## LEGISLATIVE COUNCIL

Wednesday 22 February 1989

**The PRESIDENT (Hon. Anne Levy)** took the Chair at 2.15 p.m.

The Clerk (Mr C. H. Mertin) read prayers.

## MINISTERIAL STATEMENTS: JUSTICE OLSSON

**The Hon. BARBARA WIESE (Minister of Tourism):** I seek leave to make a ministerial statement, on behalf of the Minister of Health, about hospital amalgamation.

Leave granted.

**The Hon. BARBARA WIESE:** Yesterday the Hon. R.J. Ritson asked a question which implied that the Minister of Health had attempted to interfere in the selection of elected candidates for positions on the Board of the Adelaide Medical Centre for Women and Children, the new organisation arising from the amalgamation of Queen Victoria Hospital and the Adelaide Children's Hospital, and that this was an appalling abuse of his office and power. Strong stuff, Ms President, certainly warranting a reply.

A number of people have approached the Minister in confidence, regarding the propriety or otherwise of Mr Justice Olsson offering himself for election to a position as a contributor member on the new board. The Minister's first reaction to this was one of mild amusement. Having never met Mr Justice Olsson, he did not know of his interest in women and children. Had he known, the Minister may have suggested to Cabinet that he may be a suitable candidate for a ministerial appointment to the board. This may have been a more appropriate path to board membership than the one he chose. The Minister's limited experience in dealing with matters of hospital boards and this proposed board in particular persuaded him that the elected path is a rocky road indeed.

This ballot is to be one which is hotly contested. Tickets are being run, leaders are being appointed to head those tickets, and members are desperately being signed up to enable them to turn up and vote at the ballot. This is a scenario with which all members of the Council will be familiar and one with which we are all comfortable, but not one, I would have thought, in which a judge of the Supreme Court would wish to be involved. However, the decision to be in it was one entirely for Mr Justice Olsson. Some would argue that for a Supreme Court judge to be 'soiling his hands' in the real world is a positive development. Others would argue otherwise. Wise in the ways of ballots, Ms President, the Minister—

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. BARBARA WIESE:** They don't do it by way of ballot. That is the point being made.

*The Hon. L.H. Davis interjecting:*

**The PRESIDENT:** Order, Mr Davis!

**The Hon. BARBARA WIESE:** Wise in the ways of ballots, the Minister stayed right out of it. However, the ferocity of the contest spilled over into the press on 9 February, when a senior visiting obstetrician and head of unit of the Queen Victoria Hospital, and a supporter of the faction that was apparently promoting the Justice Olsson led ticket, wrote a letter to the editor. This prompted the Minister to raise the question with the Attorney-General, as to whether or not the issue might be getting a little out of hand—hardly action that could be described to quote the Hon. Dr Ritson, as 'an appalling abuse of his office and power'.

As a footnote, Ms President, the Minister has advised me that he was surprised when he read in an article on this issue in this morning's *Advertiser* that he had declined to comment. As all members of the House would know, he is always happy to say a few words on anything. On this occasion, he was somewhat miffed that he was not even asked!

**The Hon. C.J. SUMNER (Attorney-General):** I seek leave to make a statement on the subject of Mr Justice Olsson.

Leave granted.

**The Hon. C.J. SUMNER:** Following the ministerial statement of the Hon. Ms Wiese, I can advise the Council that I raised the matter of Mr Justice Olsson's involvement in the Queen Victoria Hospital dispute with the Chief Justice after the Minister of Health had discussed it with me. The decision was one for the judge to make in consultation with the Chief Justice. It is accepted that it is inappropriate for judges to be involved in matters of political or community controversy. Judges are not meant to live in ivory towers. Involvement in the community is desirable. However, whether the particular involvement crosses the generally accepted guidelines depends on the circumstances of each case. It was quite legitimate to raise the matter with the Chief Justice—

*The Hon. L.H. Davis interjecting:*

**The PRESIDENT:** Order!

**The Hon. C.J. SUMNER:** It was quite legitimate for me to raise the matter with the Chief Justice for his consideration. Indeed, I would not have been doing my duty if I had not.

## QUESTIONS

### JUSTICE OLSSON

**The Hon. K.T. GRIFFIN:** My questions are directed to the Attorney-General on the subject of the ministerial statement relating to Mr Justice Olsson.

1. When did the Minister of Health raise this issue with the Attorney-General?

2. When did the Attorney-General speak with the Chief Justice?

3. What representations did the Attorney-General make with the Chief Justice with respect to Mr Justice Olsson's possible nomination?

4. Does the Attorney-General support the slur by the Minister of Health, and in this Chamber by the Minister of Tourism, in relation to Mr Justice Olsson's character?

**The Hon. C.J. SUMNER:** First, there clearly has not been a slur by anyone on Mr Justice Olsson. The matter was raised with me by the Minister of Health, as I have already indicated, after there was publicity in the *Advertiser* about this matter, citing Mr Justice Olsson as a candidate in one of the opposing factions or tickets that are apparently involved in this ballot. When that matter was raised with me, I spoke—I cannot recall precisely when—shortly after that to the Chief Justice. I raised with him the question of the general guidelines relating—

**The Hon. M.B. Cameron:** Extraordinary behaviour!

**The Hon. C.J. SUMNER:** It is not extraordinary behaviour. I spoke about the general guidelines relating to judges being involved in matters of political or community controversy.

**The Hon. M.B. Cameron:** There's no controversy.

**The Hon. C.J. SUMNER:** There is no controversy? That is a matter for the judge and the Chief Justice to work out,

but I understand from people who are close to this matter that there is a dispute about election to this hospital board. Normally that is not the sort of dispute in the community or in politics in which a judge of the Supreme Court gets involved. So, I raised the matter with the Chief Justice. It was made clear to the Chief Justice that it was a matter for the judge and him to decide after discussing it.

**The Hon. L.H. Davis:** Which ticket is the Minister of Health backing?

**The Hon. C.J. SUMNER:** I am not going into the facts of the matter.

**The Hon. R.I. Lucas:** We know that!

**The PRESIDENT:** Order!

**The Hon. C.J. SUMNER:** If you go into the dispute, as I understand it you will find it a particularly heavily and highly contested ballot in which there are opposing factions. The reality of the matter—

**The Hon. M.B. Cameron:** Who approached the Minister of Health?

**The Hon. C.J. SUMNER:** The honourable member can ask the Minister of Health that; I do not know. Representations were made to me by him and, as Attorney-General, I was obliged to draw those representations to the attention of the Chief Justice. Every lawyer—at least in this Chamber; and the Hon. Mr Griffin particularly I suppose, because he was responsible for recommending the appointment of Mr Justice Millhouse to the bench some years ago—knows that Mr Justice Millhouse, in his other guise as a politician, was reasonably vocal and not particularly afraid of publicity. But, since taking his position on the bench, he has concentrated on—

**The Hon. I Gilfillan:** Running.

**The Hon. C.J. SUMNER:** On running, as the Hon. Mr Gilfillan has said, and his judicial duties. We have not heard any public controversy from Mr Justice Millhouse. The Hon. Mr Griffin knows the general rules—the general guidelines—which are applicable in this case. It is a matter of degree in any particular case whether a judge's involvement in a community organisation oversteps the bounds of involvement in matters of politicial or community controversy.

The situation would have been quite ludicrous and unsatisfactory if, at the end of this ballot—it is being fiercely contested, I understand, and it is still going on—there had been arguments about the appropriateness of a Supreme Court judge lending his support to one of the factions in the ballot. Had that happened after the ballot, it is probable that the judge would have had to resign. That is the reality of the situation.

*Members interjecting:*

**The Hon. C.J. SUMNER:** I am not indicating the details of my discussion with the Chief Justice. It was my duty to raise with him the appropriateness of a Supreme Court judge being involved in a faction fight of this kind. That is the position.

*The Hon. L.H. Davis interjecting:*

**The Hon. C.J. SUMNER:** That is a matter for you to ask the Minister of Health. All I know is that it is a fiercely contested ballot. There are different factions. Mr Justice Olsson was put forward as part of one faction in the dispute. The simple question is whether it is appropriate for a Supreme Court judge to be involved in that sort of dispute. There are guidelines. I raised the matter with the Chief Justice. It clearly is a matter for the Chief Justice and the judge to decide, after discussion. Obviously, they discussed the matter and a decision was taken that Mr Justice Olsson should withdraw.

**The Hon. K.T. GRIFFIN:** As a supplementary question, will the Attorney-General indicate whether he supports in every respect the ministerial statement made by his colleague the Minister of Tourism, representing the Minister of Health?

**The Hon. C.J. SUMNER:** That is the Minister of Health's statement. In so far as he indicates my involvement in this matter and the fact that he raised the matter with me, I agree with the statement. It is a factual statement about the circumstances, and I have advised the Council of the action that I took.

## INTELLECTUALLY DISABLED

**The Hon. M.B. CAMERON:** I seek leave to make a statement before asking the Minister of Tourism, who represents the Minister of Health, a question about accommodation for the intellectually disabled.

Leave granted.

**The Hon. M.B. CAMERON:** I seek leave to table a report of the Intellectually Disabled Services Council entitled 'The First Report of the Accommodation Task Force for People with Intellectual Disability' and dated December 1988.

Leave granted.

**The Hon. M.B. CAMERON:** This report, which has not yet been disclosed by the Government, shows an alarming increase in the number of intellectually disabled people seeking accommodation. A year ago I released the Steer report into the operations of the Intellectually Disabled Services Council. This report by Dr Michael Steer identified massive gaps in the provision of services for the intellectually disabled. It described, amongst other things, the living conditions at Ru Rua, at Tennyson, as being appalling and the almost haphazard development of services for the disabled. It recommended that the Government adopt new roles for Strathmont and Minda and said that Strathmont staff had identified serious overcrowding there.

Separately from the Steer report I released documents which showed that, in January 1988, 129 intellectually disabled people were waiting for accommodation—67 of them urgently. Today I released a Government paper entitled 'The First Report of the Accommodation Task Force for People with Intellectual Disability', which shows that those figures have grown massively in the past year. This report shows that 675 people are now waiting for accommodation—154 of them urgent cases. This 400 per cent increase has occurred in one year, almost to the day.

It also states that an alarming number of families with children need long-term accommodation and identifies a growing number of crises or emergencies in all age groups. The IDSC report states that there is a lack of any funding system by the State or Federal Governments and sets out priorities for accommodating the intellectually disabled.

More importantly for the many hundreds of families who have in some cases been waiting for years for accommodation for their next of kin without any sign of help, it recommends that the State and Federal Governments should make additional funds available over a 10 year period to accommodate more than 1 300 disabled people. Many of these people, as anyone who is in touch with the community would know, have been looking after dependants for 30 or 40 years. Many of them are older parents with, in some cases that have come to our attention, already one parent dead and the other reaching the end of their life. In many cases these people are ill and there is no sign of accommodation in sight.

What steps is the Government taking to ensure that the rocketing waiting list for accommodation of the intellectualy disabled—both urgent and non-urgent—is overcome? Although the previous Minister of Health told Parliament almost a year ago that some of the $15 million from the sale of Health Commission properties would go towards the purchase of homes for the intellectually disabled, in that time period we have seen a 400 per cent increase in demand for such accommodation.

**The Hon. BARBARA WIESE:** I will refer those questions to my colleague in another place and bring back a reply. The Minister of Health has been busy, during the past 12 months, trying to meet the commitments in this area. As the honourable member would know, with respect to some intellectually disabled people who are currently inadequately accommodated at Ru Rua, measures are being undertaken to relocate them to suitable accommodation in other parts of the metropolitan area. I understand that this relocation will have taken place for all these people by 30 June this year. That is one commitment I know of that is being fulfilled, and I know that other matters can be brought to the attention of this Council that will indicate to members that the Government is taking this area of health provision very seriously. I will bring back a reply about exactly what the Government's plans are in this area when possible.

**The Hon. L.H. DAVIS:** I seek leave to make a brief explanation before asking the Minister of Tourism representing the Minister of Health, a question about accommodation for the intellectually disabled.

Leave granted.

**The Hon. L.H. DAVIS:** The Opposition has copies of reports by the Metropolitan Fire Service on two buildings licensed by the Government to provide accommodation for the intellectually disabled. I seek leave to table the reports, dated 5 January 1989 and 11 January 1989.

Leave granted.

**The Hon. L.H. DAVIS:** The reports are of very recent origin. In one home at Kurralta Park for 18 intellectually disabled people, there was no fire detection system, accessibility to exits was unsatisfactory, there were no exit signs, no emergency lighting, no fire hose reels and only two fire extinguishers, both of whih were in a discharged condition. That is referred to in the report that I have just tabled.

In the second home at Windsor Gardens, which accommodated 19 people, there was no detection system, nor were fire hoses fitted, and fire service access was described as 'difficult'. In neither home had staff been trained to deal with fires, and there was no evacuation procedure. The condition of both homes was such that an offence had been committed under the Building Act. Why is the Government allowing intellectually disabled people in its care to be housed in buildings which are potential fire traps, according to the Metropolitan Fire Service? What, if anything, is being done to rectify this horrendous situation?

**The Hon. BARBARA WIESE:** I will refer those questions to my colleague and bring back a reply.

## EMU WINERY DEMOLITION

**The Hon. I. GILFILLAN:** I seek leave to ask the Attorney-General, representing the Minister of Labour, a question concerning demolition procedures at the old Emu Winery site at Morphett Vale.

Leave granted.

**The Hon. I. GILFILLAN:** My question concerns the means of demolition of the site, now owned by Pioneer Homes, which is adjacent to Wirreanda High School, Emu Children's Centre and the Morphett Vale East Kindergarten. Before demolition began, the site was considered to be a hazard because of the presence of many physical hazards as well as asbestos lagging. Pioneer Homes gave the demolition contract to Bramley. In the light of further action by Bramley, that was a questionable choice. Work began in late October last year. Since then, several things have occurred to cause concern among members of the local community.

1. In November 1988, a contractor bulldozed a structure containing large amounts of asbestos sheeting—action outside the guidelines set down by the Department of Labour. As a result, asbestos fibres were released and traces were found in the grounds of the school, the child-care centre and the kindergarten. They have since been found to be below the level of health concern.

2. Also in November, six of the 12 monitoring devices placed by the South Australian Department of Housing and Construction were vandalised.

3. On 1 February, Martin Bramley, a key figure in the company, was killed following the unauthorised use of gelignite.

4. In early February this year, asbestos lagging, which should have been removed earlier in the exercise by a licensed asbestos removalist and which had been seen by observers only days before, mysteriously disappeared under suspicious circumstances.

At a meeting on 15 February 1989, parents involved with the child-care centre and the kindergarten issued a statement which expressed concern that these events had occurred and that there were many unanswered questions. I will read their very brief statement into *Hansard*. It reads:

> This meeting of parents and staff of the Emu Child Care Centre and the Morphett Vale East Kindergarten views with concern the following activities that have occurred on the old Emu Winery site since demolition began in October 1988:
>
> (i) the unauthorised use of gelignite on 1 February that resulted in loss of of life,
>
> (ii) the disappearance of abestos lagging that should have been removed by a licensed asbestos removalist earlier in the exercise under the strictest of safety procedures.
>
> (iii) the reluctance of either the owner of the site or the demolition company to consult with the kindergarten, the child care centre or local residents.

I therefore ask the Attorney-General, representing the Minister of Labour, first, whether he will ensure the closest surveillance of construction and demolition companies that adopt questionable work practices that endanger the health and safety of themselves, their employees and those in the vicinity; secondly, whether he will direct a thorough independent investigation into the activities of the demolition company in relation to the unauthorised use of gelignite, the disappearance of the asbestos lagging, and the unsafe dismantling and disposal of asbestos sheeting.

Thirdly, will the Government enact legislation that requires demolition and construction companies to enter into consultation with those potentially affected when explosives, asbestos or dangerous chemicals are involved on sites adjacent to schools, hospitals, kindergartens, child care and other community centres or residential areas? Will the Government give earnest and serious attention to these requests, and implement them?

**The Hon. C.J. SUMNER:** I will refer the question to the responsibile Minister in another place and bring back a reply.

## INTELLECTUAL IMPAIRMENT

**The Hon. DIANA LAIDLAW:** I seek leave to make a brief explanation before asking the Attorney-General a question about intellectual impairment.

Leave granted.

**The Hon. DIANA LAIDLAW:** In the speech given by His Excellency the Governor when opening this session of Parliament on 4 August 1988, it was noted that, as part of the Government's program, further amendments would be made to the Equal Opportunity Act, dealing with intellectual impairment. The Commissioner for Equal Opportunity, in her report of 1987-88, under the heading 'Future Outlook', notes as follows:

> It is proposed that [an Equal Opportunity Amendment Bill] will be drafted in gender neutral language and will put forward intellectual impairment as one of the grounds for discrimination to be covered by the Equal Opportunity Act.
>
> The Bill will also deal with the issue of the recognition of overseas qualifications and will ensure that all of the grounds of the Equal Opportunity Act cover voluntary as well as paid workers. It is anticipated that adequate resourcing will be made available to allow effective administration of the amendments.

Further in her report, the Commissioner, under the heading 'Review of Legislation', notes:

> It is anticipated that the draft Bill to introduce intellectual impairment as a ground for discrimination under the Equal Opportunity Act will be introduced in Parliament during the latter part of 1988.

That was last year. As the Bill to amend the Equal Opportunity Act to incorporate the ground of intellectual impairment was not introduced during the latter part of 1988 as anticipated by the Commissioner for Equal Opportunity in her report of 1987-88, does the Attorney-General intend to introduce such a Bill before this session concludes on 13 April?

**The Hon. C.J. SUMNER:** I expect a Bill to be introduced, dealing with the question of discrimination on the grounds of intellectual disability. The other matters to which the honourable member has referred are still subject to Cabinet's policy decisions. However, I expect that the matter will be discussed shortly and a decision taken.

## STRATHMONT CENTRE

**The Hon. J.C. BURDETT:** I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Health, a question about the Strathmont Centre.

Leave granted.

**The Hon. J.C. BURDETT:** I refer to the article in yesterday's *Advertiser* which reports that a union dispute over the opening of packets of cornflakes and pouring the contents into bowls is causing breakfast time disruption at Strathmont Centre, a public institution which cares for the intellectually disabled. The article says that care workers and union representatives claim that this seemingly simple and innocous task is food preparation, but Strathmont's administration disagree because they say that the task does not involve food preparation.

As a result of this ludicrous stand-off, administrative staff have had to come in specially every morning to take the packets of cornflakes from the pantry, open them and pour cereals into bowls so that developmental care workers—who are at the heart of the dispute and certainly give a new meaning to the word 'care'—will then serve breakfast to residents. The dispute appears to be the fallout of a new career structure in which workers, previously known as home assistants, performed a range of duties, some of which are done by pantry hands and domestics. The developmental care workers are now supposed to deal with clients, and one might have thought that might include opening a cereal packet.

**The Hon. R.J. Ritson:** Do they pour the milk on?

**The Hon. J.C. BURDETT:** I do not know. Other parts of the home assistants' tasks, which are not resident related, are done by pantry hands and domestics. It seems that, in framing this new career structure, everyone forgot the people who count—the hungry, intellectually disabled residents, who quite innocently like a bowl of cereal before starting their day. Constituents have said that the union dispute over this issue must be one of the choicest examples of unionism gone bonkers.

Strathmont is a very sensitive area of intellectually disabled services, and yet staff there appear so wrapped up in their own self interests that they cannot even agree on who is responsible for opening a packet of cornflakes! My questions are, first, what steps will the Government take to remove from its institutions any person who is refusing to open cereal packets so that residents can be fed, as clearly they are unsuitable to work in such places? Secondly, will the Government's proposed legislation, which has been referred to by the Attorney-General and which relates to discrimination against people who are intellectually impaired, deal with descrimination of this kind?

**The Hon. BARBARA WIESE:** I will refer those questions to my colleague and bring back a reply.

## DEREGULATION

**The Hon. T.G. ROBERTS:** I seek leave to make a brief explanation before asking the Attorney-General a question about deregulation.

Leave granted.

*Members interjecting:*

**The PRESIDENT:** Order! The Hon. Mr Roberts has been granted leave to make a statement. The Council has just given him that leave. I ask that he be heard without a cacophony of interjections.

**The Hon. T.G. ROBERTS:** I draw the Attorney-General's attention to the recent *Sunday Mail* article dated 12 February under the heading 'Millions wasted on State authorities: Olsen', and to the editorial of the same day. The article referred to a sprawling mass of Government agencies. The editorial refers to the role of the Government Adviser on deregulation, Mr Brian Wood. Additionally, I refer to an article in today's *Advertiser* about quangos. Does the Attorney-General believe that the article and editorial accurately reflect the Government's position with respect to deregulation, and what positive initiatives has the Government taken in relation to responsible deregulation, not Mr Olsen/Thatcher style, but in the style that increases efficiency while protecting public interest?

**The Hon. C.J. SUMNER:** The Leader of the Opposition in another place has recently had a lot to say about this topic, but I am afraid that he is a little bit two-faced about his approach to the question of deregulation and Government statutory authorities. The *Sunday Mail* article, week before last, gave the impression that a list of such authorities was not available, and yet we today find in the *Advertiser*, under the article about Mr Olsen's proposal, that 428 statutory authorities are listed.

I will go through some of them shortly. One error—an error made by Mr Olsen—is in relation to the Hairdressers Registration Board, which apparently is on the Opposition's hit list of statutory authorities to be abolished. Mr Olsen

has forgotten that that was dealt with by this Parliament last year.

The record of the South Australian Government in relation to deregulation is clear and should be commended. Stringent regulation review procedures were approved by Cabinet on 21 September 1987. This followed an amendment to the Subordinate Legislation Act, assented to on 23 April 1987, which provides for the automatic expiry of existing regulations, rules and by-laws. One would have expected Mr Olsen, if he was being straight forward on this issue, to mention that that legislation was passed through Parliament. It did not get a mention in the *Sunday Mail* article.

The regulations and amendments made before 1 January 1960, expired on 1 January 1989. Those made before 1 January 1970 expire on 1 January 1990. Those made before 1 January 1976 expire on 1 January 1991, and those made before 1 January 1980 expire on 1 January 1992. Those made before 1 January 1986 expire on 1 January 1993. Any regulations made on or after 1 January 1986 will have a life of seven years.

The reality is that, in most cases, the repeal of subordinate legislation—that is, the automatic repeal every seven years—will lead to a review of the principal Act and any statutory authorities established by that Act. Therefore, there is in place an automatic review procedure that includes a green paper which defines the need for regulation and canvasses alternative solutions, a consultation process which ensures that the views of all parties affected—business, unions and consumers—are considered, and an evaluation process which ensures the most cost effective solution in the public interest is chosen.

Although the above procedures have been in force for only a short time there are encouraging signs. In fact, over 60 per cent of the regulations made before 1 January 1960 that expired on 1 January 1989 were allowed to lapse, and several of the enabling Acts have been repealed. A number of proposals for Government regulation have been rejected when it could not be established that the benefits exceeded the costs. More emphasis has been given to consulation with those affected by Government regulation. Several business and professional associations are supporting self-regulation, where appropriate, in place of Government regulation. There are currently regulation reviews affecting no fewer than 34 statutory authorities that have the potential to result in significant deregulation.

However, one needs to point out to this Council that the success of deregulation and the aboliton of so-called quangos depends very much on members of Parliament and, particularly, the Opposition and the Democrats in the Legislative Council. The reality is that their track record in this respect has been to oppose deregulation when it has been put forward by the Government. The Potato Board, the Egg Board—

*Members interjecting:*

**The Hon. C.J. SUMNER:** Eventually, but it took two terms to get rid of it. Deregulation of petrol trading hours was proposed by the Government and opposed by the Opposition. Of course, members opposite completely opposed and rejected legislation relating to the extension of retail trading hours. The reality is that when deregulation is proposed in the Parliament, despite all its talk and crocodile tears in this area, the Opposition, for narrow political reasons because there is a particular lobby group it wants to curry favour with, opposes the legislation.

As I have said, just the other day there was a proposal by the Hon. Mr Gilfillan for another statutory authority when one is already operating in South Australia—an independent commission into crime and corruption. What does the Opposition do? In spite of the fact that the National Crime Authority is already established here, it wants to establish yet another quango.

**The Hon. K.T. Griffin:** We said we support the second reading.

**The Hon. C.J. SUMNER:** That is right—the second reading. That is certainly support for it.

*Members interjecting:*

**The Hon. C.J. SUMNER:** We will see where you stand at the end. Another proposal has been put forward by the Hon. Mr Elliott—the privacy commission. We will see what you do about that. What the Hon. Mr Olsen and members opposite must do if they are not to be accused of—and end up—being completely two-faced about this issue is to nominate the statutory authorities they intend to abolish. Of course, it is quite ridiculous to include in the 428 authorities mentioned, the Economic Committee of Cabinet. That is a committee of Cabinet and does not impose any additional costs on the Government. The same applies to the Resources and Physical Development Committee of Cabinet. Cabinet committees are included in the Leader's list of 428.

Will the Hon. Mr Griffin abolish the statutory authorities that he established, for example, the Legal Practitioners Complaints Committee? Let him say whether he will abolish that and the Legal Practitioners Disciplinary Tribunal, which he also established when he was Attorney-General. Let the honourable member say whether or not he will abolish the Computerised Legal Information Retrieval System Advisory Committee. It is an advisory committee, hardly a quango or statutory authority that takes a lot of money out of Government resources. Will the honourable member abolish the Birdwood Mill Museum, the Eyre Peninsula Cultural Trust or the Northern Cultural Trust?

These questions must be answered by the Opposition and, particularly by the Leader of the Opposition, if he wants to criticise the Government in this area. The reality is that, whilst the honourable member talks about this issue at length to the press, his actions in this Chamber, and the actions of members opposite in this Chamber, tell another story. In the meantime, the Government has set up a procedure for dealing with deregulation and statutory authorities. The automatic expiry system of regulations means that statutory authorities will be examined as part of that automatic expiry process.

## LOCAL GOVERNMENT MEETINGS

**The Hon. J.C. IRWIN:** I seek leave to make a brief explanation before asking the Minister of Local Government a question about local government meetings in secret.

Leave granted.

**The Hon. J.C. IRWIN:** For some time there has been public discussion relating to some council or council committee meetings being held excluding the public from part of the deliberations. This discussion surfaced again yesterday in relation to the Adelaide City Council. A report in the *Advertiser* (21 February 1989), headed 'City council keeps its secret agenda to itself', stated:

> An Adelaide alderman last night failed in an attempt to have the city council publicly list the general subjects it planned to discuss in confidence. Agenda items for discussion by the council behind closed doors are listed only as numbers, with letters of the alphabet giving the key to reasons for confidentiality.

The Local Government Act provides for councils or their committees to 'order the public be excluded from attending at the meeting in order to enable the meeting to consider in confidence'. The Act goes on to outline 12 areas where

the nature of the discussion on the agenda will allow councils or committees to exclude the public if that is the wish of the majority of the council or committee. The Act says 'may exclude the public', so it is not a direction in the Act which must exclude the public.

It appears that at least one council is using a numbering and lettering system to hide from the public exactly what the subject matters are for discussion by the council or the committee. Presumably, the council and staff are provided with the solution to the code used. I wonder how long it will be before some bright spark breaks the code, publishes it or has it leaked so that it can be published. I also wonder how much time is going to be wasted, and confusion caused to councillors and staff, by forever changing the code. I am also concerned that, as councils are encouraged by the new legislation to move more and more into an entrepreneurial roll to supplement falling income from grants, they will exclude the public more and more from their deliberations.

This is an area in which the Auditor-General and the Opposition have been very critical of the State Government for its hiding behind confidentiality and lack of accountability for the use of public funds. My questions are:

1. Does the Minister condone the practice of councils using codes or other methods to hide from the public items on the agenda for discussion?

2. Does she believe that members of the public are entitled to know the nature of agenda items for discussion so that at least councillors can be approached by electors on matters of interest to them?

3. What is the Minister doing or what will she do about the practice of coded or secret agendas?

**The Hon. BARBARA WIESE:** It has been the stated view of the Government for some years that, to the extent possible, it should be the practice of councils in South Australia to conduct open meetings so that electors are able to maintain some scrutiny over the actions and decisions of local councils. Indeed, amendments made by my predecessor to the Local Government Act in 1984 were designed to bring that philosophy into practice. Since that time there has been a much greater tendency on the part of councils around the State to conduct their business in open forum.

However, it was acknowledged in the changes to the Act that there will be on occasions some good reasons why councils should not discuss, at least in the first instance, some issues in open forum. There is a provision which would enable councils, when matters of this kind arise, to conduct discussions in camera. On occasions suggestions have been made by some ratepayers in particular council areas that their councils are using those provisions too much or too often. Whenever such an issue has been drawn to my attention, I have asked officers of my department to make inquiries of the council so that an assessment can be made as to whether or not they are correctly using the provisions of the Local Government Act.

At this point I have not received any formal complaints from ratepayers or members of the Adelaide City Council about the practices of that council. However, I intend as a result of the letter to the Editor that appeared in this morning's *Advertiser* to ask my officers to make inquiries of the Adelaide City Council as to its practices with respect to council and committee meetings so that I can satisfy myself as to whether or not the council is using the provisions of the Act in an appropriate way.

## WILLUNGA COUNCIL

**The Hon. M.J. ELLIOTT:** I seek leave to make a brief explanation before asking the Minister of Local Government a question on the subject of the Willunga council.

Leave granted.

**The Hon. M.J. ELLIOTT:** We have just heard a question and answer in relation to secret council meetings. I have had regular complaints from ratepayers in the Willunga council area about the way in which that council has been consistently running its meetings in private and not divulging what has been coming out of those meetings. For instance, concerning its proposal for the Sellicks marina, meetings were held in private for over two years and the ratepayers were not informed of that proposal throughout that time. When the ratepayers first knew about it, about $500 000 of ratepayers' money had been committed to that scheme. Even since the announcement of the Sellicks marina, the council has continued to keep secret all of its meetings concerning the marina and it is hard to see that commercial confidentiality necessitates that throughout all the meetings.

The final concern of the ratepayers is that this council, having acted in this way for about 2½ to three years now, has committed a great deal of its funding, maybe to the point of signing for a scheme about which the ratepayers knew nothing, for the marina to go ahead before an election which is due in about two months and at which at last ratepayers will have some chance to voice their dissent. Has the Minister received any complaint about the Willunga council and its meetings being held behind closed doors and the fact that information is not coming out from those meetings? If not, was she at least aware of the situation at Willunga? Finally, does she believe that the ratepayers should have some say on what is a very significant project in their area involving a significant amount of their funds?

**The Hon. BARBARA WIESE:** I did receive some complaints, from memory, from local ratepayers about the Willunga council's conducting in secret meetings relating to the Sellicks Beach marina proposal. It is some time since I received those complaints, so I cannot be sure of the timing, but certainly at least early last year I received a complaint and, as a result of that, I asked officers of my department to make inquiries of the Willunga council about its practices in conducting council meetings.

As a result of discussions between my officers and the Willunga council, it was agreed that on occasions the provisions of the Local Government Act probably had not been used appropriately. I believe that subsequently most of the information concerning the Sellicks Beach proposal, which formerly had been kept confidential by the council, was made available to any interested ratepayer who wished to look at it. I also understand that, in the 12 months or so following that contact by my officers, an assessment was made of the number of times that the council had used the 'in camera' provisions of the Act, and quite a significant reduction occurred in the use of the provision.

I have not received any recent complaint about the Willunga council and its practice of conducting meetings in secret. I am surprised to hear the honourable member suggesting that all meetings of council as they relate to the Sellicks Beach proposal have been held in secret. It is not my understanding that that has been the practice of the council, but now that he has raised the allegation I will certainly ask my officers to make inquiries of the Willunga council to satisfy me that the provisions of the Act are being used appropriately.

**The Hon. M.J. ELLIOTT:** As a supplementary question, does the Minister feel that, in the light of the continuing secret meetings, the ratepayers should have their say at the polls that are imminent?

**The Hon. BARBARA WIESE:** I will not be aware, until I have made some inquiries, whether or not the council is conducting secret meetings on this issue. Certainly, I know

there is strong feeling in the Willunga council area both for and against the Sellicks Beach marina proposal, and no doubt it will be one of the issues upon which people will be voicing their opinion when the elections are held in May. That is certainly their democratic right, and I would encourage people to take an interest in council elections, not only in Willunga but right around the State.

I also caution ratepayers against supporting or opposing any council in South Australia on the basis of one issue rather than weighing up the merits of the performance of a particular council across the broad range of issues that each council must deal with during its two-year term. As I have already indicated on the matter of information for ratepayers, the Government's view is that, to the extent that it is appropriate to do so, council meetings should be conducted in an open forum so that ratepayers have an opportunity to scrutinise their council and the decisions that it takes.

As is recognised in the Local Government Act, there will always be occasions when, at least in the area of negotiations on perhaps the acquisition of land or other issues, it may be inappropriate for discussions to be held in an open forum until such matters have been determined. Whether the Willunga council has used the provisions of the Act appropriately or otherwise since my officers conducted their first inquiry is something that I shall have to determine.

## HOSPITAL BEDS

**The Hon. R.J. RITSON:** I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Health, a question about hospital bed numbers.

Leave granted.

**The Hon. R.J. RITSON:** The numbers of beds jointly established by the Queen Victoria and Adelaide Children's Hospitals fell from 456 in 1982-83 to 327 last year, and, of those 327 beds, the daily average occupancy was about 291. I believe that the combined number of beds of the new institution that is to be created will be no more than 271 and, of course, it is never possible to have 100 per cent occupancy, so the available beds will be fewer than that. Will the Minister explain why this reduction has occurred and what is the explanation of reduced need for beds in the combined institution? How will this bed reduction assist the reduction of the waiting list, which I am informed stands at about 900 for elective paediatric surgery?

**The Hon. BARBARA WIESE:** I will refer those questions to my colleague in another place and bring back replies.

## UNANSWERED QUESTIONS

**The Hon. BARBARA WIESE:** I have a reply to questions asked yesterday by the Hon. Mr Cameron concerning questions asked before the Estimates Committees. I refer the honourable member to the Parliamentary Debates *(Hansard)*, House of Assembly Estimates Committees A and B—Replies to Questions.

Questions 1-3: refer page 531.

Question 4: refer pages 531-532.

Questions 5-6: refer page 530.

The honourable member should note that the answers to these questions were provided within the 10 days allocated immediately following the completion of Estimates Committees.

## ILLEGAL FISHING

**The Hon. PETER DUNN:** I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Fisheries, a question on departmental investigations.

Leave granted.

**The Hon. PETER DUNN:** The latest report to Parliament from the Department of Fisheries says that the high price of abalone continues to attract illegal fishing and that poachers have refined their methods in order to make detection difficult.

In October last year the Opposition raised this issue with reference to allegations that an officer in the Fisheries Department had sold to poachers radio codes and other sensitive information used in the pursuit of these illegal activities. The poachers had been tipped off about a helicopter blitz on their illegal activities which caused its failure. On 6 October the Minister told Parliament that the Government was aware of these allegations and was investigating them, and that it had also taken advice on the matter from Crown Law. What has been the outcome of an investigation into the failure of a helicopter blitz on abalone poaching on the West Coast?

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

## STATE GOVERNMENT ASSISTANCE

**The Hon. J.F. STEFANI:** I seek leave to make a brief explanation before asking the Minister of Ethnic Affairs a question about State Government assistance.

Leave granted.

**The Hon. J.F. STEFANI:** I have been informed that the South Australian Government has been providing free accommodation facilities to several community-based organisations, including the United Ethnic Communities of SA Inc, which currently operates from 48 Flinders Street, Adelaide. My questions to the Minister are as follows:

1. Is the Government providing free accommodation to any other ethnic community organisation?
2. What is the commercial rental value currently provided by the Government to the United Ethnic Communities of SA Inc?
3. Through which department is this free accommodation provided, and is that department responsible for all maintenance and outgoing expenses on the building?
4. What is the annual value of these expenses when proportionately applied to the area of the building occupied by the United Ethnic Communities of SA Inc?

**The Hon. C.J. SUMNER:** I am sorry that the honourable member apparently does not believe that the Government should be assisting ethnic communities in this way.

*The Hon. J.F. Stefani interjecting:*

**The Hon. C.J. SUMNER:** Government assistance to ethnic minority communities takes many forms. Some is in the form of grants and there is assistance in other ways.

**The Hon. J.F. Stefani:** They receive grants.

**The Hon. C.J. SUMNER:** Yes, ethnic communities receive grants.

**The Hon. J.F. Stefani:** I want to know—

**The PRESIDENT:** Order! You have asked your question.

**The Hon. C.J. SUMNER:** The honourable member is fully aware that there is a system of grants for ethnic minority communities across a whole range of areas—welfare, arts and the like. I should have throught that he would have commended the Government for that. I should have thought

that he would commend the Government on the provision of assistance to ethnic minority communities, and in doing so he would have—

**The Hon. J.F. Stefani:** Answer the question.

**The PRESIDENT:** Order, Mr Stefani! You have asked your question. You will cease interjecting.

**The Hon. C.J. SUMNER:** I should have thought that the honourable member would commend the Government on their initiatives. I do not have the details here. I will take the matter on notice and bring back a reply.

## ANTI-CORRUPTION BRANCH

**The Hon. R.I. LUCAS:** Is it the intention of the Government to table in Parliament the report which the Commissioner of Police is required to make to the Government on a six-monthly basis on the operations of the new Anti-Corruption Branch and, if not, why not?

**The Hon. C.J. SUMNER:** I understand that these guidelines follow the procedures adopted with respect to the Operations Intelligence Unit, which operates in accordance with certain guidelines and with an independent auditor. The reports of the auditor and of the Commissioner are given to the responsible Minister and are also made available to the Governor in Executive Council—at least the auditor's report. There is no provision for the reports to be tabled. It would not be desirable for them to be tabled as that branch deals with threats to the constitutional Government of the State, to VIPs, persons who are integral to the constitutional structure of our Government, the Governor, members of Parliament and members of the Cabinet. It also examines threats between community groups. Clearly, it would not be desirable to table such material in a report.

The Opposition can ask questions about certain matters or activities which are being conducted by the Operations Intelligence Unit and the Government can give general assurances as to whether those operations are being conducted in accordance with the guidelines. To date, those operations have been conducted in accordance with the guidelines, as amended from time to time.

That is the position with respect to the operation's intelligence section and the auditor that is available there. With respect to the anti-corruption unit, again it depends on what is contained in any reports that are provided. Clearly, it would not be possible to table in the Parliament any material which might prejudice ongoing investigations into criminal behaviour or which, on the other hand, might cause individual reputations to be unreasonably besmirched by reference in any reports.

So, the traditional position with respect to these reports is that they are not tabled in the Parliament, and whether the report in relation to the anti-corruption unit will be tabled is not a matter that has been given consideration. However, I will take up the matter with the Minister of Emergency Services.

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## TRAFFIC INFRINGEMENT NOTICES

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

That the regulations made under the Summary Offences Act concerning traffic infringement notices, made on 12 January 1989 and laid on the table of this Council on 14 February 1989, be disallowed.

I move for the disallowance of these regulations because it is time to make a number of important points with respect to the Government's constant increase in traffic expiation fees and the extending use of expiation fees to raise revenue. The traffic expiation fee increases from 1 February 1989 were announced just prior to the Australia Day weekend, when many people were still on leave and were perhaps preoccupied with other things but nevertheless had some sensitivity to the road toll which gains greater publicity and prominence prior to and during a holiday period than at any other time of the year.

The Government announced it under the guise of 'fighting the road toll' and sought to con the public into believing that up to 79 per cent increases in on-the-spot fines would reduce South Australia's road toll. Quite cunningly, the Government dressed up this grab and, as I say, announced it prior to the Australia Day holiday weekend. According to the 1988-89 budget papers the Government expects this current tax year to get about $10 million from on-the-spot traffic fines. That is a massive 30 per cent increase over the last year's take of $7.714 million.

Since the traffic infringement notice scheme was introduced seven years ago, the Government's revenue expectation has leapt by a massive 104 per cent. It is very difficult to believe that in context the community will accept that an increase from $30 to $40 in the jaywalking fine will have any effect on jaywalkers and, similarly, that an increase of $30 (from a fine of $95 up to $125) for breaking the speed limit in a city by between 16 and 30 kilometres per hour will have any deterrent effect. There is no evidence that the levels of on-the-spot fines implemented by the Government are in fact deterrents and contribute in any way to a reduction in the road toll: the real deterrents are demerit points and licence suspensions.

The other important aspect of road safety is road design—an issue that is currently being vigorously publicised by the Royal Automobile Association in conjunction with driver education programs and road safety campaigns. The RAA is publicising this in the context of a massive rip-off of road users by Governments, both State and Federal, in respect of taxes on fuel and other registration and licence fees. However, little emphasis is being placed by the Bannon Government on this very important aspect of the reduction of the road toll—an aspect which will have major consequences for the road toll.

Poor roads contribute to at least 20 per cent of road accidents in South Australia. Substandard roads cost more than $1.7 billion a year in accident costs. The Australian Roads Outlook Report of November 1987 stated that the construction of passing lanes on country roads can reduce crashes by at least 50 per cent; that divided urban arterial roads compared to undivided urban arterial roads can reduce accidents by 43 per cent; that the installation of roundabouts can reduce crashes by 75 per cent; and that the installation of traffic signals can reduce casualties by one third.

The Government, though, has not shown any inclination to address that issue. In the 1988 report of the Department of Transport we see that the expenditure on planning, research and investigation actually reduced from $1.922 million in 1987 back to $1.884 million in 1988, and the whole budget for its road safety program increased by a mere $400 000 in a total budget for 1988 of $6.5 million over the previous year's expenditure. So, the amount which is being provided by the Government is not increasing in real terms and is not even keeping pace with inflation, notwithstanding that the Government is collecting, not only from traffic expiation fees but also from petrol taxes, registration, licence fees and other imposts, a considerable amount of money from road users.

In the road safety section of the 1988 report of the Department of Transport, one finds that very few initiatives have been taken in the research or legislative area or in the area of publicity, promotions and education to focus more effectively upon the need for careful driving and the need to minimise behaviour which contributes to road accidents. Even in the area of road safety instruction, the 1988 report reveals that a driver development program was initiated which resulted in only 150 drivers from the private and public sectors completing the program in 1987-88. That is minuscule compared with the real need in the community for adequate, comprehensive driver training and education programs.

The public reacted with some cynicism and general criticism to the news of the Government's decision to increase expiation fees. A road safety expert, Mr Jim Murcott, who trains Adelaide's Grand Prix celebrity racers, was reported on 25 January of this year as saying:

... despite the increase in fines the police tended to set up their speed traps and surveillance units in 'safe' areas.

I don't think you will find any evidence that punitive measures such as those actually work in reducing the number of crashes and injury incidents. The way that police inevitably go about catching speeding motorists is not correct, in my opinion, because all too often they set up their speed traps and units where the roads are wide and clear.

Wouldn't it be better to set up where the roads or driving conditions are difficult or dangerous?

In the course of making that statement, he said that the sharp increases in fines, from his experience and his knowledge of the experience of others, did not affect the road toll. In the context of his criticism of the way in which the law was administered, he was really saying that there appeared to be a greater emphasis upon revenue raising than on trying to detect bad drivers in dangerous or difficult road or driving conditions. One cannot necessarily blame the police for that. I know that they are uncomfortable with their role as revenue raisers and with the greater level of emphasis which has been placed by police upon that aspect of their work than catching criminals. On previous occasions, criticism has been levelled in both Houses about the pressure on police to raise revenue.

A letter to the Editor of the *Advertiser* from a Mr Neville Leybourne dated 28 January suggested that increases in fines would reduce traffic offences for a while. He said in part:

Heavy fines will reduce traffic offences for a while. Then complacency will set in and road accidents will rise again. Why? Because there is a contradiction here—between law and society's apathy.

The apathy is derived through the narcotic acceptance of indoctrination through the media.

He went on to talk about alcohol and cigarette advertising, and motor car advertising, where the emphasis is on performance rather than safety. Also, in the *Advertiser* of 4 February, Mr Ian Porter made a scathing criticism of the Government's increase in on-the-spot traffic fines. He said in part:

There is no question the State Government is being blatantly cynical in raising road traffic fines. The only result will be the raising of more revenue, about 50 per cent or $3.5 million more than was raised in the last full year.

It will be just another tax lumped on to the already heavily overburdened motorist. But it won't save any lives. Not one. All the talk by Ministers and the Police Department about cutting the road toll is just hot air.

No roads will be improved with the extra revenue, no fewer vehicles will be on the roads and no drivers will have been trained to better handle the cars they drive.

How can the result be anything other than further death and destruction when none of the main ingredients in the road toll will be changed?

He went on to make his own point about the holiday road toll, by saying:

Whenever the holiday road toll jumps, Ministers and police always blame the drivers and speed. And, they are perfectly correct—as far as they go, which isn't very. How can drivers be expected to avoid accidents when they are not trained to drive cars before they are allowed to obtain a licence?

He made a further point about driving standards, as follows:

The current standard of driver instruction is lethal in its inadequacy. Officials everywhere constantly point to the high rate of death among young drivers as if to say that human beings of this age must all be homicidal maniacs.

That's not the common link. The common link is that they are not taught any useful driving skills before they get their licences and are treading a long and painful road of self-tuition which sometimes is not completed for decades, if ever.

While they gradually pick up the essential driving survival skills, they are at greater risk than other, more experienced drivers.

On 26 January, the *News* contacted at random members of the public for their reaction. The *News* reported that they did not believe that the threat of a larger fine would be a disincentive to speeding, in particular, or breaking other road laws. They made the point that, frequently, people did not know what the fines were and were not reminded adequately about their obligations on the road. That is correct. Whilst road safety campaigns may be run at particular times of the year, there is something of a lull between those holiday periods, and public awareness is reduced as a result of the lack of public focus on that issue.

I am critical of the lack of heavy emphasis upon education and driver training for young people who have a great deal of peer group pressure placed upon them to misbehave when driving a motor vehicle and thus contribute to road accidents because of their own inexperience. I hold the very strong view that the education of young people for driving on the roads should start at a very young age—not 15 or 16, just as they are about to obtain their licence, but when they are 10, 11 and 12, at the formative stages of their lives, and at that stage they should be given training in the resistance of peer group pressure.

I do not seek to detract in any way from the very important work which the police do in lecturing and undertaking driver training within schools. However, the level of that training is inadequate and, as most children move towards the age of 16, they are inadequately trained, not only in the rules of the road but also in their responsibilities to others and in their capacity to resist peer group pressure.

It is quite clear that the extra $3.5 million which the Government expects to raise from this extraordinary hike in on-the-spot fines will not have any effect on the road toll, however much the Government seeks to dress it up as a road safety initiative. The fact is that it is another form of tax grab. The disappointing aspect is that the Government has not given any clear indication that it will spend all that money on road safety, driver education programs or road upgrading.

The point I want to make above all in relation to my motion to disallow this regulation is that, unless the Government gives an unequivocal commitment that the additional revenue raised by this increase in on-the-spot fines will be spent on road safety campaigns, driver education programs and road safety upgrading, the Liberal Party will persist with its attempt to ensure that these increases are disallowed. The unequivocal commitment that I am seeking from the Government is that this money, in addition to moneys already being spent on road safety, driver education and road upgrading programs, will be spent for those purposes. In this way, something taken from the motorists will go back into the community, to ensure that more effective initiatives are taken to reduce the road toll.

If the Government is not prepared to give that commitment, one can only reach the conclusion that it is not serious about fighting the increasing road toll, that it is not serious about providing adequate driver education programs, that it is not serious about upgrading road safety campaigns, that the lie has been uncovered and that the Government is interested only in raising more revenue, which, unless the commitment is given, will not have any bearing on the road toll. I commend the motion to honourable members.

**The Hon. G.L. BRUCE** secured the adjournment of the debate.

## NATIVE VEGETATION

**The Hon. I. GILFILLAN:** I move:

That in view of the actions by Mr Caj Amadio, a principal of Gumeracha Vineyards Ltd in destroying several large, old and valuable gum trees in the Gumeracha area in order to more easily establish a vineyard, and in view of the failure of the Native Vegetation Unit to prosecute Mr Amadio or Gumeracha Vineyards for the destruction of the trees, the Council urges the Government to undertake immediately the revision of regulations under the Native Vegetation Management Act 1985 to prevent any further loss of valuable trees and to enable successful prosecution of offenders.

Members will realise that this motion relates to the Native Vegetation Act clearance regulations, and in particular to events surrounding the destruction of eight gum trees in the Gumeracha area by Mr Caj Amadio.

In moving this motion I have three aims: first, to see the protection of irreplaceable gums; secondly, to see the amendment of the regulations to achieve this, and, thirdly, to set the record straight as regards Mr Caj Amadio and the felling of some eight gum trees at Gumeracha.

Honourable members will recall that on 8 November last year I asked a question relating to the allegedly illegal felling of seven gum trees on section 218, hundred of Talunga, by Mr Amadio, when permission had not been granted by the Native Vegetation Branch. Before this matter had been finally resolved, I was informed that Mr Amadio, or his agent acting on his instructions, had felled another substantial and valuable gum on section 6069, hundred of Talunga, without permission. These fellings were performed to facilitate the establishment of a vineyard by Gumeracha Vineyards of which Mr Amadio is the principal.

In an article in the *Advertiser* on 17 December, I criticised Mr Amadio for 'thumbing his nose at the law' and the arrogant way in which he had acted. This eventually (8 February this year) produced a demand for an apology from both me and the *Advertiser* and, if such were not forthcoming, Mr Amadio would sue for libel, claiming damages.

I quote from two paragraphs of a letter received by me dated 8 February from Mr Allan Hunter of Wallmans on behalf of Mr Caj Amadio:

We are instructed to demand from you a full and unqualified apology for and withdrawal of the imputations contained in the article—

the article referred to was published in the middle of December last year in the *Advertiser* relating to this single tree—

such apology to be published at your expense in the *Advertiser* with the form of such apology to be approved by us. Our client also requires an indemnity in respect of such costs as have been incurred by him in this matter to date.

If we do not receive an undertaking from you that you will comply with our client's requirements within seven days of the date hereof we have instructions to issue proceedings for libel claiming damages.

Mr Amadio was fortified to make this demand because of a letter he had received from the Native Vegetation Branch on 19 January 1989 expressing a remarkable and, in my view, quite unjustified turn-around.

It has been confirmed by the Manager of the Vegetation Branch in the past few days that Mr Amadio did not have permission for the felling of the single tree on or about 12 December 1988, yet in the letter of 19 January the department attempts to excuse Mr Amadio's action. I believe the contents of the letter were not known to the Director-General, Mr Ian McPhail. It was signed on his behalf by Mr David Conlon, the Manager of the Native Vegetation Branch. I believe this letter of 19 January 1989 was the result of strong pressure by Mr Amadio on the Native Vegetation Branch and its contents are wrongly based.

On 22 September 1988 a contractor, approached by a partner of Gumeracha Vineyards to remove the trees, had explained in great detail the requirements of the native vegetation clearance controls. About the middle of October, the trees on section 218 were felled without permission from the Native Vegetation Branch. An application to fell these trees was lodged by Mr Amadio on 21 October, several days after the event.

The Native Vegetation Branch rather extraordinarily granted a retrospective approval. In a letter dated 21 October from the Native Vegetation Branch to Mr Amadio, I bring to the Council's notice that that is the same day he lodged the application he received this letter indicating the consent to the application. Further, in part that letter stated:

It should be noted that a further clearance consent is required prior to:

(1) the clearance of vegetation in an area reserved under this consent (or covered by conditions).

(2) the clearance of vegetation which is not covered by this application.

This was, I believe, fair warning that an application was required. Mr Amadio did in fact lodge an application to clear the lone gum tree, the cause of the present legal demands on me and the *Advertiser*, on 25 November 1988. However, while this application was still being considered and had been referred to the Gumeracha council for comment, the gum was felled without approval. Since that date the Gumeracha council has written to the Native Vegetation Management Branch, as follows:

21 December 1988.

Department of Environment & Planning,
Native Vegetation Management Branch,
G.P.O. Box 667,
Adelaide, S.A. 5001

Dear Sir,

*Re 471/7215/88—C. Amadio*

I refer to the abovementioned application and advise that the District Council of Gumeracha is not prepared to offer a recommendation in this instant as the tree in question has been felled prior to council considering the application. It is therefore returned to the authority to decide if a breach of the Native Vegetation Management Act has occurred.

I have been instructed to advise that the District Council of Gumeracha is of the opinion that a breach of the Act may have occurred and would support a prosecution if the authority is of the same opinion.

Yours faithfully,
District Clerk

It is clear that the Native Vegetation Management Branch had accepted the need for an application to be lodged and approval given for the felling of both lots of trees. However, out of the air came this spurious justification that, if the land owner wished to cut down the tree solely for firewood or fence posts, no application was needed.

Section 5 *(j)* provides:

. . . where the clearance is solely for the purpose of providing fencing material or firewood for use (for a period not exceeding two years from the time of clearance) by the owner of the holding on which the vegetation was situated and the nature and extent of the clearance is reasonable.

That vegetation can be cleared subject to any other Act or law to the contrary. Therefore, it is clear that there is a provision that relates solely to fencing material or firewood and the other qualifications that I have already read in relation to native vegetation that can be cleared. However, on the formal application to fell the one gum, Mr Amadio had put as 'description of the proposed clearance' the following:

to remove the only gum tree in the area to be developed, which is positioned near the apple orchard.

It is therefore quite plain that, even if Mr Amadio uses some of the timber for posts and/or firewood, it certainly was not the sole purpose, as required in regulations, and I believe added as an afterthought after some discussion with the Native Vegetation Branch; in fact, technically neither he nor Gumeracha Vineyards were the owners of the land as required in regulations, as transfers had not been effected.

In summary, it appears to me that Mr Amadio has 'thumbed his nose at the law'. First, he had proceeded to develop the vineyard without approval. On 23 September 1988, he wrote to the Gumeracha council submitting an application to establish a vineyard, bearing in mind that four days earlier a contractor had been approached to remove the first lot of gum trees from section 218. In the letter he said:

We are indeed very embarrassed as developers at not being aware of planning consent being required to establish this vineyard.

Secondly, he then proceeded to fell gum trees without consent in October and December 1988. As Council members obviously are aware, Mr Amadio is a very experienced builder with many years of operation in this State. It is a matter of some amazement to me that he is not aware of the regulations and, certainly, of his obligations to find out any regulations that would apply to this clearance and to comply with them. It is my opinion, from the evidence I have before me, and that I have submitted in part to the Council, that he was fully aware of his obligations.

Further, I believe he has behaved arrogantly in this matter generally, and in particular in threatening the journalist from the *Advertiser* who first contacted him saying, in effect, that if his name was printed he (the journalist) would be sorry. I believe he has put pressure on the Native Vegetation Management Branch to change its position on the matter, resulting in the belated and unusual letter of 19 January. Incidentally, I had a telephone call today from Mr Amadio seeking some discussion regarding the letter from his lawyer which had demanded an apology from me in relation to the article printed in the *Advertiser* on, I believe, 13 December 1988.

*The Hon. R.I. Lucas interjecting:*

**The Hon. I. GILFILLAN:** Well, I did not pursue the conversation. I thought it was inappropriate and said that it would be wise for him to hear what I had to say in Parliament. This all leads to a firm conclusion: the regulations controlling the clearance of native vegetation must be changed to ensure that, first, there is no irresponsible destruction of valuable trees. It is important in this context to refer to the incident that took place recently in the South-East, when, as I understand it, a hundred red gums were destroyed. There has been some sort of facade of applying for an application. That matter is still to be considered but, when we are considering it, I would like to emphasise to the Council that this is not a matter of simply concentrating on an isolated incident, but an attempt to ensure that further sacriligious destruction of trees such as occurred in the South-East near Coonawarra is prevented.

Secondly, the relevant section in the regulations must be redrafted to close any misuse of the fence post or firewood provision while leaving the genuine fence post and firewood requirements free from unnecessary restraint. Thirdly, local councils should be consulted for approval in regard to general ambience and local attitude to the loss of particular trees, and this must be a requirement before approval is granted. Fourthly, areas where there is little vegetation remaining should have stricter control over the destruction of trees. A fifth provision should ensure that prosecution against offenders can proceed.

I believe there is scope for constructive discussion with the Native Vegetation Branch (I have had an informal meeting with Dr McPhail and Mr Conlon, and I believe that they both consider that there should be a review of the regulations), the United Farmers and Stockowners Association, the Conservation Council and the Minister, so that satisfactory amendments can evolve. With that in mind and, hopefully, to enable me to make further constructive observations, I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

## BICYCLE HELMETS

Adjourned debate on motion of Hon. Diana Laidlaw:

That the Council take note of the petition presented on 14 February 1989 calling for the wearing of helmets to be compulsory for all bicycle riders.

(Continued from 15 February. Page 1910.)

**The Hon. CAROLYN PICKLES:** I support the motion of the Hon. Ms Laidlaw for the Council to note petitions calling for the wearing of helmets to be made compulsory for all bicycle riders. I share the concern of the Hon. Ms Laidlaw and the Hon. Mr Gilfillan regarding the safety of cyclists. Whether we are ready to move to legislation to make the wearing of helmets compulsory is, in my view, not yet clear. I note that the Hon. Mr Gilfillan is a member of the Cyclist Protection Association, and I am pleased to say that I am an associate member, as I am sure are other members of the Council.

**The Hon. I. Gilfillan:** You're a full member.

**The Hon. CAROLYN PICKLES:** I am a full member—I seem to have reached an elevated status. I do have a bicycle and I do wear a bicycle helmet, although I confess that the wearing of a helmet is only a recent situation. I have ridden a bicycle for many years while not wearing a helmet, but I intend to wear one now full time so that I can set an example for the young people of this State.

I must say that riding a bicycle into the city is not a situation about which I am enthusiastic, because I consider the traffic very dangerous, particularly for young people. The safety of cyclists should be of considerable concern to all the community, particularly as most cyclists are young children. The total number of persons injured in road accidents has fallen very appreciably in recent years. In 1986, 12 364 persons were injured (a 2.9 per cent reduction). In 1987, 11 721 people were injured (a 5.2 per cent reduction). In 1988, 10 450 people were injured—that is a very recent figure yet to be confirmed—and that represents a 10.8 per cent reduction.

Unfortunately, similar reductions have not yet taken place in the figures with respect to cyclists. Comparable figures for 1986 show 792 (an 11.5 per cent increase) compared to 1987, when 883 people were injured (an 11.5 per cent

increase). In 1988, 850 people were injured—this is also a recent figure and has yet to be confirmed—and that represents a 3.7 per cent reduction. This is probably due to an increase in cycling as a perceived cheap and healthy form of transport.

Cyclists are more prone to head injury than any other type of road user. Of the bike fatalities in South Australia, 55 per cent are a result of head injuries. It is also believed that there is a very significant under-reporting of cycle casualties on the roads. No data is available on cyclist casualties off roads. The 800 plus casualty figure is itself too high, and it is only part of the overall picture.

The State Government is very conscious of cycle safety and recent initiatives to promote cycle safety have included the State Bicycle Committee, which was established some years ago, the 'bike safe' education kits and other curriculum material for schools that has been prepared. I noted in my local *Messenger* newspaper today that the Minister for Education (Hon. Greg Crafter) was promoting this excellent education kit in a school in his electorate. Further, we have seen the introduction of some cycle ways, although I do not consider that we have enough of them and I would like to see more local councils promote this idea. The wearing of brightly coloured clothes has been encouraged, and a major effort has been made to increase the use of cycle helmets.

The use of cycle helmets has been encouraged by publicity campaigns at schools and with parents; by curriculum material; general media publicity; the encouragement of bulk purchase schemes at schools, and in many other ways which I am sure all members would support. All these activities have been based on research by the Road Safety Division and other road safety authorities.

These activities have had some measurable success. For example, comparing the helmet-wearing rates, only 3 per cent of primary school children were wearing helmets in 1984, compared with 27 per cent in 1987; only 1 per cent of secondary school children were wearing helmets in 1984 compared with 6 per cent in 1987; and only 3 per cent of general commuters in 1984 were wearing helmets, compared with the very significant increase to 40 per cent in 1987. One can assume from these figures that the problem area is with secondary school children. These latest figures are similar to those in other States, but it does seem that the helmet-wearing rates by school children are starting to decline—

**The Hon. Diana Laidlaw:** Is that primary schoolchildren?

**The Hon. CAROLYN PICKLES:** No, all children. The major problem clearly is in persuading teenage children to wear helmets and other safety equipment. In a report prepared by the Road Safety Division and entitled 'Bicycle Safety Helmet Campaign Evaluation', the reasons given for people not using safety items were that helmets were considered to be expensive and that some safety equipment was considered to be uncomfortable and looked silly. Helmets, vests and flags were all thought by substantial groups to look silly, particularly when used by adults, although they considered in the general survey that safety equipment was necessary. I am not sure what was considered necessary if they were not prepared to wear the items that would save their lives. Included also in this survey were two statistical tables which I seek leave to have inserted in *Hansard* without my reading them.

Leave granted.

*Attitudes—Commuters*

| | Agrees strongly % | Agrees a little % | Disagree a little % | Disagree strongly % | Don't know % | Total % | Sample size # |
|---|---|---|---|---|---|---|---|
| Helmet is expensive | 49 | 30 | 6 | 3 | 13 | 100 | 302 |
| Helmet is uncomfortable | 26 | 39 | 13 | 9 | 13 | 100 | 302 |
| Helmet looks silly | 16 | 34 | 19 | 25 | 6 | 100 | 302 |
| Helmet restricts movement | 15 | 27 | 16 | 31 | 10 | 100 | 302 |
| Helmet not necessary | 12 | 15 | 27 | 41 | 6 | 100 | 302 |
| Vest is expensive | 12 | 29 | 16 | 9 | 34 | 100 | 302 |
| Vest is uncomfortable | 12 | 29 | 13 | 17 | 30 | 100 | 302 |
| Vest looks silly | 13 | 28 | 18 | 21 | 21 | 100 | 320 |
| Vest restricts movement | 10 | 22 | 16 | 26 | 25 | 100 | 302 |
| Vest not necessary | 11 | 21 | 28 | 18 | 21 | 100 | 302 |
| Flag expensive | 5 | 21 | 17 | 14 | 43 | 100 | 302 |
| Flag is uncomfortable | 6 | 11 | 13 | 27 | 43 | 100 | 302 |
| Flag looks silly | 23 | 23 | 8 | 18 | 29 | 100 | 302 |
| Flag restricts movement | 7 | 11 | 15 | 31 | 36 | 100 | 302 |
| Flag not necessary | 22 | 23 | 18 | 8 | 29 | 100 | 302 |

*Age effects on Attitudes—Commuters*

Percentage of respondents agreeing with statement

| | Age 15-19 % | 20-24 % | 25-29 % | 30-34 % | 35-44 % | 45-54 % | 55-64 % | Total % | Size # |
|---|---|---|---|---|---|---|---|---|---|
| Helmet looks silly | 86 | 62 | 55 | 55 | 39 | 38 | 71 | 50 | 150 |
| Helmet not necessary | 14 | 38 | 24 | 20 | 24 | 34 | 43 | 26 | 80 |
| Flag looks silly | 57 | 54 | 53 | 39 | 39 | 31 | 57 | 44 | 133 |
| Flag not necessary | 43 | 54 | 52 | 45 | 35 | 47 | 71 | 45 | 136 |
| Vest looks silly | 57 | 46 | 52 | 47 | 31 | 25 | 71 | 41 | 124 |
| Vest not necessary | 29 | 49 | 35 | 27 | 26 | 31 | 57 | 32 | 98 |
| Sample size | 7 | 39 | 66 | 49 | 102 | 32 | 7 | | 302 |

**The Hon. CAROLYN PICKLES:** In a report completed some time ago (although its findings are still relevant), the Adelaide In-depth Accident Study conducted by Dr McLean, Dr Brewer and Mr Sandow between the years 1975 and 1979 and entitled 'Pedal Cycle Accidents' concluded that most of the head injuries sustained in these accidents could have been prevented, and the severity of the remainder lessened had the cyclist been wearing a suitable crash helmet? They made the following recommendation:

> There is a need to encourage cylists to wear a crash helmet and to make available the information necessary for them to be able to select a helmet which will provide an adequate level of protection.

Although that report was written some 10 years ago, the recommendations obviously are relevant today.

There is a need to look at the issue raised by the Hon. Miss Laidlaw and the Hon. Mr Gilfillan in relation to the expense of crash helmets. I thought it was quite interesting when I purchased my nice new racing bicycle that I was not encouraged to purchase a crash helmet at the same time. It was something that I intended to do, but it was not encouraged. It seems to me that some businesses might care to make this a package when anyone is buying a new bicycle; there could be a slight reduction on the price of a crash helmet if the two were bought together. We could perhaps encourage industry to work this way.

**The Hon. I. Gilfillan:** Did you buy a racing bicycle?

**The Hon. CAROLN PICKLES:** Yes, I did. It is not quite as fancy as the one owned by the Hon. Mr Gilfillan, but it has a few more gears than I have been accustomed to. I believe that media campaigns and promotions have all the facilities to try to cooperate with the community in stressing the importance of the wearing of bicycle helmets. I am sure they do to some extent, but they could be a little more innovative in this area and not always expect the Government to take the initiative.

Some States have introduced a rebate scheme with some success. Maybe at some stage the Government could look at this area, although it is a costly measure and difficult to control. One would have to be very careful that only those who were unable to afford helmets actually benefited by it.

Another area of expense that concerns me is in the provision of a bicycle for a small child. Some parents tend to buy a bicycle that the child can grow into, and this is a very dangerous exercise, although it is expensive to provide a bicycle that will grow with the child. It is very dangerous for a child to ride a bicycle that is too large for it. Unfortunately, as I pass Rose Park Primary School most mornings, I see some very small children wobbling along on rather large bicycles, wearing no crash helmet.

Whether it is necessary to move to compulsory legislation is in doubt, in my view. In the week since this motion was introduced, while I have been trying to find out from various road safety organisations whether or not they think this is the correct path to follow at this stage, I have found that they are unclear. I contacted Dr Jack McLean, at the University of Adelaide Road Accident Research Unit, and he is still in two minds about this. Of course, the policing of such legislation is extremely expensive and, as in other areas, it is no good introducing it unless it can be policed properly.

I know, having had young children (who are now rather large children) who have all ridden bicycles and who have at times been corrected by the police for perhaps not having the correct number of lights or brakes on their bicycles, that these sorts of warnings are timely and they are heeded for perhaps a very short period of time, but the children seem to go on again and re-offend. It is amazing how many times a bicycle seems to require a defect notice.

As a parent, at times I have been guilty of neglecting to check that their bicycles were always safe and that they were always adequately protected, but I do know that my children were very reluctant to use the safety measures fashionable at the time, such as flags and the flashes of colour on their clothing and on the bicycles themselves.

It seems to me that something will have to be overcome in the design of the helmet to make it more attractive. I think that the compulsory use of helmets and the introduction of legislation now is premature. I should like to see more consistent effort going into the areas that I have suggested and in the areas suggested by the Hon. Mr Gilfillan and the Hon. Miss Laidlaw.

I hope that we shall have some measure of cooperation within the community, because we cannot afford not only to lose our children but also to have them injured in particularly horrifying ways in those terrible accidents, often with long-term brain damage, as the head usually receives the major force of the impact.

A study carried out by the Road Safety Division in 1988 revealed that many secondary schoolchildren would support compulsory use legislation because they believed that it would help to overcome negative peer group pressure, but whether they will continue to support that if the Government introduces such legislation is a moot point. I feel that we can explain adequately to secondary schoolchildren the need to use adequate safety measures without moving to compulsory legislation.

Many years ago, the Government, with much adverse criticism, introduced legislation to make compulsory the wearing of helmets for motor cyclists. It is now universally supported and has obviously been beneficial. Therefore, in the not too distant future, that may be the only way that we can go. However, I urge caution in that area and encourage community acceptance.

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

## EQUAL OPPORTUNITY ACT AMENDMENT BILL (No. 2)

**The Hon. DIANA LAIDLAW** obtained leave and introduced a Bill for an Act to amend the Equal Opportunity Act 1984. Read a first time.

**The Hon. DIANA LAIDLAW:** I move:

*That this Bill be now read a second time.*

This Bill is the second that I have introduced to amend the Equal Opportunity Act 1984 to incorporate the ground of age. The first occasion was on 23 March 1988. At that time I indicated that I was introducing the Bill with the specific intention to circulating it widely for public comment. Subsequently, over 300 copies were forwarded to individuals and organisations representing the interests of employees, employers, the unemployed, youth and older people. In pursuing this course, I followed the recent practice established by the Bannon Government, and particularly the Attorney-General, in relation to Bills which seek to foster attitudinal or social change—for example, the Retirement Villages Bill and the package of child protection Bills.

During the past year my discussions with a large number of individuals and organisations, coupled with extensive research, have reinforced my view that there is a need for equal opportunity legislation in South Australia covering age discrimination—legislation which affirms that people have a right to be judged on their merits, no matter their age, and not on the basis of a conception or stereotype of an age group. Until now, the ageing have gone largely unprotected in terms of the law. It is my firm view—indeed, the Liberal Party's firm view—that to measure an individual's capacity on the basis of age or a stereotype of an age group is an arbitrary, crude and prejudicial response. Equally forcefully, I should note our conviction that the issues of age discrimination are not only about older people; they also affect young people.

This Bill is the first of its kind in this country, which is appropriate considering our proud record of equal opportunity initiatives by Governments of all persuasions—Liberal and Labor—over the past 15 years. Honourable members will recall that equal opportunity legislation in this country was pioneered in 1974 when David Tonkin introduced, on

behalf of the Liberal Party, a private member's Bill to render unlawful certain acts and behaviour deemed to constitute discrimination on the grounds of sex or marital status. Subsequently, the Racial Discrimination Act was passed in 1976 and the Handicapped Persons Equal Opportunity Act in 1981. In 1984 these Acts were amalgamated and the operation of the legislation was expanded into new areas where discrimination was seen to be occurring in our community.

Legislation to render unlawful discrimination on the basis of age may be novel in Australia, but it certainly is not overseas—and in some Western democracies such legislation has been in force for some years. In the United States, for example, age discrimination legislation was first introduced in 1903 in Colorado. Today, all but one State in the United States has some such legislation. In each instance, age discrimination is prohibited in Government employment and most prohibit age discrimination in private employment as well. Many also address age discrimination in other areas such as accommodation and/or the provision of credit, goods and services. In addition, since 1967—for some 21 years—there has been Federal legislation in the United States prohibiting age discrimination in employment, while compulsory retirement for virtually all employees has been banned since 1986.

In Canada, the Canadian Charter of Rights prohibits laws which discriminate against any person on the basis of age. Also, the Federal Human Rights Act prohibits discrimination on the basis of age in employment, the provision of goods and services or access to other facilities. In addition, many Canadian provinces have legislation on age discrimination, either under general human rights and anti-discrimination law or specific legislation on age discrimination, or both.

In June 1987 the annual conference of the International Labour Organisation comprising Government, employers and employees from each member nation, including Australia, recommended that a ban on age discrimination be included in provisions banning discrimination based on sex, religion, or national origin.

In Australia, the Commonwealth legislation administered by the Human Rights and Equal Opportunity Commission does not specifically address age discrimination; nor does any State anti-discrimination or equal opportunity legislation.

In South Australia, the statutory responsibilities of both the Commissioner for Equal Opportunity and the Commissioner for the Ageing do not empower either to investigate or to act on complaints of age discrimination. However, in recent years the annual reports by both Commissioners have noted a moderate to high level of complaints related to ageism, in both employment and access to service. In fact, the Commissioner for Equal Opportunity in her report for 1987-88 makes a number of recommendations for change to the Equal Opportunity Act, including in the area of age. Page 13 of her report states:

> I recommend the various protections of the Equal Opportunity Act 1984 be extended to cover discrimination on the ground of age in all areas of the Act including employment; within a framework of appropriate exemptions, particularly those in cases where it is identified that there is a need to reconcile existing legislation, where some incidences of age discrimination may be acceptable to the community (for example, the age of consent, the granting of voting rights, and conferring of eligibility to hold a driving licence).

This recommendation is interesting in the light of the fact that we in this Parliament and the South Australian people at large are still awaiting the release of the Government's Task Force Report on Age Discrimination. The Commissioner, together with the Commissioner for the Ageing, is a member of this task force.

The task force was established by the Minister for Employment and Further Education (Hon. Lynn Arnold) in April 1987 to assess the extent of age discrimination practices and to make a determination of the need for Government action, legislative or otherwise. The task force was given a timetable of 12 months in which to report. Based on this timetable the task force should have reported in April 1988—10 months ago. Yet, for the past 10 months both the task force and the Government have been silent on the subject. This silence, in my view, is unacceptable, considering that in April last year, at the time the task force was due to report, the Commissioner for the Ageing (Dr Graycar) was delivering an address in Tokyo, Japan, to the 6th World Conference of the International Society on Family and Law, at which he acknowledged that older people in South Australia were suffering from discrimination. Dr Graycar told the conference:

> To date the task force is finding evidence of discrimination in personnel practices involving older workers. Strictly speaking these are not 'elderly' people, but older workers are being treated unfairly both as employees and potential employees.

In the year since I last introduced a Bill to redress age discrimination—a year when the Bannon Government has been silent on the subject—it has been interesting to note the initiatives that have been taken in other States and nationally.

In New South Wales Premier Greiner stated in December last year that his Government would examine introducing legislation this year to prohibit discrimination on the basis of age. At present, a new consultative committee on ageing set up by the New South Wales Premier is examining the issue. This initiative is a most welcome step, and I suspect that it responds in part to the fact that the New South Wales Anti-Discrimination Board has made a recommendation every year since 1980 that age should be listed as one of the prohibited grounds of discrimination under that State's Anti-Discrimination Act.

Likewise, the New South Wales Council on the Ageing has been vocal for some years in promoting the need for age discrimination legislation, and its latest effort in this regard was the release earlier this month of a book entitled *Too Old*, which is a collection of experiences of people who have encountered age discrimination when applying for entry to higher education, when seeking employment, or when striving to obtain credit, accommodation or access to services. All honourable members have a vested interest in this subject of the ageing and in age discrimination in general, and if they have not acquired or seen a copy of this report entitled *Too Old* by the New South Wales Council on the Ageing I would recommend that they do so. I would be happy to let them borrow my copy because it is most humbling to read the experiences of people who have suffered greatly as a result of age discrimination.

Also, in Western Australia over the past year the Commissioner for Equal Opportunity has been examining action that the Government of that State may take on age discrimination, and a report with recommendations is expected shortly. Meanwhile, the Federal Human Rights and Equal Opportunity Commission has been considering whether the commission's jurisdiction should be extended to include age discrimination in employment. As part of this consideration the commission is working with the Australian Council on the Ageing and the Youth Affairs Council of Australia to convene a national conference this year on age discrimination. At this stage, it is proposed that the conference would consist of representatives of both councils and the commission, together with Government, employer and trade

union representatives. At the same time the commission is working with the International Federation on Ageing to promote a Declaration on the Rights of the Ageing at the Second World Assembly on Ageing in 1992.

Also in the past year I note that the Cass Social Security Review, Issues Paper No. 6, titled 'Towards a National Retirement Incomes Policy', recommends in favour of age discrimination legislation arguing (page 82) that:

> ... the setting of legislative standards would do much to shift public opinion towards a more positive role for older people in our society.

This view is shared by the Australian Retired Persons Association (ARPA) which, in the past year, has endorsed the need—and is lobbying hard—for Federal and State equal opportunity legislation to protect older Australians. In taking this step ARPA has now joined the Australian Council on the Ageing in advocating the need for the ambit of equal opportunity legislation to be extended to incorporate the ground of age. As an aside, I am pleased to place on the record that both ARPA and ACOTA have endorsed this initiative by the Liberal Party today to amend the Equal Opportunity Act 1984 to incorporate the ground of age.

I would be irresponsible if I failed to acknowledge that this move to prohibit age discrimination does not enjoy the endorsement or goodwill of major organisations representing the interests of employers in this State. Last March, when speaking to a similar Bill, I stated that my inquiries to that time had led me to believe that any hostility the Bill might attract from employers would be limited in its extent and could be tempered when the motivation for and the substance of the Bill was appreciated. However, this has not proven to be the case in relation to the Employers Federation, the Chamber of Commerce and Industry, or the Engineering Employers Association, although I hasten to add all these organisations advised me that they accepted the principle which the Bill was seeking to realise, while correspondence from the management of a range of large and small companies supported both the principle and the provisions of the Bill.

Essentially, the major employer organisations argued that the Bill was anti-business because potentially it would place further requirements and restrictions on the business community. Also, employer groups objected to business being asked to bear the brunt of social change through legislative compulsion. They considered also that the Bill would do little to change attitudes in industry. As most members would be aware, instinctively, most of my colleagues and I do not like parting company with employer groups. However, on this occasion we do so for a variety of reasons.

First, we consider that legislation, unlike the arguments placed before us by employer groups, has an important role to play in setting standards and that the lesson in equal opportunity over the past decade is that public opinion can be shifted for the better by the setting of legislative standards. Secondly, we recognise that the realities of the ageing of our population in this State—South Australia has a higher proportion of older people in every age group 50 years and over compared with the rest of the nation—pose a number of important challenges to our whole community, including the business community, in the near future.

Beyond the question of escalating Federal budget outlays on age pensions and unemployment benefits—essentially paid for by taxation, which is a matter of concern to all of us—the ageing of our population will lead to a smaller proportion of younger people entering the work force in the years ahead and therefore a lesser number of younger people paying taxes and doing the jobs so vital if we are to have a robust economy. Unless we in this State embark on a massive immigration program or our birthrate rises dramatically, the realities of our ageing population will determine that there is a need to retain more older and experienced workers in the work force in the years ahead, compared with the present practice.

Thirdly, the Bill incorporates a range of exemptions, including in section 85f (4) exemptions relating to the payment of different rates of remuneration based on age and different retirement ages based on gender. I must admit that I am not entirely comfortable with either exemption but, as I explained last year when introducing the Bill, my instinctive and considered response was to include a five year sunset clause on those exemptions. That sunset clause was not included in the previous Bill and is not included in this one. However, I acknowledge the anxiety of employers if exemptions were not provided in both areas at this time. I also accept their representations that both subjects must be the basis of negotiation on a national level rather than being the subject of pace-setting reform in the Bill in South Australia.

I also highlight that, following discussions with employer organisations, this Bill, unlike the one introduced last year, provides for a progressive implementation of the measures along the lines adopted in the Federal Government's affirmative action legislation of 1986. Essentially this adjustment will allow for the legislation as it relates to employment to be phased in, with organisations employing over 500 people being required to implement the provisions from 1 February 1990, a year ahead of companies employing under 500 employees. The proposed implementation date for companies employing under 500 people would be 1 February 1991. Employer organisations pressed for a staged implementation because, at present, they are in the throes of implementing the affirmative action legislation. The Liberal Party has no wish to place unrealistic burdens or expenses on business in South Australia and, accordingly, accepts the 'phase-in' as a reasonable proposition.

Overall, I suspect that the principal objection by employers to the proposed extension to the Equal Opportunity Act to incorporate age is based on a general dissatisfaction throughout the South Australian business community over the operation of the judicial process established by the existing legislation. In respect of the current onus of proof proceeding under the principal Act, together with the procedure for raising complaints, the conciliation process and ultimate arbitration process, the Liberal Party is aware of employers' general dissatisfaction, and is keen to assess and review all of these matters and, in Government, would undertake such a review.

In addition, the Liberal Party is aware of concerns that an extension to the Equal Opportunity Act will encourage a rise in the number of unfair dismissal cases. Over the past 10 years, there has been a 300 per cent increase in such cases, which currently number about 800 per year, before the Industrial Commission. Employers are concerned about the extent to which some employees may seek to use the expanded provisions of the Equal Opportunity Act for a purpose for which the Act was not intended—for a purpose which is beyond the spirit of the Act.

As a result of discussing the Bill with employer organisations, their concern over the issue of unfair dismissal cases prompted the inclusion in this Bill of a new section to amend section 96 of the principal Act. This amendment seeks to ensure that the tribunal is able to dismiss or annul proceedings that are considered to be frivolous, vexatious, misconceived or lacking in substance. Clause 6 of the Bill also empowers the tribunal to award compensation in favour of a person who has been the subject of a frivolous, vexatious, misconceived or unmeritorious complaint. These new

provisions reflect provisions in the Industrial Conciliation and Arbitration Act. However, they are provisions on which the major employer organisations are not at one—with one body arguing that, at present, it is virtually impossible to prove (in a legal sense) that a complaint is frivolous, etc., and as such is not an effective deterrent against such claims. This body has proposed that the use of the test of reasonableness be used in place of the test which is in the Bill that I have introduced.

This issue is one which I, together with the Hon. Trevor Griffin and a number of industrial lawyers, am investigating further and it may be that the provisions in the Bill (clauses 5 and 6) will be subject to amendment. In the meantime, it is important that the Bill acknowledges the concerns of employers in relation to frivolous, vexatious complaints, and the present provision in the Bill serves this purpose. Whether the issue remains in the Bill in the present or amended form will be the subject of further consideration and debate both in and outside this place.

I have concentrated at some length on the concerns expressed by employer organisations in relation to the Bill because those concerns have been strong in their content and because the main focus of the Bill is employment. This is so because employment usually determines a person's position in relation to the poverty line and their access to accommodation and other services, including credit. The Bill is structured to reflect the provisions of the principal Act in relation to discrimination on the grounds of sex, race and physical impairment. Earlier today, during Questions, members learnt that it may soon be extended, at the instigation of the Government, to include intellectual impairment.

Thus, the criteria for establishing discrimination on the ground of age—as provided for in clause 4, new section 85 *(a)*—are the same as those which apply to discrimination on the grounds of sex (section 29 (1) and (2) of the principal Act); discrimination on the ground of race (section 51 of the principal Act); and discrimination on the ground of physical impairment (section 66 of the principal Act).

Likewise, the references in the Bill to discrimination against applicants and employees, discrimination against agents and discrimination against contract workers, are essentially the same. In regard to discrimination within partnerships—clause 4 new section 85 *(e)*—the provisions are the same as those in the principal Act in respect of race and physical impairment.

The Bill, like the principal Act, also addresses discrimination in the provision of goods and services and in relation to accommodation. It incorporates a range of exemptions, a number of which I have already noted. In addition, I note exemptions in section 85*l*, which allow for the operation of any law or Act to give effect to such a law that provides for or authorises discrimination on the ground of age. As in the principal Act, section 85f provides exemptions in relation to, first, employment within a private household; secondly, employment for which there is a genuine occupational requirement that a person be of a certain age or age group; and, thirdly, employment of a person if the person is not, or would not be able to perform adequately and without endangering himself or herself or other persons, to work genuinely and reasonably required for the employment or position in question: or to respond adequately to situations of emergency that should reasonably be anticipated in connection with the employment or position in question.

The Bill also provides, in section 85f (4), that it will not be unlawful:

> . . . to pursue genuine schemes to promote the employment of persons of any particular age group that have been disadvantaged in that area or disadvantaged because of lack of experience in a particular field of employment.

Specifically, this exemption acknowledges the fact that in South Australia we have the dubious distinction of having about a 25 per cent unemployment rate among young people—higher than any other mainland State. In recent years Governments and the community at large have placed an emphasis on initiatives to counter youth unemployment. This focus is important, and is one which the Liberal Party supports. This Bill will not preclude such initiatives in the future.

The Bill will test a number of current practices in regard to employment, and I am sure I am not the only member to receive complaints from young people and their parents that they have been the subject of discriminatory action. For example, in some cases young people are dismissed once they have reached an age where they would have to be paid at the adult rate. In addition, when young people finish some of the youth employment schemes which attract subsidies, they often find that their employment is not continued in that place, despite their having worked extraordinarily hard and in a committed manner to serve their employer well. Nevertheless, they are dismissed out of hand. It could be argued that such practices are also discriminatory on the basis of age; in this case, on the basis of youth.

I have no doubt also that most members have received complaints from young people as a result of the well known Australian practice of last on, first off. Certainly, in periods of recession or other economic downturn, or because of technological change, many employers feel it necessary to shed labour from time to time. The traditional approach to determining who should go has been to single out the most recently employed. As young people are by definition the most recent entrants into the work force—not always, but generally—the consequences of recession and technological change fall most heavily upon them. The result is indirect discrimination on the basis of age.

One other immediate impact which this Bill will have, if and when it comes into operation as proposed for companies employing over 500 persons as at 1 February 1990, will be the outlawing of advertisements which state a specific age requirement. In recent years, there has been a big increase in the number of such advertisements. One has only to scan the employment sections of our daily newspapers to appreciate the large number of advertisements that virtually state middle aged people, people over 40 years of age—and that would include most members in this place if they did not have their current employment—need not bother to apply, even though they may be very well qualified for the job advertised. Advertisements that state 'don't bother to apply if you are over 40' deny middle-aged persons the hope and the opportunity of even reaching an interview stage so that they may have an opportunity to be judged on their merits. Their only alternative, if their spouse is not in the work force, is to resort at an early age—age 40—to a life on unemployment benefits.

I think that is intolerable and other Liberal members who have been to DOME and other adult employment places would experience the same stress when they speak to older people, 35 or 40 years of age and over, who have found it virtually impossible even to gain an interview, which is their first step towards a job, because advertisements have precluded them on the basis of age.

I am not sure whether the Government's task force on age discrimination—which we have yet to see—did undertake a survey of employment advertisements in South Australia. I am aware that, when the New South Wales Age Discrimination Board undertook such a survey last year, it found that 49 per cent of jobs advertised in a major Sydney

newspaper in July 1987 specified an age limit of 40 years or under. The upper age limit also applied to 65 per cent of receptionist jobs and 52 per cent of clerical or typist jobs. That automatically precludes an enormous number of mature age women who, having brought up their children, seek to re-enter the paid work force, but have found today that they are unable to do so because of age restrictions in receptionist and other clerical jobs.

The survey by the New South Wales Antidiscrimination Board also found that 80 per cent of the employment agencies surveyed said they had no clerical jobs for women over 45 years. A chartered accountant who described himself as 60-ish said that some of his friends had come to the conclusion that they could not get a job unless they lied about their age. It is that point that I wish to take up briefly before concluding my remarks on this Bill.

I have encountered in South Australia a number of older people who have told me that they have lied about their age when applying for jobs. The more youthful the older person looks, the more likely it is that they will get away with the lie. However, it does not make that person feel better; in fact, it often shames that person even further when they are struggling to gain paid employment. Our current system, which condones precluding older people from even applying for a job, then adds the pressure of the need for that person to lie about his or her age simply to get an interview. It is a sickening situation, and I do not believe that we in this Parliament should tolerate it.

As most members would know and appreciate when looking at the figures of mature age unemployed persons, those people were brought up with a very strong work ethic. They do not find it easy to rationalise the fact that they cannot get a job and provide for themselves and their families. In many instances this leads to a great deal of heartbreak for them and emotional and financial hardship for their families, because they cannot come to terms with the fact that they are no longer seen as useful contributors in the paid work force.

We can all argue that our system is structured in the wrong way, that there should not be such emphasis on paid employment, and the like, and that these people could be doing voluntary work and making other contributions to society. However, as I said, a lot of older people in this State—and, of course, a lot of younger people—recognise and have a very strong regard for the paid work ethic. In addition, they need the money to support themselves and their families. One of the immediate positive benefits of the Bill would be the elimination from advertisements in newspapers of reference to age. As a result, one would find that people, if they believed they had the experience, qualifications and qualities required for the advertised position, would be able to apply and not feel that they were excluded before the interview stage because of their age.

Finally, I have received considerable advice in relation to the concerns expressed to me that age is equated with experience and that the Bill that I have introduced may well discriminate against younger people because by seeking to help older people we may unwittingly be penalising the young on the basis of experience. The advice that I have received from a number of quarters is that one cannot specifically relate experience to age. I believe that that advice is completely sound. Much older people may have no experience for example, in welding, waitressing or child-care, unlike a younger person who has that experience, and *vice versa*.

In the current climate, with the many changes in employment as a result of the changing economy and technology, we are finding that many people are required to be retrained in a variety of areas and, increasingly, we will find that age is not necessarily equated with experience. In addition, I note that there is nothing in this Bill to prevent an employer promoting a person on the basis of experience if they so wish. Also, regardless of a person's age, if that person cannot do the job for which he was employed because of limited physical capacity or some other circumstance, nothing in the Bill that I have introduced would force an employer to keep that person on because of the age factor.

I hope that this Bill, in either this form or possibly an amended form, will receive the concurrence and support of members in this place. It is an important measure. We find not only in this State but Australia-wide that public concern in relation to age discrimination, whether it be against the elderly or youth, is gaining wider acknowledgment by Governments and by equal opportunity commissions, and the like. I strongly believe that we in this State can do something positive to help both older and younger people, and I hope the Bill receives the support of members. I seek leave to have the explanation of the clauses of the Bill inserted in *Hansard* without my reading it.

Leave granted.

**Explanation of Clauses**

Clause 1 is formal.

Clause 2 provides that the Act will come into operation on 1 February 1990 (subject to the operation of clause 8).

Clause 3 provides for the grounds of age to be incorporated into the long title of the principal Act.

Clause 4 inserts a new Part VA to provide for the prohibition of discrimination on the grounds of age. The provisions are as follows:

Section 85a sets out the criteria for establishing discrimination on the basis of age.

Section 85b makes it unlawful for an employer to discriminate against applicants and employees on the basis of age.

Section 85c is a similar provision dealing with the situation in which work is done by commission agents.

Section 85d is a similar provision dealing with the case where work is done for a person under an arrangement between that person and an employment agency which employs the worker.

Section 85e prohibits discrimination by a firm against existing or prospective members of the firm.

Section 85f provides that the above provisions do not apply in the case of employment in a private household; to employment for which there was a genuine occupational qualification that the employee be of a certain age, or age group; or to employment where a person would not be able to perform the work without endangering himself/herself or to respond adequately to situations of emergency. Furthermore, subsection (4) provides that this division does not render unlawful discriminatory rates of salary or wages payable according to age, or to the imposition of a standard retiring age. Subsection (5) will allow other exemptions to be prescribed by the regulations.

Sections 85g and 85h comprise a division dealing with discrimination in relation to the provision of services and accommodation.

Sections 85i to 85*l* comprise a division dealing with exemptions from this part.

Section 85i exempts charitable trusts from the operation of the foregoing provisions.

Section 85j permits acts done for the purpose of carrying out a scheme intended to ensure that persons of a particular

age group have equal opportunities with persons of other age groups.

Section 85k permits discrimination in the terms of annuities, life insurance and other forms of insurance; in the terms of membership of a superannuation scheme or provident fund; and in the manner in which such schemes or funds are administered. The section will also permit discrimination that, in all the circumstances of the particular case, is reasonable.

Section 85*l* allows for the operation of any other law that provides for or authorises discrimination on the basis of age.

Clause 5 amends section 96 of the principal Act to ensure that the tribunal is able to dismiss or annul proceedings that are considered to be frivolous, vexatious, misconceived or lacking in substance.

Clause 6 will empower the tribunal to award compensation in favour of a person who has been the subject of a frivolous, vexatious, misconceived or unmeritorious complaint.

Clause 7 provides for the grounds of age in proceedings of the Industrial Conciliation and Arbitration Act.

Clause 8 is a transitional provision that provides that the amendments effected by the Act will not apply in relation to employment by an employer who employs less than 500 employees until February 1991.

**The Hon. G.L. BRUCE** secured the adjournment of the debate.

## PRIVACY COMMISSION BILL

Adjourned debate on second reading.

(Continued from 12 October. Page 946.)

**The Hon. G.L. BRUCE:** In his ministerial statement last week end also way back in December 1986, the Attorney-General gave his versions of how he saw this matter. In fact, in December 1986, the Attorney-General outlined, in a speech in reply to the Hon. Mr Cameron's Freedom of Information Bill, 11 points relating to privacy principles. For the record, those points need reiterating and I will do so because the whole of the Privacy Bill put forward by the Hon. Mr Elliott relates to what will happen. On 3 December 1986 at page 2634 of *Hansard*, the Attorney summarised the privacy principles as follows:

1. Personal information should not be collected by unlawful or unfair means, nor should it be collected unnecessarily.

2. A person who collects personal information should take reasonable steps to ensure that, before he or she collects it or, if that is not practicable, as soon as practicable after he or she collects it, the person to whom the information relates—the 'record subject'—is told, in general terms, the usual practices with respect to disclosure of personal information of the kind collected.

3. A person should not collect personal information that is inaccurate, irrelevant, out of date, incomplete or excessively personal.

4. A person should take such steps as are, in the circumstances, reasonable to ensure that personal information in his or her possession or under his or her control is securely stored and is not misused.

5. Where a person has in his or her possession or under his or her control records of personal information, the record subject should be entitled to have access to those records. That is the privacy principle upon which the Government's FOI proposals have been based.

6. A person who has under his or her control records of personal information about another person should correct the information if it is inaccurate.

7. Personal information should not be used except for a purpose to which it is relevant.

8. Personal information should not be used for a purpose that is not for the purpose of collection or a purpose incidental to or connected with that purpose unless:

*(a)* The record subject has consented to the use;

*(b)* The person using the information believes on reasonable grounds that the use is necessary to prevent or lessen a serious and imminent threat to the life or health of the record subject or of some other person;

*(c)* The use of the information for that other purpose is necessary or desirable for medical, epidemiological, criminological, statistical or any other genuine research application that is being conducted in a manner that is consistent with authenticated research guidelines; or

*(d)* The use is required by or under law.

9. A person who uses personal information should take reasonable steps to ensure that, having regard to the purpose for which the information is being used, the information is accurate, complete and up to date.

10. A person should not disclose personal information about some other person to a third person unless:

*(a)* The record subject has consented to the disclosure;

*(b)* The person disclosing the information believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the record subject or of some other person; or

*(c)* The disclosure is required or authorised by or under law.

11. A researcher should take reasonable steps to ensure that in any product of his or her research the identity of a record subject, in respect of whose records of personal information he or she has had access, is not disclosed and cannot be ascertained.

That is a summary of what is proposed. In fact, in his ministerial statement given to this Chamber last week, the Attorney-General indicated that from 1 July 1989 people will have their right to privacy assured by the adoption of the principles I have just outlined. That is why I have read them into the record.

**The Hon. M.J. Elliott:** They are not assured; there's no legislation.

**The Hon. G.L. BRUCE:** Their rights are assured. From the statement made last week, I have no doubt that it will happen. It is interesting to note that 90 per cent of requests to the Federal Government involve personal affairs matters, I understand that the Victorian Government personal affairs requests almost amount to 90 per cent, too. It would seem that the large amount of queries on privacy matters will be covered by the Government's implementation of this scheme from 1 July, and not the slightest doubt exists that this scheme will meet the needs of an overwhelming proportion of persons seeking information from the Government. The Government therefore rejects the need for the Hon. Mr Elliott's Privacy Commission Bill and believes what it is putting in its place to take effect from 1 July will cover the needs of the people of South Australia. I urge opposition to the Bill.

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

## INDEPENDENT COMMISSION AGAINST CRIME AND CORRUPTION BILL

Adjourned debate on second reading.

(Continued from 30 November. Page 1730.)

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

1. Introduction

The Government opposes this Bill. In doing so, I wish to bring the public's attention back to certain fundamental principles upon which our society and system of government are based, principles which have been forgotten and pushed aside in the hysteria of debate about alleged corruption. Our system is largely derived from Westminster and

the British common law. It is a democratic system where elected members of Parliament form the Government by virtue of being in the majority Party or Parties in the House of Assembly.

The Government is responsible and accountable to the Parliament, and procedures have been developed to ensure that Parliament can insist on that accountability. Individual rights associated with and necessary for the functioning of this democracy, such as free speech and the right of assembly, are recognised. All citizens are subject to the rule of law and protected from arbitrary or unfair treatment outside the law by governments. An independent judiciary is responsible for ensuring that the rule of law is upheld.

Moreover, citizens have certain rights which ensure that they are not arbitrarily detained. Because of the doctrine of separation of powers, the Executive cannot subject citizens to processes that are properly the responsibility of the judiciary. The basic rights to which I have referred include the presumption of innocence; a fair trial for anyone accused of a criminal offence; the right to legal representation; the right to know the evidence forming the basis of the charge against them; and charges must be proved beyond reasonable doubt and in serious cases determined by a jury. Freedom of the press is also an essential part of our democratic structure. Each of these basic rights and freedoms is, to a greater or lesser extent, affected by this Bill.

2. Substance of the Bill

The powers sought to be given to the Independent Commission against Crime and Corruption by this Bill are unprecedented in this State. It is to have the powers to conduct hearings in public, to subpoena documents, to compel the attendance of witnesses (by arrest, if necessary), to compel answers to its questions (overriding all existing forms of privilege and public interests claims with two limited exceptions) and to issue its own search warrants without judicial supervision. Its powers approximate those of a royal commission but, unlike a royal commission, it will set its own terms of reference, all according to its own priorities and without effective accountability. If this Bill is enacted a profound change will have been made to the subtle structures of society in South Australia, a change that will affect every institution, including the Parliament, the Executive, the judiciary, the press and all who live in or visit the State.

The Bill simply abandons many fundamental principles which have been evolving for over 800 years. Scant regard has been paid to the roles of the three limbs of government in striking a balance between the power and authority of the modern state and the right of individuals, even if they are only criminal suspects. This balance achieved, first by Parliamentary democracy and an Executive Government responsible to the people and to the Parliament and, secondly, by the rule of law being made chiefly in Parliament but administered in the courts by independent judicial officers, ought not to be disturbed without cogent reason. If passed, this Bill would be an assault upon the civil rights and freedoms of the community. Once civil liberties are surrendered they are seldom, if ever, regained. The plethora of powers given to the proposed commission without adequate checks and balances belong in an authoritarian system, not in a democracy.

It is as though the Bill was conceived by a person who does not recognise the fine line between a democratic and an authoritarian system; who does not recognise the danger of guilt through association and the overriding of traditional rights conferred by our legal system; and who does not recognise the very real threat contained in the possibility of show trials conducted in public without proper safeguards.

There needs to be a powerful case to justify inroads into our democratic system and the erosion of existing civil liberties. As the *Australian* newspaper noted in its editorial of 29 February 1988 in relation to the New South Wales Government's Independent Commission Against Corruption:

> Nevertheless, there is the danger that an independent investigative body could become irresponsible and, if unrestrained, could not only improperly or unjustifiably damage the reputation of individuals, as has been the case with at least one recent royal commission, but could also usurp some of the authority of Parliament as the constitutional guardian of legislative probity . . . The elimination of corruption might be poor compensation for the unjustified destruction of personal reputations or the irrational or partisan interference in the proper processes of government by an overzealous or egomaniac Commissioner.

If a new organisation is needed to fight crime and corruption, careful thought is required as to what the powers and functions of such a body should and need to be. Blind acceptance of legislation introduced in another State where there are different issues and problems is not the way to proceed. The community requires and deserves a lot more careful analysis of sophisticated problems than that.

The Parliament has not been told why it is necessary to establish a new body which has the potential to become a large bureaucracy with coercive powers to investigate alleged corruption. No substantive evidence has been produced that existing mechanisms, including the procedures under the Government Management and Employment Act, the Ombudsman, the Auditor-General, the police and, in appropriate cases, the National Crime Authority, are inadequate. In terms of resources and efficiency it would seem undesirable to have another statutory authority to duplicate work which can be done by existing agencies, including the NCA.

Before the enactment of the National Crime Authority Act 1984, there was much careful analysis through a process of extensive public debate as to the appropriate functions, composition and powers that authority should have. This involved a discussion paper prepared by the Commonwealth Government, a conference in Canberra in July 1983 involving leading jurists, academics and politicians of all Parties (including the Hon. Mr Griffin and myself), and finally a report of the Senate Standing Committee on Constitutional and Legal Affairs before the Commonwealth legislation was passed. While I would not suggest that complete unanimity was reached (or ever could be reached in an area like this), Senator Evans, the Commonwealth Attorney-General, said in summary:

> . . . I discerned a very strong general desire around the Chamber for checks and balances to be built into any system which might develop here, checks and balances in terms of built-in protections for the individual and, secondly, checks and balances in the form of some clear-cut accountability, whether it be to Government Ministers, to parliamentary committees or to the courts, or involving the mechanism of Ombudsman or something of that kind.

The main concerns that emerged during that public debate have been incorporated in the National Crime Authority Act 1984. Not one of those concerns and objectives is addressed in this Bill. Indeed, the concerns expressed about safeguards to protect the reputation of innocent persons to protect traditional civil rights and mechanisms to ensure proper accountability have simply been ignored in the preparation of this Bill. The Hon. Mr Gilfillan has not indicated where he finds the powers of the authority inadequate, nor what is objectionable about the checks and balances in the Act. I would suggest that the honourable member has inadequately addressed these matters.

The honourable member, in his second reading explanation, virtually expressed no confidence in the National Crime Authority. His criticism of the NCA was threefold. First,

he said it comprises seconded police officers from State police forces. One assumes from this that his proposed commission will not have any police officers on it. Apart from the complete lack of confidence which it displays in the South Australian police, it is absurd as a proposition. The notion that people other than police can be readily trained to investigate corruption and organised crime is fanciful. Professional investigators from police forces using years of accumulated knowledge and experience are essential in this fight.

With respect to investigations involving alleged police corruption, it is important that there be a substantial independent element. This clearly is the case with the NCA. Who will carry out the investigations for the proposed commission if it is not the police? The reality is that without police assistance the proposed commission will be a lame duck. There may be room for legitimate criticism of some of the decisions of the National Crime Authority, but its structure and *modus operandi* provide, in my view, the best balance of ensuring proper investigation of corrupt criminal activity while retaining rights which are important to the functioning of our democracy. Police have the skills and expertise to investigate. They are trained for it. It is simply not credible to constitute the proposed commission with no training in investigative techniques.

The second criticism is that the NCA is under suspicion in that there are allegations against serving NCA officers. It is easy to make allegations and, as the Hon. Mr Gilfillan has repeated them, they will be investigated. However, there is no guarantee that a completely independent body would be a protection against such corruption or criminal infiltration. Indeed, it may well be easier for organised crime to infiltrate a new organisation which is recruiting people at large.

The reality is that dedicated professional police officers are necessary in any body designed to fight organised crime and corruption. It is quite unrealistic for the honourable member to suggest otherwise. The problem of corruption of individuals in law enforcement agencies and other agencies must be tackled, and I will return to this later. However, nothing is achieved by tarring the many honest, competent and dedicated police officers with the broad corruption brush. The reality is that, if this broad smear against the police occurs to the extent that it has in recent months with attacks on the Police Force by the Hon. Mr Gilfillan and the Liberal Opposition, young people of integrity will not see policing as a desirable career, morale will be affected and ultimately the fight against crime weakened.

The third criticism (unspecified) is that the NCA does not have anything like adequate powers to acquire and deal with information or conduct hearings. I reject that. The NCA does have the requisite coercive powers to compel attendance at hearings, the answering of questions and the production of documents. But it does this subject to proper checks and balances as to the exercise of those powers—that is, subject to proper accountability to elected Governments and within the scope of references given to it—something sadly missing from this Bill. In fact, much of the criticism of the NCA has been that its powers are too broad. To those people I can only say that, if there is concern about the powers of the NCA, there would be horror at the extensive invasion of civil liberties and denial of natural justice involved in this Bill.

When the National Crime Authority was being debated there was widely expressed concern that the body would be able to roam at will over the whole field of its jurisdiction, without having to justify its investigations to those accountable, that is, Governments and Parliament. This concern was addressed by the requirement in the National Crime Authority Act that the authority only exercise coercive investigative powers in the context of specific references initiated by the appropriate Government and approved by the inter-governmental committee (comprising representatives of all Governments—Federal and State—in Australia).

The proposed commission's coercive powers are exercisable at large. It can embark on an investigation without reference to anyone and initially in such secrecy that there is no-one—not the Parliament, not the elected Government, not the Attorney-General, not the proposed Operations Review Committee—that can demand information about an investigation.

There were concerns about the lack of precise statement as to the outer limits of the proposed National Crime Authority's jurisdiction. The outer limits of its jurisdiction are now precisely defined by the definition of 'relevant criminal activity' and 'relevant offence'. The combination of the precisely limited jurisdiction and the requirement for a specific reference ensures that the area of inquiry is readily ascertainable and, should the authority stray beyond that area, it can be restrained by judicial order.

No such safeguards appear in this Bill. The definitions of 'organised crime' and 'corrupt conduct' are so general as to provide no precise boundaries for the commission's operation. There is, anyway, no requirement that a person must be told the commission's area of inquiry. At a hearing the presiding member of the commission will announce the general scope and purpose of the hearing (clause 31 (3)). This is of no benefit to a person being investigated in the absence of a hearing and, in any event, a general statement does little to define the boundaries of a hearing.

There was concern to ensure that individual reputations would not suffer as a result of damaging but possibly unsubstantiated allegations made during the course of NCA hearings. The National Crime Authority Act creates a positive obligation on the authority to hold hearings in private in circumstances where, among others, the reputation of a person would be prejudiced. There is an additional layer of protection in that any public report made by the authority is not to identify a person if, among other things, to reveal his or her identity would prejudice his or her reputation or fair trial.

This Bill provides that a hearing must be held in public unless the Commissioner directs that the hearing be held in private. The commission may not give such a direction unless it is satisfied that to do so is in the public interest for reasons connected with the subject matter of an investigation or the nature of the evidence to be given. This provision is calculated to ensure that publication of hearsay and scuttlebutt would become a feature of the commission's operation and that individual reputations would suffer as a result of damaging, but possibly unsubstantiated, allegations made during the course of commission hearings.

It is contrary to our traditional concepts of justice that persons should be named in public hearings as suspected of committing serious offences, or in some way associated with the commission of such offences, before the laying of charges against them. There are good practical reasons for this policy (for example, the need to promote complete freedom of disclosure; to prevent the escape of a person named before he or she may be arrested; to prevent perjury in an effort to disprove what has been testified and to protect those who may have put themselves at risk by coming forward and to minimise potentially prejudicial pre-trial publicity).

These good practical reasons are reinforced by reference to basic concepts of fairness and natural justice. They are

also reinforced by reference to Australia's international obligations. Australia is a signatory to and has ratified the International Covenant on Civil and Political Rights. Article 14 provides:

> Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

But, no less importantly, where criminal charges have not been laid, article 17.1 of the covenant provides a wide shield of protection in the following form (where material):

> No-one shall be subjected to arbitrary or unlawful interferences with his privacy . . . nor to unlawful attacks on his honour and reputation.

If one considers the show trial provisions of this Bill together with clause 99, which enables the proposed commission to inform itself on any matter, in such manner as it considers appropriate, without regard to the rules of evidence, then there is a recipe for the grossest abuse to fundamental rights. Open hearings will have no restraints on the evidence which can be produced. Rules of evidence which ensure natural justice are discarded. Hearsay, third-hand rumours, gossip and innuendo will all be permitted to be aired in public, possibly to the severe damage to reputations of innocent citizens.

Another of the concerns addressed in the debate leading to the establishment of the NCA was the basic role of the authority. Although differing opinions were expressed, the majority consensus was that for the body to play any useful role it should operate as another arm of the criminal investigation process, gathering and assembling evidence for transmission to other law enforcement agencies for use ultimately in conducting prosecutions. This is the function of the NCA. It is not a body which collects unsubstantiated allegations or allegations of which no use can be made because they are not supported by evidence which can be used in court.

Ian Temby Q.C., in a speech given at the Sixth National Conference of the Australian Society of Labor Lawyers in 1984, said of the authority (this is the NCA quote):

> It is therefore a matter of great relief to me that the Act establishing the NCA requires concentration upon the gathering of admissible evidence, and that in discussions with members of the authority they have recognised the prime importance of my office being presented with briefs in a form that can be prosecuted.

The proposed commission, on the other hand, would not concentrate on matters which would be prosecuted. The assembling of evidence for prosecution is a secondary function, to be distinguished from its principal functions set out in clause 13 (1). That the commission is not primarily concerned with the assembling of evidence for prosecution is also shown by clause 3 (2) which provides that it is immaterial that proceedings for an offence cannot still be taken. The way would therefore be open for the show trial, guilt by association, reputations ruined by unsubstantiated allegations, prejudice of fair trials and even, perhaps, the retrial by the commission of persons who have been acquitted. Is this desirable or necessary?

A further major area of concern in the debate surrounding the introduction of the NCA was the need for a clear and precise line of responsibility to, and control by, a Minister. As Mr Justice Kirby said in his address to the National Crimes Commission Conference in July 1983:

> . . . there is a very real danger of creating an institution which is largely unaccountable to the democratic elements of our government; unable, because of the secrecy of its operations, always to justify its work and its position publicly; prone, by the nature of its mission, to take an evangelistic, even messianic role; and able, by the sharing of selected secrets, to win over even initially sceptical or unsympathetic administrators or politicians admitted into its secret world and to its assessments and points of view . . . Whilst there are dangers that accountability to political representatives can sometimes be used to muzzle the effectiveness of such a body, there are, I think, far greater dangers in allowing such a body to range widely over the landscape . . . This is especially so if it has unusual powers with imprecisely defined functions and is able to act unrestrained at the whim of those who are not effectively accountable in a democratic way.

There is no identified or identifiable ministerial responsibility for the proposed commission. There is only an unelected official appointed by elected members but not politically responsible to anyone.

While the Commissioner can be removed by Parliament and in that sense can be said to be responsible to Parliament, there is no elected Government that can be called to account by the people through an election if the commission exceeds its authority or otherwise behaves capriciously. There is no accountability through responsible Government, which is the basis of the Westminster System. In any event, the Parliament is to be given no adequate powers to monitor the commission.

The parliamentary joint committee established under Part VI would be ineffectual. Clause 71 (1) provides that the functions of the committee will be to monitor and review the exercise by the commission of its functions. However, clause 71 (2) provides that the joint committee cannot:

> *(a)* investigate a matter relating to particular conduct; or
> *(b)* reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint; or
> *(c)* reconsider the findings, recommendations, determination or other decisions of the commission in relation to a particular investigation or complaints.

There is thus no effective means of ensuring accountability. If a Minister or Government is responsible for the operations of such an authority, it can ask questions; it can probe; and it has at its disposal Crown Law officers responsible to the Attorney-General who can assess whether the authority has exceeded its charter, or whether it is riding roughshod over the rights and reputations of innocent citizens. Persons genuinely aggrieved by its actions would have some recourse to the Minister or the Attorney-General to correct that grievance and the Minister would have the means at his or her disposal to do it.

No such accountability is possible under this Bill. Because of clause 71 (2) Parliament simply would not have the means at its disposal to ascertain relevant facts and in any event could not ensure proper accountability.

3. Definitional Problems: Scope of Application of the Bill

Clause 3 of the Bill, which sets out the operative definitions, opens up a Pandora's box of human activities to the scrutiny of the proposed commission instead of, or in addition to, other duly constituted authorities such as the courts and specialist tribunals.

For example, the definition of 'corrupt conduct' could involve the most minor dereliction of duty by someone on the Government payroll. It is broad enough to cover conduct which is not criminal but which would only amount to grounds for disciplinary action. A public servant who leaked confidential departmental information to the media, whatever his or her motives, would have his or her act subjected to the jurisdiction of the commission.

By section 67 *(h)* of the Government Management and Employment Act 1985, a public servant who, except as authorised by the regulations, discloses information gained in his or her official capacity is liable to disciplinary action. Regulation 21 of the Government Management and Employment Act Regulations 1986 defines and limits the circumstances of the authorised disclosure. By virtue of clause 3 (2) of the Bill—especially where the conduct involves grounds for disciplinary action under law—and the notion of conduct that 'adversely affects . . . directly or indirectly the honest or impartial exercise of an official function' by

the public servant, the commission would have power to investigate the act as 'corrupt conduct'.

In ordinary circumstances the act of the employee may be regarded as dishonest, deceitful or spiteful only, especially when he or she accrues no personal financial benefit. But to regard it as 'corrupt' may be, in many circumstances, a complete overkill, especially if the person is subjected to the full panoply of powers open to the commission.

What of the role of the employee's Chief Executive Officer or Minister as disciplinary authorities or indeed of the statutory Disciplinary Appeals Tribunal? Are they all swept aside and ignored? Does a public servant potentially have brought to bear the whole authority of this proposed commission for a minor act of dishonesty?

4. Rights Affected by the Bill

A sacrosanct aspect of our democracy is the rule of law, which ensures that no person is subject to arbitrary State powers. The rule of law embodies both the requirement that official powers envisaged by anyone are conferred by law and that the law should conform to minimum standards of justice. In particular, the law should be certain and precise. A person charged with an offence should be presumed innocent until his or her guilt is established beyond reasonable doubt by the courts. The power of arrest is exercisable only for reasonable cause. People should not be detained in custody before trial, unless at judicial order, and the role of the prosecution is, at all times, one essentially of fairness. It is not to secure a conviction at all costs.

*(a)* Power to search

The proposed commission has wide powers of search. Clause 39 (1) provides that a justice or the Commissioner (or an Assistant Commissioner) may issue a search warrant. 'Justice' is not defined in the Bill. Presumably what is meant is a justice of the peace as in the New South Wales Act. But that Act does not allow any justice to issue a search warrant; only magistrates or justices of the peace employed in the Attorney-General's Department are authorised to issue search warrants.

The most questionable provision is the power of the Commissioner (and his or her assistants) to issue warrants to themselves. This provision is in sharp contrast to the search warrant provisions in the National Crime Authority Act. Under that Act an application for a warrant must be made to a judge. The judge must be given an affidavit setting out the grounds on which the warrant is sought and any further information he requires. When a judge issues a warrant he or she is required to state which of the reasons he or she has relied on to justify the issue of the warrant. The warrant must include a statement of the purpose for which it is issued, which must include a reference to the matter relating to a relevant criminal activity into which the authority is conducting a special investigation. These provisions are designed to safeguard the rights of citizens to privacy and freedom from unreasonable search by interposing an independent judicial officer between the person seeking the search and the premises to be searched.

Further, under the National Crime Authority Act, the authority must be conducting a special investigation (as where a reference has been made to the authority by Government and the authority must believe that a summons would be ineffective). None of these checks is contained in this Bill. The Commissioner or his other assistants have the power to issue and execute their own warrants in relation to an incredibly wide range of activities, serious and minor, defined in clause 3. There is no need for there to be a reasonable suspicion that a felony or misdemeanor has been recently committed or is about to be committed. The search provisions apply to relatively minor matters, including disciplinary matters as well as those which are more serious and criminal.

*(b)* Power to summon

Anyone will be liable to be summonsed at any time to appear before the commission, without necessarily knowing why or what case is to be answered. Failure to comply will result in a prosecution or punishment for contempt. Clause 109 provides for the service of documents, which, presumably, includes summonses. Documents are to be served by personal delivery or by leaving or sending them by registered or certified mail to the residential or business address of the person last known to the person serving the document.

When one looks at the result of failing to obey a summons to attend before the commission, the ways of serving a summons are less than satisfactory. The summons can just be left at the last known residential or business address. There is no provision, such as in the Justices Act and the National Crime Authority regulations, that the summons must be left with a person over the age of 16 who is apparently residing or employed at that place. Such a provision at least provides some safeguard that someone is on the premises and that the summons is not left at premises long vacated.

*(c)* Power of arrest

Clause 38 (2) *(a)* of the Bill empowers the Commissioner to cause the arrest of a person on a warrant from a justice if he or she is satisfied that the person 'will not attend before the commission to give evidence without being compelled to do so', or is about to or is preparing to leave the State. Again 'justice' presumably means any justice of the peace. Clause 38 (6) enables an arrested person to be detained in custody 'until released by order of the Commissioner'. The release of the person is at the exclusive discretion of the Commissioner. There is no provision for the person to be brought before the courts.

An unrestricted power given to a public official to deprive a person of his or her liberty is quite unprecedented in this State and is contrary to fundamental notions of civil liberty and the rule of law. When the police arrest a person there are strict rules regarding how the person is to be dealt with. In particular, arrested persons must be brought before a court within certain prescribed periods. Thereafter, they are dealt with by the independent judiciary and their liberty is at the discretion of judges and magistrates who have sworn and are obliged by law to:

> . . . do right to all manner of people after the laws and usages of this State, without fear or favour, affection or ill will.

In this case the liberty of the subject is determined by an unaccountable official who has none of the attributes or obligations of a member of the judiciary. The discretion to detain is so wide that there is no effective recourse to the courts unless there has been an abuse of power. This is unsatisfactory. At the very least one would have thought that provision should be made for the arrested person to apply to the courts for bail as in the NCA Act.

*(d)* Right against self-incrimination

Historically, it seems clear that the right to keep silent (or the privilege against self-incrimination, as it came to be known) was a reaction against torture and other unacceptable modes of questioning prisoners. Even today, it seems probable that the main force behind the opposition to any change in the law comes from doubts about police methods of interrogation. Undoubtedly this is true in America where the main purpose of the continued vitality of the privilege against self-incrimination is to protect the citizen from third degree and other intolerable modes of questioning. Of course, it may be said that this is no reason for preventing a judge

or court from asking questions of the accused; but the issue is not as simple as that. The accusatorial nature of our criminal procedure requires that a person should not be brought before a court unless the prosecution feels that it has sufficient evidence to lay before the court showing at least a *prima facie* case of guilt.

The former Chief Justice of the High Court (Sir Harry Gibbs) in *Sorby v The Commonwealth* in 1983, 152 CLR p. 281 at 294 said:

> If a witness is compelled to answer questions which may show he has committed a crime with which he may be charged, his answers may place him in real and appreciable danger of conviction, notwithstanding that the answers themselves may not be given in evidence. The traditional objection that exists to allowing the executive to compel a man to convict himself out of his own mouth applies even when the words of the witness may not be used as an admission. It is a cardinal principle of our system of justice that the Crown must prove the guilt of an accused person, and the protection which that principle affords to the liberty of the individual will be weakened if power exists to compel a suspected person to confess his guilt. Moreover, the existence of such a power tends to lead to abuse and to 'the concomitant moral deterioration in methods of obtaining evidence and in the general administration of justice . . .'

Royal commissions have traditionally been empowered to overrule the privilege against self-incrimination by witnesses before them. But royal commissions are established on a completely different footing from the proposed commission. As a starting point, royal commissions have strictly defined terms of reference and are usually set up as an extraordinary measure. The basic task of a royal commission is and has been to establish publicly the truth of a particular matter given to it to investigate and report upon.

A royal commission is frequently called upon to clear the air where there is apparent public scandal or disquiet. Given the traditional 'expose the facts' role of a royal commission the denial of the privilege against self-incrimination is justifiable but limited to the purpose of the royal commission and not at large. The thought of a perpetual royal commission revealing unsubstantiated allegations day after day, with all the concomitant implications for individual reputations, is, to say the least, appalling.

Clause 35 (7) abrogates the privilege against self-incrimination. It is ironic that the Hon. Mr Griffin makes no mention of this, especially in light of his criticism on previous occasions in this place of legislation which attempts to erode the privilege in a much less fundamental way than has occurred in this Bill. He has apparently forgotten his reference, on 26 November 1987 in the debate on the Barley Marketing Act Amendment Bill, to 'the usual and accepted provision that a person should not be required to incriminate himself' (*Hansard*, page 2180).

No-one can argue that our legal system should remain static, that the balance of community interest versus the rights of the individual is immutable. Indeed, the Government has been ready to amend the criminal law and procedure to abolish the unsworn statement, to abolish the corroboration warning in sex offence cases, and to facilitate children giving evidence, despite some objections raised on civil liberties grounds. From time to time there have been suggestions that the privilege against self-incrimination, should be removed if evidence is given subject to controls by a member of the judiciary and that the privilege is not available to public officials in relation to conduct during the course of their employment.

Despite those suggestions, the privilege against self-incrimination, for the reasons outlined, remains sacrosanct in our legal system and is widely regarded as one of the cornerstones of our democratic structure and one of the rights which distinguishes ours from an authoritarian system. If you add that these confessions will be forced from citizens in public then you have something akin to a Stalinist show trial. It is presumably reactions to such Soviet show trials which has led the international community to adopt article 14 (3) *(g)* of the International Covenant on Civil and Political Rights, which states that, in the determination of any criminal charge against him, a person shall not be compelled to testify against himself or to confess guilt. This Bill contravenes that article.

It is worth noting that the conference on the National Crime Authority held in July 1983 was summed up on this point by the Commonwealth Attorney-General, Senator Evans, as follows:

> Nonetheless, there was a manifest feeling widespread—I think it reflects the feeling in the community at large—of repugnance about the whole concept of traditional rights against self-incrimination being overridden, particularly by a permanent agency of this kind with an open-ended jurisdiction.

The all-Party Senate Standing Committee on Constitutional and Legal Affairs, in its report on the National Crime Authority, also recommended retention of the privilege against self-incrimination, if claimed by natural persons.

*(e)* Legal professional privilege Legal professional privilege is preserved to a limited degree but the inroads made into it are extensive.

Clause 35 (8) provides that legal professional privilege may be relied on to refuse to comply with a requirement of the proposed commission only in relation to a communication between a legal practitioner and a person for the purpose of providing or receiving legal professional services in relation to the appearance, or reasonably anticipated appearance, of a person at a hearing before the commission.

**The Hon. R.J. Ritson:** Does that mean that your lawyer could be called to testify against you?

**The Hon. C.J. SUMNER:** Yes, in relation to some other communication that might occur.

Legal professional privilege cannot be claimed in relation to anything else—not in relation to advice given in anticipation of legal proceedings to the client, or any other client. This is just one further example of the proposed commission being set above well established principles which have evolved over a long period.

*(f)* Natural justice

The honourable member seemed pleased with clause 99, which provides that the commission is not bound by the rules of evidence and can inform itself on any matter in such manner as it considers appropriate. This may have had some merit if the hearings were in private, but the combination of this provision and public hearings opens the way for the grossest abuse. Without the rules of evidence to constrain the Commissioner's charter of inquiry, hearsay upon hearsay, rumour upon rumour would be able to be canvassed in full in its proceedings.

It is a pity that the honourable member did not consider that the proposed commission should act fairly and obey the rules of natural justice—in particular, to ensure that every party is made aware of the case to be answered, is given a reasonable opportunity to present his or her case and to inspect any documents to which the commission proposes to have regard in reaching a decision.

*(g)* No trial by jury

Another crucial liberty is that of the ordinary person to place himself or herself for judgment before his or her peers. In other words, for serious allegations of criminal conduct, there is a right to trial by jury. Given the way in which the proposed commission is to operate (that is, collecting allegations and admissions which will often not be capable of being tested by a court of law), a person may be accused of criminal conduct and have findings of such conduct made

against him or her without the right to have that accusation determined by a jury.

*(h)* No right of appeal

What is to be done if a citizen alleges that he or she is being improperly investigated by the commission? There is no body to which he or she would be able to turn; not to the courts, not the Parliamentary Joint Committee. Parliament itself has the power to remove the Commissioner, but no mechanism is established to enable the Parliament to ascertain the facts relating to any abuse of power or improper behaviour. As already outlined, the Parliamentary Joint Committee has limited authority to inquire into the activities of the commission.

The hapless citizen could expect no assistance from the Operations Review Committee created under Part V of the Bill. What function this body is supposed to perform is far from clear. It certainly does not have the power to review any operations of the commission.

The Operations Review Committee itself is an extraordinarily unaccountable body—virtually a complete repudiation of Westminster notions of responsibility—indeed expressly so, as a Minister of the Crown cannot be a member of it (clause 60).

The Commissioner and Assistant Commissioner are members so, despite its name, it obviously has no role as a reviewer of the operations of the proposed commission. A majority of the committee will 'represent community views'. I had assumed in our democracy that this should occur by properly elected members of Parliament. Apparently, for the Hon. Mr Gilfillan this is not good enough.

The committee, apparently, is to advise the commission as to whether the commission should investigate or discontinue an investigation but—and here is the absurdity—only at the request of the Commissioner. If the Commissioner did decide to trust the committee with sensitive material which would be necessary to enable the committee to properly advise on a particular matter, what provisions are there to require secrecy? At least Ministers, as members of Executive Council, take an oath of secrecy. The police will have no say in who should be investigated, the Attorney-General will have no say and the elected Government will have no say. This is the antithesis of responsible government.

The decision to investigate could be made by four 'community representatives' accountable to absolutely no-one and elected by no-one. To add insult to injury there is not even a provision that the committee report to Parliament. Again, what would happen if the committee decided to target someone for investigation unjustly? To whom do we turn? Could the courts intervene? Probably not. The committee cannot be called to account at an election. The Government or Attorney-General cannot take responsibility for its actions. The Parliament has no role and will not even be reported to by the committee.

Nor could the hapless citizen turn to the Ombudsman for assistance. That functionary would have no jurisdiction over the commission or the staff of the commission.

Whilst the commission's functions may (and I emphasise 'may') be liable to collateral attack by way of proceedings for judicial review (for example, upon complaint that the commission has gone beyond its terms of reference), this will be of only arguable help, especially given the broad, ill-defined and sometimes nebulous charter that is given to the commission by this Bill as outlined earlier in relation to clause 3.

But even more fundamental is that there is no appeal to a court of law from a decision of this commission. In other words, a show trial can be conducted, reputations ruined and imputations of criminal conduct made against citizens without the requirement of proof beyond reasonable doubt and on the use of hearsay evidence, and then without the right of appeal to any court.

Any such finding of guilt, recommendation or other final determination of the commission simply will not be able to be directly challenged in a court of law. In other words, no citizen will have a direct right of appeal. Again, this is an unprecendented infringement on traditional rights.

*(i)* Power to punish for contempt

The Bill allows for what is an essentially administrative body to have wide ranging provisions relating to contempt, even though the power to punish for such contempt rests in the Supreme Court.

It is also interesting to note, in the light of the Hon. Mr Griffin's usual protestations, that clause 96 reverses the onus of proof by providing that the Commissioner's certificate alleging contempt is, in the absence of proof to the contrary, proof of the matters so certified. The onus is thus on the defendant to disprove the commission's allegations. Presumably, this sort of provision is only of concern to the Hon. Mr Griffin if contained in a Government Bill.

5. How the Bill affects the Judiciary

This legislation, if enacted, would severely compromise the independence of the judiciary which is vital to the proper functioning of our democratic system. Judges must be free to decide matters without fear or favour. We must be careful about publicity surrounding unwarranted personal and professional attacks on them. By the very nature of their work in making decisions in keenly contested disputes where emotions often run high, there is a risk of attack and, if the attacks are personal, unjustified and made in pubic, there is risk of a lack of confidence in the judicial process.

This Bill provides for the commission to investigate 'corrupt conduct' of a member of the judiciary. This displays an incredible vote of no confidence by the Hon. Mr Gilfillan in the South Australian judiciary which is totally unjustified. There have been no allegations of corruption against the South Australian judiciary and there is simply no evidence to suggest such corruption.

Even if allegations of corruption were made against a member of the judiciary is this new body really the appropriate body to look at the allegations? If there is a need to have a more formal mechanism to investigate complaints against the judiciary, this is not it. There must at the very least be some safeguard against publicity being given to allegations which may later turn out to be completely unfounded. The Bill, of course, is designed to ensure that such allegations are made public.

One of the features of our democratic system is the mutual recognition of, and respect for, the judiciary, the Parliament and the Executive by each other. For example, matters before the courts are not generally discussed in Parliament where there is the risk of prejudice to a trial—the *sub judice* rule.

The proposed commission, however, can continue with its investigations even though there may be proceedings before the courts (clause 100 (1)). This can occur even though the Commissioner, as an officer of the commission, is a party to the proceedings (clause 100 (3)). The honourable member has justified this provision on the grounds that one way to frustate the work of the commission would be to bring a matter before a court, causing the commission to suspend its investigation. Clause 100 (3) then is designed to ensure that, even if the commission is being challenged on the basis that a certain investigation is beyond its power, the commission can still continue with its investigation.

In the light of this, could a court issue an interim injunction preventing the commission acting beyond power pending a final determination? Presumably not. Indeed, the Hon. Mr Gilfillan seems to have specifically provided that the commission is not subject to normal oversight by the independent court. Presumably the courts could, in a final determination, issue an injuncton restraining the commission from acting beyond its powers, but this is far from clear.

The Hon. Mr Gilfillan's expressed intention seems to be to remove this commission from any of the effective checks and balances and accountability through the courts or Ministerial responsibility which hitherto have been considered essential to the functioning of our democracy.

If a witness before the commission is attempting to prove to a court that the commission is exceeding its jurisdiction, it is preposterous to suggest that the commission should continue with its investigation, pending or perhaps in spite of any determination of the matter by the court. That is a recipe for the abuse of power.

There is also nothing at law to prevent the commission continuing to hear a matter in public even though an accused person is before the courts. Clause 100 (2) provides that if the commission continues its investigation while a matter is before the courts it should ensure 'as far as practicable' that the hearing is in private. An accused person and witnesses then can be subject to the use of the commission's coercive powers, not necessarily in private, while the accused person and witnesses are before a public jury trial on a criminal charge. In these circumstances there could be a grave risk to a fair trial. The courts would be placed in an untenable position in being, on the one hand, faced with a law (this Bill) which says investigations can continue while a trial is in progress and, on the other hand, the risk of prejudice to a fair trial which such investigations may entail. It is quite unsatisfactory for proceedings before the commission and court to be carried on in public or private simultaneously without resolving which authority is to have precedence.

The Hon. Mr Gilfillan's suspicion of the courts has caused him to seek to overrule existing law in this area. In *Hammond v. The Commonwealth* (1982) 42 ALR 323 the High Court held that a witness could not be compelled in any circumstances to give evidence against himself to a Royal Commission after he had been committed for trial. As Justice Brennan said in *Sorby v. The Commonwealth* (1983) 46 ALR 237 at 265,

> There [i.e. in Hammond's case] an attempt had been made to require an accused person to testify before a Royal Commission as to matters relevant to the charge upon which he had been committed for trial, but this court restrained the attempt. If the power to compel testimony under the 1902 Act could be exercised to strip away the protection of an accused from inquisition as to the crime charged against him, the evils of an *ex officio* oath would be revised and the adversarial nature of a criminal trial subverted.

This was agreed to by the all-Party Senate Standing Committee on Constitutional and Legal Affairs in its report on the National Crime Authority Bill and was incorporated in that Act. There are simply no mechanisms in this Bill for resolving conflicts between the courts and this commission. Commonsense dictates that, if a matter is before the courts, the coercive powers of the commission involving the possibility of self-incrimination should not be used either in public or private.

There is also uncertainty for the media in these circumstances. They may report the proceedings of the commission, yet there may be prejudice to a fair trial by such reporting. Would that then render the media liable to contempt proceedings? The situation must be clarified. Parliament has developed rules of *sub judice* to resolve potential conflict. No such rules are available here. Under this Bill an unaccountable public official could alter the course of a duly constituted trial before the courts. There would be nothing at law to stop the commission seizing documents for its own purposes from the chambers of the trial judge while the trial was in progress.

As the Bill stands, an officer of the commission will be able, without any prior notice, even to the Chief Justice or the Attorney-General, to enter the chambers of a judge and inspect and copy any documents there (clause 25). The commission could request a judge to provide a statement of information about a matter it is investigating, and a judge who failed to comply would be liable to prosecution under clauses 23 and 24 or for contempt. This represents a grave potential interference with the administration of justice and independence of the judiciary.

There is also the possibility of a person who is subject to findings of criminal conduct by the commission (without being bound by the rules of evidence and based on hearsay) being acquitted of a relevant criminal charge following a proper judicial hearing of the matter. So, the effect of an acquittal—that is, a judicial declaration of 'not guilty'—would be substantially impaired. A person could walk from a court still having to justify his or her untarnished reputation while rumours and innuendo grind on. Although acquitted he would have no right of appeal against the findings of the commission.

6. How the Bill affects the Executive

The executive arm of Government fares no better than the judiciary. Cabinet deliberations are to be open to the commission's inspection (clause 26). Individual members of Cabinet can be summonsed before the commission to answer any questions the Commissioner may care to ask (clause 35).

**The Hon. R.J. Ritson:** Is there anything about Crown privilege?

**The Hon. C.J. SUMNER:** No, there is nothing about Crown privilege. Failure to comply will result in prosecution for an offence or indefinite incarceration for contempt of the commission. Crown privilege (that is, the prerogative of the executive arm of Government to claim immunity from giving or yielding evidence to a judicial or *quasi*-judicial body) is abrogated. The confidential—necessarily so under the Westminter system—determinations of Executive Council, Cabinet, Ministers of the Crown and their advisers could be openly disclosed and many interests (for example, commercial, state security, law enforcement, etc.) jeopardised, if not wholly vitiated. Again traditional privileges have been overriden without adequate thought or consideration of the consequences.

7. How the Bill affects the Parliament

Members will be pleased to learn that in one area the privileges of Parliament are not abrogated. Clause 108 provides nothing in the Act that affects the rights and privileges of Parliament in relation to the freedom of speech, and debates and proceedings in Parliament. However, it is less clear whether this privilege would protect a member of Parliament being called before the commission if he or she was a recipient of information outside the Parliament. Recently, the Hon. Mr Griffin was given a document emanating from the Department of Public and Consumer Affairs in contravention of the Government Management and Employment Act. This is 'corrupt conduct' on the part of the public servant involved. The Hon. Mr Griffin and others in the Opposition could be called before the commission and required to disclose where the document came from. Often during the course of their parliamentary duties, members are recipients of information of all kinds. The

commission will be able to pursue this information from members or others to whom they had spoken and, presumably, from Caucus colleagues.

8. How the Bill affects the Media

I have already said that a free and responsible press is another pillar of a free society. The traditional bases upon which the press operates are also adversely affected by this Bill. A journalist or editor who refuses to reveal the source of information is liable to prosecution or to punishment for contempt.

The High Court, in its 1988 judgment in *John Fairfax and Sons Limited and Anor v Cojuangco*, recognised that the free flow of information is a vital ingredient to a free press. The court said:

> ... Information is more readily supplied to journalists when they undertake to preserve confidentiality in relation to their services of information. The courts have refused to accord absolute protection on the confidentiality of the journalist's source of information, whilst at the same time imposing some restraints on the entitlement of a litigant to compel disclosure of the identity of the source. In effect, the courts have acted according to the principle that disclosure of the source will not be required unless it is necessary in the interests of justice.

**The Hon. I. Gilfillan:** What does that mean?

**The Hon. C.J. SUMNER:** It means that the courts give some recognition to the principle of confidentiality of a journalist's source of information, but not an absolute right to protection. They will compel disclosure if it is in the interests of justice.

This case decided that journalists in certain circumstances before a court could be compelled to reveal their sources. It has already been attacked by the media and the Australian Journalists Association. It is not necessary to take sides on that issue at this time. What does need to be said, however, is that this Bill imposes on journalists and editors an obligation to reveal their sources at the investigative stage and before any court proceedings are contemplated or, indeed, whether or not any criminal offence is alleged. The proposed commission could, at the investigative stage of proceedings, thus ensure that a journalist will be placed in the position of revealing his or her sources without any restraint and in public.

Let us look at the consequences for journalists or editors who wish to protect their sources. They can be summonsed before the commission (clause 35). If they do not attend in answer to the summons a warrant for their arrest may issue (clause 38). They may then be detained in custody for an unspecified time whilst waiting to be brought before the commission (clause 38(6)). The period spent in custody does not appear to be reviewable by a court. While this is occurring, the journalist or editor may have his other business and home premises searched (clause 40), and members of their family may be searched should there be a reasonable suspicion that they have a relevant document on their person.

As there are no rules relating to evidence, anyone to whom the journalist or editor has spoken could be called before the commission and required to answer questions. This could include the proprietor, managing director, members of the board, the editorial group or members of any of these persons' families. The coercive, investigatory powers of the commission could be invoked in public against journalists and their editors and relevant media executives where, acting upon rumour or hearsay, the commission seeks to learn the identity or whereabouts of sources.

In this situation the media would be at real risk of having to divulge confidential information even before court proceedings were every contemplated let alone commenced. Nor, in such cases, would the traditional judicial protections of rights be available to the media.

It is not surprising that the Australian Journalists Association objects strongly to certain provisions of this Bill. The President of that association, after looking at the Bill, stated:

> The AJA's code of ethics has been the subject of legal debate and challenge over the years, but in all instances AJA members have stood firm in their belief that their paramount responsibility is to protect the confidentiality of their sources.
>
> If journalists' existing and potential news sources were aware that, as a result of this Act, their confidentiality would be under threat and could not be guaranteed, AJA members would be unable to maintain their journalist-source relationship with integrity.
>
> Furthermore, the AJA believes the public would lose faith in the freedom of the media to report openly and unhindered. In short, the sections of the Bill outlined would severely undermine the professionalism of AJA members in South Australia.

9. Effect of the Bill on the police

Perhaps the class of public officials that has the greatest cause for concern about this Bill is the police. The overwhelming majority of allegations of corruption have been and will be levelled at them. At the moment, such allegations are dealt with internally, or externally by the Police Complaints Authority, the National Crime Authority or by the courts. Police are particularly vulnerable to unsubstantiated attack. There is little doubt in my mind that criminal elements use misinformation to try to undermine law enforcement agencies in this country. Those in the media who do not check their sources, or members of Parliament who are prepared to use parliamentary privilege in an unscrupulous way without checking their sources, are ready dupes for this sort of misinformation against police and other officials responsible for the enforcement of the law.

This Bill constitutes a charter for an unrestrained and unaccountable witch-hunt against the South Australian police. The South Australian police have the confidence of the Government, while recognising that there are areas of concern that will be properly investigated. But a public witch-hunt of the kind envisaged by this Bill is not justified, both the Democrats, by the introduction of this Bill, and the Liberal Opposition, by its support for it, have demonstrated a completely unjustified lack of faith in the integrity of South Australian police officers. I remind members that even Mr Bob Bottom has said of the South Australian police:

> ... not only do I say its one of the cleanest Police Forces, I always contend and I always repeat that I believe it is actually the cleanest Police Force in Australia, though it does have, has had, some problems and probably always will have some, but, as you said, 'You've got to put it into perspective'.
>
> (Vincent Smith 5DN interview) 19 May 1988

Where then is the evidence to justify this Bill? There is a further practical problem which has the potential to adversely affect the police. The commission will be expected to conduct its affairs, including relevant investigations, using its own staff, who, according to the Hon. Mr Gilfillan, will not be police officers. The risk of confusion is real in that, in conducting an investigation, the commission could blunder into a police investigation. One would surely require close, candid communications and liaison between the commission and the police in order to avoid such a fiasco. But nowhere, it seems, has the Bill contemplated the commission and the police enjoying a relationship of mutual confidence. On the contrary, the Hon. Mr Gilfillan's second reading speech indicates a mutual hostility and distrust of the police to the detriment of law enforcement in this State.

10. General Issues

I said earlier that the problem of potential corruption of individuals in law enforcement agencies must be tackled. The Government has now addressed this issue by inviting the NCA to South Australia and establishing an Anti-Corruption Unit. In many respects, however, the debate on the

general issue has been superficial. Institutional solutions to dealing with corruption are of necessity limited and may not be completely effective. They represent a criminal justice approach to eliminating corruption.

Those who see the criminal justice system and enforcement agencies as the exclusive panacea for the elimination of corruption or a reduction in criminal activity or anti-social behaviour will almost certainly be disappointed. There needs to be a more fundamental approach. This involves the reinforcement of basic ethical standards in our institutions and community. I am attracted to the comment of former Queensland Police Commissioner Ray Whitrod in the *Advertiser* on 2 September 1988, that police corruption is not a systems deficiency but a break-down in personal morality. It may in fact be both, but emphasis is given to overcoming the former and little attention given to the latter.

Along with the institutional structures put in place attention should be given to reaffirming basic ethical values in our schools, training institutions (including police) and the institutions which I have mentioned as essential to the functioning of our democracy, including Parliament and the press. In a pluralistic society, these values are derived from many sources, not necessarily all religious or from one religion. Nevertheless there is a core set of values which is accepted and, if reinforced by society, should lead to less need for investigation and punishment approaches to eliminating corruption. The challenge is to find ways to reinforce those values in a practical way.

XI. Summary and Conclusion

Ms. President, criminal activity, some of it organised and involved in the drug trade, does exist in South Australia. Further allegations about public corruption, particularly in the Police Force, have been made. I wish once again to make it perfectly clear that the Government will not shirk its duty to the community to fight organised crime and corruption. However, I should say that, despite the recent clamour about corruption allegations, I do not believe that there is widespread corruption in South Australia's public institutions. Those who eagerly anticipate a Queensland outcome will, I suspect, be disappointed. Nevertheless, the Government has put in place the structures both within the South Australia Police Force and the NCA to deal with organised crime and allegations of public corruption.

The Government has, at all times, put before Parliament and the people any information which can be properly made public in relation to corruption investigations in this State, be they by the NCA or the police. We have provided publicly all the information that could be made available without compromising ongoing investigations or the reputations of innocent people. The Government has also, at all times, supported the inquiries and investigations undertaken in this State by the National Crime Authority.

The South Australian Government fully supported the establishment of the National Crime Authority in 1984. The Government agreed initially in May 1986, to the National Crime Authority undertaking investigations in South Australia as part of a national reference into organised crime, drug distribution and associated criminal activities. It was that investigation which resulted in the apprehension and subsequent conviction of Barry Malcolm Moyse and his criminal associates.

That initial investigation resulted in an interim report of the National Crime Authority, which was received on 29 July 1988, and which identified a number of matters requiring further investigation. A number of initiatives were set in place as a result of this report, and these initiatives were outlined to the House in my ministerial statement of the 16 August 1988—within three weeks of its receipt.

At that time the Government indicated that a ministerial committee of the Minister of Emergency Services, Attorney-General and Police Commissioner would consider the National Crime Authority's report and recommendations. It should be emphasised that the National Crime Authority itself did not recommend a royal commission; nor indeed did it recommend the establishment of an office of the authority in this State. Rather, it recommended the establishment of an anti-corruption unit which would work with the State police to fight corruption.

The ministerial committee considered the NCA report, and officers had discussions with Commissioner Tony Fitzgerald Q.C., Mr Justice Stewart and Mr Peter Clark of the NCA and Mr Eric Strong of the NCA, formerly of the New South Wales Police Internal Security Unit. Following these discussions and further consideration by the ministerial committee, it was decided that, because it already had coercive powers and could act nationally, the NCA was the most appropriate body to deal with the further investigations required.

Coercive powers, whereby persons can be compelled to appear and answer questions and produce documents, would not have been available to any anti-corruption unit without specific legislation. The ministerial committee considered that a proliferation of investigative bodies with such special coercive powers around Australia was not desirable or necessary. Further, the jurisdiction of the anti-corruption unit would not extend beyond South Australia. An NCA office then represented the best option—it had the necessary powers and could act nationally. The Government invited the NCA to establish an office and provided the necessary finance. That decision was announced on Thursday 29 September 1988.

The Government had always been prepared to support an NCA office in South Australia should the authority consider it necessary. The Opposition's assertions that the Government opposed or resisted the establishment of an NCA office in South Australia are false. On 19 May 1988, in response to a question about a permanent office for the NCA in South Australia, the Deputy Premier, Dr Hopgood, stated:

> It's up to them, and if they did we would put no obstacles in their way.
>
> (*News* 19/5/88)

The South Australian Police Commissioner, Mr Hunt, also supported an NCA office in South Australia. On 20 May 1988, he said:

> If the NCA wish to set up a base in Adelaide, I would welcome it if they deemed it desirable.
>
> (*Advertiser* 20.5.88)

The setting up of an office has already occurred; the newest member of the National Crime Authority, Mr LeGrande, took up his appointment at the end of last year and the first public hearing has been held.

The NCA has indicated that it will investigate the allegations that have been made publicly in the media and Parliament to date. It has also called for members of the public to come forward. There is now an obligation on all those within and without the Parliament to cooperate with the NCA.

It should be noted that, with respect to a number of allegations, approaches have been made by me or the Police Commissioner for evidence to support the allegations. Little evidence has been forthcoming. This is despite the fact that I offered the Crown Prosecutor, if people were reluctant to go to the police, and agreed in principle to pay the reasonable legal costs of any person who wished to come forward

to enable him or her to consult private legal practitioners so as to determine the best way to put his or her allegations before the appropriate authorities. Liberal Senator Hill has produced nothing, the Hon. Mr Gilfillan nothing and Mr Bob Bottom nothing. This is despite the fact that Mr Bottom, in the *Sunday Mail* on 8 May 1988, indicated that there were areas of concern with respect to bribery of public servants and secret commission in hospitals, roadworks, and building rezoning. Now that the NCA is established here, there is an obligation on all these people to substantiate the allegations previously made. The South Australia police have already carried out extensive inquiries into many of the allegations made. These will be available to the NCA.

Further yesterday in Parliament, the Government tabled directions to the Police Commissioner, under the Police Regulation Act, which have established an 'Anti-corruption Unit' within the South Australian police with oversight by an independent auditor. The Anti-corruption Unit will be responsible for dealing with all allegations of corruption, whether against the police or other public officials. The structure to deal with past and future allegations is thus in place. There is no need for this Bill.

The Opposition's approach to this issue has been characterised by unabashed opportunism. It has had no coherent or consistent policy. It still has not been able to outline a definitive policy or program for dealing with allegations of corruption.

The Opposition originally rejected the Democrats' proposal for an Independent Commission Against Corruption. On 9 May 1988, the Hon. Mr Griffin said:

> One has to question whether that sort of operation can be justified in South Australia when we have the NCA, the Police Complaints Authority, the Corporate Affairs Commission and the State and Federal police.
>
> (*Advertiser* 9.5.88)

On 30 September 1988, he claimed, in response to the Government's proposal, that an NCA office in South Australia was a step in the right direction:

> The NCA has got very wide powers and adequate resources and it will bring all its fire power to bear on corruption wherever it may exist.
>
> (*News* 30.9.88)

However, by 12 October 1988, the Leader of the Opposition, Mr Olsen, was calling for the appointment of an all-Party committee of both Houses of the Parliament to inquire into allegations of corruption. (*Hansard* 12.10.88 at page 960). That was notwithstanding his view:

> The nature of allegations so far made do not, in the view of the Liberals, warrant an independent, permanent commission—although a final decision on this further step should not be made until this committee (the all-Party committee of both Houses) has reported to Parliament.
>
> (*News* 13.10.88)

Just two days after the call for an all-Party committee and the statement that the nature of the allegations did not, in the view of the Liberals, warrant an independent permanent commission, the Leader of the Opposition issued a news release stating:

> The State Opposition says there are now grounds for the Bannon Government to consider a royal commission into drug-related corruption.

On 30 November 1988, the Opposition came the full circle and threw its weight behind the Gilfillan Bill.

**The Hon. K.T. Griffin:** That's not correct. You know it's not correct. Look at *Hansard*. Someone has written this for you.

**The Hon. C.J. SUMNER:** They have not. I have written it myself.

**The Hon. K.T. Griffin:** You haven't bothered to read *Hansard*.

**The Hon. C.J. SUMNER:** I know what you said in *Hansard*.

**The Hon. K.T. Griffin:** You haven't read it.

**The Hon. C.J. SUMNER:** You said that you supported the Bill at the second reading stage. That is support for the Bill.

**The Hon. K.T. Griffin:** It is not support for the Bill.

**The Hon. C.J. SUMNER:** What is it then?

**The Hon. K.T. Griffin:** It is support for the second reading to allow the Bill to be considered further.

**The Hon. C.J. SUMNER:** The fact is that you have supported the Bill.

**The Hon. K.T. Griffin:** We have not supported the Bill. We have supported the second reading. That is not supporting the whole thing. You read it.

**The Hon. C.J. SUMNER:** I have read it in full.

*The Hon. K.T. Griffin interjecting:*

**The PRESIDENT:** Order!

**The Hon. C.J. SUMNER:** I have read the honourable member's contribution. He did not address any of the serious issues about the Bill or about the breaches of fundamental rights which are involved in the Bill. The honourable member indicated that the Opposition was going to support the Bill.

**The Hon. K.T. Griffin:** We said that we would support the second reading.

**The Hon. C.J. SUMNER:** I am not sure what the difference is between supporting the second reading and supporting the Bill.

**The Hon. K.T. Griffin:** If you do not know—

**The PRESIDENT:** Order!

**The Hon. C.J. SUMNER:** Clearly, supporting the second reading is supporting the Bill—at least at this stage.

**The Hon. K.T. Griffin:** Now you're qualifying it.

**The Hon. C.J. SUMNER:** That is support for the Bill. There is no question about that. The Government has acted whilst the Opposition has been casting about for a position, changing position at whim.

I will conclude by reference to the *Australian* legal affairs writer David Solomon on 18-19 June 1988 when commenting on the New South Wales Independent Commission Against Corruption:

> The ghost of Senator Joe McCarthy, the man who gave his name to modernday witch-hunts has been called up by the controversial law to create the Independent Commission Against Corruption (ICAC) in New South Wales... ICAC, too, has the power to destroy lives and careers and in the same way as McCarthy by smear and publicity. Guilt may or may not have any bearing on the consequences for those selected for ICAC treatment.

The Government has taken the initiative and invited the National Crime Authority to establish an office here. It has put up the money to fund this office in Adelaide and that office is now functioning. It would be wasteful of public funds to establish another body to duplicate the work of the NCA. For these reasons, and the attack on society's basic rights in the Bill, I oppose this Bill as neither necessary nor desirable.

**The Hon. J.C. IRWIN** secured the adjournment of the debate.

## PRISONERS (INTERSTATE TRANSFER) ACT AMENDMENT BILL

**The Hon. C.J. SUMNER (Attorney-General)** obtained leave and introduced a Bill for an Act to amend the Prisoners (Interstate Transfer) Act 1982. Read a first time.

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

*That this Bill be now read a second time.*

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

Leave granted.

**Explanation of Bill**

The object of this Bill is to give effect to an agreement between the States, the Commonwealth and the Northern Territory to amend uniform legislation relating to the interstate transfer of prisoners to provide a transfer mechanism for those persons imprisoned for Commonwealth offences or joint Commonwealth-State offences.

The model provisions, prepared by the Parliamentary Counsel's Committee, have now been enacted in Queensland, Tasmania, Western Australia and New South Wales. This Bill conforms with the model provisions with minor changes having been made to reflect the existing South Australian law.

The provisions of the Bill are as follows:

Clauses 1 and 2 are formal.

Clause 3 amends the definition section. The principal changes are the insertion of definitions of 'Territory' and 'State' (which now includes the Northern Territory) and the corresponding definitions of the relevant Ministers. 'Commonwealth sentence of imprisonment' is distinguished from 'State sentence of imprisonment'. 'Joint prisoner' means a person subject to both a Commonwealth and a State sentence of imprisonment. The rules for deciding at what point a sentence of imprisonment has been completed are set out in new subsection (7).

The remainder of the clauses of the Bill deal with all the amendments consequential upon the necessity to refer to territories and the Commonwealth as well as to participating States. References to 'superintendent' of a prison are deleted and 'manager' is substituted. New sections 8, 16a and 21 make it clear that State orders made in relation to joint prisoners have no effect unless a corresponding Commonwealth order is in existence.

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

## MARKET ACTS REPEAL BILL

Second reading.

**The Hon. BARBARA WIESE (Minister of Tourism):** I move:

*That this Bill be now read a second time.*

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

Leave granted.

**Explanation of Bill**

The purpose of this Bill is to repeal the Market Clauses Act 1870, the East End Market Act 1872 and the Adelaide Fruit and Produce Exchange Act 1903. The establishment of the East End Market involved these three Acts of Parliament. The 1872 and 1903 Acts were private Acts (known as special Acts) for the purpose of giving private citizens the powers and privileges to establish markets which were used for the public benefit. These special Acts incorporate the provisions of a public Act dealing with the establishment of statutory markets generally; the Market Clauses Act 1870. Provisions of this Act only relate to the 1872 and 1903 Acts.

With the closure of the East End Market at the end of September 1988, these three market Acts have become obsolete. They have no relevance to the establishment and operation of Adelaide's new wholesale produce market at Pooraka developed by Adelaide Produce Markets Ltd. The site of the East End Market is being developed for commercial, retail and residential uses in a major project being undertaken by the East End Market Company. Advice to the Government indicates that the East End Market Act and the Adelaide Fruit and Vegetable Produce Exchange Act may limit the use to which the land at the East End Market site can be put in the future and inhibit the proposed redevelopment by retaining an obligation to conduct markets. In order to remove these impediments and because these Acts serve no further useful purpose, these three Acts should be repealed.

Clause 1 is formal. Clause 2 repeals the Market Clauses Act 1870, the East End Market Act 1872 and the Adelaide Fruit and Produce Exchange Act 1903.

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

## STAMP DUTIES ACT AMENDMENT BILL

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

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

*That this Bill be now read a second time.*

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

Leave granted.

**Explanation of Bill**

The Government has concerns regarding two situations in which tenants of the South Australian Housing Trust wishing to purchase either full or part equity of the home they are residing in and as a consequence take advantage of the concessions that apply to all first home buyers are, in fact, discriminated against under the current terms of section 71c of the Stamp Duties Act 1923.

The first situation occurs within the rental purchase scheme. This scheme forms part of the South Australian Government's Home Ownership Made Easier Program. The scheme is jointly administered by the South Australian Housing Trust and the State Bank and is designed to assist low income earners to purchase a home. It is a low deposit program (minimum $500) that enables the most marginal low income earners to enter home ownership.

Under the rental purchase scheme, the Housing Trust purchases an approved property on behalf of the purchaser. The purchaser then enters into an agreement for sale and purchase with the Housing Trust. The title of the property remains in the name of the Housing Trust until the purchaser makes the final payment. This reduces costs in times of default and avoids lengthy processes in foreclosing a mortgage.

The Housing Trust has the first option to buy at current market value should the purchaser wish to sell the property at any time. In cases where the Housing Trust does not wish to exercise its options, purchasers may sell the property on the open market.

When property is sold on the open market a double transfer of title occurs, from the Housing Trust to the original purchaser and then to the new purchaser. Under this arrangement, the original purchaser is required to pay

the costs associated with the preparation, execution, stamping and registration of the initial memorandum of transfer.

Section 71c of the Stamp Duties Act deals with concessional rates of duty in respect of the purchase of a first home. This section provides for the concessional duty applicant to occupy the dwelling house, the subject of the transfer, as their principal place of residence within 12 months of the date of conveyance. Hence, this section currently precludes those Housing Trust rental purchase clients selling their properties on the open market from receiving any concession on stamp duty payments, even though the property in question may have been their principal place of residence for a considerable period of time. These clients are also ineligible for any concession in the future, as they can no longer be classified as first home buyers.

An amendment to section 71c of the Stamp Duties Act is required to ensure that first home buyers purchasing and selling homes on the open market, under the rental purchase scheme, are eligible for stamp duty concession. Such an amendment would be effective from the first day of February 1988, in order to rectify the status of applications rejected since this time.

The second situation occurs within the HOME trust shared ownership scheme which was established in August 1986. The scheme assists trust tenants to purchase part and eventually all of their trust home in affordable stages.

Under this scheme tenants may purchase an initial 25 per cent share of their home at the current house value. Subsequent tenant purchases must be a further minimum 10 per cent of current house value.

Purchasing tenants are able to sell a part or full share in the house at any time. First option to repurchase is currently held by the trust on properties which, due to their design or location, would be difficult to replace.

As section 71c of the Stamp Duties Act allows only one exemption for first home buyers up to $50 000, tenants participating in HOME trust shared ownership are eligible for concessions on stamp duty on only the first purchased share as are other first home buyers.

As most purchases under HOME trust shared ownership are less than $50 000, tenants purchasing subsequent shares are disadvantaged by comparison with normal first home buyers purchasing full titles. Tenants participating in this scheme will receive less benefit from stamp duty exemptions than higher income purchasers in the open market. This clearly is not the intention of the Act.

Change to the Stamp Duties Act to allow HOME trust shared ownership purchases the same overall benefits as full purchases would add to the scheme's attractiveness and marketability.

Clause 1 is formal. Clause 2 provides that the measure will be taken to have come into operation on 1 February 1988.

Clause 3 sets out various amendments to section 71c of the principal Act. The first amendment will allow applicants to be in occupation of the dwelling house at the date of the conveyance, instead of the present requirement that they must intend to move into the house. The existing provision has caused difficulties when Housing Trust tenants are selling their interest in the house and moving out. The amendment is of general application as the same problem arises whenever a tenant purchases the house that he or she has been occupying. The second amendment ensures that an interest under an agreement with the Housing Trust relating to the purchase of the particular dwelling house is not considered to be a relevant interest under subsection (1) *(b)*. The third amendment will allow the concession to apply to a series of conveyances under the one agreement for the purchase of a Housing Trust home.

Clause 4 provides that the amendments effected by the measure apply to conveyances lodged with the Commissioner of Stamps on or after 1 February 1988.

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

## SUPERANNUATION ACT AMENDMENT BILL

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

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

*That this Bill be now read a second time.*

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

Leave granted.

### Explanation of Bill

The purpose of this Bill is to make a series of technical amendments to the Superannuation Act 1988. The Superannuation Act continues the South Australian Superannuation Fund established for the purpose of providing superannuation benefits to employees of the Government and a large number of the public authorities.

Since the Superannuation Act 1988 came into operation on 1 July 1988 several minor problems have become apparent. The amendments contained in the Bill will ensure the smooth operation of the superannuation schemes. Some clarification is also introduced into certain provisions of the Act.

As well as the amendments dealing with calculations and providing clarification under the Act, there are several others that deal with technical problems associated with more general issues.

It has been recognised that the provisions of the Act do not adequately cater for a situation where an employee under the Government Management and Employment Act resigns to take up employment with, say, the Country Fire Services Board. An amendment is to be made which will enable the contributor to the scheme to remain a member where there is a break in Government service of not more than one month. This will allow a sensible continution of the employee's membership.

Similarly, the Act does not adequately cater for school teachers who are on a contract for a whole school year and have their contract expire in December. Often these teachers are re-employed on another contract for the school year starting in the following February. An amendment is to be made that will prevent these school teachers being forced to leave the superannuation scheme just because the school year finishes. The intention of the Act is that if you apply to become a member of the scheme and your only employer remains the Government, you shall remain a contributor to the scheme.

An amendment is to be made to section 45 of the Act to enable persons in receipt of an invalidity or retrenchment pension to earn a limited amount of income from outside the Government. The total amount of pension plus other income earned from remunerative activities will be restricted to the amount of salary applicable to the pensioner's position before ceasing duty. This was the situation under the repealed superannuation Act and the Government believes that a similar provision should apply under the new Act.

The amendment will encourage rehabilitation and re-establishment.

The provision under section 46 dealing with the payment of benefits to a lawful and putative spouse is to be amended to make it clear that the Superannuation board cannot be required to make payment to a spouse where the board has already made payments to another spouse on the basis that that person was the only surviving spouse of the deceased contributor. The provisions will ensure that the board is not liable for two sets of spouse benefits in respect of one contributor.

The Bill introduces a provision to the Act which provides for the appropriation from revenue of the money required to meet the employer costs of the benefits provided under the scheme set up by the Act. The repealed Act had a similar provision to ensure the automatic supply of moneys required to meet the promised benefits under the Act.

Clauses 1 and 2 are formal.

Clause 3 amends section 4 of the principal Act. Paragraph *(a)* amends the definition of 'notional salary' to cater for contributors who are employed part-time or on a casual basis. The amendment made by paragraph *(b)* will allow for exceptions to be made by regulation to the exclusion of accommodation expenses etc., from the definition of 'salary'. Paragraph *(c)* amends paragraph *(e)* of the definition of 'salary'. This amendment will allow a contributor who has received higher duties allowance for more than 12 months to have benefits calculated on salary including the higher benefits even though the higher benefits had not been included in salary for the purposes of calculating contributions. This will maintain the position that existed under the repealed Act. Paragraph *(d)* inserts two new subsections into section 4. Subsection (5) sets out a formula for calculating the amount that would be credited to a contributor's account if the contributor had contributed at the standard rate. Without this formula interest accruing on notional contributions over a period of (say) 30 years would have to be calculated. This task, if not impossible, would be far too difficult and time consuming. Subsection (6) ensures that a person who changes jobs from one employer to another in the public sector does not lose his status as a contributor to the Fund. It also caters for teachers on contract from year to year. These contracts expire with the school year in December and the contract for the next year does not commence until the commencement of the new school year.

Clause 4 is consequential on the amendment made by clause 12.

Clause 5 tightens section 23 (7). The intention is that before contributions cease a contributor must have accrued contribution points equal to the number of months between entering the scheme and his age of retirement. He must also have at least 360 points. The change affects contributors who joined before the age of 30.

Clause 6 will prevent disability pension and recreation leave or long service leave being paid simultaneously.

Clause 7 adds brackets to the formula in section 34 (2)*(c)*.

Clause 8 makes it clear that a temporary disability pension cannot be paid to a contributor after reaching the age of retirement.

Clause 9 provides for the rate of indexation in section 39 of the principal Act.

Clause 10 will allow a pensioner to earn other income to a level that together with the pension does not exceed his salary before cessation of employment.

Clause 11 clarifies section 46 of the principal Act.

Clause 12 amends section 48 of the principal Act which provides for refunds to a contributor or his estate in certain circumstances. New subsection (1) applies where the original subsection applied but provides also for the case of a contributor who resigned and preserved his entitlement to a pension but dies before the age of retirement leaving no spouse or dependent children. New subsection (3) ensures that where a contributor has contributed at a rate exceeding the standard contribution rate the excess will not be charged with any pension or lump sum previously paid to or on account of the contributor pursuant to subsection (2).

Clause 13 provides for appropriation.

Clause 14 amends clause 6 of schedule 1 to the principal Act.

Clause 15 amends clause 9 of schedule 1.

Clause 16 replaces clause 10 of schedule 1. The new clause provides for the continuation of pensions that commenced under pre 1974 legislation.

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

## STATE TRANSPORT AUTHORITY ACT AMENDMENT BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendments, and made consequential amendments.

## ADJOURNMENT

At 6.24 p.m. the Council adjourned until Thursday 23 February at 2.15 p.m.