parents aware that their child had been picked up in these circumstances. That is a vexed question, but it is one with which we as a Government will have to grapple in the near future.

It has been suggested that we should ban the sale to minors of glue, liquid paper and other substances that are abused. That is a very difficult question and I would like to hear from as many members of the public as possible as to whether they think that is wise action. It would be a fairly Draconian step: it would mean that no person under 18 years of age could buy glue for making model aeroplanes or for a number of other hobbies in which glue is commonly used. It would also mean that no person under 18 years (and it would include, of course, very responsible teenagers in the 13 to 17 year age group) could buy a range of substances for which they would have quite legitimate uses. That would be a serious step, not one that I would take lightly and not one that I would like to impose on the community unless there was clear evidence (and I repeat that I would certainly like people to contact my office to give me their views—I would like to know the views of the community) that that was warranted.

Finally, I am very happy to be able to tell the Council about a major education programme that will be mounted in our schools from the beginning of calendar 1985. The programme is called 'Free to Choose', and it was developed by experts in the United Kingdom, having been in use there for some time, so it is well proved. Already a comprehensive manual has been printed, 5 000 copies of which are being distributed to principals of high schools throughout the State. In the immediate future—I hope within two to three weeks—we will bring in an expert from the United Kingdom who was associated with the development and conduct of this programme in that country. The programme 'Free to Choose' covers about 12 topics, one of which is solvent misuse.

We will second a health expert to this programme from the health promotion area and, with the co-operation of the UK expert and my colleague the Minister of Education, we will train a core teacher group to become experts in the whole range of substance abuse counselling in high schools throughout this State. They, in turn, will train, through a series of in-service programmes, almost every high school teacher in South Australia so that instead of simply having intermittent programmes we will endeavour to make the great majority of high school teachers in this State expert in counselling in this area.

The programme 'Free to Choose' relates very much to what happens in the real world and not to some distant sort of adult perception of what they would like to happen in the real world. It makes very clear to 12, 13 and 14 year olds the sorts of pressures that they will come under from their peers to take various drugs, whether it be tobacco, alcohol, volatile solvents or the various other illicit drugs that, regrettably and tragically, are available in the community. It will teach them not only how to deal with those challenges when they are confronted by them but also, and just as importantly, how they can live absolutely drug free in their own environment.

It will, for example, show that our values as an adult, pill popping society are not necessarily the best by any means. I hope that it will make them think hard before they even take such a simple thing as Aspirin. In the first instance, we will mobilise the secondary schoolteaching force of this State to start to tackle this multi-faceted and serious problem. Ultimately, if experience shows that it is as successful as we hope, then it may well be extended to the earlier years and into the primary schools. That is part of a comprehensive programme in these areas that we are embarking upon as a Government. That is our significant education programme, in the first instance, to try to overcome what I describe as a serious social problem, one in which we must all co-operate to overcome.

LOCAL GOVERNMENT VOTING

The Hon. R.C. DeGARIS: I seek leave to make a brief explanation before asking the Attorney-General a question about local government.

Leave granted.

The Hon. R.C. DeGARIS: Informed people in local government are gradually becoming aware of the voting system that has been thrust upon them by this Parliament. As time goes on the opposition to that voting system will continue to grow as more and more councils begin to realise that the system is unfair, undemocratic and unjust. I had considered introducing a private member's Bill to get this message across and to generate more support for a change in the system that we have introduced. However, such a Bill would require Government support to pass. My questions to the Attorney-General are as follows:

1. Is the Government aware of the growing discontent in local government with the system that has been inflicted upon it?

2. Will the Government give urgent consideration to changing the system before the first elections occur in May 1985?

The Hon. C.J. SUMNER: I am aware that there are certain differences of opinion about the system of voting that has now been approved in the Local Government Act for local government elections. However, as to anything beyond that, I would have to seek the views of the Minister of Local Government to ascertain whether or not representations have been made to him about the matter that the honourable member raises.

PAY-ROLL TAX

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Treasurer, a question about State pay-roll tax.

Leave granted.

The Hon. L.H. DAVIS: There has been recent comment about the application of State pay-roll tax to the reimbursement by employers of motor vehicle expenses legitimately incurred by employees in the course of their work. As the State Act now stands, it appears that, if employees are paid expenses on a per kilometre basis, pay-roll tax is payable. This is in contrast with the Federal tax law, which permits payment to employees for car expenses on a per kilometre basis.

I am advised that the State Act can be circumvented by asking employees to put in a claim for a total amount, say $30, specifying that it is for fuel, parking and so on. However, I am alarmed to hear that in recent weeks State tax inspectors have apparently stepped up their activities in the collection of pay-roll taxes in this area. For example, I have been told of one employer whose books have been investigated and, as a result of his paying employees on a per kilometre basis rather than a block expense for the use of motor vehicles, he has been hit for seven years of back taxes.

The business sector is concerned about the fact that the application of the State Pay-roll Tax Act is inconsistent with the Federal Act and that the method by which motor vehicle expenses incurred in identical circumstances are treated in employers' books will catch some employers and exempt others from the operation of State pay-roll tax. At a time when the Government should be doing all it can to encourage businesses, it seems remarkable that inspectors are devoting themselves to hours of investigation to collect puny amounts of money while incurring the wrath of the business sector in doing so. Will the Treasurer immediately review this situation and act to correct this anomaly?

The Hon. C.J. SUMNER: The honourable member seems to have based his question on some hearsay evidence—

The Hon. L.H. Davis: There is no hearsay evidence about this: it is a fact.

The Hon. C.J. SUMNER: —that he has picked up. However, I am happy to refer the matter to the Treasurer so that he may investigate this matter. As the honourable member knows, this Government has done much to encourage business, and the economic climate is certainly—

The Hon. L.H. Davis: Yes, FID, State taxes up 21 per cent, 150 increases in taxes and charges—

The PRESIDENT: Order!

The Hon. C.J. SUMNER: —better in this State now than it was under the Tonkin Government. The honourable member only has to ask his business associates about that to get an affirmative answer, I am sure. If the honourable member wishes to draw the Treasurer's attention privately to the example he has raised, and if he has information about it, then I am sure that the Treasurer will be happy to look into that matter, as well as into the general issue raised.

SPECIAL INVESTIGATIONS

The Hon. K.T. GRIFFIN: Has the Attorney-General an answer to the question I asked on 23 August about special investigations?

The Hon. C.J. SUMNER: In the Legislative Council on 23 August 1984 the honourable member addressed three questions to me relating to the Kallins special investigation, the Elders special investigation and the Swan Shepherd special investigation. On that occasion I answered most of the honourable member's questions but intimated that I would obtain an up to the minute report on action in other States in relation to the Von Doussa Report.

I can now inform him that, in relation to the question of possible breaches of the Foreign Investment Review Board guidelines and legislation arising out of the inquiry by Mr Von Doussa, Q.C., into the acquisition of shares in Elders GM, the Corporate Affairs Commission has been formally advised that 'the (Commonwealth) Government has decided not to take any legal action against BT Australia'.

As to the final matter raised in the honourable member's questions, I can advise that, all proceedings against Mr Owens having now been concluded, no further prosecution proceedings will be instituted against any other persons for matters arising out of the Elders special investigation.

MAGISTRATES

The Hon. K.T. GRIFFIN: Has the Attorney-General a reply to a question I asked on 16 October concerning magistrates?

The Hon. C.J. SUMNER: I am informed by Chief Superintendent Brown of the Prosecutions Section of the Police Department that it is not the intention of the police to recommend appeals against the sentences imposed by Mr Brown, S.M., to which this Parliamentary question relates. Chief Superintendent Brown expressed the view that, whilst the penalties were somewhat low, they did not appear to be substantially out of line with other penalties imposed for the offence charged.

QUESTIONS ON NOTICE

SMALL CLAIMS COURT

The Hon. K.T. GRIFFIN (on notice) asked the Attorney-General: In relation to matters listed in small claims courts

throughout South Australia in the period 1 July 1983 to 30 June 1984—

1. How many cases have been dealt with?
2. How many cases have been settled?
3. In how many cases has judgment been given for the plaintiff?
4. In how many cases has judgment been given for the defendant?

The Hon. C.J. SUMNER: The replies are as follows: Statistics in the detail requested by the honourable member are not maintained and it would be an enormous task to examine each file in each court in the State. When the court is provided with computer facilities, such statistics will be readily available. The information that we are able to provide is as under:

Small Claims Jurisdiction—1.7.83-30.6.84

1. Actions commenced	50 347
2. Judgments by default	19 942
3. Actions settled by trial	2 791

PRISONS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 17 October. Page 1172.)

The Hon. K.T. GRIFFIN: This Bill makes minor amendments to the substantial amendments to the Prisons Act that were hurriedly passed by this Parliament in December 1983 with one exception, namely, that of day leave, which is already in the Correctional Services Act that was passed in 1982.

There are a number of philosophical questions that one could debate in relation to this Bill but, because it contains matters of mere detail rather than matters of substance, which are more particularly dealt with in the Correctional Services Act Amendment Bill, I propose to confine my remarks to those technical matters under a broad overview of the legislation, reserving a right to speak at greater detail and to move amendments of more substance when we are debating the Correctional Services Act Amendment Bill.

As I indicated, the only matter of substance in this Bill is that of day leave, which was included in the Tonkin Liberal Government's Correctional Services Act of 1982. The second reading explanation rather presumptuously says:

> In introducing this Bill to amend the Prisons Act, the Government is again showing its commitment to bringing the operation of the correctional services system in South Australia into line with standards already established in other Australian States and overseas.
>
> The legislative programme of the Government, involving these amendments to the Prisons Act and amendments to the Correctional Services Act, will complement the major capital works programme already begun by this Government.

I do not think that the Minister read the explanation before he had to get up and deliver it because, if he had done so, not even the Minister could have been fooled into believing that this was a Bill that again shows the Government's commitment to bringing the operation of the correctional services system in South Australia into line with standards already established in other Australian States and overseas.

The Hon. Frank Blevins: A bit overstated, you reckon, in regard to this Bill.

The Hon. K.T. GRIFFIN: Not just overstated, but extraordinarily overstated and, in fact, without any substance at all in the Bill. Let me briefly deal with some of the matters that are dealt with in the Bill. For example, a few remaining prisoners had applied to the old Parole Board for parole release before 1983, and there has been some doubt whether they were covered by the new provisions. An amendment to the Bill to clarify that can hardly be anything more than technical.

There is a provision in the Prisons Act Amendment Act, 1983, which requires a court to fix a non-parole period for all sentences of more than 12 months, except in exceptional circumstances. The Bill makes it clear, if that was needed, that the court will be required to fix a non-parole period for all sentences of 12 months or more. That is no more than a technical amendment to the Prisons Act.

According to the second reading explanation, we find that the Parole Board has found that the requirement to release a person on the day calculated as his release day has caused some concern. So, the Bill seeks to give such persons a little bit of leeway. Again, that is only of an administrative or technical nature. The second reading explanation also says that the Parole Board should have discretion to vary or revoke the parole conditions of a parolee with a determinate sentence and that short prison sentences for failure to pay a fine should not invoke the cancellation of a parolee's parole release. That second matter is perhaps a little more than technical, and I support the amendment. It is certainly not a matter of considerable substance, as suggested in the first paragraph of the Minister's second reading explanation. The first of those two amendments is only of a technical nature.

Another amendment allows institutions to calculate everyone's remission at the end of each calendar month rather than at the end of each month of service within the prison. Again, while I agree with that amendment, it is nothing more than an amendment of an administrative nature, so the bulk of this Bill is concerned with technical amendments that do not in any way show any change in any course that the Government may have set for itself in the administration of prisons.

There is one matter, and that relates to day leave from an institution. The Government cannot claim credit for that because, in fact, it was in the 1982 Correctional Services Act which was passed two years ago but which still has not been proclaimed. Why has that Act not been proclaimed? It is long overdue. To say that it has taken two years to draft regulations suggests that somewhere along the line someone needs to be moved along with a great deal more incentive than appears to prevail at present.

Day leave, an initiative of the Tonkin Liberal Government, is in the Correctional Services Act and it is being translated from that Act, because of delays in proclamation, into the Prisons Act, and presumably will be in operation under this Act for, one would hope, a relatively short period. The introduction of day leave is a matter of substance, but the Government cannot take credit for it, because it is picking up an initiative that we took in 1982. I believe it ought to be picked up and implemented at the earliest opportunity, because it is a valuable transitional mechanism for introducing trusted prisoners back into the community and, provided they are adequately vetted and there is adequate supervision, we on the Liberal side of politics believe that it is an amendment that ought to be picked up.

The technical amendments relating to the operation of the Parole Board will be supported by the Opposition on this occasion, but that is not to be taken as an indication of support for the substantial amendments that the Government made in 1983 involving the operation of parole; in fact, to the contrary. I reiterate that the Liberal Party does not accept the changes made with the support of the Australian Democrats in December 1983 because, under those amendments, the Parole Board has no power. It cannot review prisoners' progress through the system, as it can only set conditions (I referred to those last week) that are largely of a mechanical or administrative nature. True, prisoners

have to accept them, but in most cases the prisoners do accept them and, in those cases where they do not accept them, it is not because of the conditions that have been set. As I understand it, it is because the prisoners prefer to be released absolutely at the end of their non-parole period rather than being subject to supervision by parole officers and subject to regular reporting and other conditions of their release on parole.

Members ought to be reminded that, if a prisoner on parole does reoffend, the maximum period for which the prisoner can be recommitted to prison is three months. So, if a prisoner is sentenced to 10 years with a non-parole period of six years and is released after serving two-thirds of that non-parole period—after four years—and reoffends, to the extent that there is a breach of parole in that subsequent two-year period after release, the prisoner can be recommitted only for a breach of a parole condition for a maximum of three months, which in many circumstances does not even take the person up to what would have been the end of their non-parole period.

Again, I make the point that, although it is argued that the courts now have power to fix a determinate sentence and that prisoners know the maximum and minimum periods to be served up to the expiration of the non-parole period, in my view that takes no account of the behaviour of prisoners within the prison system, except to the extent that there may be some disallowance of days off as a result of misbehaviour, and it does not take into account prospects outside the prison after release. The courts certainly do fix a non-parole period that has generally tended to be increased since the Government's new parole provisions came into force in December last year to take into account the automatic remission and the automatic release—

The Hon. Frank Blevins interjecting:

The Hon. K.T. GRIFFIN: Automatic release and to a large extent automatic remission—

The Hon. Frank Blevins interjecting:

The Hon. K.T. GRIFFIN: To a large extent it is automatic. It is difficult to have something that is half automatic: it is either automatic or it is not.

The Hon. Frank Blevins: There's a high degree of predictability.

The Hon. K.T. GRIFFIN: There is a high degree of predictability, and I thank the Minister for interjecting with that description of the system.

The Hon. Frank Blevins: That was the phrase you were looking for. I didn't say that.

The Hon. K.T. GRIFFIN: I accept that description. I reiterate the Liberal Party's concern about the way in which the present system operates. I do not intend to debate that at length, because the debate on the Correctional Services Act Amendment Bill will enable a much deeper consideration of those philosophical issues than does the present Bill, and that is a much better vehicle for doing that.

There is only one amendment that I want to move to the Bill, and that relates to clause 8, which gives the Parole Board 30 days in which to organise the release of a prisoner who is due for release and where the court may have ordered release to take effect from the date of the court order. I understand that there are administrative difficulties, and I sympathise with them to some extent, but it seems to me to be unreasonable that, if a prisoner is ordered to be released on a particular date, the Parole Board can take up to 30 days after that date to organise the papers and the administrative conditions attaching to that parole order and to formally make that order. What I would like to see and what I will be moving is an amendment to reduce that time from 30 days to seven days, because seven days ought to be enough time to organise the paper work and the formal order to enable that release.

Without approving the substantial amendments made by the Government in 1983 to the parole and prisons system, and without emphasis on the way in which I do not believe they are effective, but in order to facilitate the refinement only of those provisions, the Opposition supports the second reading.

The Hon. FRANK BLEVINS (Minister of Correctional Services): I thank the Hon. Mr Griffin for his contribution to the second reading debate on behalf of the Opposition and for his general support of the Bill, given its nature. I was disappointed that the Hon. Mr Griffin thought that the second reading explanation somewhat overstated the importance of these amendments. When I first read the second reading explanation, I thought it was excellent and I congratulate the officer who prepared it. However, as the Hon. Mr Griffin states, the amendments are, by and large, of a technical nature and do not embody any great policy initiatives. Nevertheless, I think they are important.

Two substantial questions were raised by the Hon. Mr Griffin, the first relating to why the Correctional Services Act has not been proclaimed. A number of reasons exist: first, delays in preparing the quite extensive regulations were encountered and, secondly, when those regulations were being drafted a number of deficiencies in the Act came to light. For example, on the question of day leave addressed in this Bill, in the Correctional Services Act a provision was made for day leave by the previous Government and supported by the then Oppostion. However, no provision was made for dealing with anybody who committed an offence whilst on day leave. It was an oversight by everyone. It went through this place, where we are supposed to be all wise and all seeing, and it was just one of those things. There were several anomalies in the Correctional Services Act and they are being addressed in the amendments contained in the Correctional Services Act Amendment Bill also before the Council.

The 30 days in which to make arrangements to release a prisoner after the date has been established was found to be necessary in a few important cases. For the overwhelming majority of prisoners and people who are being released, we are able to calculate the day on which they will be released within a short period. So, arrangements can be made for the Parole Board to go through its procedure, as it must by law, in establishing parole conditions, discussing the case and getting the agreement of the person to be released. One of the problems is that the Parole Board meets only every three weeks. Whilst for 99 per cent of prisoners that does not matter, because one can project within about 30 days the people who will be released, in a few cases it has been found to be difficult. This has occurred when prisoners have gone to the court for a non-parole period to be set and the court has released them on the spot. A conflict arises with the Act under which the Parole Board is working where it has an obligation to establish parole conditions, submit them to the prisoner and have the prisoner agree.

In the case of life-sentence prisoners, those parole conditions have to go to Executive Council. That process is not conducted in five minutes. Members who have been in Government will appreciate that that can take some time. So, we have a conflict between what the court wants to do and our power to carry out our obligations under the Act under which we work. For 99 per cent of prisoners this is not a problem, but on those rare occasions it is a problem and is the reason why we require the 30 days to enable the machinery to be carried out.

My guess is that the 30 days will probably never be required. It would be an unfortunate trick of fate if the judgment by the court was given at such a period of the cycle of the Parole Board and Executive Council as to take

30 days. That is put in as an absolutely outside case. It would be used only on rare occasions. Once we get through the transition period of people who are in the system now who do not have a non-parole period, and they have obtained a non-parole period (and everyone coming into the system will have a non-parole period), it will not be a problem at all, because of the degree of predictability, within reason, of their release date. At the moment it causes a conflict with the court. The reason is as simple as that and is no more sinister or interesting than pure machinery of establishing parole and going through Executive Council.

Bill read a second time.

In Committee.

Clauses 1 to 7 passed.

Clause 8—'Board shall order release of a prisoner upon parole.'

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

Page 4, line 7—Leave out 'thirty' and insert 'seven'.

My amendment is designed for implementation as soon as possible after an order is made for release and to require the release to be effected within seven days. I understand what the Minister is putting in respect of bureaucratic difficulties.

The Hon. Frank Blevins interjecting:

The Hon. K.T. GRIFFIN: The Minister interjects and says that it is not just bureaucratic difficulties but also the question of the Governor-in-Council and those sorts of delays which occur because of the way in which this matter has to be processed. I understand the difficulties faced by the Minister. I am not sure what the answer is. There is always much concern if prisoners are kept in the system longer than they are legally required to be kept. If the court makes an order for release on a particular date, which might be earlier than the 30 days provided in the Bill, and the prisoner is not released on that due date, quite obviously he is serving a longer sentence than that ordered by the courts (and that is apart from any arguments as to whether or not the courts should order it). I accept that the courts have the jurisdiction to make decisions about the release of prisoners. It is the implementation of those decisions which should be effected as quickly as possible. Notwithstanding the Minister's indicated difficulties, I am inclined to persist with my amendment, if only to have it on the record as to the principle that we see embodied in the amendment.

The Hon. FRANK BLEVINS: I will not restate the argument, because I outlined the problem in my response to the second reading debate. We have a conflict between the court's desire and the law, which imposes an obligation on the Parole Board to do certain things. Although that conflict occurs very rarely, when it does occur one of two things happens: either the person has to stay in prison after the time that the courts have said he should leave, or the Parole Board cannot carry out its statutory obligation. As I said, this problem will virtually disappear with the effluxion of time, anyway.

The Hon. K.T. Griffin: What period of time?

The Hon. FRANK BLEVINS: It could be years. We cannot compel people to go for a non-parole period. Eventually, the problem will virtually disappear; it will be minimal. It could still happen, and it is undesirable and unnecessary that that conflict should arise. As I said in my response to the second reading debate, it is no problem for 99 per cent of prisoners because we can predict before the next Parole Board meeting the approximate time that they will be due for release, and the Parole Board can make the necessary arrangements under the present system.

If the court decides that a prisoner should be released immediately, the Parole Board cannot carry out its statutory obligation. While the new provision will be used rarely, it will tidy up this area, because at the moment either no-one knows whether a prisoner is being kept illegally or we put the Parole Board in a position where it cannot fulfil its legal obligation. It is a pity, for the sake of this amendment, not to tidy up this area.

The Hon. K.T. GRIFFIN: I acknowledge that it is a difficult area. Does the Minister know how many prisoners are likely to be affected by the amendment?

The Hon. FRANK BLEVINS: It is impossible to predict what the courts will do. If the courts give a non-parole period which expires after one month, there is no problem—the Board may sit two days later; and there is no problem if during its three week sitting cycle, the Board says that a prisoner should be released, say, the following week. However, if the court decides that a prisoner should be released immediately, and it is the day after the Parole Board has met, there is a 21 day problem. On top of that, it could be that the Parole Board has established the conditions for release, interviewed the prisoner and the prisoner has agreed to the conditions and, if it involves a prisoner serving a life sentence, it must go to Executive Council. Really, we need the 30 days. Of course, it may never happen that we will need the full 30 days, but from time to time we need a few days to make the arrangements. I cannot predict how many days will be necessary because I cannot predict what the courts will say.

The Hon. K.T. GRIFFIN: What difficulties, if any, would be created by requiring the Parole Board to meet more frequently on occasions where it becomes necessary to consider a prisoner in this sort of situation?

The Hon. FRANK BLEVINS: The problem with that is that the Parole Board is comprised of working people who have a set regimen to which they attempt to adhere. For example, the Chairman of the Parole Board, Francis Nelson, QC, is not someone who hangs around at home waiting for a telephone call to attend a hurried meeting of the Parole Board. In the main, the other members are also professional people and they are certainly working people of one form or another. It is not convenient, at the drop of a hat, if a court says that a prisoner is to be released immediately, to rush around and organise a meeting of the Parole Board and ask it to interview a prisoner. By the time that is arranged the prisoner has probably gone, unless we keep him in custody, possibly illegally. Even if we could get the Board together within a couple of hours, it is still too late. What do we do if it involves a prisoner serving a life sentence and the conditions have to go to Executive Council? Can we have Executive Council hanging around just in case this occurs? Of course, that is impractical. It occurs very rarely, but when it does it really needs to be tidied up. While this provision may not be used to its fullest extent, it does tidy up this area.

Amendment negatived; clause passed.

Remaining clauses (9 to 12) and title passed.

Bill read a third time and passed.

RACING ACT AMENDMENT BILL (No. 2)

Second reading.

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

That this Bill be now read a second time.

As this matter has been considered in the House of Assembly, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

This Bill proposes amendments to the principal Act, the Racing Act, 1976, relating to a number of disparate matters.

The Bill contains amendments designed to enable the Minister to authorise a registered horse racing, trotting or greyhound club to conduct on-course totalisator betting on other races in circumstances where a race meeting scheduled to be held by the club at a racecourse has been cancelled due to inclement weather or any other onforeseen circumstances. At present, the Minister has no power to authorise on-course totalisator betting except where a race meeting is being held at the racecourse in question. Furthermore, betting with bookmakers at racecourses is under the principal Act conditional on there being an authorisation for the conduct of on-course totalisator betting at the racecourse. The consequence of this is considerable loss of revenue to any racing club forced to cancel a race meeting at short notice. In the Government's view there would be significant advantage for clubs, the racing industry and the racegoing public if the Minister were empowered to permit the conduct of such 'phantom race meetings'.

The Bill proposes amendments to permit the practice of cross-code betting for the future and to validate this practice where it has occurred in the past. By 'cross-code betting' is meant totalisator betting conducted by a club on races held by clubs from different codes. This practice has in fact occurred for a considerable time and it was only recently that the Crown Solicitor, in providing advice on another matter, pointed out that the practice is not authorised under the Act. In addition, the moneys derived from cross-code betting and paid by each club to the Racecourses Development Board have been credited to the Racecourses Development Fund for the code to which the club belongs rather than, as is required under the Act, to the fund for the code in relation to which the bets were made. The Bill also makes provision designed to authorise this for the future and to validate the previous practice.

Under the present provisions of the Racing Act, the Minister fixes the dates and racecourses for on-course totalisator betting by notice published in the *Gazette*. This arrangement presents no problems in relation to the initial notice fixing the dates and places for on-course totalisator betting for the whole season. However, on occasion, the Minister has received such short notice of a proposed variation to the programme that it has been difficult or impossible to publish notice of the variation in the *Gazette* before the relevant date. Accordingly, the Bill proposes amendments to enable such a variation to be made by written or oral notice to the club concerned if it is not practicable in the circumstances for the variation to be published in the *Gazette*.

Finally, the Bill proposes an amendment relating to the powers of the Betting Control Board to control and discipline bookmakers. Under the Act, a person may not act as a bookmaker unless he is licensed as such by the Betting Control Board and unless he has been granted a permit by the Board to operate on a particular day and at a particular racecourse. Although the Act empowers the Board to suspend or cancel a licence, the Board considers that there would be some advantage to it if it were possible for it in an appropriate case to revoke a permit rather than suspend a licence. The Bill makes an appropriate amendment for this purpose.

Clause 1 is formal. Clause 2 provides that the measure is to come into operation on a day to be fixed by proclamation. Clause 3 amends the definition of 'on-course bet' and 'on-course betting' contained in section 5 of the principal Act. This amendment is consequential on the proposed new section 64, which provides for totalisator betting at a racecourse where a race meeting that was to be held is of necessity cancelled due to inclement weather or any other unforeseen circumstances.

Clause 4 inserts a new section 5a that is designed to validate certain practices that subsequently have been found not to be authorised by the Act. Sections 63, 64 and 65 presently provide that the Minister may authorise a racing club to conduct on-course totalisator betting on races held by the club and, in the case of a horse racing club, on other horse races or, in the case of a trotting club, on other trotting races or, in the case of a greyhound club, on other greyhound races. However, in practice, totalisator betting at race meetings has not been limited to the form of racing of the clubs conducting the race meetings. The proposed new section validates that practice. The proposed new section also validates the practice whereby all of the moneys derived from totalisator betting at a race meeting that have been paid to the Racecourses Development Board pursuant to sections 70 or 77 have been credited to the fund under Part V for the racing code to which the club conducting the race meeting belongs, notwithstanding that some of the moneys were derived from betting on other forms of racing.

Clause 5 amends section 51 of the principal Act which provides that a function of the Totalizator Agency Board is to act as the agent of an authorised racing club in the conduct by that club of on-course totalisator betting on races held by the club and on other races held within or outside Australia. The clause amends this provision so that it is clearly consistent with the proposal to permit on-course totalisator betting by an authorised racing club at a racecourse on a day when its scheduled race meeting has been cancelled due to inclement weather or any other unforeseen circumstances.

Clause 6 provides for the repeal of sections 63, 64 and 65, which provide for the Minister to authorise, by notice published in the *Gazette*, on-course totalisator betting by racing clubs belonging to each of the three racing codes on various days and at various racecourses during each racing year. Each of these sections provides that the Minister may, by notice published in the *Gazette*, vary a notice fixing the days and racecourses for on-course totalisator betting for a racing year. The clause provides for these sections to be replaced by a new section 63 and a new section 64. Proposed new section 63 provides that the Minister shall, at or about the commmencement of each racing year, upon the recommendation of the controlling authority for each form of racing, by notice published in the *Gazette*, publish a programme for that racing year setting out in respect of that form of racing the days on which and the racecourses at which each registered racing club is authorised to conduct on-course totalisator betting.

The proposed new section differs substantively from the previous provisions in two respects. The proposed new section does not, as is the case with the present provisions, limit such on-course totalisator betting to the races held by the racing club in question and to other races belonging to the same racing code as that club. The proposed new section also empowers the Minister to vary the programme for on-course totalisator betting by notice in the *Gazette*, or, if the giving of notice in the *Gazette* is not practicable in the circumstances, by written or oral notice to the club concerned. Proposed new section 64 provides that where, due to inclement weather or any other unforeseen circumstances, a registered racing club is unable to hold races on a day and at a racecourse specified in respect of the club in a programme published under proposed new section 63, the club may, if authorised to do so by the Minister (whether by writing or orally), conduct on-course totalisator betting on that day at that racecourse on other races held within or outside Australia, notwithstanding that the club is not conducting any races itself.

Clause 7 inserts in Part IV of the principal Act which deals with the licensing and control of bookmakers a new section 112a. Under the present provisions of that Part a licensed bookmaker may not accept bets at a race meeting or in any registered betting shop unless the Betting Control

Board has granted him a permit to do so. Proposed new section 112a confers on the Betting Control Board a power (which it presently does not have) to revoke any such permit.

Clause 8 amends section 133 of the principal Act which provides that the Racecourses Development Fund for each form of racing shall consist, *inter alia,* of moneys paid to the Racecourses Development Board pursuant to sections 69, 70 or 77 that are derived from bets on that form of racing. Under the amendment, moneys paid to the Racecourses Development Board by the Totalizator Agency Board pursuant to section 69 that are derived from bets on a particular form of racing would continue to be paid to the Racecourses Development Fund for that form of racing. However, under the amendment, any moneys paid to the Racecourses Development Board by an authorised racing club pursuant to sections 70 or 77 that are derived from totalisator betting with that club are to be paid to the Racecourses Development Fund for the racing code to which the club belongs, notwithstanding that part of the moneys is derived from totalisator betting on other forms of racing.

The Hon. R.J. RITSON secured the adjournment of the debate.

FAMILY RELATIONSHIPS ACT AMENDMENT BILL

In Committee

(Continued from 18 October. Page 1258.)

Schedule.

The Hon. K.T. GRIFFIN: I seek leave to withdraw my amendment to the schedule (to insert a new section 47a) with a view to moving an alternative amendment.

Leave granted; amendment withdrawn.

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

After the amendment to section 4 of the Adoption of Children Act, 1966, insert new item as follows:

'After section 47. Insert new section as follows:

Surrogacy agreement.

47a. (1) A person who, knowing that a woman has entered into a surrogacy agreement, carries out a fertilisation procedure in relation to that woman, shall be guilty of an offence and liable to a penalty not exceeding $10 000 or imprisonment for two years.

(2) Notwithstanding any other law, a surrogacy agreement is void and of no effect.

(3) In this section—

'fertilisation procedure' means—

(a) artificial insemination; or

(b) the procedure of fertilising an ovum outside the body and transferring the fertilised ovum into the uterus:

'surrogacy agreement' means an agreement (whether or not in writing) by which a woman agrees to bear a child on behalf of some other person with a view to the child being brought up as a child of that other person and not as a child of that woman (whether or not the adoption of the child by that other person is contemplated by the agreement).'

At the end of the debate on the last occasion on which we were considering this, several members raised questions about the desirability of providing for the woman who undergoes a fertilisation procedure for the purpose of a surrogacy agreement or with a view to entering into a surrogacy agreement to be liable to a penalty not exceeding $2 000. It would be prosecuted in courts of summary jurisdiction and the evidence would have to establish the offence on the basis of proving it beyond reasonable doubt.

In consequence of the discussion on the penalty, I decided to effectively delete the proposed subsection (1), which placed the penalty on the woman, and to leave the remainder of the clause as it stands. Now we would have a subsection (1) providing that a person who, knowing that a woman has entered into a surrogacy agreement, carries out a fertilisation procedure in relation to that woman is guilty of an offence and liable to a penalty. The penal provisions apply to a person who carries out the fertilisation procedure. The woman in respect of whom that procedure is carried out carries no criminal liability.

I continue by providing that, notwithstanding any other law, a surrogacy agreement is void and of no effect. A surrogacy agreement and the fertilisation procedure are defined in proposed subsection (3). The amendment that I now move has limited operation, but puts it clearly on the public record that surrogacy agreements are void and that a person who assists in a fertilisation procedure for a woman who has entered into a surrogacy agreement, and not the woman, should be liable to a penalty.

That does not deal with the much broader question of surrogacy, which is an issue that the Select Committee on IVF and other procedures will consider, as it will consider the place of the woman who is a party to the surrogacy agreement. My new amendment reflects an attitude that confirms what I believe the civil law to be, anyway—that is, that a surrogacy agreement is void and of no effect—but it puts that beyond doubt, as recommended by the Connon/Kelly and other reports, and leaves other questions to the Select Committee. I hope that in that context my new amendment removes the difficulties that honourable members perceived were evident in the previous amendment and will now enable honourable members to support the modified amendment to the extent that I have outlined.

The Hon. ANNE LEVY: It is true that the terms of reference for the Select Committee include surrogacy in the broad sense; but, also, specifically they refer to surrogacy with AID and IVF. To that extent, the Hon. Mr Griffin is prejudging the results of the Select Committee. I am not suggesting that the Select Committee would necessarily come to a different conclusion from that in his amendment, though it may come to a different conclusion as to the legal means of tackling surrogacy. Certainly, surrogacy with IVF is one of the terms of reference for the Select Committee.

Does his moving this indicate that the Hon. Mr Griffin, as a member of the Select Committee, is not prepared to treat the whole question of surrogacy, including surrogacy for IVF, in an open-minded and unbiased fashion and, if the Select Committee as a result of evidence that it received came to a different conclusion, would he oppose a different penalty system, a different legal control, or even the entire question of surrogacy? Is the Hon. Mr Griffin prejudging the issue and, regardless of what will happen in the Select Committee, refusing to take any alternative view at any time?

The Hon. K.T. GRIFFIN: The Hon. Anne Levy made that allegation in relation to one of my colleagues on another question recently. The fact that amendments are moved to deal with particular positions does not mean that the issue is prejudged: it means that there is a presently held point of view that the member of Parliament believes ought to be reflected in legislation at present, but I would hope that no member comes to any issue with such a preconceived idea that he is not open to persuasion.

As I have expressed quite clearly, I have a genuinely held concern about surrogacy. In the light of the reports of surrogacy arrangements in New South Wales and Victoria, and the 'Rent a womb' concept that has been publicised in

the United Kingdom, I have quite a significant concern about surrogacy. But I am prepared as always to listen to the evidence and, if it persuades me that there ought to be a modification of a position, I am certainly prepared to change. I have done that on a number of occasions on this sort of issue. I believe that a Select Committee is a most appropriate forum for considering the whole range of issues.

I want to put on the record and make it part of the statute law at present and at the present state of our knowledge that surrogacy, in the context of a fertilisation procedure, ought not be available. The Hon. John Cornwall indicated, in August I think, that that is the Government's position in any case. The Select Committee will consider the question but, until it does so and until it reaches a final conclusion, this ought to be the law in relation to fertilisation procedures. It does not deal with voluntary surrogacy but only with this artificial area of—

The Hon. Anne Levy: That is one of its terms of reference.

The Hon. K.T. GRIFFIN: I do not deny that. There are a lot of others. I have ideas and views on other terms of reference, as has the Minister of Health. The Minister has already indicated what Cabinet has decided in relation to some aspects of the Connon/Kelly Report and the Government, either as a Government or through the Minister of Health, has given administrative directions. I do not believe that that can be construed as prejudging the issue: it is a holding position which, of course, will be subject to review. My position is that I have a view on surrogacy, I have expressed it frankly and openly, I am prepared to listen to all the evidence on this and the other issues that might be given to the Select Committee and I will then make a final decision. The amendment is a holding position in relation to surrogacy in respect of the fertility programme.

The Hon. ANNE LEVY: Did the Hon. Mr Griffin, in drawing up his amendment, consider making advertisements for surrogacy illegal (that is one of the recommendations of the various committees that have considered this matter)? Obviously, that is one of the matters that will have to be considered by the Select Committee. Did the honourable member consider this action and reject it? It does not appear in his amendment. If the honourable member did not consider that matter, one could almost ask why not, if he was drawing up, as a holding arrangement, legal proposals to control surrogacy.

The Hon. K.T. GRIFFIN: Certainly, I considered that matter, as I considered the question of intermediaries. It did not appear, certainly within Australia, that either of those two issues was being raised publicly. The question of surrogacy and the arrangement between the woman who is to bear the child and the purchaser or whatever—

The Hon. Anne Levy: The couple.

The Hon. K.T. GRIFFIN: It can be a purchaser. In terms of a Sydney arrangement, there was a consideration of $10 000, and clearly, however one describes the couple who commissioned the birth of the child, the arrangement can be quite simply described as a sale and purchase agreement. I know that that might be a bit crude in its description, but that is how it must be perceived. I considered those issues. I realised that they were complex and that they may well be subject to consideration by the Select Committee, but on the principle of surrogacy I believed it was important to state a position.

It may be that, having stated that position and having made it an offence for someone to carry out a fertilisation procedure in relation to the woman proposing to be the surrogate mother, aspects of the criminal law might impinge, such as aiding and abetting, and so on. However, I took the view that it was not so important to express in the statute those related issues as to express the very central question of surrogacy. If the Hon. Anne Levy wishes to move amendments to extend the operation to cover those matters, I will consider it.

The Hon. Anne Levy: I don't want to prejudge the issues.

The Hon. K.T. GRIFFIN: I do not believe it is prejudging issues. There is a basic difference of opinion and attitude.

The Hon. C.J. SUMNER: I must confess that I do not believe that this is a matter of any great practical moment. Although the honourable member has withdrawn his original amendment (because the Hon. Anne Levy quite rightly pointed out that it was imposing a penalty on the woman who engaged in the surrogacy arrangement rather than on the people who carried out the procedures), I only wish to say that the arguments that I put forward previously still stand. The Select Committee will consider the question and the Government has made its position clear at this stage following the Connon/Kelly Report recommendations. I do not imagine that surrogacy arrangements will be carried out in the hospitals through the IVF programmes, so I do not believe this is a matter of great practical moment. On balance, I would prefer that the matter await the findings of the Select Committee.

The Hon. R.C. DeGARIS: I have a very high regard for the work that the Hon. Trevor Griffin does in this Council in regard to amendments, but in this case I cannot support his amendment.

The position is fairly clear to me. I do not support the total use of surrogacy, but submit that there are cases where it is a perfectly justified means for people to use. The classic example is the one that occurred in Melbourne about which people have no doubt become aware. A woman in the programme there had three or four embryos in the freezer. Embryos had been implanted but had not taken. She had a serious operation which prevented her from continuing with the programme. Her sister, who is married and has three children, told her that as she could not stay in the programme she would rear one of the embryos for her. I have no objection to that procedure. I think that we would be in a very difficult position in this State if we placed a blanket suppression upon surrogacy and said it was illegal at all times for it to be used. Therefore, I do not support the amendment, because I have a strong belief that in some cases surrogacy should be permitted.

The Hon. I. GILFILLAN: The Hon. Anne Levy is not in the Chamber so she is not able to accuse me of prejudging the issue. I assure her and others who are concerned that it is my intention, and I understand my colleague's intention, to support the amendment.

The Hon. C.J. Sumner: Can't you be sure nowadays?

The Hon. I. GILFILLAN: We work democratically and each makes up his own mind. However, from conversations we have had I can be reasonably sure that he will support the amendment on the ground that it could be a signal that this is an area of concern. I think that the deletion of the penalty imposed on the woman removes the real problem from the original amendment. We believe that this is a sensible measure, bearing in mind that the Select Committee will, quite independently of any decision on this amendment, look at the whole problem of surrogacy and its availability for the humane sorts of situations to which the Hon. Ren DeGaris referred. For the time being we believe it is appropriate for this amendment to pass.

The Hon. R.J. RITSON: I join with the Hon. Mr Gilfillan in supporting the Hon. Mr Griffin's amendment. We have heard arguments on this matter that tend to be based solely on the assumption that a child is an object to be used to treat the anxiety and stress suffered by an infertile woman. Although I understand something of the nature of that anxiety and the feelings that accompany infertility, the other side of the equation must be considered—that is, the good of the children. When children are adopted the parents are

screened and there are certain requirements to be met, such as a reasonable standard of physical and mental health being required; motivations are examined by departmental social workers; evidence of the stability of the marriage is sought by welfare workers; and the age of the applicants is considered so that the children do not outlive their parents before they are independent. All of these matters are considered together with the emotional needs of the adoptive parents, but there is that other side of the equation—the good of the child.

A surrogacy agreement between two people is simply that. If one were to give official sanction to surrogacy, one would have to consider whether it would be a *carte blanche* approval of surrogacy without any consideration of the suitability of the receiving parent to bring up the child and without consideration of the suitability of the surrogate mother to look after the child *in utero*. We could not be sure that people who would agree to be a surrogate mother for money would be people who would look after a child *in utero*. Who would check such mothers for drug and alcohol abuse and smoking habits, etc., during pregnancy? It is a very complicated matter.

The moment that the law steps in and legislates it is, in effect, an accomplice or co-conspirator in what happens, and the people who pass that law must take some responsibility for the result. The question of surrogacy is not a simple legal question. Certain inevitable rules of human behaviour are involved. One of those is that, regardless of what intellectual decisions a woman makes as to what she wishes to do, she possesses a very strong maternal instinct. That is the situation in most cases. It is an instinct that can be repressed but it still operates at the unconscious level. Indeed, it is quite common to read in the daily press from time to time of disputes that occur after the birth of a baby because that instinct breaks through into the consciousness and the mother finds that she is unable to relinquish the child as per the contract.

If we are to give an official blessing to surrogacy, how would we deal with that problem? At the same time, we would have to look at the state of the existing law in relation to its ability to solve that sort of dispute. Another dispute that arises relates to the rejection by both parties to the agreement when a child is born congenitally deformed. Congenital abnormalities are very common. Quite grave abnormalities occur, from memory, as frequently as in 2 per cent or 3 per cent of live births. Lesser problems such as minor cosmetic abnormalities are more common. Even small cosmetic abnormalities can cause people to reject a child, bearing in mind that the pregnancy was embarked on in highly emotionally charged circumstances and almost solely for the psychological good of the mother who is to receive the child.

I do not know what the law proposes to do about a legal dispute involving the rejection of a child by both parties to an agreement. I have only scratched the surface of some of the complications involved here. I do not think that this Chamber will solve these problems here and now. I think that if we were to give some blessing to surrogacy we would just leave these problems to be worked out in some dreadful human social and legal nightmare in the future. It is a matter that is to be considered by the Select Committee. It needs to be considered in great depth because of the sorts of complication that I have mentioned. I support the amendment. Let not this Chamber be blamed for dealing with an extremely complex matter in 10 minutes.

The Committee divided on the amendment:

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

Noes (9)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall, C.W. Creedon, R.C. DeGaris, M.S. Feleppa, Anne Levy, and C.J. Sumner (teller).

Majority of 1 for the Ayes.

Amendment thus carried.

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

Page 4, after Part III—Insert new Part as follows:

PART IV

AMENDMENT OF THE SEX DISCRIMINATION ACT, 1975

Provision Affected	How Affected
After section 37 Fertilisation procedures	Insert new section as follows: 37a. (1) A reference in this Act to the provision of a service does not include, and shall be deemed never to have included, the carrying out of a fertilisation procedure. (2) In this section— 'fertilisation procedure' means— *(a)* artificial conception; or *(b)* the procedure of fertilising an ovum outside the body and transferring the fertilised ovum into the uterus.
Long title	After 'the Guardianship of Infants Act, 1940' insert 'and the Sex Discrimination Act, 1975'.

My amendment is consequential on an earlier amendment to clause 8 that has been carried, where we were debating whether or not the Sex Discrimination Act should apply to the *in vitro* fertilisation and artificial insemination by donor programmes. As the amendment to clause 8 was carried, I presume that the Attorney-General will accept that the amendment I now move is really consequential on it. I may speak further to the amendment if my presumption is presumptuous.

The Hon. C.J. SUMNER: The presumption and the assumption are quite correct.

Amendment carried; schedule as amended passed.

Clause 5—'Presumption as to parenthood.'

The Hon. K.T. GRIFFIN: A number of members have amendments to this clause arising from the debate we had as to whether the status of children to be defined by the Bill—

The CHAIRMAN: I think that the clause with the amendments is clause 6; clause 5 you intend to oppose.

The Hon. K.T. GRIFFIN: That is correct, but as I recollect it they are all related. We were focusing on clause 5 on the last occasion that we were considering this only because it was related and were exploring all the possibilities. My amendments were seeking to limit the definition of ascribing status to the children of married couples and providing an extension of that to the extent that the woman who bore the child was the legal mother for all purposes. My position was that—

The Hon. C.J. Sumner: We should defer this clause. There are too many amendments to clause 6 to deal with it as a matter of principle in clause 5.

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

Consideration of clause 5 deferred.

Clause 6—'Insertion of new Part IIA.'

The Hon. R.I. LUCAS: I move:

Page 2, lines 17 to 19—Leave out definition of 'married woman' or 'wife' and insert new definition as follows:

'"married woman" means a woman who is the lawful spouse of a man; and "husband" has a correlative meaning.'

The intent of this and following amendments is to limit the application of the proposed Bill to children of putative spouses. The amendment does not exactly say that, but that is the intent of it. It covers the three sections of the putative spouse definition included in the parent Act. The first aspect of the definition is that the man and woman should have cohabited as husband and wife *de facto* continuously for a

period of not less than five years. That is the most commonly recognised aspect of the definition. The second aspect is that they have spent not less than five years within a six-year period together. That is meant to allow for trial separations or brief spats where they may well have separated but, within a six-year period, they had five years together.

Thirdly, the couple may well have had a child previously. The intent of the putative spouse definition in the parent Act is that there is some degree of stability and commitment between the man and woman, whether it be in terms of time (five years together) or of actually having consciously made a decision to have a child. So, there has been some stability, some element of stability or commitment to each other. The putative spouse definition has been in the parent Act for nearly a decade now and has been utilised in eight or 10 other pieces of South Australian legislation.

Many of the rights and responsibilities of married couples have been extended by previous Parliaments to putative spouses. The Inheritance (Family Provision) Act is an important one, and the most recent example is the Members of Parliament (Pecuniary Interests) Act under which responsibilities were placed upon members to provide information as to the pecuniary interests of putative spouses as well as legally married spouses. The concept of a putative spouse has been accepted by previous Parliaments over about a decade.

The concept is legally definable as per those three definitions that I have already outlined. There is a degree of certainty with respect to the putative spouse definition. The problem with the Government's Bill is that the Government intends that in effect a married woman or wife includes a woman who is living with a man as a wife on a genuine domestic basis. That is what the Government wants us to accept in this Bill. A 'genuine domestic basis' is not defined and would have to be litigated on each and every occasion as to what was a genuine domestic basis. The Attorney in debate last Thursday admitted or conceded the possibility that a relationship of perhaps only two months or three months and less than six months could be construed by a court as a genuine domestic basis. Therefore, it would mean that relationships of such a short duration would come within the ambit of the Bill.

The Hon. C.J. Sumner: So they should.

The Hon. R.I. LUCAS: That is a view the Attorney holds and it is up to him to expound it, but it is not a view that I share. The Government's Bill does not extend to children of all relationships; it extends to children of a genuine domestic basis. If a couple is not involved in a genuine domestic basis—whatever that is—then the Government's Bill will not cover the children of those relationships. It is not an argument of the Government that it is providing legal status to all children of all relationships. It is an argument that the Government's definition of relationships and the children of those relationships is much wider than the amendment that I am moving; that is, the putative spouse amendment concept that I am moving will limit it, whereas the Government's Bill will extend it, but that Bill is not all inclusive. There will be children of relationships that are not of a genuine domestic basis who will be left without a legal father.

The Hon. C.J. Sumner: Like there are now?

The Hon. R.I. LUCAS: Like there are now. It is not an argument that the Government's Bill will cover the children of all relationships. There will be a small number of children who will be left without a legal father if the Government's Bill is passed. My amendment extends by some indeterminate number that number of children who will be left as they are now without a legal father. The intention is that at least, as I said, the putative spouse concept is definite, recognisable, and there is at least that degree of stability and commitment between the man and the woman who are engaged in the putative spouse domestic relationship. At least that approaches the commitment that legally married men and women have given to each other.

In my view, if we do as the Government wants and extend it to a genuine domestic basis of possibly only two months or three months, it would mean that in effect we are placing relationships of a relatively fleeting nature on the same status as legally married couples. There is at least an argument for placing the putative spouse—

The Hon. C.J. Sumner: It is the children we are talking about.

The Hon. R.I. LUCAS: The Attorney will have his turn. There is at least an argument for placing the putative spouse arrangement and the married couple arrangement on the same footing and, therefore, treating the children or the product of the putative spouse arrangement in the same way as we treat the children of a legally married relationship. There is at least an argument there. In my view, one is entering the realms of the unknown to do as the Government wishes and go to some indefinable genuine domestic basis and place the children of those relationships on the same basis as children of a legally married couple and, at the same time, not include that small number of children of relationships where there is not a genuine domestic basis occurring between the man and the woman.

If one wants to pursue the Government's line, I do not see why one draws the line at the genuine domestic situation basis: why not throw it open to the product of all relationships, whether or not they are of a genuine domestic basis? That is the intention of the amendment, and I have nothing further to add.

The Hon. I. GILFILLAN: I am not persuaded by the argument of the Hon. Mr Lucas as to the value of this amendment. I repeat what I think seems to be very difficult to identify, that the Bill does specifically aim at the legal status of children who are born or who will be born. It is not a moral judgment on the actual relationship of the parents. The Hon. Mr Lucas has recognised that but is attempting to make a value judgment that certain domestic relationships are such that there should not be the risk of fatherhood being attributed to the male who took part in that relationship.

I believe that the Bill does have, for the purposes of determining the legal status of the child, some safeguards. First, it has to be in an area where it will be in dispute, so that there will be, one expects, a judicial judgment of what is a genuine domestic basis as a married couple, as husband and wife. Anyone making an assessment of that would assume that a genuine domestic basis as husband and wife has already shown evidence of some durability. One will not show evidence as husband and wife if it has been for three months or four months, except in so far as—and this is relevant to the debate—or when we are talking about the permanence of relationships, because the so-called legal married status has probably as bad a track record in durability as have *de facto* relationships.

Members interjecting:

The CHAIRMAN: Order!

The Hon. I. GILFILLAN: I may be using a touch of exaggeration to make the point. One is treating with great reverance the legal status of marriage as if that is then beyond dispute as being a long enduring relationship in which the children are properly brought up and cared for by two parents. I do not believe that that is right. The other factor that I think the Hon. Mr Lucas has neglected is that, where you have an issue and the fatherhood is in dispute, it is rebuttable: it can be shown by a man who is reluctant to accept it that he had not given consent for this procedure or had not been consulted.

I do not believe there is room for concern for accepting the Government's clause in the Bill that justifies approving an amendment that will virtually disqualify any child, born into a putative relationship in the first five years, from being legally recognised as the child of the father if, as to qualify for this, they have had to live together for five years. It has some unfortunate side effects. The only thing I say for it is that it is possibly an improvement on complete opposition to considering putative spouse or *de facto* relationships. However, it is my intention to support the clause as it is in the Bill and recognise that it is not a judgment on *de facto* relationships *per se,* but an attempt to make a realistic, practical and caring situation for children who are possibly born already or likely to be born into these situations.

The Hon. C.J. SUMNER: I do not wish to prolong the debate because we canvassed all the issues of principle when this matter was before us on a previous occasion, but will restate the position quickly in the light of the Hon. Mr Lucas's amendment. He has attempted to bring the concept of putative spouse into this legislation. While that may be an applicable concept in determining relationships between people who live together as man and wife, it is not (although it may be applicable in other circumstances such as Parliamentary declaration of interests and the like) a concept that is applicable to this legislation. The putative spouse concept talks about the relationship of the parents. This Bill talks about the status of children born from the relationship. It therefore places the status of the children on the same basis as those born from natural means.

The first point is that the concept of putative spouse is inapplicable in this situation. The definition used in this Bill has been worked upon by a majority of Attorneys-General and Parliamentary Counsel throughout Australia and is incorporated in the New South Wales and Victorian legislation. For the honourable member to say that this will not pick up all children born of all relationships is probably true. The current law in terms of children born as a result of natural procedures does not pick up the paternity of every child.

The Hon. K.T. Griffin: It does.

The Hon. C.J. SUMNER: No, it does not. Paternity does not have to be declared or revealed by a woman.

The Hon. K.T. Griffin: Paternity is certain.

The Hon. C.J. SUMNER: This is certain, too. The honourable member's amendment would leave a hiatus for children who may be born of people living as man and wife on a genuine domestic basis for one year, despite the fact that that might have been quite a stable arrangement at that time. They might have agreed to go through this procedure and the honourable member is then going to leave the status of the child in limbo.

The Hon. R.I. Lucas: So are you.

The Hon. C.J. SUMNER: No, I am not. There is no point in arguing. I am not leaving in limbo the status of any children born in either a marriage situation or a genuine *bona fide de facto* relationship. A hiatus exists in law currently. Paternity does not have to be declared to start with. A woman may not declare who is the father and, in fact, may not know who is the father. In those circumstances, the child does not know who is its father. This Bill is placing on the same basis children born by these procedures in a marriage or *de facto* relationship as children born now from a natural marriage or *de facto* relationship. It is clear what the Bill does.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: I said before that there are now children whose status is indeterminate as far as the father is concerned although born by natural means because the woman may not declare the father.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Well, it is. The woman may not declare the paternity and, in fact, may not know the paternity of the child. It still seems to be utterly unjust for the honourable member to argue that children born of a *de facto* relationship, where the parents decide to go through these procedures to have a child, cannot then claim as the father the male living in that *de facto* relationship. Surely that is just. Children will be left in a hiatus and that is clearly unjust.

The woman has to bear the child. The honourable member shakes his head. We can take the two year situation which the honourable member now denies. Members opposite are saying that three, four or five years would be a valid period. In that situation the woman and the man may decide that they want to have a child. They consent, go into it open-eyed, apply and have the AID procedure. The woman has the child. What happens if the man wants the child? A man may spend two years talking to the woman about having a child. The woman may agree and then go along to have the AID procedure. What if they go through that procedure, having agreed in a consensual situation to go through it, the woman has the child and the man shoots through shortly after they have agreed to do that? The woman is stuck with the child even though initially she may have been the reluctant partner in terms of having the child. The man can disappear without any responsibility at all for that child. How the Hon. Miss Laidlaw can sit there and justify that situation—

The Hon. Diana Laidlaw: I moved an amendment.

The Hon. C.J. SUMNER: If the honourable member is supporting the Hon. Mr Lucas, that is what she is supporting and there is no justice in that. I would not have thought that any honourable member could sit in this Chamber and claim that that is a just situation. In terms of women's rights, the woman has to bear the child, the status of the child *vis-a-vis* that woman is not indeterminate because she has the child. Yet, the status of that child *vis-a-vis* the male who agreed to the procedure occurring and may have wanted the child in that genuine *bona fide* domestic relationship is indeterminate. There is no status and no relationship at all. The man may leave but the woman still has the child. That is the injustice, inequity and unfairness in the honourable member's proposition.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: That is a matter for the parents. We are talking about the children and what a child can do, *vis-a-vis* the male. In those circumstances a child cannot get maintenance from the male. That is not just. The woman or the State must find maintenance for the child. That is not fair in any sort of concept of fairness as far as I understand it.

The Hon. R.J. Ritson interjecting:

The Hon. C.J. SUMNER: One month would not come within the terms of the legislation.

The Hon. R.J. Ritson interjecting:

The Hon. C.J. SUMNER: There are means of determining it. The Family Relationships Act refers to cohabiting with a person as the husband or wife *de facto* of the other person. There are means of determining what is a *de facto* relationship. There have been cases on that in the past. Ultimately, it is a matter for the courts to look at the whole situation. Therefore, I believe that the situation outlined by the Hon. Mr Lucas is clearly unjust. Section 21 (2) of the Adoption of Children Act provides:

> In the case of a child who has not previously been adopted, the consent of every person who is a parent or guardian of the child is required but, subject to subsection (3) of this section, the consent of the father of a child born outside marriage is not required unless his paternity of the child is recognised under the law of this State.

I put the reverse side of the coin, where the father's rights are affected: a father has no rights where a woman has a child following a concential arrangement and she then decides to adopt out the child. That might be despite the fact that the couple had had a relationship for four years and despite the fact (taking the other example) that the woman wanted to have the child and the father agreed. If the woman subsequently decided to adopt out the child—and perhaps the child had lived as part of the family unit for two years after its birth—it could be because she decides that she cannot go on. On the other hand, the father may have wanted to keep the child as part of the family unit. In that situation the father has no rights at all—absolutely none. In both situations it is unfair. The Government Bill resolves those issues of status as best can be done. That approach is accepted in Victoria and New South Wales and it should be accepted here.

The Hon. R.J. RITSON: I support the amendment. In spite of the fact that the Government continues to argue that this is merely a Bill to validate the status of existing and potential children, it does have an encouraging effect upon some aspects of artificial conception. The Hon. Miss Laidlaw made the point that there are unmarried couples and single women who are seeking IVF and embryo transfer but who are currently not being admitted to the programme because of the uncertainty of the status of the child. To make that status certain here today, in those cases, may encourage the development of a problem which does not presently exist, before the Select Committee has had a chance to consider this matter. For the small percentage of people waiting to step into the programme the passage of this Bill will create difficulties in an area about to be examined by the Select Committee.

I really think that it would do no harm, from that point of view, to let the Select Committee look at it first. The Attorney-General gave a number of examples of the consequences to children in terms of maintenance, and I suppose also in terms of rights of inheritance where a child does not have a legally recognised father. We have been approaching this matter from the wrong end, I think, by arguing the minority case. I refer to the question of paternal consent for adoption, which the Attorney mentioned. Where that problem exists, it would be much more frequent with naturally conceived children than with artificially assisted conceptions. The Government is looking at the whole area of birth outside wedlock, stepping in and taking a step which is vague. There is no doubt that the term 'genuine domestic relationship' will have to be tested. A line of case law—

The Hon. C.J. Sumner: As man and wife. It is not just a genuine domestic relationship.

The Hon. R.J. RITSON: Yes, as man and wife—a genuine sexual relationship as opposed to two sisters living together. Case law will have to be developed in this area. There will be appeals and in almost every case there will have to be litigation to determine the matter. I am not sure whether 'genuine domestic relationship' means the same as '*de facto* relationship'. However, if they mean the same thing and '*de facto*' has a specific meaning which is clearer, why was not the Bill drafted in those terms? Do we have to distinguish between a genuine domestic relationship and a *de facto* relationship? If we are going to step into this area, to solve a small percentage of problems, a greater number of problems result from natural conception, and that greater number will remain untouched by the Bill.

If we are going to step into that area, we should do so with a more accurately determinable and less litigation-engendering dividing line. That is obviously achieved by setting a fixed period of time. It becomes much clearer if the measure of the step taken into this area of children born outside marriage is a step already known to the law and is measurable as a stated period of time. It is because the five year term is known to the law in other areas that it has been chosen in this amendment. I think the fundamental principle is that the measure will work better with a fixed period rather than with 'genuine domestic relationship', whatever that may be. I support the amendment.

The Hon. K.T. GRIFFIN: I would prefer to see all children born outside a marriage relationship as a result of AID or IVF procedures not dealt with under this legislation but as the subject of further consideration by the Select Committee. Debate both the other day and again today on what are the appropriate criteria for determining the status of a child born outside marriage merely confirms the difficulty in reaching a satisfactory solution. There is no definiteness about the definition referred to in the Bill. Living together as man and wife, although not lawfully married, in a genuine domestic relationship has no real certainty.

It is all very well for the Attorney-General to say that that has been the subject of litigation, and it has, but that litigation has not set down hard and fast rules to determine when a person does satisfy that description or does not; each case is determined on its own facts. In the context of this Bill, if the Government's provision prevails, we will have a need for litigation most likely on each and every occasion to determine whether or not the woman and her male partner satisfy the loose description of living together as man and wife on a genuine domestic basis in order to determine the status of the child.

When we are talking about the status of the child we are talking about identifying who are to be the legal mother and father. As I indicated earlier, there is no problem with the legal mother: the woman who bears the child is and ought to be the legal mother. The husband in a marriage relationship is the lawful father. The difficulty comes in identifying who is to be the father outside marriage.

The Hon. Robert Lucas's proposed amendment at least provides certainty. It is true that it leaves a group of children outside the definition. That means that the question of who is the legal father is unresolved. That is a larger group than the group that will exist, presumably, under the Government's description. There will be a body of children not covered by the Government's Bill to the extent that the father will not be identified at law.

That is to be distinguished from the situation to which the Attorney-General referred, that is, where a woman conceives a child by natural means and the father disappears or if, for some reason, the natural father cannot be identified, maybe because there had been a succession of males associating with the woman. In that situation, the father is legally identifiable, though maybe not known, whereas the artificial procedures about which we are talking introduce a totally new ingredient that makes it impossible to identify the legal father, and that is what we are talking about.

To the extent that the Hon. Mr Lucas's amendment provides a greater degree of certainty, I accept it. It picks up a definition which, whatever one might think of it, is certain and has existed in our State since 1975 under the Family Relationships Act; so I am prepared to accept that. I will vote to support the amendment, although I still believe that the question of the status of children (that is, who is the legal father of children born outside marriage) ought to be a matter for deeper consideration by the Select Committee.

If this amendment passes, that is it. If it does not pass, I would be prepared to accept, at least on an interim basis, the amendment of the Hon. Diana Laidlaw because that improves the Bill, but if that is not carried I would want at some stage—perhaps by recommiting clause 6—to at least have a vote on the principle whether or not the final clause, which may be the clause that is in the Bill at present, all other amendments being defeated, stays in the Bill. I have

a technical difficulty with that, and that is why I indicate that it may be necessary at the end of these procedures for a few minutes to seek to recommit clause 6 with a view to determining whether or not that part of the clause relating to children born outside marriage should remain in. Because of those technicalities, that is the sort of procedure that I would seek to implement.

The Committee divided on the amendment:

Ayes (7)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, Peter Dunn, K.T. Griffin, R.I. Lucas (teller), and R.J. Ritson.

Noes (12)—The Hons G.L. Bruce, B.A. Chatterton, J.R. Cornwall, C.W. Creedon, R.C. DeGaris, M.S. Feleppa, I. Gilfillan, Diana Laidlaw, Anne Levy, K.L. Milne, C.J. Sumner (teller), and Barbara Wiese.

Pair—Aye—The Hon. C.M. Hill. No—The Hon. Frank Blevins.

Majority of 5 for the Noes.

Amendment thus negatived.

The Hon. R.I. LUCAS: I take the vote as a test case, so I will not proceed with my further amendment.

The Hon. DIANA LAIDLAW: I move:

Page 2—

Line 25—Leave out 'This Part' and insert 'Subject to this section, this Part'.

After line 33—Insert new subsection as follows:

'(1a) This Part does not apply—

(a) in respect of a fertilisation procedure carried out on or after the first day of January, 1986, either within or outside the State; or

(b) in respect of a child born on or after the first day of January, 1986, either within or outside the State.'

Since this Bill was introduced I have been troubled by both the retrospective and prospective aspects. The Attorney-General claims that children have been born by AID to *de facto* couples and to people in other relationships, although he cannot provide supporting evidence. The Hon. Anne Levy claims that she knows of one case, but there could be 10 000 cases. Apparently, no-one knows. Nevertheless, in some respects, whether there are one or 10 000 cases, that is irrelevant, because these children should not be denied legal status. As the Attorney stated in regard to the Hon. Mr Lucas's amendment, legal status involves custody, access, maintenance, education and inheritance rights of the child. Those children did not choose to come into this most uncertain world and therefore we should not, as a retrospective action, ensure that they are not given legal status.

The Bill also deals with a prospective situation and in effect provides that children born as a result of human reproduction techniques in the future, whether by AID or by any other technique using donor gametes, will have legal status, irrespective of the relationship of the parents. I have a grave concern about the wisdom of this very open-ended course, and at this stage I am unable to endorse that aspect of the Bill. I stated in the second reading stage that it is generally accepted that the law in its dealings with children should have the welfare of the child as its principal objective.

Legislation in this State and elsewhere dealing with adoption, custody and maintenance issues contains specific provisions making the welfare of the child the paramount consideration. In this Bill we should ensure that in general the interests of the child are our paramount consideration. I do not believe that any honourable member would argue that a stable, parental relationship is not the desirable relationship in which to rear children. Possibly, I am wrong, but if my assumption is correct we as legislators should seek to reflect this view in legislation. As my colleagues have noted at some length, the term 'genuine domestic relationship' does not necessarily envisage a stable relationship. It is a very broad definition and it could encompass any period. The Bill does not define 'genuine domestic relationship' and the Government has provided no guide. This ambivalence is undesirable in considering future arrangements.

In considering the question of ambivalence in the definition of 'genuine domestic relationship' we should also consider further the welfare of the child. In this context I was interested to note recently the recommendations of the New South Wales Law Reform Commission on the question of *de facto* relationships. This matter was referred to the Commission by the New South Wales Attorney-General, the Hon. Paul Landa. No-one would suggest by any means that the New South Wales Law Reform Commission is other than a forward looking body and, under the heading 'The Question of definition', it defines *de facto* relationship as:

> . . . the relationship between a man and a woman who, although not legally married to each other, live together as man and wife on a *bona fide* domestic basis.

It is further stated:

> As will become clear, we have not applied this definition without modification in all areas we have examined. For example, for the purposes of our recommendations on financial adjustment . . . and adoption, we have included an additional requirement that the parties have lived together for a minimum period.

The minimum period suggested in the case of *de facto* couples and in regard to the adoption of children is three years, and that requirement is made in consideration of the welfare of the children. Elsewhere in the report it is stated that, where proposals affect children, their welfare should be the primary concern. I do not believe in this respect that we should support, for a future basis of legislation, such an open-ended and ill-defined concept as 'genuine domestic relationship', which gives no time limit and no suggestion of stability. We should indicate through legislation that stability is a desirable factor when a couple brings children into this world.

The recommendation is related to adoption and, as we know, adoption is supported and well accepted in the community. However, we are talking about human reproduction technologies involving donated gametes, and that is a highly controversial matter in the community. Certainly, no common view is held on that subject as in regard to adoption. On that basis all members of this Council believed that a Select Committee should consider human reproduction technologies. One of the references of the Select Committee is to consider the persons who should be allowed to participate in the programme. On that basis, we should allow the Select Committee to consider the issue and report back to the Parliament on what is a desirable situation in the future. This amendment is a holding amendment. After the Select Committee has investigated the matter, after the recommendations have been debated and after the community has had an opportunity for discussion, we can consider what arrangements should be provided in the future.

At this stage we should not proceed that far. However, we should certainly allow the children born to date to be given the legal recognition I believe they deserve. In response to earlier interjections and comments from the Hon. Anne Levy, we would not, by passing the amendment I have moved, be prejudging the issue to be considered by the Select Committee. As I have said, it is a holding motion that I hope has the support of this Committee.

The Hon. C.J. SUMNER: It certainly does not have the support of the Government. It is completely rejected as nonsensical. The problem with this debate, and I do not know whether or not it is due to my powers of explanation, is that honourable members opposite—and I do not know whether they are being obtuse or deliberately attempting to misrepresent what this Bill does—fail to understand that

the Bill determines and talks about the status of children in this situation. It does not say anything about whether these procedures should be available to *de facto* couples in hospitals; or whether these procedures should be available to *de facto* couples, single couples or any sorts of couples anywhere in South Australia. That is not the point of the Bill. There may be legislation which deals with those situations, certainly, but all this says is that if those procedures do occur—and they have occurred—and even if they occur illegally, it is saying what is the position so far as the kids are concerned. That is all we are talking about in this legislation.

All the extraneous nonsense that people have gone on with during this debate over a period I think must have come about because honourable members opposite want to turn this Bill into something that it is not. We are not placing any moral, ethical or other considerations into the situation of AID for *de facto* couples, or IVF for *de facto* couples, or anything else in this Bill. We may do that at some later stage. We may say that it is illegal and subject to a fine of $10 000 for *de facto* couples to go through an AID procedure, or for a doctor to perform that procedure. We may say that a doctor performing an IVF procedure for a *de facto* couple or single woman should be locked up for 10 years.

That might be what the Select Committee will recommend. If those parents or doctors are locked up for having done that, are we still going to say in five years time that the poor kids born as a result of these procedures do not have a father? The argument is nonsensical and the insertion in this Bill of any kind of sunset clause is also nonsensical. The honourable member is now suggesting that we will have one category of kids born as a result of these procedures before 1 January 1986 and another status for kids born after that.

The Hon. Diana Laidlaw: That is not necessarily so.

The Hon. C.J. SUMNER: That is the potential effect of what the honourable member is saying. I bring honourable members back to what this Bill does: it talks about the status of children; it does not talk about legality, ethics, morals of AID or IVF procedures for single people or *de facto* couples. If people want to deal with that, the Select Committee can report on it and we will deal with it.

The Hon. Diana Laidlaw: That is what we have asked for.

The Hon. C.J. SUMNER: Sure. The Select Committee can say that it is okay, lovely, fine or sweet. It can also say it is absolutely outrageous and that the people concerned should be locked up for 10 years. That is the range of options, but surely that is not going to affect, and should not affect, the status of the kid who has nothing to do with the matter except happening to be born. Surely that kid should still be given a certain status. That is what the Bill does. Let us come back to the fundamentals; that is all I ask the Committee to do. The amendment is utterly unacceptable to the Government.

The Hon. I. GILFILLAN: That was a very eloquent statement of rejection of the amendment. I believe that there is, as usual, a lot of logic in the Attorney's statement, but I rather suspect it is overstating the case. If there were a risk that this amendment would leave children born in these circumstances in limbo then obviously that would be directly contrary to the reasons why I have supported the Bill so far. If there is a risk that the time frame we are working in is such that the dates here put children at risk who are born during a limbo period then I think the matter should be looked at critically in that light.

The Hon. C.J. Sumner: There is no point in having a sunset clause unless you want a phoney compromise. It's ludicrous!

The Hon. I. GILFILLAN: That is a pointless argument. I think that sunset clauses may well be justified because one feels that there are grounds to improve conditions and the definition of 'genuine domestic relationship' by amending something.

The Hon. C.J. Sumner: Then bring in an amending Bill instead of leaving the whole thing in limbo for 18 months. We might as well not pass the Bill!

The Hon. I. GILFILLAN: I say openly, if I get a chance to be heard, that I still have an open mind about the value of this amendment. I am yet to be persuaded that it is particularly dangerous in the context of the aim of the Bill, provided the dates are right. If there is to be a problem because people who are going to use the procedures can foresee that there possibly is not to be recognised legal status then the procedures, if ever used in this context, would stop, and should stop. It is irresponsible for those providing the procedures to be willy nilly going ahead without a feeling that the children will have an assured legal status.

I believe that the Attorney has overreacted here in a very emotional way. I do not dispute the logic of his argument because I agree with what he said about the intention of the Bill absolutely. However, I do not see why we need hysteria about an amendment that, provided the dates are right, merely says that there is concern in the community and that we want to be sure this is reassessed, that it could be improved and should be looked at. It might not be a matter of cancelling out, but a matter of amending in a more positive way.

The Hon. C.J. Sumner: Then bring in an amending Bill instead of leaving the whole basis of the Bill in limbo for 18 months.

The Hon. I. GILFILLAN: The amendment does not prevent amending Bills from being introduced. What it would do is put pressure on the Government to make sure that this matter comes before the Parliament again prior to the prescribed dates. If someone can tell me that the dates are dangerous and the actual time frame will leave children in a period of indecision where the matter is not determined then I would look at this matter more critically. As it is, I do not see that the amendment negates the intention of the Bill.

The Hon. C.J. SUMNER: The fact is that it leaves the whole situation in a nowhere position—one might as well not have the Bill! That is my position—we might as well not have the Bill—forget it! Let the Select Committee do its work and report and then bring back another Bill! There is no point in doing that. This matter has been investigated up hill and down dale for about five years with legislators, lawyers, Solicitors-General and Attorneys-General trying to come to grips with what has happened in the medical profession in relation to such matters. They have just tried to say to the kids in these circumstances, 'We will sort out your status,' yet after five years we are still arguing about the thing in the South Australian Parliament. Now, heaven forbid, honourable members opposite come along and want to provide another 18 months of limbo during which this Bill will be in place and no-one will know what will happen after that 18 months.

On 2 January 1986 there is no Bill. Children before 1 January 1986 have some status and those born after do not; or the Select Committee reports and decides that they should not have status and that it is outrageous that these children are born by these procedures to a *de facto* relationship and that they do not have any status at all. The whole matter is misconceived; it is pointless. If there needs to be some changes subsequently to the legislation, let us look at those changes and bring in an amendment. But do not leave the community in a state of complete limbo for another 18

months by inserting a sunset clause in a Bill that deals with the status of children. It is a pointless exercise.

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: There are not. I do not think that the basic principles in this Bill have anything to do with the Select Committee fundamentally, because it talks about status.

The Hon. Diana Laidlaw: Children born by donor material.

The Hon. C.J. SUMNER: What about it?

The Hon. Diana Laidlaw: I am just saying that it is the status of children born like that.

The Hon. C.J. SUMNER: What I am saying is that we are talking about the status of the children and not whether the parents are moral degenerates. We are not talking about whether the doctors—

The Hon. Diana Laidlaw: Nobody is saying that.

The Hon. C.J. SUMNER: If that is understood then there is no point in having a sunset clause that places in limbo the principles of the Bill. Members opposite want to bring in a Bill and then throw it out. That may be applicable for random breath testing where one is trying to test a certain procedure that operates in the community; it may be appropriate in other circumstances to have sunset clauses. However, it is utterly inappropriate where one is trying to bring in something that determines the status of children, to give them a definite position in the community, having been born from these procedures, then members opposite are saying that after 1 January 1986 it may not exist any more. It is inappropriate if one accepts the principles in the Bill.

The Hon. I. Gilfillan: You are making a value judgment on the amendment that is not justified.

The Hon. C.J. SUMNER: It is utterly unacceptable to the Government. I certainly will not be recommending to the Government that this amendment be accepted in the House of Assembly. It undermines the Bill completely. It brings back into the circumstances of this legislation, which talks about the status of children, a whole bunch of uncertainties that one might as well forget about. Frankly, the terms of reference for the Select Committee might as well be amended so there can be an inquiry into it that can go on for another two years. There is no point in the Bill passing with a sunset clause. I am certainly not going to have a bar of it.

The Hon. PETER DUNN: We have been magnanimous enough to try to help these children and have accepted the Government's position, but it is a matter of time. The procedures we are dealing with were developed like Topsy. So, in the community children are born from this procedure. We recognise that they have a legal status.

The Hon. C.J. Sumner: Until 1 January 1986, then they may not have any again.

The Hon. PETER DUNN: That is fine. We recognise that, because they have developed from a position where they had no legal status. If the Attorney wishes to change the date, he can do so.

The Hon. C.J. Sumner: It is not the date: it is the principle. You are making them legitimate until 1 January 1986 and then forgetting them again.

The Hon. PETER DUNN: I do not think so. I believe that the Select Committee will come up with a suggestion. What we are saying is that the children should be born into a marriage relationship.

The Hon. C.J. Sumner: That is fine.

The Hon. PETER DUNN: You agree with that? We should deal with this in the Parliament. All it is is a cut-off period. We accept that it has grown not within the law. It was developed as a medical procedure and has grown outside that. We are trying to legalise it. We are saying that we will stop the present situation. The honourable member is recognising that in future they can carry on with this procedure. That is what he is saying if he lets it go on.

The Hon. J.R. Cornwall: Penalising the children.

The Hon. PETER DUNN: You are not penalising the children. It need not happen in the future. If the Select Committee suggests—

The Hon. C.J. Sumner: Fine. That is great. If that happens it is its decision.

The Hon. PETER DUNN: Both of us are being fairly pedantic. The Minister is wanting to have his cake and eat it too.

Progress reported; Committee to sit again.

SOIL CONSERVATION ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

ADMINISTRATION AND PROBATE ACT AMENDMENT BILL (No. 2)

Returned from the House of Assembly without amendment.

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

Returned from the House of Assembly without amendment.

CRIMINAL INVESTIGATION (EXTRA-TERRITORIAL OFFENCES) BILL

Returned from the House of Assembly without amendment.

BUDGET PAPERS

Adjourned debate on motion of Hon. C.J. Sumner:

That the Council take note of the papers relating to the Estimates of Receipts and Payments, 1984-85.

(Continued from 16 October. Page 1078.)

Motion carried.

ANTI DISCRIMINATION BILL

Adjourned debate on second reading.

(Continued from 23 October. Page 1323.)

The Hon. R.I. LUCAS: I support the second reading of this Bill. There is certainly a need for legislation of this type, in my view. We already have separate pieces of legislation on sex, race and handicapped persons, and many of the dire consequences that were predicted in the mid-1970s when the original Sex Discrimination Act was passed have not eventuated. There have been no major or significant problems with the implementation of the original sex discrimination legislation, although there may well have been a few minor irritations in certain sections of the South Australian community.

One aspect of this Anti Discrimination Bill that has not attracted much comment is that it is an example of rationalisation of QUANGOS in South Australia. The new Anti Discrimination Act will set up one Anti Discrimination

Tribunal in place of two statutory authorities—the Sex Discrimination Board and the Handicapped Persons Discrimination Tribunal. The rationalisation of QUANGOS and the rationalisation of three separate Acts of Parliament into one new Act is an excellent reform by this Government and in concept is one that I support strongly. I hope that the initiative taken with respect to this legislation in rationalising the number of QUANGOS and statutory authorities in South Australia is followed in other legislation by this Government, rather than the converse, as we have seen during this and previous sessions, when we continued to increase the number of QUANGOS and statutory authorities in South Australia. I refer to clauses 10 and 11, which outline the functions of the Equal Opportunity Commissioner. Clause 10 (1) provides:

> The Commissioner shall foster and encourage amongst members of the public positive, informed and unprejudiced attitudes with a view to eliminating discrimination on the ground of sex, sexuality, marital status, pregnancy, race or physical impairment.

That clause is being misinterpreted and misrepresented by many members of the community and, in particular, groups such as the Festival of Light. I quote from its magazine *Focus* of September this year. Among the many references, I refer to page 3 and this statement:

> The proposed Bill is saying in effect that homosexuality is a desirable lifestyle for South Australians.

Then on page 6 in an article by Alen Barron, Executive Officer of the Festival of Light, he says:

> In fact, it will be the job of the Commissioner for Equal Opportunity to break down negative opinions against homosexuals and to promote positive attitudes to 'homosexuality'.

As I said, I believe that groups like the Festival of Light are misrepresenting that provision and upon consideration of that clause I do not believe that the word 'positive' adds much at all to the function of the Commissioner. If the Commissioner is required to foster and encourage amongst members of the public informed and unprejudiced views, then, in my view, informed and unprejudiced views automatically include 'positive'.

Certainly, I will be looking at an amendment to delete the word 'positive'; and if there is a better word for 'positive' I might consider that. It is superfluous if the Commissioner is required to foster and encourage unprejudiced views. That is what we would like the Commissioner to do and, in my view, that implies a positive attitude by the Commissioner. The removal of the word 'positive' will remove the possibility of groups such as the Festival of Light using that minor provision of the Bill in an incorrect way. To be consistent, but for no other reasons than being consistent, I will have to seek to remove the word 'positive' from clause 11 of the Bill. Once again, I believe that the words 'informed and unprejudiced attitude to persons who have intellectual impairments' incorporates positive attitudes. It is a desirable goal and the removal of the word 'positive' will not in my view detract from the intention of the legislation.

Clause 12 of the Bill deals with reporting requirements. I will expand on that area in some detail during the Committee stage when I will move amendments in relation to the reporting requirements to make them more rigorous. This is something that I have taken up with respect to many other statutory offices and QUANGOS. In my view, three months after the end of the financial year is more than adequate time for the Commissioner to present a report to the Minister. In my view, the Commissioner does not really need six months in which to report to the Minister. I will move an amendment to tighten that provision. Equally, a problem that I spoke of recently is what I believe is an undesirable reporting requirement which gives the Minister an open-ended flexibility in presenting the Commissioner's report to Parliament. Clause 12 (2) provides:

> The Minister shall, as soon as practicable after his receipt of a report submitted to him under subsection (1), cause a copy of the report to be laid before each House of Parliament.

As I have indicated, where that clause appears in other pieces of legislation dealing with QUANGOS and statutory authorities, Ministers sometimes delay tabling a report in Parliament for many months after receipt of the annual report from the statutory officer. I will move an amendment to tighten that to the usual 14 sitting day provision, which will place a definite time limit on the tabling of annual reports by Ministers.

The most controversial aspect of the Bill is the new provision relating to sexuality. There is no similar provision in the Commonwealth legislation or, I understand, in legislation in other States. It is a controversial area which has engendered much debate in the community and which has taken up much time in the contributions of other honourable members in this debate. I believe that, as in the mid-1970s with the original sex discrimination legislation, if this Bill is passed containing a sexuality provision, much of the criticism from groups such as the Festival of Light and others will prove to be ill-founded. In her contribution the Hon. Diana Laidlaw gave a comprehensive summary of the pros and cons of including a sexuality provision in the Bill. I will not traverse that ground again. Suffice it to say that I agree with most of the Hon. Diana Laidlaw's analysis as a fair assessment of the arguments both for and against. In that respect I think that the Hon. Diana Laidlaw's contribution laid down a specific number of arguments both for and against including the sexuality provision.

Whilst I have some concerns about the practical implementation of the principle of including a sexuality provision in the Bill, I support the principle behind the Government's intention in this area. I believe that principle is that, irrespective of any moral position on sexuality, we should seek to minimise the extent of all kinds of discrimination in the community. I believe that a number of good points were made by the Hon. Ms Levy and the Hon. Ms Laidlaw. The Hon. Diana Laidlaw's point with respect to discrimination on the grounds of age, political preference, and religion not being covered in this Bill or any other Bill was a sound criticism of the situation in South Australia. That applies equally to the point made by the Hon. Anne Levy with respect to the question of adultery.

I thought the Hon. Ms Levy made a very valid point when she said that many people in the community are morally opposed to adulterers. However, most people in the community accept that there should not be discrimination against adulterers and certainly, to my knowledge anyway, there is very little evidence, if there is evidence at all, of discrimination against adulterers in the community. I thought it was an excellent example of where a moral position may be taken by many people in the community against something such as adultery which, in effect, has general acceptance in the community so as to not require discrimination, and certainly there is little evidence of discrimination in this area.

The evidence of discrimination has been presented in this debate by the Hon. Ms Levy. She quoted sections from various annual reports from the Commissioner of Equal Opportunity and, once again, I will not traverse that area. However, I think the Hon. Ms Levy's point was that there had been complaints of discrimination on the ground of sexuality here in South Australia, contrary to views put by some people in the debate both in Parliament and in the community that there is little evidence of complaints of discrimination in South Australia on the ground of sexuality.

A member of the clergy has provided me with examples of cases that have been presented to the New South Wales Anti-Discrimination Board in relation to discrimination in

employment and accommodation, particularly. The argument that the member of the clergy put in writing was that those were validly examined examples of discrimination in New South Wales, that there is every good reason to expect that New South Wales is not too much different from South Australia and that it is likely that similar examples of discrimination on the grounds of sexuality are occurring in South Australia.

I especially agreed with the contribution made by the Hon. Barbara Wiese in one particular respect, that is, that people ought to be judged in the main on their actual performance in a job, and that as long as their sexuality does not affect their performance (or that of the company for which they work) the sexuality of a person should not really matter. I agree that there is a right to expect that everyone should not overtly display their sexuality, whether that is homosexuality or heterosexuality, in the workplace. My view is that it is wrong that a homosexual can be refused the provision of goods and services, for example, banking, credit, insurance, entertainment, recreation, refreshment, transportation, travel, or professional trade services. I believe it is wrong that, because a person is a homosexual, a transsexual or a bisexual, someone in the community can decide not to provide a banking, trade, or professional service, say, medical or legal.

I certainly believe that, in regard to discrimination in the community, anti-discrimination legislation should apply in such instances. It seems unfair, for example, that a homosexual could be told that a legal or medical service would not be provided solely on the grounds of one's homosexuality, particularly if that person lived in a small country town where there may be only one service available and that anti-discrimination legislation did not cover that situation.

I take the example of a specific type of transsexual. I rely on the medical advice of my learned colleague the Hon. Dr Ritson when he tells me that some transsexuals are such because of, in effect, an accident of birth, that is, that they are born with ambiguous genitalia as a result of which they are raised in the wrong gender. If those people are refused the provision of, for example, the goods and services to which I referred earlier, such as banking, legal or medical services, is it right that they not be covered by the provisions of anti-discrimination legislation? In principle, I do not believe that that is right; it is wrong that they would not be covered by such legislation solely because of an accident of birth.

However, as I indicated before, whilst I support the principles behind the Government's intention, I foresee practical problems with the implementation of the Government's Bill. I will look at two areas in particular: education and employment. There is already a partial exemption with respect to education for religious schools. I have received representations on this and wonder whether the exemptions are wide enough, on the grounds, in particular, of role modelling. Teachers are such important factors in the development of children, role models are very important for children, and teachers are very important role models for children, as children are exposed to their teachers for a large proportion of their childhood. So I have some questions with respect to partial exemptions in education.

The other matter, which is more important to me, relates to employment and, in particular, small business. I am concerned that the practical effects of the Government's Bill might result in adverse effects on some businesses. Take the example of a receptionist, secretary, sales or shop assistant—the sorts of positions where there is day to day contact with the customers of the small business. In those sorts of situations it may be that the employment of a homosexual, bisexual or transsexual may deter people from coming to that business. I do not want to argue whether the people who might be deterred from coming to that business are right or wrong. However, I am sure that most members would have to agree that in the South Australian community, as in any other community, many people would not wish to be confronted with a homosexual, bisexual or transsexual, assuming that they could tell the difference; that assumes that the behaviour or the dress of the homosexual, bisexual or transsexual in some way conveys an impression of that sexuality.

If the employment of such a homosexual, bisexual or transsexual is driving customers and potential customers away from a small business, it is not fair on the employer that he or she should be penalised for the prejudiced views of customers and potential customers. That is what could quite likely happen if the Bill was passed unamended: that is, small businesses in particular and businesses in general may be penalised unfairly because of potential reaction from customers and potential customers to the homosexual, bisexual or transsexual employee.

A number of other similar practical problems concern me about the Government's Bill as drafted. Over the past week I have had and will continue to have discussions with Parliamentary Counsel in an endeavour to ensure that these practical problems that I see in the Government's Bill can be overcome and, if they can be overcome, in such a way that the general principle of anti-discrimination with respect to sexuality can be retained within the legislation. Based on the past week's discussions with Parliamentary Counsel and other legal advisers, at this stage I am not over-confident that I can find an appropriate set of words.

The last matter to which I wish to refer relates to sexual harassment. I, along with most other speakers in the debate, abhor genuine sexual harassment in the work place. I think it is fair to indicate that even the passage of this Bill, unamended with relation to sexual harassment, will not remove all sexual harassment. Customers harassing female or male employees in business, on my understanding, are not covered in the Government Bill. Certainly, on the evidence presented to me, that is a significant part of sexual harassment in the community.

In general, I support the principle with respect to sexual harassment provisions laid down by the Hon. Trevor Griffin, that is, that he will move an amendment to the provisions in line with the Commonwealth legislation, with some minor adjustments. It is sensible to have consistency between the Commonwealth and State legislation on sexual harassment, as the Commissioner for Equal Opportunity will be charged with the responsibility for overseeing both provisions relating to sexual harassment. When we get to the question of sexual harassment we get into the vexed question of exactly what is sexual harassment. There is one definition in this Bill, one definition in the Commonwealth Bill and everyone seems to have a different definition of 'sexual harassment'.

Some previous speakers referred to a publication called 'Sexual harassment in the work place' by the Administrative and Clerical Officers Association. I looked at the definition used by that union, as outlined at page 43 of the publication, as follows:

> Sexual harassment covers a range of verbal and physical behaviour of a sexual nature which a worker experiences in relation to the job, and which is unwelcome, unsolicited and non-reciprocal. The range of this behaviour covers non-verbal acts like leering, displays of offensive pictures, sexual body gestures to verbal comments, sexual innuendo, offensive jokes, pressure for sexual activity, to physical contact such as pinching, patting, hugging and brushing against another person's body, molestation, through to explicit violence as in rape.

At page 42 some other aspects of the definition of 'sexual harassment' are outlined, as follows:

From the available literature, it is clear that many kinds of behaviour constitute 'a sexual nature' and to itemise them is of clarification value. They include:

- Non-verbal gestures and looks—leers, ogling, stares, displays of erotic pictures, offensive body and hand movements.
- Verbal comments—smutty jokes, questioning a woman about her private life, comments about a woman's appearance, requests for sexual favours, requests for 'going out',—

I presume that that is going out on a date—

sex orientated verbal kidding or abuse.

They also include:

- Physical contact—patting, pinching, brushing against, hugging, touching, rubbing any part of a woman's body, explicit sexual violence such as attempted rape or rape.

Certainly, that last part of what the union defines as behaviour of a sexual nature I am sure virtually all of us would agree would constitute sexual harassment: rubbing any part of a woman's body, explicit sexual violence, and so on, is clearly sexual harassment. However, I am concerned when we start to get to the edge of the definition of sexual harassment such as ogling, stares and smutty jokes, comments about a woman's appearance and requests for going out.

Those things in some situations may well be sexual harassment, but in my view, and I would hope in the view of most people, in many instances stares or ogling do not constitute sexual harassment. If we get to the extent where that sort of behaviour is defined as sexual harassment, we are approaching the realms of the ridiculous. Similarly, if in general smutty or offensive jokes are deemed to be sexual harassment, once again we are heading into the realms of the unreasonable.

There is concern about what is defined as sexual harassment. Groups such as the Administrative Clerical Officers Association and other bodies indicate that sexual harassment is rife in the community. Its document quotes a number of studies, one being a doctoral survey by Beth Schneider, Assistant Professor of Sociology at the University of California at Santa Barbara. She says that more than 80 per cent of people report being sexually harassed. A number of other studies are referred to in that document (pages 67 to 69) which indicate that between 50 per cent and 90 per cent of people are supposedly sexually harassed.

The point I make is that, if we include one's having to listen to an offensive joke, being stared at or ogled at, or having the ugliest person in the office ask one out on a date as sexual harassment, I am not surprised that 80 per cent of people think that they have been sexually harassed. I do not believe that we should accept that it is so rife that virtually 80 per cent of women are being exposed to sexual harassment in the work place. In saying that, I am not saying that sexual harassment does not exist: I am saying that we must be very careful as to what constitutes sexual harassment so that we neither understate nor overstate its extent.

If the legislation is to work, it must be reasonable and, if it is not—if we talk in terms of ogling, staring and jokes and so on generally being sexual harassment—we are heading into uncharted and dangerous waters. I support the second reading with a view to moving certain amendments in Committee. I have explored the possibility of moving a number of amendments regarding sexuality, if appropriate words can be found.

The Hon. I. GILFILLAN secured the adjournment of the debate.

JURIES ACT AMENDMENT BILL

Returned from the House of Assembly with amendments.

ADJOURNMENT

At 6.21 p.m. the Council adjourned until Tuesday 30 October at 2.15 p.m.