Labor politics from Dunstan to Rann.

by C J Sumner

A Commentary on *A View from the Horizon, My Life in Politics and Beyond.* Peter Duncan (Wakefield Press 2024).

Author: Christopher Sumner AM was a barrister and solicitor from 1967 to 2022. He was a Member of the South Australian Legislative Council from 1975 to 1994 and the holder of numerous ministerial portfolios including, as a successor to Peter Duncan, holding the office of Attorney-General in the Corcoran, Bannon and Arnold Labor Governments. From 1995 to 2012 he was a Member/Deputy President of the National Native Title Tribunal (email: csumner@bigpond.net.au).

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Introduction.

The Commentary has been prepared for anyone interested in Peter Duncan's book and generally in Labor politics in the Dunstan, Corcoran, Bannon, Arnold and Rann years in Government. It is a work in progress and responses are welcome, particularly factual corrections. More formal publication may follow (email: csumner@bigpond.net.au).

My motivation has been two-fold. To correct the innumerable errors which appear in Duncan's book and to attempt to defend the dead people whose reputations have been traduced and who can no longer defend themselves. My main aim is to ensure factual accuracy in so far as this is possible when dealing with sometimes contested historical events.

I do not subscribe to a version of history that involves clear blue lines or that can generally attribute to famous people exclusive responsibility for policies or actions. History is much more nuanced. In a proper functioning democracy change occurs generally in response to changes in community attitudes that evolve over time. Few people in public life can claim to be exclusively responsible for change or reform. Don Dunstan and Gough Whitlam came to power after long periods of conservative rule and can justly claim to have been catalysts for reform. Even then much of what they achieved needs to be leavened with the reality that it wasn't all about them. It was a collective effort (for an assessment of the Dunstan Government, see Andrew Parkin & Allan Patience, eds, *The Dunstan Decade, Social Democracy at the State Level,* Longman Cheshire, 1981).

Duncan's book for the most part takes a different approach; it is mostly about him with little acknowledgment that the origins of what he did are more complex than he makes out. His assertions throughout the book that Labor Governments after that of Dunstan (with him as Attorney-General) did nothing significant can easily be shown to be wrong and littered with inaccuracies and half-truths.

Duncan has nothing positive to say about any State Labor Governments after Dunstan except that of Premier Lynn Arnold. He is scathing about them all. This Commentary amply demonstrates that, at least in the Bannon Government in which I spent most of my ministerial career, there is no reasonable basis for his excessive criticism. The one Government for which he makes no criticism is the Arnold Government which had a very short tenure of 15 months in 1992-93. The implication that the Arnold Government had more Labor or reform runs on the board than Bannon, Rann or Weatherill is unsustainable.

Lynn Arnold wrote what can only be described as a hagiographic Foreword. Without qualification he repeats many of the factual inaccuracies and regrettably implies his agreement with Duncan's conclusion about his former colleagues. He asserts there is no self-congratulation when in fact a large part of the book is of this character, something about which readers can come to their own conclusions.

The following are some examples of Duncan's attacks:

> (p 147). *Most people would be hard pressed to remember much about the Corcoran, Bannon, Rann or Weatherill Governments, or anything they achieved, except perhaps for the Bannon State Bank disaster.*
>
> (p 110-111). *Don was very disappointed with Bannon as were we all. Apart from the collapse of the State Bank and being focused simply on winning government rather than on policies to assist the electorate, the Bannon Government achieved little of note. Rather than a reformer, he was a manager, and considering the State Bank disaster, not a very good one. The common thread throughout the Bannon years was extreme caution.*
>
> (p 248). *Labor governments either try to reform society or manage it. Unfortunately, in the past 40 odd years, the managerialists have held sway. They could just as easily have left it to the Liberals.*
>
> (p 110). *Bannon had portrayed himself as a younger Dunstan*. This is not true, like many of us who joined the Labor Party in the mid-1960s, John Bannon admired and supported Dunstan. But they were very different personalities.
>
> (p 127). … *good people [who] entered those Cabinets* [Bannon, Rann and Weatherill] '*went to water'.* A statement attributed to Bob Mack and endorsed by Duncan.
>
> (p 129). *ultra cautious Bannon … Dunstan had awoken South Australia. Sadly, Bannon sent it back to sleep*. The context for this statement was the failure to find a job for Dunstan after his return from Victoria which is dealt with below.

Structure of Commentary.

The Commentary deals with 1. Matters of legislation and policy with which Duncan was involved and for which he claims credit. 2. Other topical issues in which he was involved. 3. Defaming the dead and other personal attacks. 4. Factual errors. 5. Final reflections and comment on Bannon and Rann Governments.

Like many people who served in senior Ministerial positions, Duncan can legitimately claim credit for some of the initiatives taken by him. Regrettably his claims are often exaggerated and fail to acknowledge the work of other people including other Ministers and MPs including some Liberals and the Labor Party generally. Some are just wrong.

1. Claimed legislative and policy initiatives.

A. *Abolition of capital punishment.*

Duncan (58) regards the abolition of capital punishment as his most notable achievement. He had the privilege of being the responsible Minister (Attorney-General) in a Labor Government when the death penalty was finally abolished in 1976. This was a long-standing Labor Party policy which Duncan was carrying out.

South Australian majority Labor Governments early in the twentieth century (e.g. John Verran) were strongly abolitionist and did not carry out the death penalty even though it was mandatorily imposed by the Supreme Court.

There was nothing unique about Duncan's role in the preparation or implementation of this legislation. Dunstan had introduced legislation for the abolition of capital punishment during the Stuart case controversy in 1959 (Don Dunstan, *Felicia*: *The political memoirs of Don Dunstan*, South Melbourne, Vic. MacMillan, 1981,76). Labor Governments tried unsuccessfully after the 1965 and 1970 elections, but abolition was blocked by the Legislative Council. Duncan acknowledged that his *Statutes Amendment (Capital Punishment Abolition) Bill* was in substantially the same terms as that which failed to pass the Parliament in 1971, ie, before he became an MP (*Hansard,* House of Assembly, 5 August 1976, 459). The critical factor in securing its passage was the July 1975 election when Labor elected 6 members to the newly democratised Council (incidentally the first and only time this has happened).

Community attitudes had changed, the last SA execution had been in 1964. (Glen Sabre Valance). The legislation was not groundbreaking nationally as capital punishment was abolished in Qld in 1922 (last execution 1913), NSW in 1955, except for piracy and treason (last execution 1944), Tasmania in 1968, and in Victoria in 1975. For Commonwealth offences, abolition occurred under the Whitlam Government in 1975. The death penalty had already been abolished in many countries (Barry Jones ed, *The penalty is death.* Sun Books, Melbourne, 1968).

B. *Criminal Law (Sexual Offences) Amendment Act 1975.*

This legislation which came into effect on 25 September 1975 decriminalised homosexual acts between male consenting adults. Little credit is given to anyone else on this topic. There is a lot more nuanced history than that which Duncan acknowledges. Dunstan in 1965 obtained Cabinet and Caucus approval for this measure but did not proceed with it because of concerns from some Members that the public weren't ready for it (*Felicia,* 126-127). Dunstan was aware of the *Wolfenden Report* on homosexual offences and prostitution recommendations in the UK in 1957 on which his proposal was based but agreed not to proceed because of the concerns expressed. He would have been aware of the political controversy the proposal would have engendered.

It was Liberal Member of the Legislative Council Murray Hill who introduced the first Bill to remove the offence of buggery which had existed in the criminal law for centuries and decriminalise homosexual acts between male consenting adults in private. It was introduced on 26 July 1972 after Dr George Ian Duncan was killed on 10 May 1972 by off duty police officers from the Vice Squad who threw him into the River Torrens. While no one has been convicted of any crime I am satisfied this is the case. The Hill Bill was based on the legislation passed in the UK in 1967 which had followed the recommendations of the *Wolfenden Report*. The decriminalisation applied to no more than two males in private over the age of 21 years. It did not extend equal rights in the criminal law to all persons whether heterosexual or homosexual. E.g. there was a different and lower age of consent for heterosexual acts.

Liberal Leader of the Opposition in the Legislative Council Ren DeGaris successfully moved amendments to this Bill which negated decriminalisation as originally proposed. The amended Bill maintained the criminality of the offence of buggery but provided that the accused person had a defence if the act occurred in private between consenting adults.

Although by this time the age of majority in SA had been reduced to eighteen years, Hill kept the previous adult age of twenty-one, which was consistent with the UK legislation. He was being cautious, and it is likely he thought this might make the legislation more acceptable to opponents of the Bill in Parliament and the public.

Duncan (44) says that the Bill as amended by DeGaris which *"effectively reversed the onus of proof"* had been *"supported by Hill"*. This does not tell the full story. In accordance with normal Parliamentary procedure, after the Hill Bill was amended by the Legislative Council, it was sent to the House of Assembly where it was introduced by Liberal Member David Tonkin.

There was extensive debate and Labor Member Don Hopgood successfully moved an amendment to reinstate the decriminalisation clause as originally proposed by Hill. There was also an amendment to reduce the age to eighteen years. On 18 October 1972 the Third Reading in the House of Assembly was passed by 26 votes to 9 with 4 pairs on each side (*Hansard,* 2220). This meant that there were 30 Members of the House of Assembly in favour of Hill's original decriminalisation proposal with the modification of the age of consent. In accordance with regular Parliamentary procedures the Bill was then returned to the Legislative Council to enable it to consider the amendments made by the House of Assembly. The age of consent of 21 years was reinstated by the Council. Hill then moved to agree to the House of Assembly amendments which would have reinstated the terms of his original decriminalisation Bill, but this was defeated. (*Hansard,* Legislative Council, 25 October 1972, 2379).

The Bill was returned to the House of Assembly where the options available were to insist on its amendments and return the Bill to the Legislative Council for further consideration or not insist and allow the Bill to pass in the form amended by DeGaris. When returned to the Legislative Council there would have been the option of it requesting a conference with managers from the House of Assembly to try to resolve the issues in dispute or just lay the Bill aside. On 25 October 1972 Tonkin moved that the House of Assembly not further insist on its amendments. He expressed regret that this was necessary but feared the loss of the Bill if they did insist. Dunstan supported the motion also with regret and based on inquiries that had been made which made it obvious that the Legislative Council would lay the Bill aside and not request a conference of managers of both Houses to consider the Bill if the amendments were insisted upon. (*Hansard,* House of Assembly, 25 October 1972, 2454, 2455). Although not satisfactory to these Members and the House of Assembly it represented some improvement in the law (Hopgood, 2456). They were not prepared to lose the Bill altogether.

Interestingly, the one Member who wanted to press the issue with the Legislative Council and test whether it would agree to a joint conference of managers was the Minister of Education Hugh Hudson (Hudson, 2455). On other issues Duncan is critical of Hudson.

The House of Assembly motion to not insist on its amendments was passed on the voices (i.e. without a division) and it is clear that, apart from Hudson, the House of Assembly Members who favoured decriminalisation all decided, as did Hill himself, to accept the Hill Bill as amended by De Garis. There would be less confusion over this issue if the unsatisfactory 1972 legislation was referred to as the DeGaris Bill.

The important point from Parliament's consideration of this issue in 1972 is that the great majority of House of Assembly Members supported decriminalisation. This included Attorney- General Len King QC, a Catholic, who elsewhere Duncan unfairly criticises for reluctance to take on social reform (54). Don Hopgood an active and prominent Methodist also supported the Bill. In accordance with longstanding Christian belief both regarded sodomy as a sin but considered that the criminal law should no longer apply to it.

Given this history it is curious that in *Felicia* (202) Dunstan wrongly says that the Bill introduced by Hill provided for the defence in the form DeGaris had amended it whereas in fact it was originally for decriminalisation based on the UK model of 1967. This mistake is often made. Even Justice Michael Kirby, usually known for his fastidious attention to accuracy, has said that Hill's proposed legislation did not decriminalise male homosexual acts but provided a defence if the accused persons could prove that the sex involved was private, adult and consensual (Michael Kirby, "Dr George Ian Duncan Remembered" (2016) 37 (1) *Adelaide Law Review*.)

It is in this context that Duncan on 19 September 1973 and on 27 August 1975 introduced his Private Member's Bills, both before he became Attorney-General. He says (47) that after his 1973 Bill was defeated in the Legislative Council, he again introduced the Bill which he suggests was 1974 and which was also defeated. This is not accurate, another albeit relatively minor error, but consistent with much of the book. Duncan did not reintroduce the Bill in 1973 or 1974, but the original Bill was considered twice by the Legislative Council in 1973. First, on 21 November 1973 (*Hansard,* 1848) when Cec Creedon a Labor Member who supported the Bill missed the division, and the vote was 8 all allowing the President (Sir Lyell McEwin) to cast his vote against it.

On 28 November 1973, Labor MLC Brian Chatterton, then adopted a little used procedure of moving again that the Bill be read a second time as the non-appearance of Creedon was a mistake. On 29 November (*Hansard*, 2091) on the third reading Creedon was present and on the division, there was a majority of one (8 to 7) for passing the Bill. McEwin then drew attention to the *Constitution and Electoral Acts Amendment Act* 1973 which had been proclaimed to operate from 22 November 1973. This Act dealt principally with the changes to the voting system for the Legislative Council which introduced the system of electing eleven Members (half the Council) each election by proportional representation applying to the whole of the State. As part of that Act a power was given to the President, where a casting vote had not been used, to express concurrence or non-concurrence with the second or third reading of certain Bills. McEwin used this power to express his non- concurrence with the Bill thus producing an equality of numbers and allowing the Bill to lapse.

In 1983, in the context of debate on the *Maralinga Tjarutja Land Rights Bill* and a possible close vote, the issue of whether the President could use the concurrence/non concurrence power in the same way as McEwin had done in 1973 was raised.

I provided advice to the Legislative Council and President Arthur Whyte (*Hansard,* 8 December 1983, 2534) based on the opinion of the Solicitor-General M F Gray QC (supported by J J Doyle QC and A R Castan QC) that what McEwin had done in 1973 was not a valid use of the power on which he had purported to rely (as it was available only for matters requiring an absolute majority to amend the *Constitution Act)*.

The shadow Attorney-General K T Griffin disagreed with this opinion, and it is not known what view the President would have taken in 1983 as he was not called upon to use this provision as agreement had been reached on the Bill.

I have no knowledge whether in 1973 Duncan was aware of what might happen. I must assume that the Government (Dunstan and King in particular) were not aware of the implications for Duncan's Bill of bringing the amendments to the *Constitution Act* into effect. No issue was raised by Labor Members in the Legislative Council about the use of this procedure by the President, but it is reasonable to assume, given his staunch opposition to the reform, that McEwin would not have changed his mind.

It is a quirk of history that, had Creedon not missed the division on 21 November 1973, or the *Constitution Act* had been proclaimed to operate after 29 November, or submissions had been made to McEwin which he had accepted that he had no power to act as he did to block the Bill, then Duncan's Bill would have passed in 1973. The writing was clearly on the wall for its opponents.

Duncan laments that the legislation is often said to be a Dunstan Government initiative although they were not Government Bills and Dunstan had nothing to do with the drafting of them. Duncan should know how things work in politics. In popular discourse most initiatives of Ministers, and even private members' Bills, are labelled according to the name of the Premier at the time. It is a cross we minor functionaries must bear.

Duncan exaggerates the difficulty he had with these Bills (48, 50 -51), saying that reform was only supported by a small, enlightened elite. In fact, much of the hard work in debate on the Bill had occurred in 1972. Undoubtedly there was strong opposition from some in the community, particularly from some religious groups and the Festival of Light. The reality is that the main obstacle to reform was the Legislative Council which rejected attempts at decriminalisation made first by Hill and then Duncan before it was eventually passed in 1975.

As with abolition of the death penalty, once Labor had six Members elected to the Legislative Council in 1975, its 10 members along with two Liberal Movement Members meant that decriminalisation was always going to pass. Someone else would have taken up the cause, perhaps even Murray Hill the originator of the process in 1972. Duncan concedes (48) that there was never an issue in the House of Assembly (amply demonstrated by the overwhelming vote in 1972).

In addition, there had been a change in community attitudes. Even before the Hill Bill was introduced, *The Advertiser* on Saturday 1 July 1972 editorialised in favour of decriminalisation. Most of the mainstream churches had come to accept the change. In 1957 the General Assembly of the Church of England supported the *Wolfenden Report* recommendations.

On 1 September 1973 the Adelaide Anglican Archbishop Dr Rayner, while not condoning homosexuality, expressed the view "*that the sanctions of the criminal law were not the best way of dealing with the deep and complex problems associated with homosexuality"* (Tim Reeves, *The Death of Dr Duncan*. Wakefield Press 2022, 178-179)**.**

On 18 October 1973 the House of Representatives, on a motion of John Gorton, former Liberal Prime Minister, expressed the opinion that homosexual acts between consenting adults should not be subject to the criminal law, a motion agreed to by 64 votes to 40 with ten of the eleven South Australian Members in the majority (*Hansard*, Legislative Council, Hill, 1505). This could only be an expression of opinion but in 1976 the Fraser Government approved legislation to the same effect to be applied in the ACT which had first proposed it in 1973. Had the ACT had self-government in 1973 it would have been the first jurisdiction in Australia to act on homosexual decriminalisation.

In June 1974 the SA Labor Party officially adopted at State Council a policy in support of decriminalisation. The issue remained a conscience vote which meant that individual Members were not bound by the policy, but Duncan knew he had the general support of members of the ALP for the Bill.

Duncan (48) says that opinion polling at the time showed that 60 percent of people were against the proposal and only 17 percent supported it. He provides no reference for this assertion which differs from that contained in the recent book by Tim Reeves. *Reeves* (145) says that, while a survey at about the time Dunstan proposed his original Bill in 1965 showed less than a quarter of respondents supported liberalisation, by 1970 over half advocated the removal of criminal sanctions. Later (175) he cites a poll in *The Bulletin* (5 October 1974, 28) showing that the public was 2-1 in favour of legalising homosexual acts.

Duncan tends to minimise the role played by gay activist groups in 1972 and onwards, whereas Reeves and Hodge (Dino Hodge, *Don Dunstan: Intimacy & Liberty, a political biography*, Wakefield Press, 2014) provide ample evidence of their involvement. Duncan (46) does acknowledge the role of the Council for Civil Liberties which may have come up with the proposal that went beyond the original Hill decriminalisation measure and removed the distinction in the criminal law between homosexual and heterosexual acts.

Unpicking the claim to world first status. As with elsewhere in the book, Duncan overstates the significance of some reforms and his role in them. This detracts from those matters for which he can justly claim credit. Duncan claims (47):

> *My Bill simply altered the law so that males and females, heterosexual or homosexual, were treated in relation to sexual behaviour without distinction. Importantly, it introduced a code of conduct applicable to all people, regardless of gender. The latter was a world-first for South Australia and provided a model for reform, one that has now been copied in dozens of jurisdictions.*

Lynn Arnold elaborates on this statement (Foreword,vii):

> *Perhaps Peter's most notable and memorable achievement was his Private Member's Bill in the South Australian Parliament (1973-75), the first in the Westminster system, worldwide, to treat homosexuals and heterosexuals equally prompting the former High Court Judge, Justice Michael Kirby, to later describe him as 'the father of homosexual law reform in Australia'.*

These statements are ambiguous and give rise to confusion. The rhetoric should have been toned down. The confusion arises because Duncan's Bill did not just deal with decriminalisation although that was the principal issue that was subject to debate.

In his Second Reading speech on 27 August 1975 (*Hansard*, House of Assembly, 503) Duncan says the Bill removes specific references to homosexual acts and provides for a code of sexual behaviour regardless of the sex or sexual orientation of the person. It rationalises the law as between males and females.

It created statutory equality between homosexuals and heterosexuals, established a common age of consent of 17, the same penalties for non-consenting acts and the same restrictions on public acts and penalties. It abolished the offences of buggery, gross indecency and soliciting for homosexual purposes and recognised male prostitution and homosexual rape. (*Reeves,* 170). The Act was also gender neutral using the word "person" in all sections which had previously specified the sex of either the victim or offender. It had harsh penalties for sexual offences against children.

The additional general non-discriminatory measures raised no controversy. In speaking to Duncan's Bill, Murray Hill graciously commended him for his courage in introducing it (*Hansard,* Legislative Council, 31 October 1973, 1505). He pointed out that his original Bill had the one purpose of decriminalising homosexual acts between consenting adults which was of immediate concern to an estimated 14,000 to 25,000 male homosexual South Australians. He thought at the time an approach which dealt with all the anomalies in the law would have been too complex and confusing and not impact on many people anyhow but accepted that Duncan's wider approach was an improvement to the law.

Reeves concludes (170 -171):

> *This indeed was far-sighted legislation, and not only in the gains it made for homosexuals.*
>
> *The 1975 South Australian legislation proved to be a landmark in its approach to the law on sexual offences. It set an example to other Australian States of a more rational approach to regulating sexual behaviour: removing unnecessary distinctions in the way the law treated homosexual and heterosexual behaviour, and limiting the scope for double-standards in the way that men's and women's sexual conduct is viewed by the law* (quoted from Graham Carbery, *Towards homosexual equality in Australian criminal law – a brief history* (Australian Lesbian & Gay Archives, last revised 2014, 9).

In the battle of which jurisdiction led the world on this issue, it is helpful to consider it in two parts, although effect was given to both by the same legislation in SA: first, just the decriminalisation of male homosexual consensual acts in private; and secondly, the broader reform of placing heterosexuals and homosexuals on the same footing in the criminal law. It can readily be acknowledged that in respect of both sets of changes South Australia in 1975 was the first State in Australia to enact them.

To claim the decriminalisation of homosexuality as a world first is clearly wrong. Before 1975 sixty-nine jurisdictions had decriminalised consensual homosexual acts; in other democracies the French in revolutionary mode did so in 1791, Belgium in 1795, Denmark 1933, Norway in 1972 and in some of the States of the USA at various times (see below). In five other countries (Cambodia, North and South Korea, Laos and Vietnam the acts have never been illegal.

In Japan they were illegal for a short time between 1873 and 1882 (Jeane - Francois Mignon, *Decriminalizing Homosexuality: A Global Overview Since the 18th Century*, Hal Open Science, Id hal – 03778162, 15 September 2022). The broader claim of a world first in removing the distinction between heterosexuals and homosexuals in the criminal law cannot be verified and is probably wrong, particularly as in some countries consensual homosexual acts were never criminalised.

Other claims have been made which are more credible, but only when referring to the criminal law. The first in the Westminster system to treat homosexuals and heterosexuals equally (Arnold); that SA's completely non- discriminatory homosexual law reform was the first in the English common law world (*Hodge,* 307 quoting Jamie Gardiner); not only a first for SA and Australia, it was also the first legislation in the English-speaking world to eliminate any distinction in the criminal law between heterosexual and homosexual acts including a common age of consent (*Reeves*, 182, 208).

The role of SA in homosexual law reform is often misstated. At the 2023 Adelaide Festival an oratorio *"Watershed"* directed by Neil Armfield was performed. It told the story of Dr Duncan's killing. Reeve's book was published shortly beforehand and contains an excellent summary of the issues. More recently (14-16 June 2024) *Watershed* has been staged at the Sydney Festival.

An SBS report continued the confusion when it said that SA became the first English-speaking state in the world to decriminalise homosexuality and became the most progressive state in the Western world on gay law reform. (Georgia Maher, Madelaine Wedesweiler, *George Duncan's murder case was never solved but his death changed Australian lives* (SBS, 9 June 2024). Even an anonymous reviewer of Duncan's book (*Vanguard,* expressing the view of the Communist Party of Australia (Marxist Leninist) – wwwcpaml.org), repeats the myth that his private member's bill was the first in the world to decriminalise homosexuality and establish equal rights for homosexuals and heterosexuals for which he is said to be best known.

Under the Westminster system or in the common law world or English-speaking countries, decriminalisation occurred in the UK (1967), Canada (1969), Malta (1973). The Canadian legislation followed that of the UK by decriminalising sodomy and gross indecency if done in private between consenting adults. I assume, but have not been able to verify, that the changes in Malta were similar. In the USA before September 1975 there were twelve States that had removed laws prohibiting homosexual acts, starting with Illinois in 1962 and then Connecticut (1969), Colorado (1971), Oregon (1971), Delaware (1972), Hawaii (1972), Ohio (1972), North Dakota (1973), Massachusetts (1974), New Mexico (1975), New Hampshire (1975) and California (1975).

Other States moved relatively soon after this. I am not aware of the details of the US legislation. While it is likely to have been similar to that adopted in the UK in 1967, it is possible that the changes were of a broader nature. In the UK it was not until 2001 that a common age of consent was introduced following a ruling of the European Commission of Human Rights and not until 2004 that sex specific legislation was repealed including the 1967 Act.

In summary the following is my conclusion.

The claims to world leading legislation cannot be verified and are likely to be wrong. In this I trust I am not unduly influenced by my natural aversion to generalised grandiose sweeping statements.

The assertion that SA was the first in the English-speaking world or in common law and Westminster systems to have decriminalised homosexual acts between consenting males is wrong.

On the other hand, as indicated above, the *Criminal Law (Sexual Offences) Amendment Act 1975* was completely non-discriminatory, and SA was probably the first among the Westminster jurisdictions to remove the distinction between heterosexual and homosexual acts in the criminal law.

The use of the word "code" in explanation of the legislation gives a misleading impression. There were changes to legislation but nothing that resembles what is usually understood to be a code.

If it had been a code, then the 1975 changes which eliminated the heterosexual and homosexual distinction in the criminal law should also have applied to eliminate it in discrimination law. In SA the general discrimination against homosexuals remained in place until 1984 (see below). Arnold's unqualified statement is wrong, and he and Duncan should have resisted the hyperbole. The safest thing to do is rely on what is known for certain.

Duncan deserves credit for taking up the cause of homosexual law reform as well as introducing the general non-discriminatory aspects of it into the criminal law. But this should have been placed in the context of the previous attempts by Murray Hill, Dunstan and others and changing community attitudes reflected in other parts of the world and by the support in the House of Assembly from 1972 onwards which included Labor and Liberal Members.

Former High Court judge Michael Kirby is someone usually given to sober judgements but considering all the material on this topic it might be regarded as excessive for him to have described Duncan as the father of homosexual law reform in Australia. Or at least that the honour should be shared. *Reeves* (155) says: *"Murray Hill demonstrated courage and leadership and is the hero of the piece in relation to the law reform events of 1972."*

C. *Appointment of the first Commissioner for Equal Opportunity*

Duncan (67, 251 and 255) claims as part of his reformist achievements the *"appointment"* of Mary Beasley as the first Commissioner for Equal Opportunity and the establishment of administrative structures under the *Sex Discrimination Act* 1975. He says that these were some of the first steps in Australia and helped to lead to the "*groundbreaking"* and *"revolutionary"* change in the status of women over the ensuing 40 years. The problem with this overblown claim is that the office of Commissioner for Equal Opportunity had already been created by this legislation and Duncan had no choice but to make the appointment and set up the supporting structures including the Sex Discrimination Board. The Act was committed to the Attorney- General following its passage through Parliament at which stage it had been Dunstan who had ministerial responsibility for it.

The history of the *Sex Discrimination Act* is not always a comfortable one for Labor supporters. There is no doubt that Dunstan took a number of initiatives to support the rights of, and services available to, women, the later ones supported by Duncan. In 1965 Dunstan had recommended the appointment of Roma Mitchell to the Supreme Court, the first woman to be appointed to a superior court in Australia. (Note: The Bannon Government appointed Mitchell as the first female Governor in Australia in 1991). Other substantial initiatives are summarised in Angela Woollacott, *Don Dunstan, The visionary politician who changed Australia,* Allen and Unwin, 2019, 194 - 200). These followed the appointment of a Women's Advisor to the Premier (Deborah McCulloch) in April 1976, which followed three years after the appointment of Elizabeth Reid in April 1973 to a similar position in the Whitlam Government and after appointments in Victoria and NSW. Other initiatives included a Women's Advisory Unit and a Women's Information Service, Working Women's Centre, the Rape Crisis Centre and a Women's Health Service.

What is rarely acknowledged is that Liberal MP David Tonkin (later Premier) introduced the first Bill for the prohibition of sex discrimination on 29 August 1973. (*Hansard,* House of Assembly, 29 August 1973, 574). Dunstan is gracious enough (*Felicia,* 237) to acknowledge this and confirm that initially he did not support the Bill but *"came to be convinced otherwise*".

Dunstan initially thought that the best way to rectify women's position in society as second-class citizens was for the Government to put its own house in order. This process had started with instructions to the Public Service and teaching services to eliminate any discrimination in employment on the grounds of sex or marital status and by specific legislation when anomalies in the law existed. There was a certain poignancy with Tonkin's actions as his mother died the day before he introduced his Bill, something in which she had taken a particular interest.

Tonkin's Bill covered discrimination in employment, training and education and the provision of services and financial matters in the public and private sectors. It provided for a Sex Discrimination Board to receive complaints, try to conciliate them and assist complainants in taking action for damages in the regular court system.

On 19 September 1973 a Select Committee of the House of Assembly was set up to consider the Bill. There were five members and, in accordance with the usual practice, the Government had a majority on the Committee, one of whom was Duncan. Tonkin noted that in the UK private member's Bills along similar lines had been introduced and had been the subject of Select Committee consideration and that the UK Government had now introduced a similar Bill (*Hansard*, 19 September 1973, 830)

There was no sense of urgency, and the Select Committee was granted several extensions of time to report. It eventually did so on 16 October 1974, over twelve months after it was established and after taking a substantial amount of evidence (*Report of the Select Committee of the House of Assembly on the Sex Discrimination Bill, 1973-1974*, P.P.115).

On a motion to note the Report (*Hansard*, House of Assembly, 16 September 1974, 1511), Tonkin complimented Select Committee members for their cooperation, help and enthusiasm and throughout the legislative process it was unanimously hailed as a productive exercise.

Except for one issue, Tonkin's Bill was supported by the Select Committee. The contentious issue was that, while supporting the principles of the Bill, the Government members recommended it be withdrawn and introduced as a Government Bill because of the financial appropriation necessary to set up the processes, including the Sex Discrimination Board. Tonkin objected to this by correctly pointing out that the Government could attend to the appropriation formalities while still proceeding with his Bill. He was concerned about further delays. Other Liberals (Roger Goldsworthy, *Hansard,* 16 October 1974, 1518) accused the Government of using this issue politically to deny the Liberals just recognition for the measure. Dunstan confirmed the Government's support for the principles of the Bill and undertook to proceed with its Bill during that session of Parliament (*Hansard,* 16 October 1974, 1514). Duncan commended Tonkin for the excellent job in introducing good legislation which he supported (*Hansard,* 16 October 1974, 1519).

In a ministerial statement on 25 March 1975 (*Hansard*, House of Assembly, 3170), Dunstan explained that the Bill could not be introduced in that session (as he had promised) because the Government wanted to consider legislation introduced in the UK which contained measures that could be incorporated into the Select Committee Bill and which the Parliamentary Counsel did not have time to draft.

On 11 June 1975 Dunstan introduced the Government's Bill (*Hansard,* House of Assembly, 3296) which did not proceed because of the 12 July election but was reintroduced in identical form on 19 August 1975 (*Hansard,* 348). The Government's Bill accepted the concept and basic principles and coverage of the Tonkin Bill. Consistently with what he later recorded in *Felicia,* Dunstan explained the initial reluctance of the Government to support Tonkin's Bill because it did not regard the legislation as necessary and the issue could be dealt with piecemeal by administrative changes (*Hansard,* 11 June 1975, 3296).

Dunstan referred to developments in the UK particularly in relation to providing effective remedies for discriminatory conduct; positively acknowledged Tonkin's initiative; and concluded that the need for the Bill had been put beyond any doubt by the findings of an expert committee set up by the British Labour Government and by the findings of the Select Committee. (In the UK this is a reference to the White Paper: *"Equality for Women"* tabled in September 1994 a month before the report of the Select Committee).

> *The Bill implements the major recommendations of the Select Committee of the House of Assembly and of the United Kingdom White Papers on sex discrimination: it renders unlawful discrimination on the basis of sex or marital status by employers and bodies or authorities connected with employment: it prohibits discrimination by educational authorities; it prevents discriminatory practices in the supply of goods, services and accommodation. The procedures for administration and enforcement are an important feature of the Bill and represent a major advance upon those available in analogous legislation in other places. (Hansard, 11 June 1975, 3297)*

The bodies created were the Commissioner for Equal Opportunity (who could conduct inquiries generally into discriminatory practices as well as assist individual complainants and attempt to conciliate disputes) and the Sex Discrimination Board comprised of a judicial officer and two others which could arbitrate individual complaints and general practices and had an inquiry function similar to a court but which was more informal and inquisitorial and could make orders for redress including damages.

In his Second Reading response (*Hansard,* 14 October 1975, 1299) Tonkin initially, and with some justification, complained about the time taken to deal with his Bill. He said there had been continuous, prolonged and sustained apathy towards it and that it was proceeded with unwillingly and slowly. He asserted that it was only towards the end of the Select Committee process that the Cabinet had decided to support his Bill.

Even if overstated, these are the sentiments of someone frustrated by the way the Bill had been handled by the Dunstan Government and there is no doubt that there were questions raised within some Government departments as to whether the legislation was necessary (*Report of the Select Committee,* 2-3). Tonkin noted that the new Bill closely followed that of the UK and was happy to support it even though he preferred the process set out in his Bill for access to the courts for remedies by way of damages. The Bill then proceeded without controversy, passed both Houses and was assented to on 4 December 1975, just after the UK *Sex Discrimination Act* 1975 was assented to on 12 November 1975.

The new enforcement mechanisms provided for by way of the Equal Opportunity Commissioner and the Sex Discrimination Board rather than the courts to adjudicate where disputes were not resolved by mediation were an enhancement to the Tonkin Bill. The structure of a commissioner and an independent tribunal to adjudicate disputes became the model for dealing with all forms of discrimination. These were brought together by the Bannon Government in the *Equal Opportunity Act* 1984 and remain in place today. One of the curious unanswered questions is why Duncan and Dunstan did not set up the same processes for dealing with race discrimination when the changes were made by the *Racial Discrimination Act* 1976 to the criminal provisions because relying solely on the criminal law had been shown by then to be a flawed model.

When the reforms introduced by the Dunstan Government are listed, the *Sex Discrimination Act* 1975 is always given pride of place as the first such legislation in Australia. In politics as in war the history is written by the victors, and Tonkin has been largely written out of it on this issue even though he was the instigator and prime mover and a passionate one at that. Dunstan was less enthusiastic about the legislation than he has subsequently been presented to be. Tonkin is rarely mentioned and, if so, only as a minor player consigned to a footnote if at all. In the case of Duncan not at all. While Dunstan properly acknowledged Tonkin's role, Duncan is much less attentive to the facts of history - there is none until he becomes Attorney-General and appoints the first Commissioner for Equal Opportunity.

Duncan was in Parliament when Tonkin introduced his Bill, played a role as member of the Select Committee but was not the Minister responsible for the passage of the *Sex Discrimination Act* which was handled by Dunstan. He is fully aware of what happened but none of this history is acknowledged by him and his role in the appointment of the Commissioner for Equal Opportunity is exaggerated. The sex discrimination legislation was already in place, and he was obliged to make the appointment.

During Duncan's time as Attorney- General no steps were taken to prohibit discrimination on the grounds of sexual orientation, despite repeated recommendations from the Commissioner, Mary Beasley. He says (51) that the Commissioner conciliated complaints of discrimination [even if without legal authority] against gay people and over time "*and following later amendments*" ensured that the position of homosexuals in the community was greatly improved.

Those later amendments were made by the 'unmentionable' Bannon Government. Until then, under Dunstan and Duncan, discrimination on the grounds of sexual orientation was still permitted.

Further, no steps were taken to make sexual harassment in employment unlawful and a ground of discrimination. Both these issues were attended to in 1984 by the Bannon Government, so much reviled by Duncan, with consolidation and modernising of the *Equal Opportunity Act* covering discrimination on the grounds of race, sex and physical handicap which I introduced. Further, discrimination in private clubs with both male and female members was no longer permitted and a start was made on the vexed question of discrimination in superannuation. The Bannon Government added prohibition of discrimination on the grounds of intellectual disability in 1989 and age discrimination in 1990.

During his years as Premier, Dunstan was unable to find a woman qualified to be head of a Government Department and neither could Duncan when he was in office as Attorney-General and Minister for Health from 1975 to 1979. Women might justifiably find that a bit strange. McCullough could be an adviser but not someone with executive power. It was my recommendation in 1984 that saw Catherine Branson appointed by the Bannon Government. She was Crown Solicitor from 1984-1989, the first woman to be appointed in Australia (and probably in the common law world). Branson had a dual appointment as the Chief Executive Officer of the South Australian Attorney-General's Department, the first woman to be the permanent head of a South Australian government department. She was aged 36 at the time of appointment and promoted over several more senior officers including the Deputy Crown Solicitor. I was convinced that she was the most meritorious appointment, a view that has been vindicated. She went on to be a Federal Court judge, Chair of the Human Rights Commission and Chancellor of the University of Adelaide. Had I established a more regular process for the appointment the boys club would almost certainly not have recommended her appointment 'on merit' at that time.

D. *Discrimination on the grounds of race criminalised.*

Duncan (69) says that another important reform was the *Race Discrimination Act* 1976 which outlawed acts of racial discrimination. This wrongly implies that this was the first legislation of this kind. The truth is that under the Walsh Government Dunstan had secured the passage of the *Prohibition of Discrimination Act* 1965 which had introduced criminal penalties for discrimination on the grounds of race.

The problem was that it was not particularly effective, and prosecutions failed. In his Second Reading speech (*Hansard*, House of Assembly, 21 October 1976, 1755), Duncan pointed out that the 1965 Act was deficient in important respects and that proving that race was the sole reason for the discrimination was an almost impossible task. This was changed by his Bill so that discrimination could be found to have occurred when race was not the only motivation for the discriminatory action. The other important change was to alter the onus of proof so that the prosecution only needed to establish the discriminatory act on the balance of probabilities (ie, not as normally required in criminal matters beyond reasonable doubt) when the onus shifted to the defendant to prove that he/she was not guilty.

Duncan commented that, while this was a rather novel provision in the field of criminal liability, it was justified because of the extreme difficulty in establishing the basis upon which a particular act of discrimination had occurred.

The so-called reverse onus of proof provision was not only novel but in general seriously frowned upon as a basis for establishing criminal liability. Keen readers of Duncan's book (44) will note that he was critical of what was said to be a reverse onus of proof in the De Garis proposals on homosexual law reform (see above). *The Race Discrimination Act* 1976 was undoubtedly important modernising legislation but not the first to criminalise racial discrimination. The criminal provisions were maintained but modified to try to make prosecutions easier.

The question arises, given the ineffectiveness of the criminal law in this area, why in 1976 the Dunstan Government did not adopt the same approach as that in the already enacted *Sex Discrimination Act* 1975 (see above).

E. *Set up the Bright Committee into the Rights of Handicapped persons*

Duncan (73) established the Committee into the Rights of Handicapped Persons for which he deserves credit. He then jumps to his role assisting the Attorney-General in the Keating Government in 1992 when he says he was able to *"resurrect this issue"* with the passing of the national *Disability Discrimination Act* 1992 (see also, 160-163). He says that why *"disability discrimination was not dealt with by subsequent governments in South Australia escapes me".* It is hard to make out whether in saying this he is completely ignorant of what happened or again cannot give credit to the Bannon Government or any Government of which he was not part. If the first, then it is further confirmation of his relaxed attitude to the facts and, if the second, another example of his antagonism to the Bannon Government.

Duncan is completely wrong. The *Handicapped Persons Equal Opportunity Act* 1981 was passed under the Tonkin Government in time to celebrate the International Year of Disabled Persons. Coincidently, I have read the memoir of Becky Llewellyn. *Handicapped, a carer's memoir of disability, love and making change,* Walden Press, 2023) in which she describes the role of her husband Richard Lewellyn in disability advocacy. It is well worth reading as a moving tribute to Richard and Becky herself and the battle for reform in this area which eventually culminated in the Keating Government introducing the *Disability Discrimination Act* in 1992.

SA Liberal Attorney-General Trevor Griffin, Premier John Bannon and I are mentioned favourably. Richard was employed by the Attorney-General's Department to assist in the implementation of policies we took to the 1982 election and was later appointed the first Disability Adviser to the Premier. The Bannon Government did much in this area for which it is entitled to credit, even if the real credit must go to the many disability advocates who worked hard to keep the issue before Governments. One of Richard Llewellyn successful initiatives was the introduction of access cabs.

Becky Llewelyn has recently told me that the Bannon years were certainly productive, significantly reforming times and that she *was "a huge fan of your team in the Bannon years".* The advantage of the Commonwealth Act was that it enabled action to be taken against State Governments.

The first case taken against a State was a challenge to the SA Transport Department by three disability activists over its non-accessible public transport. As a result, a 30-year action plan was prepared by Richard for Transport SA. This led to a national Transport Standard.

The national *Disability Discrimination Act* 1992 was an important advance but for Duncan to suggest nothing happened for over 10 years and that he had to *"resurrect"* the initiative is wrong and demeans the work done by Richard and other disability advocates and by the Tonkin, Bannon and other State Governments (e.g. anti-discrimination legislation in NSW (1981) and Victoria (1982).

F. *Criminalisation of rape in marriage*

Duncan (66, 250, 254) says this was the first time in the English-speaking world that rape in marriage had been outlawed, a position endorsed by Lynn Arnold in his Foreword. As with other issues, the situation is not that clear cut.

It is to Duncan's credit that on 2 December 1975 he requested the Criminal Law and Penal Methods Reform Committee chaired by Justice Roma Mitchell to prepare a special report on the law relating to rape and other sexual offences. This reported in March 1976, considered that the marital rape immunity was part of the South Australian common law and recommended a partial abolition of it such that a husband could be convicted of the rape of his wife if the husband and wife were living apart and not under the same roof. The Liberal Party would have agreed to this recommendation (*Hansard,* Legislative Council, John Burdett, 23 November 1976, 2348)**.** Duncan considered that this recommendation did not go far enough and in 1976 introduced amendments to the *Criminal Law Consolidation* Act to remove the immunity altogether.

In doing this the Dunstan Government was ahead of its time, and this was the first attempted reform that had been contemplated in Australia. Had the legislation passed in its original form, the claim of it being the first in the English-speaking world would have stood up. Duncan says there was a "*small hiccup*" in the progress of the legislation in the Legislative Council but in the end a *"fairly innocuous amendment"* was eventually agreed which allowed the Bill to pass.

Duncan minimises the controversy his proposal provoked. In fact, the Legislative Council inserted amendments to which the House of Assembly disagreed. A conference of managers of both Houses was established at which a compromise was reached that the Bill be agreed to with amendments. These amendments were not innocuous and seriously modified the intention of the original Bill, making it more accurate to say that there had only been partial abolition of the spouse immunity and qualified criminalisation of rape in marriage.

Section 12 of the *Criminal Law Consolidation Act Amendment Act,* 1976, which was assented to on 9 December 1976, repealed s 73 of the principal Act and provided that no person could, by reason only of the fact that she is married to some other person, be presumed to have consented to sexual intercourse or indecent assault with that other person.

So far, so good but the amendments introduced the important qualification in s.73(5):

> *(5) Notwithstanding the foregoing provisions of this section, a person shall not be convicted of rape or indecent assault upon his spouse, or an attempt to commit, or assault with intent to commit, rape or indecent assault upon his spouse (except as an accessory) unless the alleged offence consisted of, was preceded or accompanied by, or was associated with- (a) assault occasioning actual bodily harm, or threat of such an assault, upon the spouse; (b) an act of gross indecency, or threat of such an act, against the spouse; (c) an act calculated seriously and substantially to humiliate the spouse, or threat of such an act; or (d) threat of the commission of a criminal act against any person.*

The effect of these amendments was that two different legal regimes were established, depending on whether an accusation of rape was being dealt with when the parties were married or when they were not. If they were not married, then the normal requirement for the prosecution to prove lack of consent applied. This could have been made clear verbally by the alleged rape victim. If they were married and, even if living apart, the prosecution had to prove lack of consent *and* at least one of the other of qualifying factors in s 73 (5). That is, that the lack of consent had been accompanied by a threat of assault or an act of gross indecency etc. If none of these factors of aggravation were present the marital immunity remained. Burdett made clear his view that *"where the only aspect of rape is lack of consent, the husband cannot be convicted".* (*Hansard,* Legislative Council, 30 November 1976, 2535).

Self-evidently this was a major modification to Duncan's original intention. Most academic (particularly feminist) commentators did not regard the legislation as completely criminalising rape in marriage. There was *"partial criminalisation"* in SA in 1976 with full criminalisation starting in NSW and Victoria in 1981 (Lisa Featherstone, *Rape in marriage: Why was it so hard to criminalise sexual violence.* Australian Women's History Network Blog, 7 December 2016.)

The qualifications remained in the law until repealed by the Bannon Government in November 1991 (*Hansard*, Legislative Council, 21 November 1991, 2184). Labor MLC Anne Levy participated in the debates in 1976 and 1991-92. On 13 February 1992 (*Hansard*, 2732), she concluded: "*while we were the first State to attempt to change the law regarding rape in marriage, we were to be the last State to achieve what we set out to do the first time".*

There is a further twist. Courts in Australia and the UK started to revise the position expressed by the Mitchell Committee that the spouse immunity was part of the common law. Although not necessary for its decision (i.e. *obiter*) the High Court questioned the existence of the immunity (*The Queen v L* [1991] HCA 48). Brennan J described it as a "*common law fiction … offensive to human dignity and incompatible with the legal status of a spouse*". In the UK the same view was expressed (*R v R* [1992] 1 AC 599). In introducing the 1991 legislation to remove the qualifications I observed that it was somewhat ironic that the common law now seemed to take a more enlightened view than the previous SA statutory reform.

There is a further development which confirms this view. The SA Supreme Court (*R v P, GA* (2010) 109 SASR 1) and the High Court (*PGA v The Queen* (2012) 245 CLR 355) considered directly the state of the common law in SA in 1963 when a spouse alleged that she had been raped by her then husband. The defendant's argument that rape in marriage was not a crime at that time was rejected. This means that the Mitchell Committee which had initiated the rape law reform had been wrong in its view that at common law the rape immunity existed.

There is an unintended consequence. Anyone charged with a spousal rape in SA alleged to have occurred between 1976 and 1991 will have the matter determined, not by the common law which doesn't recognise the immunity, but by the 1976 SA statute with the significant qualifications on the issue of whether the alleged victim consented. With the passage of time, the number of accused persons who may be able to take advantage of this anomaly must be very small.

The Dunstan Government and Duncan cannot be blamed for any of this. They acted with the best intentions in accordance with the law as understood at the time which meant that, unless the law was changed, allegations of rape in marriage would not have been investigated or prosecuted.

However, what we could have expected from Duncan was some analysis of the nuances that this issue has thrown up and more serious consideration of the qualifying effect of the Legislative Council amendments in 1976. They were far from being a *"small hiccup"* and *"innocuous*". He might also have had more sympathy for Hill, Dunstan, Tonkin and the House of Assembly MPs in 1972 who found themselves in the same position as him when lumbered with Legislative Council amendments that undermined or seriously qualified the original policy intentions in relation to homosexual law reform (see above).

Duncan (66) says the rape in marriage changes were a "*world- first reform"*. Less hubris was called for, as this would have been wrong even if the legislation had passed in its original form. The first country to criminalise rape in marriage was the Soviet Union in 1922, followed by Poland in 1932 and after World War II many members of the communist bloc e.g. Czechoslovakia in 1950. Sweden followed in 1965 and Norway in 1971.

G. *Reform of procedures for rape and other sexual offences trials*

Duncan (66-67, 250) refers to other changes in procedures for rape and sexual offences trials recommended by the Mitchell Committee. These covered the requirement for an alleged victim to appear at a committal hearing and restrictions on questions which an alleged victim could be asked in cross examination about her prior sexual history. He says that the stress of a criminal trial was greatly ameliorated. This is an overstatement. While these were important advances the issue of procedures in sex offence criminal trials has remained a vexed one and further changes were required. Recently the Lehrmann and other trials have provoked further controversy leading the Commonwealth Government to give a wide-ranging reference to the Australian Law Reform Commission which has now reported with 64 recommendations (*Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence*, 6 March 2025) and the SA Government to establish a Royal Commission into domestic violence.

The issue of how to ensure that sexual assault offences are dealt with in a way that satisfies victims and the community generally that offenders are being apprehended and punished while ensuring the traditional protections for a fair trial remains at the heart of the debate.

Despite Duncan's concern about the terrifying prospect for a victim of having to confront the alleged offender at trial, he ignored one of the most important recommendations of the Mitchell Committee, namely that the unsworn statement should be abolished. This was a procedure whereby an accused person could give evidence by making a statement from the dock without being cross examined.

The Mitchell Committee spoke of the most unedifying spectacle for a jury to see and listen to the prosecutrix in a charge of rape being stringently cross examined (often involving details of their sexual life and mode of dress) and subsequently hear the accused merely read a statement giving his version of what happened without being exposed to any questioning at all. This was not only unedifying for the jury but offensive to the alleged victim. In declining to proceed with this reform Duncan is likely to have preferred the position of criminal lawyers (who had strongly objected) over the concerns of women identified by Mitchell. I was also concerned about the civil liberties implications but, after modifications to the use and form of the unsworn statement made in 1983, decided in 1985 on complete abolition.

H. *Privacy*

Duncan (74) talks of his support for a tort of privacy. He refers to a report prepared by Brian Cox, Solicitor-General and later Supreme Court Judge, on the issue. According to Duncan, Dunstan was enthusiastic about a tort of privacy, and they intended to introduce one, but no action was taken before he was transferred to another portfolio. Duncan acknowledges that previous Attorney-General Len King QC had introduced legislation to create a right of privacy, but it was withdrawn after vigorous community opposition. It is more accurate to say that the media were the most vociferous opponents. The Bill would probably have failed in the Legislative Council in the early 1970s.

Again, Duncan does not mention what was done by the Bannon Government, perhaps for fear of contradicting his main theme. In fact, we also tried to introduce a tort of privacy in 1991 which met the same fate as the King Bill and for similar reasons. We did not give up on the issue and introduced Privacy Guidelines for the Government sector. One of the consequences of these was that the addresses of electors on the Electoral roll could not be available publicly or to political parties. Later more comprehensive Commonwealth privacy legislation was introduced.

I *Associations Incorporation Act reform*

Duncan (74) deals with his attempt in 1978 to amend the *Associations Incorporation Act* to provide for greater democracy in the governance of these organisations. An avalanche of opposition caused the Bill to be withdrawn**.** There is no doubt that the rules governing these associations needed modernising. As Duncan points out, there were some very large associations such as the RAA and Red Cross established under the Act that should be subject to the same prudential and financial requirements as large companies. Part of the opposition arose because some of the requirements needed for these large bodies were also made applicable to smaller community bodies, sporting and the like.

At my initiative, the Bannon Government proceeded to update this Act, it was not left in limbo (*Hansard*, Legislative Council, 5 December 1984, 2135). I have not looked recently at a comparison of the respective proposals, and it is probable that our proposal did not go as far as Duncan's in respect of the election of worker directors.

Nevertheless, our changes did fulfill many of the intentions of the original Bill and were more acceptable to the community and particularly to the Legislative Council where Duncan's proposals would certainly have failed.

J. *Drug law reform.*

Duncan (73) tries to answer the oft posed question to him of why the Dunstan Government did nothing about drug reform. While he and Dunstan supported action, some opposition from Cabinet meant that in the first instance it was decided to appoint a Royal Commissioner (Ronald Sackville) to report on how to proceed. His report was finalised in April 1979.

Duncan says that sadly by this time Dunstan had resigned, he was no longer Attorney-General and the *"report and recommendation for actions were shelved"*. This is only partly true. Des Corcoran, Labor Premier in 1979 was not interested and neither was the Tonkin Liberal Government (1979-82).

However, the Bannon Government did implement some of the Sackville recommendations. Minister for Health John Cornwall had carriage of the proposals, the most prominent of which was the introduction of expiation notice fines for possession of small amounts of marijuana (see below).

K. *Peter Duncan and John Cornwall*

I interpolate a short digression on Duncan's support for John Cornwall and particularly his criticisms of John Bannon. Duncan (102) laments that while Minister of Health in the short-lived Corcoran Government in 1979 he had been unable to make changes to administration in the health portfolio and that *"real reform was not addressed until John Cornwall became minister in the 1980s".*

John Cornwall was an activist and effective minister in the Bannon Government. Apart from drug law reform he successfully implemented the Labor Party policy on the prohibition of cigarette advertising and set up a mechanism for sports and arts bodies to apply for grants to replace funds lost from tobacco sponsorship. He took a leading role in trying to deal with lead pollution in Pt Pirie in the face of opposition, rather paradoxically, from the Mayor and Council.

Cornwall later made common cause with Duncan as a critic of Bannon which is dealt with elsewhere in the book (127-129) in relation to appointing Dunstan to a government position. The reasons for Cornwall's animus towards Bannon are explained in an article in *In Daily* by Tom Richardson, 'Transforming Health – but not as we know it', 23 October 2017, updated 25 October 2017, written on the occasion of the launch of Cornwall's memoir (John Cornwall, *After work, after play, after all*. *A political memoir.* Book POD 2017 [*Cornwall* 2017]. This followed an earlier work - John Cornwall, *Just for the Record, The Political Recollections of John Cornwall,* Wakefield Press, 1989 [*Cornwall* 1989]).

The key problem for Bannon, who had supported Cornwall in his administration of the health portfolio, was Cornwall's intemperate attack in February 1984 on orthopaedic surgeons. It was not a part of Cornwall's' job description nor necessary for the performance of his duties to call an orthopaedic surgeon a 'robber baron'.

He was sued for defamation. Cornwall failed to apologise and settle the case, and the District Court awarded a substantial amount of damages and costs. Matters were made worse as the Judge was highly critical of Cornwall as a witness, describing him as unimpressive, guilty of prevarication, non-responsive, defensive and unsatisfactory in the manner of giving the whole of his evidence, including by furthering his political ends by making political statements at every opportunity. Even worse, the Judge said that his evidence was not to be accepted and, in some respects, not to be believed unless independently verified. (*Cornwall* 1989, 193-194).

While there were obvious adverse political implications, the Government felt it had to indemnify him, but Bannon thought some penalty should be paid by Cornwall. He resigned on the basis that a possible return to the Ministry would be open to him. Cornwall later did not take up this option and resigned from Parliament. Contrary to what Cornwall says, the public record and my recollection are clear about this (*Cornwall* 1989 at 201-205). It does not take a very perceptive reader to spot the contradiction in what Duncan says. On the one hand, he says the Bannon Government was lacklustre in its reform agenda, but, on the other, extols the virtues of Cornwall as a reforming Bannon Minister. Duncan is experienced enough to know that none of what Cornwall did could have happened without Bannon's imprimatur (see below).

L. *Law reform and managerialism*

Duncan says he is a reformer not a managerialist (248). But he is happy to add to his list of reforms a series of quintessential managerial initiatives as 'make weights' to burnish his reformist credentials, viz, extra resources for the Lands Titles Office, establishment of the Corporate Affairs Commission and Regulation Review Unit, consolidation of Statutes and increase in scope of work for the Public Trustee (256-261). These were all worthy initiatives but hardly the stuff of permanent revolution.

M. *Members of Parliament (disclosure of interests) legislation.*

Duncan (251, 256) claims this as part of his reformist legislation. He is only partly right, as the legislation he introduced was blocked by the Legislative Council. He says when *"subsequently passed"* it became the template for such legislation across the nation. Passed that is by the Bannon Government with the *Members of Parliament (Register of Interests) Act* 1983 which I introduced on 30 March 1983 (*Hansard,* Legislative Council, 751). It required the public disclosure on a register of all MP's private interests and those of their close family members. The proposal had been longstanding Labor policy.

In my Second Reading Speech I summarised past attempts at legislation: a private member's Bill in 1974; a Dunstan Government Bill introduced by Duncan on 30 November 1977 which passed the House of Assembly but then lapsed; another attempt by Duncan with a modified Bill introduced on 22 August 1978 but which was laid aside by the Legislative Council on 27 February 1979 after a conference of both Houses was not able to reach agreement; and, in October 1981 as Shadow Attorney General my introduction of a slightly modified version of the defeated Bill which, after extensive debate, also did not pass.

The major areas of contention for the Liberal Party were whether the register of interests should be completely open to the public and some concerns about the disclosure of interests of family members. I pointed out that there had been not dissimilar public disclosure in the UK since 1975 and under the Hamer Liberal Government in Victoria since 1978. It is therefore probably overreach for Duncan to say that the 1983 Bannon Government legislation became a template for the rest of Australia.

N. *Abolition of public drunkenness as a crime*

Duncan (64, 250) claims the abolition of the crime of public drunkenness as the next on his list of reforms after the abolition of capital punishment. This caused some consternation for me as, if true, I have been living for decades under the view that it was a Bannon Government initiative. Most sources (e.g. *SA Law Handbook, Wikipedia* and others) say this in fact did happen under the Bannon Government with the *Public Intoxication Act* 1984, which set up non-criminal processes for dealing with drunk persons, sobering up centres and the like.

Fortunately, the issue has now been resolved by the discovery of a report of the Office of Crime Statistics (Director, Adam Sutton), *Decriminalising Drunkenness in South Australia,* November 1986. It reports that in 1976 legislation was introduced that provided for detention at sobering up centres and at approved premises and for drunks to be transported home as a first preference.

Lack of funds for the sobering up centres meant that the Act was not proclaimed. In 1977 an interdepartmental committee was set up to advise on implementation and in 1978 legislative amendments allowing police cells to become the main detention centres were introduced. The laws were not proclaimed.

The Report (5) concludes that it was not until 3 September 1984 that the deadlock was broken. Following the Bannon Government election in 1982, John Cornwall, the incoming Minister of Health, revived the project by establishing another committee to try to resolve the issues relating to the means and cost of dealing with persons who were drunk but not subject to the criminal law. Funds were made available to the Drug and Alcohol Services Council for additional staff and pick-up facilities. This enabled the *Public Intoxication Act 1984* to be proclaimed along with the relevant provisions of the *Summary Offences Act 1953.*

It therefore appears that in 1976 the *Police Offences Act* 1953 (as the *Summary Offences Act* was then called) was amended under Duncan to remove the offence of public drunkenness but not proclaimed (and therefore did not come into operation) because of problems of setting up the non-criminal model of treatment. As the Minister, Duncan had from 1976 to 1979 to put in place structures to enable the change to come into effect but didn't do it. His claim to have abolished public drunkenness as a crime is not technically correct as the legislation was not proclaimed. His good intentions were not realised. Interestingly Victoria took until 2023 to enact this change.

My conclusions are confirmed by John Cornwall (*Cornwall* 1989, 91) who claims credit for the Bannon Government repealing the offence of public drunkenness and establishing a system after apprehension without charge of taking people home, to sobering up centres or to police stations for a limited time. Duncan is not mentioned.

O. *Freedom of Information*

Duncan (257) correctly says freedom of information laws were drafted but not enacted. The *Freedom of Information Act* 1991 was a Bannon Government initiative introduced as part of an agreement with then independent Martyn Evans following the 1989 election. It had been part of our policy for the 1982 election, and we probably should have done it earlier.

As one cynic has said, this is the sort of legislation that should be introduced early in a government's term of office or enthusiasm for it wanes. Even initiatives like this have cost implications and we were trying to restrict unnecessary expenditure. Rex Patrick (former Senator), who makes extensive use of FOI applications, recently informed me that it is good legislation and still effective if used properly.

P. *Consumer legislation*

The Dunstan Government had a priority to enhance consumer rights and protection. Much of the early work, particularly in consumer credit, was done by Attorney General Len King (1970-75).

Duncan (251) continued the work in the areas he identifies in prices and consumer affairs, credit unions, *Land and Business Agents* Act, *Second Hand Motor Vehicles* Act, *Builders Licensing Act*. All this was valuable legislation building on the initiatives of King and Dunstan. I continued the Labor priority of looking after consumers in the Bannon Government.

Q. *Residential Tenancies Act 1978*

Duncan (77, 251, 260) rightly refers to this legislation as an important reform which was soon adopted in other jurisdictions. In his Second Reading Speech on 2 November 1977, he said the Bill was a significant measure and the first attempt in Australia to legislate comprehensively for reform of the landlord and tenant relationship. It was the result of over two years work including close study of Canadian legislation and recommendations of the Australian Commission of Inquiry into Poverty established by the Whitlam Government and the SA Law Reform Committee. Len King had given a reference on standard terms in tenancy agreements to this Committee which in part informed preparation of the Bill. This was legislation which provided a lead to other States and for which Duncan should be given credit. However, it was not developed exclusively at his initiative and proposals had been in the pipeline for some time, confirmed by the Second Reading Speech.

R. *Abolition of the legal consequences of illegitimacy. Family Relationships Act 1975*

This legislation also involved the recognition of *de facto* couples. (Duncan, 68, 251, 255). On 28 October 1975 Duncan introduced the *Family Relationships Bill* said to be the first in a series of ten Bills designed to give effect to the recommendations contained in two previously provided reports of the Law Reform Committee of South Australia. It was designed to remove the legal consequences of illegitimacy and to assimilate the rights and the position of an illegitimate child with that of a legitimate one. It also sought to remove some of the legal disabilities to which the father of such a child was subject.

Duncan became Attorney-General on 9 October 1975, just three weeks before he introduced the legislation. He must be given credit for the alacrity of his actions, but he had not initiated the development of the policy lying behind the legislation, at least in relation to illegitimacy, which had come from the Law Reform Committee. The reference to that Committee on the rights of illegitimate children had been given by Liberal Attorney-General Millhouse before 1970.

The SA Parliament information web site claims the *Family Relationships Act* 1975 abolishing the legal consequences of illegitimacy as a SA first in Australia. This is wrong. The Tasmanian *Status of Children Act* 1974 assented to on 14 October 1974 and the *Victorian Status of Children Act* 1974 preceded it in relation to the status of illegitimate children. This was good legislation but again illustrates my point that policy reform is a process that occurs over time and usually involves several actors.

The Bill also reflected the policy of the Dunstan Government to ensure that persons living together in an established *de facto* relationship should for certain purposes be entitled to the same rights and benefits as lawful spouses. It established the concept of a 'putative spouse'. This part of the Bill appears, as claimed by Duncan (255), to be an Australian first subsequently copied nation-wide.

S. *Establishment of the Legal Services Commission.*

Duncan (69, 251, 256) says he established the Legal Services Commission to ensure that legal aid was available to all in need, an aim with which we can readily agree. The background, however, is a little more complicated.

The Second Reading speech to the *Legal Services Commission Bill* on 14 April 1977 explains this background (*Hansard*, House of Assembly, 3452). The Whitlam Government had established the Australian Legal Aid Office to operate around the country, with the Adelaide office opening in August 1974.

This operated in conjunction with the long-standing legal assistance scheme provided by the Law Society. In March 1976 the Fraser Government decided to phase out the ALAO but to provide financial assistance to the States to assume responsibility for legal aid. It was on this basis that the Legal Services Commission was established incorporating the Law Society scheme. Duncan referred to WA and the ACT which had already started the same process. Other States were forced to make similar arrangements and Legal Aid Commissions were established in other States.

Duncan confirms that this initiative was driven by Bob Ellicott, the Commonwealth Attorney-General, and said: *"I am not particularly anxious to set up a legal aid commission in [SA] ..."* (*Hansard,* House of Assembly, 20 April 1977, 3618). The ALAO was a national initiative of Lionel Murphy, Attorney- General in the Whitlam Government, so it is not surprising for Duncan to have preferred it over State based bodies.

The Legal Services Commission remains a crucial agency to provide advice through paid staff and the private legal profession. Later I was responsible for approving the establishment of the Law Foundation which, among other things, has provided funding for access to justice initiatives such as JusticeNet SA and a justice reinvestment pilot project.

I also approved funds for a Litigation Assistance Fund to assist parties take civil proceedings that they would otherwise be unable to do.

T. *Establishment of the Office of Crime Statistics.*

Duncan (69, 251, 256) refers to his establishment of the Office of Crime Statistics with Dr Peter Grabosky as the first director. This enabled the development of a crime statistic service independent of the Police.

It was an excellent initiative, maintained in place by me and was an important part of the support provided to the community crime prevention policies the Bannon Government established in 1989. This policy aimed to provide programs separate from the conventional ones operated by the Police and designed to keep people from offending and out of gaol. Sadly, the office was abolished by the Weatherill Government.

2. Other issues in which Peter Duncan was involved.

A. *Dismissal of Police Commissioner, Harold Salisbury.*

Salisbury was dismissed by the Dunstan Government on Tuesday 17 January 1978 for having provided misleading information about the scope of surveillance carried out and the maintenance of files by the SA Police Special Branch.

The dismissal was based on a report provided by Supreme Court Acting Justice White to the Premier on 21 December 1977 (The Honourable Mr Acting Justice White, *Initial Report*, *Special Branch Security Records*, House of Assembly, 7 February 1978, P.P 145). White found that there was a hard core of genuine security intelligence material relating to extremist left-wing and right-wing organisations and persons reasonably suspected of being potential security risks in the security areas of espionage, terrorism, sabotage and subversion. There was also a mass of records (the greater part of the Special Branch records) that related to matters, organisations and persons having no connection whatsoever with genuine security risks.

A significant proportion of the files related to political, trade union and other sensitive matters (9). There was substantial proof that from 1970 onwards the Premier was prevented from learning of the existence or nature of Special Branch files on political and trade union matters in spite of specific inquiries by the Premier in October 1970, July 1975, and October 1977. On three occasions the relevant Police Commissioner gave answers that did not disclose the existence of files on political and trade union matters (42).

On 30 May 1978 a Royal Commission conducted by Supreme Court Justice Roma Mitchell found the dismissal to be justifiable (Royal Commission 1978, *Report on the Dismissal of Harold Hubert Salisbury,* House of Assembly, 23 November 1978, P.P 117). The conclusion was that the Government was misled by communications of Mr Salisbury as to the nature and extent of Special Branch activities and that relying on such miscommunication it had misled others (32).

There are numerous errors in Duncan's account of this issue

(i) Decision to dismiss Salisbury

Duncan (89) says:

> *The SA Government directed the Police Commissioner Salisbury to destroy the [Special Branch] files. Salisbury refused point blank, after which a Cabinet meeting was held, where it was agreed that Salisbury should be offered the options of destroying the files or resigning. He refused both, and in accordance with the Cabinet decision, he was sacked.*

This is not accurate. It could be expected that Duncan as Attorney- General at the time would know what happened, but the mistake is also made by two of Dunstan's biographers (*Woollacott*, 216; *Hodge*, 192).

The actual sequence of events as described in the Royal Commission Report (14) is that: Dunstan conferred with White AJ and, on Tuesday 10 January 1978, sought an opinion from the Solicitor-General about the power to dismiss the Police Commissioner; Dunstan met with Salisbury on Wednesday 11 January 1978 and gave him a copy of the White Report with a request that he read it and come back with his answer on the apparent failure of his responsibility; on Friday 13 January there was another meeting, with Don Simmons the Chief Secretary also present, in which Salisbury suggested that the White Report not be released;

Dunstan responded by saying that that was for the Cabinet to decide but the Government had to be frank with the public and that Salisbury would have to take responsibility for misleading the public; Cabinet met on Monday 16 January 1978 and decided that the Premier should inform Salisbury that it was intended to give Directions relating to the Special Branch records, that the White report would be released immediately, that the Premier should ask for Salisbury's resignation, and that if he did not then he would be dismissed.

On Tuesday 17 January 1978 Dunstan advised Salisbury of this decision, but he refused to resign. Later that day, Salisbury was dismissed by the Governor in Executive Council as from the close of business that day. On Wednesday 18 January 1978 the Governor gave Directions to the incoming Commissioner of Police in accordance with s.21 of the *Police Regulation Act* 1952-1975 which specified that the records kept by Special Branch should relate only to matters of security and the overthrow of government by force or violence.

Records or material created by Special Branch that did not comply with the criteria specified were to be culled and destroyed under the direct supervision of White AJ (*SA Government Gazette Extraordinary*, Wednesday, 18 January 1978). Contrary to what Duncan says the Directions were given after Salisbury's dismissal not before and were not for the total destruction of Special Branch files.

This version of events is confirmed by Dunstan who dictated notes immediately after the meeting on Friday 13 January 1978 (*Felicia* 294; *Hansard*, Dunstan, House of Assembly, 7 February 1978, 1360). Dunstan records that Salisbury strongly opposed the release of the White Report and said that it should be considered a domestic document, and the matter could be dealt with by having a senior officer assist White in culling the material held by the Branch. In other words, Salisbury did not refuse to destroy the files but offered to cooperate in culling them.

The Government did not direct Salisbury to destroy the Special Branch files either informally through the Premier or formally by the Governor in Executive Council. He was not given the options suggested by Duncan and was always going to be dismissed if he did not resign. Salisbury refused to resign but he wasn't given the option of remaining if he agreed to destroy the files. This is a significant error as it suggests that Salisbury could have remained in his post if he had agreed to destroy the files, which was never the case. The argument about unfairness, real or perceived, was at the heart of opposition to the dismissal but would have had less force if Duncan is right that Salisbury could have stayed on if he had destroyed the files, but he is not.

(ii) Duncan's role at the rally supporting the dismissal.

On Wednesday 25 January 1978, a large meeting protesting about the dismissal was held in Victoria Square estimated to be between 10,000 – 15,000 people (*Felicia*, 299), One of the people critical of the dismissal was *The Advertiser* journalist Stewart Cockburn who later wrote a book about it (Stewart Cockburn, *The Salisbury Affair*, Sun Books, Melbourne, 1979).

Duncan (89) says that Dunstan and he decided to respond and organised a meeting in support of the Government's action. The meeting was held on the Festival Centre Plaza on Saturday 11 February where he and Dunstan addressed the crowd from the *"Juliette"* balcony at the rear of the Parliament building. Duncan says the Plaza was full, the meeting extremely successful and greatly lifted Dunstan's spirits. The day and image "*indelibly remain*" with Duncan.

Duncan recounts that later they had tea at Parliament House and Dunstan advised him that, as the Liberals were threatening to establish a Select Committee in the Legislative Council, he now thought a Royal Commission was the best option despite having previously opposed one.

None of this happened as described by Duncan. It is correct that the Government had a change of heart and decided to establish a Royal Commission in the face of the Liberal's proposal for a Select Committee, but it did not result from any discussion between Dunstan and Duncan after the rally. The Royal Commission had been established the day before (*SA Government Gazette Extraordinary*, Friday 10 February 1978) and was announced by Dunstan at the Festival Centre Plaza rally.

The Juliette balcony appearance is a fantasy – there is a photo in Cockburn's book (176) showing Dunstan speaking on the Plaza. Federal Member for Bonython Neal Blewett spoke at the rally and had only been told of the change of heart shortly beforehand (*Cockburn*, 61). Duncan is not mentioned by Cockburn, and I cannot recall him speaking and neither can anyone else to whom I have spoken.

Reports in the *Sunday Mail* of Sunday 12 February 1978 confirm all the above including what some might want to dismiss as Cockburn's biased account. The establishment of a Royal Commission was first considered by Cabinet on Thursday, 9 February 1978 but finally decided on by Dunstan late the following day and then formalized by Executive Council.

The decision was announced by him on Saturday morning at a press conference before the rally. The speakers were Dunstan, Blewett and Kate Short of the Campaign against Secret Police Activities. Blewett confirmed he had arrived with a speech opposing the Royal Commission but had *"to do some quick revision"*.

Mike Rann had only just been installed as Dunstan's Press Secretary and the above accords with his recollection. He also remembers a cheer from the crowd when Justice Roma Mitchell was announced as the Royal Commissioner.

(iii) Special Branch and the so-called "pink files".

Duncan (49-50) says the Labor Government in the 1970s was:

> *unaware of the extent to which the police special branch collected files on thousands of homosexuals who were otherwise law-abiding citizens. Known as 'pink files', they were subsequently used by the police in the surveillance of citizens or to limit their career prospects, the most notable incident occurring in 1967, when the police commissioner went to Premier Walsh with a file on John Jefferson Bray, who was in the process of being nominated as Chief Justice of South Australia.*

This statement is wrong. The Special Branch did not keep files on thousands of homosexuals and was not the source of the information which the Police Commissioner McKinna took to Premier Walsh to object to the appointment of Dr Bray as Chief Justice. Duncan has confused the nature of the files kept by Special Branch (which were supposed to be concerned with issues of security) with those kept on homosexuals by the CIB/ Vice Squad or as a result of ordinary patrols or surveillance. The use of the term "pink files" in relation to the police and homosexuals is considered below.

Duncan has done no one any favours by muddying the waters again on this issue. It was central to the attacks made on Dunstan at the time but not accepted by the Royal Commission. i.e., the allegation that because Dunstan knew of files kept by Special Branch on persons who had not been convicted, he could not have been misled and not have been justified in sacking Salisbury.

(iv) Peter Ward claims Dunstan knew about Special Branch and its activities

Duncan (88-89) refers to pressure, mainly from journalist Peter Ward, building on the government over allegations that the police Special Branch had large numbers of files on law abiding citizens.

He says Ward's disquiet arose because he thought Dunstan had not done enough to bring the police under control in relation to the so-called "pink files" held on homosexual people. He says Ward, prior to the White report, may not have realised that files were also kept on people holding Left political views. The latter statement is incorrect as it is apparent from the articles written by Ward cited below that he was fully aware that files were being kept by Special Branch on people other than homosexuals.

Peter Ward had been a good friend of Dunstan and his executive assistant from 1969 until 1976 when he left to work for *The Australian* newspaper. He had been privy to some of the earlier questions raised by the Government with Salisbury in 1975 about the scope of Special Branch activities and files.

Shortly before the September 1977 election, and using information obtained while he was working for Dunstan, Ward started asking questions about Special Branch. Australian Democrat MP, Robin Millhouse, also publicly asked questions. The resultant media coverage prompted the Government to set up the White inquiry. There was nothing raised by Ward in these initial articles about the surveillance of homosexuals or the existence of pink files.

He was aware from his experience in government that the issues raised in 1970 and 1975 related to security. At no stage does either the White Report or the Royal Commission Report refer to the existence of pink files.

The first article (Peter Terry and Peter Ward, 'Exposed… the secret police dossiers on demonstrators', *The Australian*, 3 September 1977) dealt with dossiers collected by Special Branches in each State on thousands of people who have never committed a crime. It pointed to the information being interchangeable with ASIO and concerned with the study of organisations that may be subversive to government, the care and protection of VIPs and the provision of intelligence in areas of protest and dissent.

With respect to SA the article asserts that Dunstan had known of these top-level police surveillance since 1967 and been given more information in 1976 in the context of Justice Hope's inquiry into security and intelligence services in Australia. The files concentrated on potential subversives and covered some of Adelaide's most eminent citizens in politics, education and the law. Ward questioned why Dunstan was reluctant to act on the files he knew about given the civil liberties concerns they raised. *The Australian* newspaper put a series of questions to the Government.

The second article (Peter Ward, 'Secret police files a nettle for Dunstan to grasp', *The Australian*, 3 November 1977) reported on answers to questions that had been asked of the Chief Secretary Don Simmons by Millhouse based on *The Australian's* questions. The Government, based on information provided by Salisbury, admitted that the police kept intelligence files on people not suspected of indictable offences but who had advocated violence or breaches of the peace or were involved in organisations that had done so. Ward then asserted that the Special Branch files went beyond this and provided an example of a file supposedly kept on the State Commissioner for Consumer Affairs, Mr L.H.Baker, details of which had been provided to the Government. Ward wanted to know what the Government was going to do about the civil liberties concerns raised by this police activity.

Following Salisbury's dismissal, Ward wrote two articles in which for the first time he raised the pink file issue, and which are crucial to unravelling the truth about them. The first was in Adelaide's afternoon newspaper *The News* ('Sacking ends muck-raking', Wednesday, 18 January 1978, 2). Ward reiterated what he had said in his articles in *The Australian* that there were extensive files which the Government knew about and took no action on despite highly respected public servants being included in the dossier system. He concludes this article by saying: *"It is interesting and significant that a large section of the files maintained by the SA Special Branch are said to be pink files and contain details of the private lives of people whom Special Branch suspect of being homosexuals".*

Ward raises this issue despite an accompanying article reporting White's finding that he had found one file and some cards on homosexuals (see below). The following day Ward wrote an extensive article in *The Australian* ('Police dossiers: a scandal that just wouldn't go away …', Thursday, 19 January 1978).

After an exultant claim that it was a nice feeling to have won one, he refers to the previous articles recounting his assertions about Dunstan's knowledge of Special Branch and the questions asked about it. He was happy to say [because of his involvement with the issues while employed by the Government] that he knew the answers to the questions posed and that Dunstan knew he did. He then elaborates on the knowledge that Bob Bakewell, the Head of the Premier's Department, had gained from a Special Branch file on another highly respected public servant [Baker], information which was given to Dunstan in his presence in early 1976 and about which nothing was done.

Ward then refers to White's findings that material was kept on categories of people as diverse as prohibited immigrants, women's liberation groups, activists in the worker participation movement and homosexuals. Again, while fully aware of White AJ only finding limited information on homosexuals, he says: "*The last category thus gives strength to the widespread rumour that for many years the color-coding used by the Special Branch for homosexuals was pink and was described as "the pink file" system"*. He then connects this to Dunstan's knowledge of Special Branch by saying that Dunstan had long suspected the scurrilous nature of the secret police files *"ever since they were used in an attempt to influence critically important decisions of the Walsh-Dunstan Government in the 'sixties'"*. (This is a reference to the appointment of Chief Justice Bray in 1967 referred to by Duncan and considered below).

The Australian editorial of that day asks why it took Dunstan so long to establish the White inquiry since it was clear that Dunstan and Deputy Premier Corcoran knew of the existence of the files and that they had on at least one occasion been used improperly. (Again, a reference to the Bray incident).

It is worth pausing the narrative at this point to reflect on the difficult position in which Ward had placed the Government. Based on inside knowledge he alleged that Dunstan was aware of Special Branch and of at least some of its activities and that Special Branch kept files on senior public servants and others, including homosexuals, and was aware that the police were prepared to use Special Branch information to try to influence Government decisions. Dunstan was furious with Ward and felt betrayed but that did not alter the fact that this was a political disaster and made it difficult for Dunstan to control the public debate.

If Dunstan knew about Special Branch activities, how could he have been misled by Salisbury in a way that justified his dismissal? Although not realised immediately the Government was on course for a Royal Commission to resolve the issues.

(v) The Royal Commission's findings.

The question of what the Government knew about Special Branch was identified by the Royal Commission (27) as a relevant factor on the basis that a person who has a complete knowledge of a fact and is confident of the truth of that knowledge cannot be misled by false information regarding that fact.

If the Government had been well aware of the nature and extent of the activities of Special Branch, then it could not have been misled by any inaccuracies in the information provided by Salisbury.

The Royal Commission (27-30) examined a number of historical documents and press reports that were relevant to what Dunstan knew about Special Branch and concluded that he did not know of its existence until 1970 when he became Premier. There were two issues of most importance, referred to in Ward's articles, one involving Dr John Bray QC and the other Bob Bakewell, the Head of the Premier's Department and public servant Baker.

The Bray issue (Royal Commission Report, 29). On 9 October 1968 in *The News* newspaper Dunstan is reported as saying that he and other Ministers had seen files on people of certain political views and that *"matters concerning individuals who have not committed crimes"* appeared in police files. The Royal Commission determined that these files did not relate to Special Branch. Two of them involved files related to employees of the Education Department and files shown to Dunstan by Police relating to the Scientology organisation.

The third case is of most significance and was potentially most damaging to Dunstan if it were true. The Royal Commission accepted that this matter related to the incident referred to above by Duncan and Ward involving the appointment in 1967 of Dr Bray as Chief Justice but that the source of the information Police Commissioner McKinna had was also not from any files kept by Special Branch. Bray is not named in the Royal Commission Report and nor is he named by Dunstan in *Felicia* but it was subsequently revealed that he was the person and the facts are clear. The Royal Commission records (29) that in 1967 when the Government was about to make an appointment to high office [Bray], the then Commissioner of Police Brigadier McKinna made available certain comments from a police file relating to that person. McKinna confirmed in evidence that the information came from a patrol report and not from Special Branch.

In *Felicia* (133) there is much more detail about the incident. In Cabinet Premier Walsh objected because the person [Bray] was not a fit person based on information, which he and Bert Shard (Chief Secretary) had received from McKinna that Bray was a homosexual. McKinna initially indicated his evidence was from social gossip but was given three days to produce evidence to back up his views.

It is worth repeating the three instances he produced because they help put paid to any suggestion of Special Branch involvement. Dunstan says, and McKinna agreed in evidence before the Royal Commission, that they were all from ordinary Police patrol reports and not Special Branch - sitting in a car talking with another man in the Adelaide parklands late at night; a Police patrol stopping outside Bray's house on a hot night to question a passer-by had seen him get up from behind the garden wall of his house with another man and walk inside; and, Police being called to a separately let part of the premises where Bray lived when there were transvestites there but Bray was not even present. Dunstan was furious, especially as all these incidents in the patrol reports were capable of innocent explanation. Dunstan had threatened to resign, and Bray was appointed.

The Bakewell /Baker issue (Royal Commission, 31-32). Ward gave evidence of what he knew of Special Branch while employed by the Government and that he had discussed, with Dunstan and other officials, the issue of files being kept on people who had not committed an offence or even been suspected of wanting to commit an offence. In his article in *The Australian* of 3 November 1977 (see above) Ward referred to a visit made by Bakewell to police headquarters when he was shown a file relating to the State Commissioner for Consumer Affairs, Mr LH Baker.

In his evidence Ward said that Bakewell had told him and others including Dunstan that he had personally attended Special Branch where this happened. Bakewell denied that this was the case and said he had not gone to the Special Branch premises and was not shown a file on Baker. Bakewell had only seen some papers (not an individual file) that had been shown to him in Salisbury's office between July and October 1975 when they were discussing how to respond to the Hope Royal Commission questions. The Royal Commission found that Special Branch had never had a file on Baker. The Royal Commission rejected Ward's version of events contained in his articles and evidence and reflected adversely on Ward's credibility, such that it was not willing to rely on his evidence when it conflicted with other witnesses (32).

Mitchell J concluded: Salisbury made a deliberate decision not to give information to the Government concerning the work of Special Branch in sensitive areas which included political and trade union activity and had intentionally given incomplete answers to questions rendering them in some instances untrue and misleading (27); and that the Government had been misled by Salisbury as to the nature and extent of Special Branch activities and had consequently misled others (32).

(vi) The White Report and files on homosexuals.

As part of its security remit, Special Branch received information about homosexuals, but it was not the repository of large amounts of general information about them. This is clear from the White Report (11) which identified over 3000 separate dossiers or files and over 40,000 index cards.

White provides a summary of the subject matter of files and cards kept by Special Branch (12) divided into categories that are legitimate for security purposes and those that are not. The second category includes, for example, files on non-communist Socialists; political files mainly related to ALP personalities and Parliamentarians; trade unions; university matters; demonstrations; Peace movements; and the Council of Civil Liberties.

There are a number of further categories including *"4.11 Homosexuals. One file. Some cards."* As far as I can tell, this is the only reference to the number of files kept on homosexuals and although identified as being cards and files that should not have been legitimately kept, they do not attract an additional commentary from White.

By contrast with the limited information kept on homosexuals, there is *"an armful of files"* about the ACTU; *"several armfuls"* about individual unions; *"Two armfuls"* on University matters; *"armfuls of files"* about the peace movement; and *"a great many files"* on demonstrations (13). It is self-evident from this information that Special Branch did not see its primary role as the surveillance of homosexuals, there is no evidence in White's report to establish that Special Branch kept files on thousands of homosexuals.

White specifies and elaborates on the masses of information on other categories of people, something he would also have done if he had any special concern about the nature and extent of the homosexual files.

The White Report (Appendix 2, 50) includes a memo about the functions of Special Branch prepared by Sgt R. Huie the Officer in Charge on 1 September 1967. This includes surveillance of *"Sex Deviates likely to attain a position with a degree of access to classified information"*. He elaborates by saying sex deviates can always be classed as having the potential for compromise as in the field of espionage they are a prime target if they have access to this information. Purveyors of pornography may also be able to compromise people.

There is no doubt that there was a close relationship between Special Branch and the Australian Security Intelligence Organisation (ASIO) involving daily contact and that Sgt Huie made some decisions in close cooperation with it (*Royal Commission,* 18). *Hodge* (194) records: that Sgt Huie confirmed to the Royal Commission that information on homosexuals in responsible and high positions was recorded by Special Branch because *"they had been considered vulnerable to compromise and blackmail"*; that there was a flow of information from Special Branch to the CIB; and, that McKinna confirmed that records on homosexual men were held in ordinary police files and CIB files.

Despite the authority conferred on Special Branch as identified by Sgt Huie and the exchange of information between CIB and Special Branch and Special Branch and ASIO, the number of files on homosexuals kept by Special Branch was small and White did not regard them of central importance to his inquiry. Had there been a significant number of colour coded files on homosexuals as suggested by Ward then White would have mentioned them. Sgt Huie gave evidence to the Royal Commission that Special Branch never compiled anything called a "pink list" (Des Ryan and Mike McEwen, *It's Grossly Improper*, Wenan, 1979, 128).

(vii) The disposal of files - Special Branch and so-called pink files

The fate of the Special Branch files is dealt with above, they were culled and destroyed under the supervision of White AJ if they did not comply with the January 1978 Directions. This was done over time in 1978 but not commenced until after the Royal Commission had been released on 1 June 1978.

Dino Hodge (193-195) deals with the disposal of what he identifies as the so-called pink files, and which were not Special Branch files but those kept by the Vice Squad and as part of general police activity relating to homosexuals.

Within three weeks of the establishment of the White inquiry, the Adelaide Homosexual Alliance had made a submission to it and on Monday 15 January 1978 had written to the Premier and other Ministers *"calling for the destruction of 'pink files' on innocent homosexuals"*.

On Tuesday 7 February 1978, by then in the knowledge of the Government's Directions given on Special Branch, Michael Steele, the President of the Council for Civil Liberties, wrote to Dunstan applauding the action taken about Special Branch, a matter of long-standing concern to it, and requesting the investigation be widened to include any other branch of the Police Force. At this time and probably beforehand Steele and the CCL were aware of the separate categories of files kept by Special Branch and as a result of general police activity.

Dunstan and Simmons acted quickly and on 2 March 1978 Dunstan made a Ministerial Statement (*Hansard,* 2 March 1978, 1896). He explained the two inquiries which had been made of the incoming Police Commissioner, Laurie Draper, about material contained on police files relating to unconvicted persons. One related to the newspaper reports about the possible existence of so-called "pink" files relating to homosexuals; and the other about the process by which Police examined irrelevant material related to unconvicted persons, material that was not relevant to the detection of crime but was recorded on police patrol reports or otherwise in event reports by Police.

Dunstan read Draper's report to Parliament. Draper said he had checked Special Branch, Crime Intelligence Unit and Vice Squad and was satisfied that there were no pink files in existence and the term was not known to the Police Department. He inspected cards held by the Vice Squad many of which related to observations concerning specific homosexual people. All these cards related to past circumstances, was information not then used by the Vice Squad or contained nothing of current use. He had instructed that they be destroyed which had been done.

Hodge (195) says the number of files, dossiers and cards to be destroyed was so great that they had to be sent to the Centennial Park Cemetery where some 40,000 documents were burnt over a period of several weeks in an incinerator equipped with spark arrester to ensure that everything was destroyed. The supporting reference for this is a copy of a note held by Hodge from Peter Dunkley to Peter Ward dated 6 January 1989. I do not know who Dunkley is and have not been able to check the veracity of the information.

On the face of it there is a discrepancy between what Draper and Hodge say about the destruction of these files. Draper says that the documents had all been destroyed by 2 March 1978 i.e., in less than four weeks after Dunstan approached him, whereas Hodge suggests a later and longer period over which the destruction occurred. The reference to 40,000 documents (approximately the number referred to by White) might also suggest another case of confusion between these files and those held by Special Branch. However, we know that the Special Branch files had not been culled and destroyed by April 1978 as the Royal Commission had not yet reported. Even if there is some uncertainty about what precisely happened, we know that the non-Special Branch files on homosexuals were destroyed with the qualifications specified by Draper.

Draper said that generally files and/or information concerning homosexual people were not maintained solely because some people coming into contact with police were homosexual or may be considered to be. However, he explained that in some criminal investigations it might be necessary to interview homosexuals because of the type of offence. He gave two examples one of which was *"the murder of Dr Duncan".* Names and some other personal particulars were held on file but only as part of the murder investigation. This file was held in his office in a locked cabinet and made available only by him. None of it could be destroyed because the case was unsolved.

Draper then reported on the second inquiry made by Dunstan by providing details of procedures for the destruction of files and field reports of a general nature which are not relevant to the current discussion.

Draper's report thus confirms the existence of past files on homosexuals separate from Special Branch which were not known formally as pink files but something it is reasonable to assume were the source of the rumours or known to exist by the gay community and to which the "pink file" description relates (see below).

There has been an interesting sequel to the fate of the files prepared for the Dr Duncan investigation which in 1978 were locked away in Draper's office safe. They have found their way to the Coroner who permitted Simon Royal, an experienced and respected journalist, to read them on the condition that the names were kept anonymous (Simon Royal, Duncan drowning files a disturbing reminder of past attitudes', *In Daily*, 4 March 2022, updated 7 March 2022). Royal says these statements are the originals with blue pencil lines.

There are almost 400 statements taken mainly from homosexuals often involving questions about intimate sexual activity. These statements were used when in 1985 a Task Force was established to reinvestigate the Dr Duncan case after further controversy and fresh information was received. This led to the unsuccessful prosecution of three former police officers (Francis Cawley, Michael Clayton and Brian Hudson) for manslaughter. I tabled the final Duncan Task Force Report in 1990 (*Hansard,* Legislative Council, 3 April 1990, 1036) and we can safely assume these files were then deposited with the Coroner as the circumstances of the death of Dr Duncan had still not formally been resolved.

(viii) The source of the "pink file" rumours

Tracking down the origins of the "pink file" description of files held by the SA Police is not easy. The colour is obvious enough as pink is associated with gay men sometimes, but not always, positively. While the phrase was previously in circulation in some gay and perhaps police circles it was Ward's articles after publication of the White Report that brought the rumours into more general public prominence albeit in a mistaken way. *Hodge* (194) under the heading *"Police Pink Files"* records the knowledge in the gay press and community of police files that were separate from Special Branch. According to Hodge these had been maintained over decades and in 1977 were still being supplemented by CIB sighting numberplates near gay haunts and tracing them to compile lists of suspected homosexuals. By this time acts of male homosexuality had been decriminalised so it is not clear what purpose this continuing attention from the police would have served.

We can safely assume that the earlier surveillance would have produced information on homosexuals that was used to harass them at gay haunts and attempt to obtain criminal convictions including by the odious entrapment process.

An article in a Sydney publication (Peter Trist, "Pink Files", *Mature Age Gays,* undated) reports on a theatrical performance at a MAG meeting on 12 October [year unknown] based on the lives of four gay Adelaide men who came in contact with police before homosexual law reform. It was based on the reading by Ian Purcell of interviews conducted by John Lee (a gay historian and activist) of gay men from the 1940s and 1950s who were arrested and imprisoned.

The article says that the title "Pink Files" was an ironic South Australian reference to the police version of gay men's lives and that Special Branch and the Vice Squad held many files with information on known or suspected homosexuals and that *'these were referred to by the gay community as the police's "Pink Files"*'.

It describes how Dunstan sacked Salisbury for having mislead Parliament over the Special Branch files which were then burnt in the furnace of a crematorium, something which is not accurate, if what I have said above is correct. The article then accurately records that the Adelaide Homosexual Alliance in 1978 had sought an assurance from the Premier that the feared "Pink Files" had *"also"* been destroyed.

The above information suggests a gay community source for the "Pink File" description. It is also possible that the statements obtained from the interviews with gay men as part of the investigation into the killing of Dr Duncan which had further expanded the net of homosexuals the subject of information held by police were included in the description.

I have heard from a reputable academic source who studied the dismissal at the time that the description could have been one adopted informally by some police officers as a derogatory reference to the gay community. We know that the description had no official status either in Special Branch or other sections of the police force. There is no reference to "Pink Files" in either the White or Mitchell Reports.

My conclusion (subject to receipt of more evidence) is that initially the phrase came to be used colloquially in the gay community rather than by the police. At times the phrase encompassed all files held by the police on homosexuals, in others the "Pink File" description was only a reference to the files kept by the Vice Squad or general patrols. It was never a phrase just attached to Special Branch Files.

(ix) Liberals and Cockburn contest Royal Commission findings – the Griffin Report

Despite the unequivocal findings of the Royal Commission about Dunstan's knowledge of the Special Branch and the reach of its activities, these were never accepted by the supporters of Salisbury, the Liberal Party and Attorney-General Griffin or Stewart Cockburn.

The confusion was compounded when John Ceruto, who had earlier been in a sexual relationship with Dunstan, made a statement on 4 February 1980 at the relaunch of the book by Ryan and McEwin. He said he knew that Dunstan knew about Special Branch years before he admitted it to the Royal Commission and, among other things, said there were pretty big holes in Dunstan's testimony. He was amazed that no one was suggesting the reopening of it.

Premier David Tonkin immediately asked the Attorney-General Griffin to examine the transcript because of the disturbing matters raised by Ceruto so the Government could further consider the matter.

Griffin's Report was finalised on 27 August 1980 after an inexcusably long time and tabled in Parliament (K T Griffin, *Report on the Dismissal of Mr H.H. Salisbury, Commissioner of Police,* Legislative Council, 23 September 1980. P.P 137).

Ceruto provided an additional statement to the Government for Griffin's inquiry in which he said:

> *He (meaning Mr Dunstan) told me in 1968, when I was a visitor to his Norwood home, that we were under surveillance by Special Branch officers. He thought that the vehicle numbers of visitors' cars were noted and he believed that there was what was called a "Pink List" which Special Branch maintained, which named all known practising homosexuals in the State.* (4).

There are two immediate observations to make. The first is that this is more or less what Duncan is saying about the role of Special Branch, but which is not true, and the second is that there are questions about whether the files on homosexuals had by this time come to be described as "pink files". If not, this would have affected the credibility of Ceruto's statement about events in 1968.

Griffin prepared his report based on Ceruto's two statements and further investigations which produced information not tested at the Royal Commission. This was a documentary search including reports and newspaper clippings which gave rise to queries about Dunstan's version of events. As far as I can tell no one, including Ceruto, was personally interviewed except perhaps for the purpose of his second statement.

Griffin's conclusion was that the Dunstan Government could not have been misled to the extent which it claimed, if at all, following White AJ's inquiry; that there was sufficient information on the public record on the existence of Special Branch to raise at least grave doubt about Dunstan's insistence that he did not know of the existence of Special Branch until October 1970 (5).

Griffin said (10-11):

> *"5. The basic facts disclosed by Ceruto as to his relationship with Mr Dunstan (which is apparent from Dunstan's correspondence)* ***may*** *have placed Mr Dunstan in a position where he could not dismiss Salisbury and, as a matter of evidentiary proof, establish his actions as being divorced from his personal fears concerning the knowledge of Special Branch officers, i.e. the only conclusion which could objectively be reached upon the evidence* ***may*** *have been that Mr Dunstan* ***must*** *have been influenced in his actions by his fears of public disclosure of Ceruto's position of influence."* [my emphasis]

This reasoning lacks logic. How can one come to a conclusion that someone definitely did something based on evidence which, objectively considered, indicates only that they *may* have done that thing? How could it be concluded, as the *only* conclusion objectively available, that Dunstan *must* have been influenced in the manner described when the evidence, even if accepted, indicates no more than that he *may* have been so influenced? Griffin appears, by a form of convoluted reasoning, to have been straining to reach a conclusion damaging to Dunstan based only on evidence of what *might* have been the case.

The case made by Griffin relates to the *"ulterior motive"* theory first raised by the Liberal Party at the Royal Commission (13) where it suggested there might be evidence of this kind which explains the peremptory dismissal of Salisbury.

No evidence was produced, and Mitchell was satisfied that Dunstan gave the true reason for he and the Government acting in the way they did. Griffin says that with his additional information and the disclosure of Ceruto's statement an underlying reason for Dunstan's action was revealed in that he was trying to prevent disclosure of his relationship with Ceruto.

In coming to his *"conclusion"* Griffin adopted without specific acknowledgment the argument of Ryan and McEwin in their book (140) that Dunstan had a personal reason for wanting to neuter Special Branch.

Griffin argued that, if this evidence had been before the Royal Commission, the credit of Dunstan may have been affected and Ward's evidence preferred over that of Dunstan. He does not deal with the obvious question of how the dismissal of Salisbury in 1978 and a continuation of Special Branch with the culling of its files based on genuine security criteria but not their total destruction, and under the supervision of an independent auditor, would achieve the objective of non-disclosure of Dunstan's relationship with Ceruto. This is a classic conspiracy theory, rightly described as bizarre by *Woollacott* (241).

In considering what further action to recommend, Griffin (13) reiterated that there was at least grave doubt about whether the Government had been misled; said that consequently this raised the same grave doubts about the Government's motives (including those of the Premier) in moving against Special Branch and the Police Commissioner; and that the information *"now available and not generally presented to the Royal Commission also raises serious questions in retrospect about the judgement made by the Royal Commission on Mr Salisbury's actions"*.

Griffin, having come to these quite definite conclusions, then rather strangely recommended no further action, i.e. that there would be no merit in re-opening the Royal Commission or establishing a new one with wider terms of reference. The report was heavily criticised, including by *The Advertiser* (Editorial, 'Better not Done', 20 September 1980; (*Hodge*, 257-262).

While Griffin uncovered some fresh public references to Special Branch including in Annual Reports of the Police Commissioner before 1970 there was nothing adequate enough to call into question Mitchell J's findings about what the Government knew about Special Branch without another proper inquiry. In any event whether there was a Special Branch was not the central issue which was whether the Government had been deliberately misled about the scope of its activities. Another inquiry would not have altered that finding.

Griffin's Report was a regrettable exercise which did no credit to Tonkin (who was a small "l" Liberal and in 1972 had been a strong supporter of homosexual law reform) or to Griffin who lent the status of Attorney- General to a project that was entirely political. He should have refused to do it. The Liberals were under pressure from their supporters to do something to correct the perceived injustice to Salisbury but didn't want to open a can of worms by re-opening the Royal Commission and run the risk of a confirmed finding against Salisbury.

The compromise was Griffin's examination of Ceruto's statement which he said could (may) contradict the Commission's findings but would not require anything further to be done in a substantive way to overturn Mitchell's findings or award compensation to Salisbury.

It was a cruel hoax on him and his supporters. If there were genuine concerns revealed by the material considered by Griffin, then the Royal Commission should have been re-opened or another independent inquiry set up. It was only by putting this "new evidence" to Dunstan and giving him the opportunity to respond that the matter could be dealt with properly. Griffin should have known this but proceeded anyhow with his own mealy-mouthed findings against Dunstan.

(x) Stewart Cockburn

Cockburn never gave up. Dunstan (*Felicia*, 305-308**)** quite generously acknowledged that his book was very readable but repudiated other ulterior motive or conspiracy theories that the dismissal was motivated by the Government's disagreement with Salisbury's views on punishment and social attitudes and his opposition to pornography. Cockburn still maintained that Ward's credibility should be preferred to that of Dunstan despite the clear findings that Special Branch had no involvement in the Bray incident in 1967, something ignored in Cockburn's book.

Most extraordinarily Cockburn accused Ward of being a KGB agent. This was described by Dunstan as the "*crowning silliness".* He also drew into the dispute in a tendentious way the controversy over Governor Keith Seaman's "grave personal impropriety" committed before his appointment which turned out to be an extra- marital affair. Not a good look for a Methodist Minister, and he had not told Dunstan about it before his appointment, but hardly evidence of the moral decay in SA under Dunstan that Cockburn attempted to portray.

Despite the book containing important factual information, *Woollacott* (220) rightly describes it as "*oddly rambling".* It is my view that Cockburn became obsessive and lost any reasonable perspective despite his genuine concerns about the Government's action. Recently evidence has emerged that Cockburn accepts this to some extent (Jenny Cockburn, *Stewart Cockburn, writing for his life*, Australian Scholarly Publishing 2022, 308). A salutary lesson for all investigative journalists where obsessiveness is a precondition for action.

Cockburn (48) also deals with the dispute which led Peter Ward to threaten legal proceedings for defamation against Dunstan. After Ward's *"it's a nice feeling"* article in *The Australian* of 19 January 1978 Dunstan responded the same day with a press statement and conference disputing what Ward had said about Dunstan's knowledge of Special Branch, accusing Ward of scurrilous and inaccurate reporting and saying the Government would no longer deal with him because it could not rely on fair reportage. Ward threatened to sue for defamation which was reported in *The Australian*. Cockburn correctly records that a war of words and court action between Dunstan and his former executive assistant would have been a disaster for the prosecution of the Government's case against Salisbury. He says the matter was resolved in a *"politically ingenious, if bizarre, way"*. Commonwealth MP Neal Blewett who was friends of both was called on to mediate, the result of which was a lengthy article written by Ward ('Face to Face, the two men in the eye of the storm over South Australia's secret police dossiers', *The Australian,* 24 January 1978, 7). The article includes an extensive outline of Dunstan's case which he continued to argue for in Parliament and before the Royal Commission.

There was discussion of misunderstandings between them which Dunstan said had been cleared up. He agreed to withdraw the word scurrilous, Ward admitted that *"perhaps"* he shouldn't have released information gained while a political servant and agreed not to pursue the legal proceedings.

In *Felicia* (297) Dunstan deals with this issue by quoting from Ward's 19 January 1978 article. He then says (298):

> *"Then and subsequently, headlines stated that I had known, long before the White report, about the nature of Special Branch files. Actually Peter Ward did not say that, but the rest of the press took it that this was what he was referring to, and this gave the forces of reaction something to hang their hat on."*

I can only assume that Dunstan came to believe this because of his discussions with Ward that removed the possibility of defamation proceedings, but it is not correct. Any reasonable perusal of Ward's articles both before and after the White Report can only conclude that Ward was saying (whether accurately or not) that Dunstan knew about files kept on persons not convicted of indictable offences held by Special Branch. He continued to maintain this position in his evidence before the Royal Commission particularly in relation to the Bray and Bakewell/Baker incidents and which was rejected.

Delving into these historical minutiae may seem unnecessary but it is not. Compromises in legal and political disputes often involve fudges or the ignoring of the facts so parties can take out of the settlement statement whatever best suits their position. In this case an immediate and disastrous political controversy was avoided, but Dunstan's take on it that Ward was misreported is wrong. Ward's accusations remained in place and are now taken up by Duncan in one respect at least (Bray and Dunstan's knowledge of Special Branch) even though contradicted by the Royal Commission.

Griffin and the Liberal Party also continued to maintain that Dunstan knew about the extent of the Special Branch files. When the Special Branch was disbanded under the Bannon Government in 1984 and in 1986 a new set of Directions given for the operation of the new Operations Intelligence Section Griffin was still content to say that Dunstan had known of Special Branch and its activities for many years and had sought to manufacture an excuse to dismiss Salisbury and emasculate Special Branch. Cockburn returned to the fray about the downgrading of our security services in an article in *The Advertiser* of 9 June 1984 from which Griffin quoted (*Hansard,* Griffin, Legislative Council, 16 August 1984, 339-341).

There is a later event which reveals something magnanimous and decent about Dunstan's character. Despite the viciousness of Cockburn's attacks on him, Cockburn's distortion or ignoring of facts on the Salisbury case, the undoubted hurt and distress they would have caused him and the bitterness he was justified in feeling, Dunstan agreed to be interviewed by Cockburn for his biography of Sir Thomas Playford (personal communication from Jennifer Cashmore, Cockburn's wife). Dunstan admired Playford and wanted to help Cockburn despite what had happened.

(xi) Conclusion on Duncan's confusion about Special Branch files.

Confusion over the two categories of files held by police on homosexuals and Dunstan's knowledge of them bedevilled debate in 1978 and the confusion has continued since, despite the clarity delivered by the Royal Commission that Dunstan knew about general files kept on homosexuals and others exemplified by the Bray incident (but perhaps not generally known by then as pink files) but did not know before 1970 of Special Branch and the extent of its activities supposedly related to State and national security.

Duncan's mistake over this issue is egregious and inexcusable as he has attacked the very basis of the Dunstan Government's defence of the sacking of Salisbury. He supports the mistaken views of Ward and a key element in Ceruto's mistaken version of events supposedly going back to 1968. The Government and Dunstan's defence to the accusations was that, while he knew about the existence of Special Branch at least after 1970, he was not aware of the full extent of its activities about which he was misled, and which formed the basis of Salisbury's dismissal. However, Dunstan did know about other police activity in relation to homosexuals not convicted of an offence now known as pink files, whether they were called that or not. In particular he knew that in 1967 at the time of Bray's appointment there was no Special Branch involvement.

It could be asked if Duncan, Ward and Ceruto are right, then how did Dunstan not know in 1967 of Special Branch's role in the collection of the vast pink files as asserted by Ceruto? The simple answer is Duncan is wrong on this matter as he is on numerous others. The evidence is clear from the White Report and Mitchell Royal Commission that the Special Branch was not generally collecting files on homosexuals. Ward's evidence was rejected. The Royal Commission's decision did not stop Cockburn and the Liberal Opposition from continuing to raise the issue and regrettably Duncan's mistake has rekindled it in a way that supports their view.

A view that it could be said to be all ancient history, or a mistake of no consequence, is not sustainable. History does matter and people considering one of the most controversial events in SA history are entitled to the truth. It would normally be expected that the recollections of a Minister who was directly involved could be relied on. When a mistake like this is made, the historical trail is corrupted as subsequent writers continue to rely on it as true. It is also not fair personally to the memory of Dunstan for succour to be given to the Liberal's incorrect version of events, as Duncan has unwittingly done.

(xi) Should Salisbury have been dismissed in the way he was?

Duncan (90) says that he supported the sacking of Salisbury and the way it was done, presumably even with hindsight and what we now know about the political fallout. This issue can be more fully pursued at another time and there are legitimate differences of view.

Suffice it to say for the moment that the practice of democratic politics often involves carefully balancing issues of principle with the pragmatism and compromise required to win elections and continue to govern. The principle in this case could not be clearer as explained by Dunstan in the Parliamentary debate supporting the Government's actions (*Hansard,* House of Assembly, 7 February 1978, 1360).

Just as it is unacceptable for a Minister to deliberately mislead Parliament and resignation should follow if that happens, so a senior public servant cannot mislead a government which in turn may mislead Parliament and the public. This should have been an easy debate to win but turned out not to be.

I was in Parliament as a backbencher who had nothing to do with the decision but supported it fully. The question now is whether Dunstan and the Government had done its political due diligence about the possible backlash. The strength of protest from the Liberal Party should have been foreseen.

Despite the unequivocal nature of the principle, it turned out that it was easy for Cockburn and the Liberal Party to create the impression that Salisbury had not been given a fair go. The Police Association was the first to protest, again something not adequately foreseen.

The usually careful attention to good media presentation failed, it can only be described as politically inept. Salisbury was dismissed by Executive Council on the afternoon of Tuesday 17 February 1978. An exclusive briefing was given to *The Advertiser* shortly afterwards but embargoed until midnight, Salisbury was out to dinner and didn't want to receive a letter while he was there so only received notice that he had been dismissed when he got home at about midnight. Dunstan was on early morning radio from about 6.00 am explaining the Government's position with a press conference at 9.30.

Ward was angry about the exclusivity, particularly as he had been the journalist who had first raised the issue. His reaction had not been anticipated by Dunstan when perhaps it should have been. This may have been because Ward was a friend, but Dunstan had overlooked that many journalists don't allow a friendship to get in the way of a good story.

And Ward's was seemingly a good story blowing the otherwise principled clarity of the issue out of the water. The electronic media and particularly the television stations were also angry about the exclusive release on a major matter of public policy and politics. This created a media environment hardly conducive to selling the Government's story.

It was also easy for the Government's opponents to make the case that there had been undue haste in effecting the dismissal and that Salisbury had not been given enough time to consider his position. The Royal Commission accepted that the rules of natural justice had been satisfied, based on the facts peculiar to the case, but that did not stop the critics. Mitchell J also concluded that Dunstan and Duncan were wrong in their advice that suspension was not legally available. Dunstan's newly minted press secretary Mike Rann, political antennae in place even then, had suggested suspension as a first step but had been angrily rebuffed. Suspension with release of White AJ's Report would have highlighted and concentrated the debate on the valid reasons for any later dismissal.

While Dunstan's senior policy staff favoured immediate dismissal, some senior public servants advocated suspension and an administrative inquiry (*Woollacott*, 216)**.** The Royal Commission (14) noted that, although Salisbury had been told he would be dismissed, he had believed that this would be likely to happen at the regular Executive Council meeting on the following Thursday, not later on the day he was told by Dunstan. On the other hand, Dunstan initially thought Salisbury would resign and Rann had prepared a press release to this effect which had to be changed when it became clear later in the evening that this had not happened.

In politics there are usually options available and in this case alternatives to immediate dismissal should have been considered. According to Dunstan Salisbury was amenable to culling the files which means that this could have been done by agreement along with the release of the White Report and the new Directions. Salisbury could have been suspended and/or given the directions under s 21 of the *Police Regulation Act* which, if he had refused to comply, would have provided firm grounds for dismissal without the accusation that Salisbury did not get a fair go and the furore that followed.

The political consequences of Salisbury's sacking were adverse, as they resulted in a significant drop in Dunstan's approval ratings to 57% from their earlier height of 82 % and then 71 % at the time of the 1977 election (*Woollacott*, 220). While this was still a solid figure, it can be argued that the political fallout followed by other events in 1978 marked the beginning of the end of the Dunstan decade.

Duncan (90) commits a more minor error. In the context of the protest about the dismissal of Salisbury he says that Cockburn was married to Jennifer Adamson the Health Minister in the Tonkin Government, implying that this was so at the time of Salisbury's dismissal. That is wrong, because Jennifer Cashmore did not marry Cockburn until 1988.

B. *Failure to appoint Elliott Johnston QC to the Supreme Court because he was a communist.*

Duncan (87) says he was keen to appoint Elliott Johnston QC (Duncan misspells his name) to the Supreme Court but, after raising it with Dunstan, they agreed not to proceed. This was because he was a communist and they did not want any further controversy in 1978, the year of the Salisbury sacking. At this time Johnston was the *de facto* Leader of the Bar and on merit should have been appointed.

Dunstan and Duncan decided not to proceed with the appointment because of his political opinions. As a result, the Supreme Court lost the best person for the job at the time and Johnston suffered financial detriment as, by the time he was appointed, he was too old to qualify for a judicial pension (not that that would have bothered him).

Duncan says he doesn't regret not appointing Johnston because of the circumstances of the time but *"was pleased that he was appointed subsequently*". He does not seem able to bring himself to say this appointment was made in 1983 by the Bannon Government on my recommendation. So much for his commitment to principles of non-discrimination.

C. *Federal Court appointment*

Duncan (179) says that after the March 1996 federal election:

> *It was quite possible, if I'd expressed an interest, that the new Liberal Government would appoint me to the Federal Court. I was on quite good terms with Peter Costello, the new Treasurer, and it was likely the Libs would have offered me an appointment to protect Trish Draper.*

This must be a fantasy based on even the most superficial view of the policy positions and ideology of the Howard Government. It is also impossible to believe that Daryl Williams QC the Attorney-General would have engaged in such a subterfuge to take Duncan out of a future contest for his old seat of Makin which he had lost to Draper. It also overlooks the requirement for merit, including legal ability, in judicial appointments.

It was John Mansfield QC who was appointed to the Federal Court in September 1996, based in Adelaide, and it is laughable that Duncan may have been considered a more meritorious appointment.

D. *Uranium protest meetings.*

Duncan (91-94) deals with the fallout from a rushed visit Dunstan made to Europe in early 1979 to examine the latest developments in the uranium industry and to consider whether there might be any basis for modifying Labor policy.

In 1977, at both Federal and State levels, a decision had been taken to oppose uranium mining and processing. The State Government was aware in early 1979 of the potential of the Roxby Downs deposit and the desire of some in the Ministry, such as Hugh Hudson, to permit its exploitation. The end result of Dunstan's trip was that he concluded it was not safe to do so at that stage based on the inadequacy of non-proliferation arrangements and nuclear waste disposal. The trip was no junket: Dunstan had been accompanied by public servants, experts who supported uranium mining and press secretary Mike Rann who, in New Zealand, had been involved with the Campaign for Nuclear Disarmament and Greenpeace. They travelled to England, Sweden, France, Holland, and West Germany (*Felicia,* 312; *Woollacott,* 230-233).

In *Felicia* (313) Dunstan refers to meetings during his absence organised by members of the Party *"led by"* [Duncan] … "*to get various bodies of the Party pre-committed against any change of policy which might be recommended out of my investigations"*. He said that "*stories about this had carefully been leaked to the press*".

The result was that the media said that in the conclusion Dunstan had reached on the trip, he had bowed to left-wing pressure and that the meetings in his absence had given support to the *"press campaign directed against the honest intentions of my investigations.* Dunstan says he read the riot act to the Party Executive and Caucus about this on his return.

Duncan's version of events is that he attended a meeting of the Left with some other members of Caucus but no other Ministers. In considering Duncan's version it should at the outset be understood that under the non-factional Machine consensus model that was still in place, it was by common understanding unacceptable for a Minister to attend a meeting outside the normal forums of the Party which could potentially undermine the Cabinet and particularly action that a Premier was taking. The proper place for discussion was in Cabinet, in Caucus or State Executive, Council or Convention. Thus, it had been inappropriate for Duncan to have attended the meetings he did.

Duncan says that Dunstan had received a biased report of the meeting and *"regarded my actions as disloyal"*. He says it was a private meeting of the Left and the details had not been publicly leaked. These assertions need clarification based on media reports at the time. There was speculation that Dunstan's investigative trip might lead to him trying to modify the ALP policy at a State Convention and then, as would be necessary, at a Federal Conference. There was concern about this across the Party generally.

There were in fact two meetings during Dunstan's absence: they were not private meetings of the Left and details had been given to the press. The first meeting of about 80 people was on Wednesday 24 January 1979 at the Trade Union Training Centre in Gilbert St and attended by Duncan and Chief Secretary Don Simmons (i.e. another Minister was present) and three Legislative Councillors, Norm Foster, Anne Levy and Frank Blevins.

A committee was formed to draw up a resolution supporting the current Federal policy and opposing change which, after a further meeting, would be presented to Dunstan on his return from overseas (Greg Kelton, 'Ministers at anti-U meeting', *The Advertiser*, Friday January 26, 1979**).**

The second meeting of 103 people was on Wednesday 31 January 1979 at the Australian Government Workers Union office in Sturt St and attended by Duncan, Legislative Councillors Foster, Levy and me and House of Assembly Member Terry Hemmings ('ALP supporters reaffirm ban on uranium', *The Advertiser*, Thursday February 1, 1979. (Note: I have no independent recall of the meeting, so it is possible I wasn't there but am prepared to accept the press report). The current policy was reaffirmed in strong terms.

This article also says that, earlier that week, Dunstan had said that international safeguards were still not adequate. This was a reference to a report of Dunstan saying in clear terms that he had not found any evidence in Britain to change his mind against uranium mining in SA (Chris Milne, 'U-survey hasn't changed stand: Premier', *The Advertiser*, Monday January 29, 1979). It is easy to surmise that Dunstan's anger about what was happening back in SA was prompted by the fact that he was not proposing any change of policy and, indeed, had repudiated the idea even before the protest meeting on 31 January.

Dunstan's concern about the way the public dispute within the Party was used by the Liberal Opposition is confirmed by a statement from Doug Anthony, the Acting Prime Minister, who said that Dunstan had been forced by the Left-wing of the ALP to make another U-turn; had bowed to colleagues at home determined to sabotage him; and had not been able to withstand the pressures within his own party ("Dunstan 'forced into U-turn'", *The Advertiser*, Tuesday January 30, 1979, 3). It is no wonder Dunstan felt betrayed by having his integrity questioned.

Duncan says that Steven Wright, Dunstan's senior private secretary, was on the trip and in constant contact with Peter O'Brien, Duncan's senior private secretary. During these conversations Wright indicated that Dunstan was strengthening his opposition to uranium mining. How this would have helped with Duncan trying to justify his attending meetings to gather support to maintain the policy is not clear. In any event that is a hypothetical question as the discussions between Wright and O'Brien did not happen in that way as Wright was not on the trip.

Woollacott (232) correctly asserts that Duncan was *"one of the meeting organisers"* and that its purpose was to coordinate opposition to uranium mining in the face of a possible backflip by Dunstan. She refers to John Cornwall's recollection that, on his return, Dunstan "*tore shreds off Duncan in front of the whole Caucus"* (*Cornwall* 1989, 8). I can confirm this recollection. Duncan tries to downplay the issue by saying that he can't recall the exact details but only that Dunstan was extremely displeased. It is surprising that Duncan is hazy about the details. I am not. Dunstan was furious and regarded Duncan's actions as grossly disloyal in the context that Dunstan had always shown loyalty to him and supported him to get into Parliament and the Ministry.

Duncan (94) asserts that someone had fed an incorrect version of the meeting and poisoned him to Dunstan. On the basis of what we know now, it is hard to see how that could be the case. The purpose of the meetings, Duncan's involvement in them and the public nature of them is clear. The person said to have given Duncan the false information is not named, leading to the inference that he or she is still alive.

Loyalty was an essential attribute under the Machine consensus model and much prized by Dunstan. He regarded Duncan's actions as a betrayal. He was opposed to the Party splitting into formal factions (*Woollacott*, 233) which Duncan by now was starting to orchestrate with the help of interstate influences.

Dunstan collapsed in Parliament on Thursday 8 February 1979 shortly after his return on Sunday 4 February and the caucus meeting that followed on Tuesday 6 February. He resigned as Premier on Thursday 15 February.

The trip had been exhausting, Dunstan had poor health during it, and he had the added burden of Duncan's disloyalty as he clearly perceived it. Mike Rann provided information to Woollacott, confirming the trip's gruelling nature and the stress it generated, and that Dunstan had seemed depressed as well as ill and had been falling asleep at meetings. Rann has informed me that the itinerary was 'ridiculous', and the weather freezing - confirmed by a media report that they were trapped by a strike and snow bound in London (Chris Milne, 'Dunstan trapped in London', *The Advertiser*, Wednesday, 24 January 1979, 1).

Rann was present in London when Dunstan received the news from his office and from the Party Secretary Howard O'Neill of Duncan's attendance at the meetings. Rann had never witnessed such fury from Dunstan who thought that Duncan's actions were an affront to his integrity. He could not believe Duncan would have done this to him after all the support he had given him.

It is likely that the meetings were organised by staff in Duncan's office. By this time Duncan and his supporters had established a vehicle for advancing their causes without having a formal faction. Called the Policy Research Group or PRG (jokingly referred to as the Provisional Revolutionary Government) it was based in Duncan's office.

Dunstan's anger had probably been heightened by the fact that he had previously received information about Duncan's office being used to prepare and print material critical of Dunstan's industrial democracy policy. Phil Bentley was the Executive Officer at the Unit for Industrial Democracy and Assistant Director of the Department of Labour and Industry. In May 1978 he had obtained information that a document highly critical of the industrial democracy policies instituted by Dunstan had been prepared for use at the upcoming State Convention and printed in Duncan's electorate office. Bentley made this known to Dunstan and others in the leadership group, including his Minister Jack Wright, who were extremely unhappy about Duncan's actions.

The political battles had taken their toll on Dunstan particularly those against the conservative elements of the Liberal Party. *The Advertiser* was not always aggressively antagonistic to Labor as we now see today with Murdoch owned outlets. It supported homosexual law reform and cultural and arts initiatives and gave qualified support over the Salisbury dismissal while still publishing Cockburn's very antagonistic views.

Many in “the Establishment” liked Dunstan’s approach to the arts which helped build the coalition he needed for electoral success. It was the Murdoch owned *The News* and *The Australian* for whom Peter Ward worked that was most aggressive in support of Salisbury.

By January 1979 Dunstan had spent nearly 26 years engaged in high octane political activity. He was an indefatigable worker in the Labor cause and would accept invitations from anywhere to speak, from the smallest country sub-branch in SA to prestigious lectures to large public gatherings.

He was a charismatic figure and speaker and much in demand. He did not shirk hard work, despite not always being in robust good health. He suffered from migraines. By 1977 he was being advised to take a weekend off in every three and several two week breaks during the year. (*Woollacott,* 232).

His *annus horribilis* was 1978. The Salisbury dismissal must have taken a serious toll on his stress levels after the adverse reaction which had not been anticipated and was followed by the death of his wife Adele Koh from cancer. In retrospect, the uranium trip was probably ill advised, particularly as one of the health issues, a testicular virus, was apparent before he left. But the trip was characteristic of Dunstan, he was faced with a serious policy issue that could have profound implications for the economic wellbeing of the State, and he wanted to get to the bottom of it given the conflicting views that existed in the Ministry and public service.

Duncan (247) says it was an honour and privilege to serve in Dunstan’s Government and one of his many sorrows was *“to see him finally smashed by the dishonourable forces arrayed against him, not just members of the Adelaide establishment but also individuals from the Labor Party.”* Duncan does not specify who those Labor Party individuals were either personally or by category and it is an unwarranted slur. Dunstan was given great loyalty by his Cabinet colleagues, including Deputy Premier Des Corcoran, even though they were very different personalities.

In Parliament from 1975 I was unaware of any Caucus members who tried to smash Dunstan who was given unqualified loyalty. It was the Left grouping that coalesced around Duncan that wanted to see the consensus model of Party organisation which Dunstan supported undermined. Duncan’s denigration of members of the Labor Party and Caucus is unjustified. Since Dunstan’s death Party members and others have worked hard to keep his memory, ideas and inspiration alive, including through the Don Dunstan Foundation.

History is about reality and perceptions of it and interpretations about what is known. Duncan may not have thought there was anything wrong with what he did over the uranium issue but that was not how Dunstan perceived it. He felt that what Duncan did to him was disloyal, an attack on his integrity and politically gave an opportunity for Labor’s opponents to attack him.

Others can come to their own interpretation based on what is known but, in my view, it was the attack, perceived or real, on his integrity implied in the meetings organised by Duncan that would have hurt Dunstan most. A horrible year was capped off by the trip and the additional hurt and stress caused by Duncan’s actions. Dunstan also felt a sense of betrayal over the Salisbury affair where former friends or persons he admired turned on him – Mark Oliphant, Peter Ward and Max Harris. Duncan’s actions could be seen as the last straw but more likely there was not just one tipping point but an accumulation of factors.

The reality is that by early 1979 he was physically and emotionally exhausted, the limit of his capacity as an effective politician had been reached. Not surprisingly he was "stuffed".

E. *Lynn Arnold Foreword (vii).*

Arnold joins enthusiastically in the Duncan tribute to himself by asserting wrongly that Duncan is one of *"the very few"* to have served as a Minister in State and Federal Parliaments. This ignores the first decade of Federation in which almost all the Ministers had previously served in colonial governments. And since then, what about Bob Menzies, Wilfred Kent-Hughes, Laurie Brereton, Wal Fife, Frank Walker, John Fahey, Bob Debus, Bob Carr, Joe Berinson, Linda Burney, Carmen Lawrence, Christian Porter, Eric Abetz and almost certainly others.

3. Defaming the dead and other personal attacks (Bannon, Lewin, Plunkett and Young all deceased).

A. *Ballot for the National Executive 1981.*

Duncan (118) records that in February 1981 the Bannon Opposition elected a Shadow Cabinet and he was appointed Shadow Transport Minister. Prior to this, and after the September 1979 election, the Labor Opposition had relied on a smaller executive structure in which Duncan had declined to participate. In August 1981 he resigned from the Shadow Cabinet. He says he could no longer work for or with Bannon based on what he alleges was a deception and betrayal relating to the election for National Executive delegates (118 -121).

There is no dispute about some of the key facts. At the regular 1981 June State Labor Party Convention there was an election for two National Executive delegates. It was conducted under the winner take all system as described by Duncan and before the introduction of proportional representation for national positions.

Mick Young was elected first, and his ticket should have seen Chris Schacht who was Party Secretary elected had everyone who voted for Young followed it. Some did not which meant that Duncan was elected by a small margin.

It was revealed shortly afterwards that the three delegates from the Builders Labourers Federation had been wrongly credentialled for a greater number of votes than those to which they were entitled. If the BLF with the correct number of votes had voted for Duncan, then he would have narrowly lost. It was accepted by all concerned that the irregularity could have affected the result.

The matter was considered by State Executive. It recommended to the July State Council that a fresh ballot be conducted at the 6 August State Council meeting involving all three candidates and according to State Council voting rules, which gave one vote to each delegate rather than the use of the card vote which gave delegates votes based on the number of votes for which a Union was affiliated. Duncan declined to nominate for the 6 August ballot and then resigned from the Shadow Cabinet.

From here what happened particularly in relation to the criticism Duncan makes of Bannon, based on his discussions with him, cannot be fully verified. We do have Duncan's account, but Bannon is not here to give his version of events.

Schacht was directly involved as Party Secretary and a candidate. Although a partisan actor, I have no reason to question the essential elements of his recollections, particularly in relation to the legal advice that was obtained.

The most glaring omission from Duncan's version of events is that once the existence of the credentialing error was discovered, legal advice was obtained from Johnston Withers, a left-wing labour law firm of which Elliott Johnston QC was still a part. Partner Peter McCusker advised that, because of the credentialling error, the election was invalid and should be reconducted involving all three original candidates. Further, that it was appropriate for the fresh election to be conducted at a regular monthly State Council meeting.

This being the case, there are some aspects of Duncan's version and the discussions he says he had with Bannon that do not add up. Duncan would have been aware of this advice if not directly then at least from his supporters on the State Executive. Duncan says that because the Returning Officer had reported at the State Convention the result of the original ballot, and this had been declared, that meant that Young and he had been properly elected. He argues that legally this should have been the end of the matter as the Returning Officer's role was *functus officio*. In my opinion this is not a correct statement of the law. A fundamental flaw in relation to the eligibility to vote which could have affected the result rendered the election null and void.

There is a ready analogy with a Parliamentary election. The declaration of the ballot by a Returning Officer does not preclude an aggrieved candidate from seeking redress in the Courts if there have been irregularities in the conduct of the election.

Secondly, Duncan says that he had accepted that Young had been legitimately elected but offered to resign so that a ballot could be held between him and Schacht. Duncan says Schacht was not particularly popular and could not have won against him. He says the Centre Left did not agree to that course.

That is not surprising as the State Executive was not entitled to ignore the legal advice and declare just one of the candidates elected (see below for comment on whether there was a formal Centre Left faction at that stage). If the legal advice was correct (which I think it was) then the original election by State Convention was not validly conducted and it is unlikely the State Executive had the legal power to modify it. It would certainly have been inappropriate in the circumstances.

Thirdly, Duncan says that he raised the question of whether the State Council, as an inferior body in the Party structures to the State Convention, could, in legal terms, overrule a decision of the Convention. He says that Bannon had agreed with him that it could not.

This is true as a general proposition but irrelevant to the legal situation that arose at the time. The original State Convention decision was invalid so there was no decision of State Convention with which a decision of the State Council could conflict. Bannon, as a member of the State Executive, was aware of the legal advice. So as a matter of law the process was to be started afresh. Hence it is unlikely that Bannon in the circumstances of this case would have agreed with Duncan's assertion that the State Council had no power to override the Convention. Duncan may just be confused and be alleging only that as a matter of general principle State Convention should have conducted the new ballot.

Fourthly, Duncan then says based on this discussion Bannon *"went to State Executive with the proposal"* which Duncan expected to be carried. He says the State Executive dominated by the Centre Left decided to conduct the whole ballot again but at a subsequent State Council meeting, not at a Convention.

Duncan says that after the State Executive meeting, he had been assured by Bannon that the matter had been resolved as had been agreed between them. In Duncan's eyes this was the betrayal as he thought the agreement he had with Bannon was for a State Convention ballot. There are several problems with this scenario. It is virtually certain that Schacht, as Party Secretary, and other supporters such as Young would have been informed if Bannon had believed there was an agreement as alleged by Duncan. Yet Schacht says that he was never informed of Duncan's discussion with Bannon on this issue.

Schacht also says that Bannon played no special role in the State Executive discussions but went along with the decision which was based on the legal advice. According to Duncan, the members of the State Executive who moved that the July State Council endorse its decision concerning the fresh election were Bob Gregory, then Secretary of the Trades and Labour Council and seconder Frank Blevins. It is inconceivable that they, both from Left unions, would have done so had they been aware of Duncan's concerns (which he alleges he had made known to his supporters, presumably including Blevins).

From my knowledge of them both, Gregory and Blevins would have been sticklers for the rules and once the legal advice was clear would have had no doubt about what needed to be done.

Duncan says that he had alerted his supporters to his agreement with Bannon and asked them to support a Convention ballot. Schacht's recollection is that there was no move made by Duncan supporters on State Executive to advocate for this option. This is surprising if Duncan had lobbied them to do so.

Duncan says Frank Blevins told him that Bannon had informed State Executive that Duncan supported the motion as passed i.e. for a Council, not Convention ballot. Schacht has no recollection of Bannon specifically doing this or playing any special role on the issue and believes that he was content (as were the rest of the State Executive) to abide by the legal advice.

Duncan's allegations are extraordinarily defamatory. He asks us to accept that Bannon had an agreement with Duncan which he not only failed to follow through but deliberately deceived the State Executive about. While it is possible that there may have been some lack of clarity in any discussions between Duncan and Bannon, I do not accept that Bannon would have behaved in such a deliberately duplicitous way. As is well known it is always possible for people acting in good faith to have different interpretations of discussions. I think a misunderstanding is a more likely explanation for what happened than a deliberate deception by Bannon.

The only possible grievance that Duncan had was that the fresh ballot should as matter of policy have been conducted by a subsequent State Convention and not by a State Council. According to Schacht the legal advice was that in between Annual State Conventions it was the monthly State Council that was responsible for the conduct of the State Branch's affairs, and it was legitimate for it to reconduct the ballot.

It would certainly have been possible, even if not as administratively convenient, for a special Convention to have been held, perhaps prior to the regular State Council meeting but the State Executive which included Duncan supporters agreed with the State Council proposal.

There is in any event no basis for Duncan's assertion that the Federal Executive position was *"stolen"* from him. Leaving aside the legalities of the matter which required a fresh ballot, the politics of the situation were such that Schacht would probably have won in any forum in 1981. Had the original ballot been properly conducted it is likely that, without the BLF irregularity, Schacht would have won. A full rerun of the ballot at a State Convention would also probably have resulted in a Schacht win on Young's ticket.

Duncan says he would have won a ballot against Schacht but, given the invalidity of the original ballot, it could not have been conducted again just between him and Schacht and without Young. Schacht would also have won probably even more convincingly at the State Council if the election had been held.

Cornwall (*Cornwall* 1989, 12- 14) deals with this issue and refers unquestioningly to Duncan's assertion that a State Council cannot overrule a State Convention decision without clarifying that there was no 'decision' of the State Convention as the ballot was invalid. He also says that Duncan won a ballot for the same position in 1982 with 54 % of the vote when the card vote was used. This is correct but by this time the Left had increased its support, and the same result would not have occurred in 1981 even if the card vote had been used. He also records a statement by Bannon whereby he totally rejected Duncan's version of events as had been portrayed in the resignation letter.

It is worth observing that Schacht's alleged unpopularity came about because in 1980 he, with the support of Bannon, had managed to convince a State Convention to increase the sub-branch component of the card vote from 6 percent to 25 percent, thus increasing democracy for sub-branch members but also diminishing union power.

On this topic and elsewhere in his book, Duncan refers to the "Centre Left" implying that it was an organised faction in 1981. In fact, it was not formed as an organised faction until early 1984. For decades prior to this the SA Branch had operated on a consensus model which saw all ideological positions in the Party accommodated. There were no formal factions that met and sought to bind their members in ballots or on policy. The idea of parties within a Party was anathema to Dunstan and to the likes of me and the great majority of ordinary trade union and sub-branch members. I spoke to a motion moved by the Darlington/ Marino Sub-Branch at a State Council meeting on 15 October 1986 denouncing the factional system and referring the issue to State Executive for discussion with the Federal Executive and preparation of a report on the reduction of the effects of or elimination of the formal factions within the Party which was carried without dissent (*Submission to the ALP Review Committee - 1993 election*, 26 February 1994). The resolution was ignored and the factionalisation of the Party continued apace.

Under the consensus model the Party was said to be run by "the Machine" comprising a cross section of particularly trade unionists and former trade unionists (such as Jim Toohey and Clyde Cameron) and others such as Don Dunstan (see Duncan, 90). By the use of the card vote the major unions controlled the preselection of candidates but not by meeting in separate rigid factions.

There was considerable fluidity between them and on policy matters the card vote was not used. Delegates voted based on the policies adopted by their Union or sub-branch or according to their own views. There were no separate factional meetings.

It was Duncan and elements of the Left, through the vehicle of the so-called Policy Research Group which Duncan was instrumental in establishing, that were encouraged by interstate influences in the late 1970s to begin the process of forming a formal Left faction to challenge the consensus model against the wishes of Dunstan. The Centre Left was formed to try to maintain the traditional SA model.

With the imposition by the Federal Executive of proportional representation for national ballots which tended to solidify the factions Duncan and others were successful in establishing a formal factional system, but it was a pyrrhic victory. Eventually the Shop Assistants Union increased its affiliation to the ALP thus increasing the power of the Right, the Centre Left imploded, and the fallout meant that, since the mid-late 1990s the Right have been the dominant faction, and the Left has a minority, almost mendicant, status. Beware of unintended consequences.

This history is important as background to Duncan's 'betrayal' allegations. Duncan explains (110) that his reason for not taking a position on the parliamentary executive immediately after the 1979 election was that he was rundown and exhausted after five years as a busy Minister and unbelievably frustrated with the Corcoran Government. He was not the only one in this position but all the other Ministers from the Corcoran Government renominated including Don Hopgood who had been a Minister since 1973. Duncan was only 34 years old and in a safe seat but decided not to put his shoulder to the wheel of reviving Labor's fortunes. He did not even do Bannon the courtesy of informing him of his intentions.

When the Shadow Ministry was formalised in February 1981 Duncan was elected with Bannon's support. The consensus approach remained in place despite the efforts of Duncan to undermine it. It was reported that without Bannon's support Duncan would not have been elected to what was the last position and it was at the expense of Howard O'Neill a former Party Secretary **(**Geoff Stokes, 'South Australia, consensus politics' in A. Parkin and J. Warhurst, eds, *Machine Politics in the Australian Labor Party,* Allen & Unwin, 1983, 154). When Duncan resigned in August, O'Neill was elected to the Shadow Ministry and given the Industrial Relations portfolio until he was forced to resign from Parliament in August 1982 because of ill health.

B. *Bannon's alleged failure to find a job for Dunstan in 1987 and blocking Hawke Government appointing him.*

(i) A job for Dunstan

Consistent with the animus displayed to Bannon elsewhere in the book, Duncan (127-129) condemns him for failing to find a job for Dunstan when he returned to Adelaide in early 1987 following his time as Director of Tourism in Victoria. Duncan asserts that Dunstan was treated as a political pariah; that Bannon black-balled Dunstan from any appointment by the Hawke Government; and, that Dunstan had created Bannon politically and anointed him as State Labor Party Leader, but Bannon did not return the favour.

Dunstan's alleged appalling treatment at the hands of Bannon was one of the more egregious incidents Duncan says he had witnessed in his political career.

A bare bones timeline relevant to this accusation is as follows (*Woollacott,* 244 - 255): Cain Government elected in Victoria, April 1982; Dunstan appointed Victorian Director of Tourism, August 1982; Bannon Government elected, November 1982; Hawke Government elected, March 1983; Dunstan resigns early following a period of controversy particularly over the Chinese Museum and Dunstan being photographed at a gay book launch in Sydney with a satirical figure Monsignor Porcamadonna, December 1986; Dunstan returns to SA, early 1987; Dunstan had been and continues to be President of Freedom from Hunger and Community Aid Abroad,1987; Dunstan appointed by Minister of Aboriginal Affairs Greg Crafter to a consultancy to examine governance on Aboriginal lands, June 1988, report submitted July 1989.

Steven Cheng, Dunstan's partner who he met in Melbourne in September 1986 comes to Adelaide to live with Dunstan, August 1988; Bannon elected Federal President of the ALP, April 1988; Gareth Evans appointed Minister of Foreign Affairs, following the resignation of Bill Hayden, September 1988; military coups in Fiji, May/September 1987; Dunstan active in opposing the coup and supporting democracy in Fiji and critical of the Hawke Government's response, during 1988 and subsequently; Dunstan plays an active role in relation to South West Africa (Namibia) from October 1989 onwards; Dunstan becomes President of the Nelson Mandela Foundation and is active in opposing apartheid and supporting the ANC, 1987 – 1990; Dunstan active in organising the visit of Nelson Mandela to Australia including on 25 October 1990 when he appeared on the steps of the Sydney Opera House with Mandela, Eddie Funde and Gareth Evans. Woollacott opines correctly in my view that this must have been one of the most memorable moments in Dunstan's life. Dunstan appointed Chair of the Jam Factory, 1990-1994.

The first problem with Duncan's assertions about Bannon's alleged failings on the return of Dunstan to SA is that the foundational fact on which it is based is wrong. Duncan (127-128) purports to rely on John Cornwall.

> *As observed by John Cornwall in his memoir:*
>
> *He [Bannon] had been placed on the fast track by Dunstan following his election as the Member for Ross Smith in 1977. He entered state Cabinet in 1978 and at the same time, he had been virtually anointed by Dunstan as a future leader.*
>
> *It is interesting to contrast this with Premier Bannon's treatment of the former premier almost a decade later, when Dunstan returned to South Australia from a controversial appointment as Director of Tourism in Victoria. Dunstan had only accepted the appointment when it had been made clear that his services were not wanted in SA.*
>
> *Premier Bannon, however fleetingly, was not about to allow his quest for 'perpetual popularity', to be interrupted by giving Dunstan a job and in Cabinet he frequently expressed his misgivings about doing so. It was more than 12 months before we were able to take advantage of Dunstan's enormous experience in government administration. In the second half of 1988 he was eventually given a modest, but very difficult, consultancy to develop options for Aboriginal local government in consultation with Aboriginal communities.*

There are several problems. First, Duncan does not make clear that Cornwall wrote two memoirs (see above). This quote purports to come from *Cornwall 1989* at 9-10.

Secondly, the Cornwall quote has been altered in a non-material way by rearranging sentences and punctuation. The normal ethical practice for authors is for there to be faithful renditions of quotes from another source.

Thirdly, and of most significance, Duncan has added a sentence which does not appear in Cornwall's book, namely: *"Dunstan had only accepted the appointment when it had been made clear that his services were not wanted in SA."* It is difficult to understand why this insertion was made. Is it a mistake of some kind? Another possibility is that the quote has been deliberately *'doctored'* in a way that supports Duncan's case. This is for Duncan to explain.

While memory can sometimes be imperfect it should not be difficult for an author to lift a few lines from a previous source without error. Cornwall would not be impressed with the bastardisation of his work.

It is almost certainly true that the Tonkin Liberal Government would not have appointed Dunstan to any position but not true of Bannon. What Duncan inserted into the quote from Cornwall has been said by Bannon's antagonists but is a myth. Dunstan took the Victorian job in August 1982 before Bannon was elected later that year. Woollacott, based on an interview with Bannon, says that he had tried to dissuade Dunstan from taking the Victorian job because he thought Labor could win the next election and be able to make use of Dunstan's services. She says Bannon was disappointed that Dunstan took the position and resented him promoting Victoria, our main rival in the tourism market.

This accords with my own understanding, namely, that Dunstan accepted the position because he thought Labor could not win in 1982. It was galling to see Dunstan fronting tourism advertisements, including on TV, extolling the virtues of Victorian lifestyle and wines.

The second omission from Duncan's analysis is that there is no mention of the controversy which accompanied Dunstan's tenure in Victoria. The Kennett Liberal Opposition went into attack mode particularly over issues relating to the Chinese Museum which Dunstan had proposed for Melbourne and then the Monsignor Porcamadonna (pig Madonna) incident in which Dunstan was photographed, albeit by chance, in the presence of a supposedly satirical figure with this name. This was regarded as a grievous insult to Catholics in particular, even though Dunstan apologised.

It is somewhat curious that Dunstan almost a decade after his retirement from politics provoked the vitriol to which he was subjected by the Liberal Party. When appointed to the Aboriginal consultancy in SA the Liberals went into an apoplectic frenzy about jobs for the boys. Dunstan was an accomplished lawyer with a long involvement with Aboriginal people and a very successful Premier. He was a perfect fit for this modest consultancy. All his life he had been the subject of vicious attacks and smears from some of his political opponents and their supporters but interestingly not from the likes of Sir Thomas Playford. They seemed to think that having a go at Dunstan was good politics. It would be gratifying for him to know that, while his antagonists have faded into obscurity, he continues to be remembered as a reforming and significant Premier of SA.

Despite the adversarial politics involved in the attacks on Dunstan and dispute about the substance of them, there is no doubt that an uncomfortable situation was created for the Victorian Government.

Premier John Cain was agitated enough to contact Bannon to see if a job could be found for Dunstan which would allow him to relinquish the Victorian position (*Woollacott*, 248 - interview with Bannon). None of this means on its own that Dunstan was not suitable to be appointed to a position in SA but it complicated the situation compared with that when Dunstan left for Victoria.

Duncan makes a number of specific claims. He says that the most obvious role for Dunstan would have been as Agent-General in London. In colonial times and the early years of Federation it was not an unusual occurrence for Premiers and Ministers to receive this appointment without what has now become the usual banal cry of jobs for the boys. In Dunstan's case the outrage would have been deafening, with no doubt issues raised about remuneration, the parliamentary pension and accommodation in London. But the real problem with what Duncan says is that I have never heard of the suggestion and there is nothing on the historical record which points to it being raised.

Mike Rann maintained close ties with Dunstan all his life and has a clearer memory than most about key events. At no stage did Dunstan mention any interest in this position to him. Most importantly there is nothing to suggest that the position would have appealed to Dunstan. Living alone in London and doing the boring rounds of the diplomatic circuit would not have appealed, from what I know of his interests and personality.

An appointment as Ambassador to Italy might have been another matter, something he would have enjoyed. Woollacott records (251), based on communications with Mike Rann, that *"soon after"* the election of the Hawke Government in which Bill Hayden was Foreign Minister, the federal ALP promised him the position of Ambassador to Italy. Dunstan was bitterly disappointed when the offer was withdrawn with no explanation.

Rann has advised me that Dunstan discussed his disappointment over this matter with him on several occasions but never suggested that Bannon had black-balled him, let alone had been involved in the decision. Rann was an adviser to Bannon and, after 1989, in the Ministry. He believes as I do that it would have been out of character for Bannon to have behaved in such a vindictive manner, something Dunstan would have known.

There must be some doubt about when discussions occurred about this issue but, if it was early in the term of the Hawke Government, it makes the case for a Bannon veto even weaker. There would have been no basis for Bannon even to know about the matter let alone have a role in black-balling Dunstan. While the Victorian controversy had not become apparent, Hawke might have thought that making the appointment so soon after Dunstan had taken up the Victorian position was not a good look. Bill Landeryou was close to Hawke and was the Minister in the Victorian Government who had recruited Dunstan. He was unlikely to have welcomed his star appointment being moved to a diplomatic post so early in his term.

There may also have been the problem of moving professional diplomats already posted to the position. While it is always possible to move professional diplomats, doing so to accommodate a "political" appointment would heighten controversy.

Duncan's story (128) has a different timeline, after Dunstan has returned to Adelaide and after the Federal election on 11 July 1987. He says after he became a Federal Minister following that election he spoke to Neal Blewett (Health Minister) on a flight to Adelaide around the time that *"speculation was rife about the termination of [Don's] contract [in Victoria]"*.

This cannot be correct as Dunstan had already resigned and returned to Adelaide, some six months previously. Duncan says they agreed that a posting as Ambassador to Italy would suit Dunstan's talents. Both he and Blewett spoke to Bill Hayden who was sympathetic to the idea and said he would recommend it to Hawke. Duncan adds that in 1988, Blewett told him that Hawke had indicated that he would offer the job if Bannon agreed.

He then throws in a red herring that Bannon was about to be appointed Federal President of the Labor Party which was not until April 1988. The relevance of this escapes me unless Duncan is suggesting there is some connection between Bannon becoming Federal President and thereby using his influence with Hawke to block Dunstan's appointment.

Perhaps Duncan is hinting at some form of deal to the effect that Bannon was prepared to take on the role as President provided Hawke blocked any overseas posting for Dunstan. This is patently absurd and completely against Bannon's character and importantly his interests. By this time the issue of how Dunstan's services could be utilised back in SA was on the table and the difficulty in finding something suitable was already apparent. An appointment by the Commonwealth Government would have solved the local problem.

Duncan then says that later he took the matter up with Gareth Evans, the new Foreign Affairs Minister. Evans has no recollection of this. He was a great admirer of Dunstan and is unlikely to have forgotten something like this if there had been any serious discussion about it.

Chris Schacht was elected to the Senate in July 1987. Prior to that he was State Secretary and national junior Vice President from 1983. He chaired the Foreign Affairs Committee of the National Executive and had contact with Hayden in that capacity. They were also quite close as both were members of the Centre Left faction. Schacht says the issue was not raised with him, something it is reasonable to assume he might have been consulted about or would have heard about if serious consideration was being given to the appointment.

Rann knew Hawke well but the issue of a diplomatic post for Dunstan was never discussed even though Hawke held Dunstan in high regard. Duncan's suggestion of a black-ball from Bannon does not stack up.

If the Hawke Government was considering this matter in 1987, it would have been in the context of the controversy (confected or not but widely regarded as unsatisfactory) surrounding Dunstan's tenure as Tourism Director and concerns expressed by John Cain. Rann says that Dunstan had critics within the Victorian Government but does not know whether that affected Hawke's position on the issue. In my view, the issues relating to Dunstan's time in Victoria and the likely controversy that his appointment would have provoked are likely to have been the major reasons for Hawke not proceeding with a diplomatic appointment, if it had been raised with him. It is also somewhat curious that there are no details of who Dunstan actually had the discussions with and who made the promise in the first place or that he did not follow it up to clarify the reason for the change of heart.

Bannon like all of us (including Duncan) who became politically aware in the 1960s was greatly influenced by Dunstan and an admirer of him. He bore no antagonism or ill will towards Dunstan and the idea that he would have actively intervened to stop a diplomatic appointment makes no sense.

The issue of whether the Bannon Government could have put Dunstan's talents to better use is another matter and one about which there can be reasonable disagreement. There were genuine concerns about what sort of position would have been suitable. The Victorian experience suggests that a regular public service position was something with which Dunstan was not entirely comfortable, and which also created difficulties for the Government. In SA, a role in the arts such as Chair of the Festival Centre would have been an obvious possibility but head of tourism out of the question.

Around the country, while there are plenty of precedents of former Premiers being appointed to part time roles, there are few if any in which a former Premier has returned to head up a major government agency working under one of their successors. The potential difficulties are self-evident.

In retrospect, along with Rann, I think more could have been done to use Dunstan's talents but not in a highly paid public service position. Ordinary members of the public and even those in the Labor Party might ask why a subsequent Government has an obligation to find a job for a former Premier who has a Parliamentary pension and just left a highly paid public service position that would have supplemented it for five years.

The above recitation of Dunstan's post Victorian activities readily highlights the problem for Dunstan personally if he had been appointed at that stage to a public service or diplomatic position and the potential problems for any government. For any overseas appointment, he would have needed to consider his domestic situation and his recently established permanent relationship with Steven Cheng. From 1988 until 1992 he was active in pursuing the cause of anti-racism, something that had been at the forefront of his activism since his election to Parliament in 1953.

The coups in Fiji were race based, and he was soon in disagreement with the Hawke Government about the handling of the issue. He would have had Hawke's support for his activities against apartheid and support for Nelson Mandela but the time he could have committed, and the level of his involvement, would have been constrained if he had been in a conventional public service or diplomatic post. Outspokenly fighting for causes such as this had been a hallmark of Dunstan's life and being a grey bureaucrat out of character.

(ii) Dunstan and Bannon

Alan Patience says that Bannon was trying to put the Dunstan years behind him by deliberately cultivating a cautious uncontroversial style; that he didn't want to be seen as an innovative reformer; that he sought to distance himself from Dunstan and accordingly had avoided offering him any significant government appointments. (*Hodge* (292) quoting from Andrew Parkin and Allan Patience, eds, *The Bannon Decade, The Politics of Restraint in South Australia,* Allen & Unwin, 1992, 347).

I do not accept that Bannon's main motivation was to distance himself from the Dunstan years as far as implementing Labor policy was concerned. The short resume of policy matters that I have provided below show that there was reform continuity. What can be accepted is that they were different people in lifestyle and character, and it was reasonable for Bannon to carve out his own personal and political niche. Across most policy areas the Bannon government continued with the social democratic reforms, many of which were inspired by Dunstan's approach.

He was in the company of similar modern Labor Leaders – Wran, Cain, Bracks, Goss, Beattie, Carr and Gallop. The tragedy is that much of it is enveloped by the shroud of the State Bank disaster.

Duncan (110) says that Bannon portrayed himself as a younger Dunstan. Spot the contradiction! Elsewhere most of Duncan's thesis, for which he tries but fails to produce the evidence, is that Bannon went out of his way to distance himself from Dunstan and be as unlike him as possible. The reality is that no one could portray themselves as any sort of Dunstan. He was unique, *sui generis*, the like of which had not been seen in Australian politics either before or since.

A possible exception may have been Charles Cameron Kingston, the reforming Premier in SA in the 1890s who challenged one of his political opponents to a duel and is said to have produced a number of illegitimate offspring.

Dunstan was highly intelligent and his legal skills would have qualified him for appointment to the Supreme Court; he was a Renaissance man with an interest and accomplishment in music and the arts but not sporty; his life style was urbane and cosmopolitan, encompassing more than most Australians at the time a love of good food and wine; he was passionate about the causes he took up particularly in his stance against racism and fearless and courageous in their advocacy; for the most part he was highly professional in the way he practised his chosen vocation of politics; he was assiduous to the extreme in giving attention to the concerns of his constituents; pioneered the use of opinion surveys and media communications; while highly principled he was well versed in the need for pragmatism and compromise in achieving political objectives; he was loyal to his friends and those he worked with something that was not always reciprocated; he was a kindly man who did not deserve the vitriol that was heaped upon him by his enemies and sometimes former friends.

Except for close friends Dunstan was not always easy to talk to and small talk was not his long suit. Unlike Gough Whitlam, self-deprecation was not a part of his personal armoury. And he was a complex person. Despite the professionalism (generally) in politics he had a chaotic personal life. A supposedly open marriage was accompanied by affairs with men and women. As Duncan says, it was not known in the 1970s that Dunstan was bisexual.

He had a relationship with a male staffer during his first premiership and later a risky and I believe irresponsible relationship with John Ceruto from the late 1960s to the mid-1970s. Ceruto was given preferment in employment in Dunstan's office and supported in his restaurant undertakings. He was initially left alone on these issues by the media, but no such leeway would be allowed today, and his behaviour would be regarded as unacceptable.

Something of which I was not aware at the time, and which surprised me later given the amount of criticism (often unfair) that came his way, was that he was personally very sensitive to media criticism. Although never formally coming out as gay he had established the stable domestic relationship with Steven Cheng in 1987 that lasted until his death in 1999.

No one could model themselves on this life and Bannon never attempted to do so. Swapping his running shorts for pink shorts was never an option. Bannon was conventional and mainstream in his personal behaviour. He was a conservative, even old-fashioned dresser and not much into flamboyance. He was sporty, an excellent long-distance runner and modest but enthusiastic cricketer.

He went into unpaid well-regarded sports administration with the SA Cricket Association and Cricket Australia after retirement from politics. He became Master of St Marks College a position that Dunstan would never have sought, and a respected author and historian, even being commissioned by the Downer family to write a biography of Sir John Downer, Alexander's grandfather and notable politician at the time of Federation.

Privately Bannon could be a great entertainer, a mimic of famous people and had an inexhaustible repertoire of Gilbert and Sullivan songs. Both he and Dunstan were intellectually on the top shelf, and they shared an interest in the arts, Dunstan probably more passionately than Bannon.

But they were very different personalities, Dunstan was not exactly a libertine**,** but he had a genuine belief in peoples' right to express themselves sexually and otherwise as long as no harm was done, a stance which he acted out during his lifetime. He was generally opposed to censorship.

Even though pornography was permitted to be sold in SA (and generally elsewhere in Australia) according to approvals by an independent Board, this issue was used against him by his former friend and Governor Sir Mark Oliphant and journalists such as Stewart Cockburn at the time of the dismissal of Police Commissioner Salisbury.

Bannon by contrast was something of a puritan, perhaps reflecting his Scottish non-conformist background. As a liberal, like Dunstan, he didn't want to impose his views on others but personally was conventional and cautious.

It is not surprising that different personalities can come together to pursue common social and political objectives, something the oft maligned formal Party system in our democracy facilitates. Dunstan and Bannon shared basic values associated with a liberal social democracy which has been the mainstream political philosophy in Australia for some decades. That they were different personalities did not impede them working in this common cause. Different rhetoric and style do not necessarily detract from substantive action. Bannon's detractors might also realise that the social and economic circumstances confronted by Dunstan in 1965 were markedly different from the 1980s where on the economic front neoliberalism had become the dominant philosophy even for the Hawke and Keating Governments.

C. *The High Court and the Franklin Dam case*

Duncan (123-124) makes the extraordinary claim that Justice Sir William Deane (later Governor General) was enticed to be part of the High Court majority against the damming of the Franklin River by suggestions from Justice Lionel Murphy that Deane would become Chief Justice if he did. Deane's position meant that Brennan J would also join the majority. Duncan claims that Lionel explained to him how he had engineered this over a series of dinners. This claim is extremely defamatory of Deane, who is still alive. Murphy might have offered to lobby for Deane as Chief Justice and he would have been an admirable choice. Perhaps better as it turns out than Sir Anthony Mason who should have been disqualified because of his involvement as a judicial officer in assisting Governor- General John Kerr to dismiss the Whitlam Government.

Deane is universally acknowledged as a person of rock-solid integrity, and it is inconceivable that what Duncan alleges happened (and cannot be verified) could have had any bearing on his judgement in the Dam's case. I am sure Deane will not take any action and give publicity to Duncan's story; he will rightly conclude that no one will take Duncan seriously.

D. *Lewin, Plunkett, Young, Casinos and poker machines, Federal Parliament.*

Duncan's attacks on his enemies in the Centre Left are predictable enough but he reserves his most strident criticism for his former comrades in the Left usually because, he asserts, he has been betrayed by them and that they cannot be trusted.

Although neither of them is exactly a household name, Duncan is particularly vitriolic in his attacks on John Lewin and Keith Plunkett.

(i) John Lewin

Duncan (26) makes his case against Lewin in two brief paragraphs which are worth quoting in full:

> *Sometime during 1973, Mick Young, then federal secretary of the Australian Labor Party, convinced Jim [Dunford] to employ John Lewin, a young industrial officer who had worked for a short time as industrial officer for the NSW branch, under the control at the time of Left wing secretary Lew Macky. Unhappy about losing control of the AWU in the 1970s, Mick installed a Trojan horse in the union in the person of John Lewin. Lewin was ostensibly part of the inner workings of the Left but was in reality a sleeper for Mick and the Centre Left faction with his actions resulting in the AWU becoming politically unstable and unreliable for the Left. John Lewin was rewarded by Mick Young for services rendered when he was appointed as an Industrial Relations Commissioner by the Hawke Government.*
>
> *From the first time I heard Lewin's upper-class pronunciation of the word 'isyous' as opposed to the more common pronunciation 'ishues', I should have known better than to trust him. The political deal delivered the AWU to the Centre Left and elevated Lewin to the Bench.*

This is an astonishing claim. John Lewin as a latter-day Kim Philby sent in by his controller Mick Young to disrupt the workings of the Left in the AWU!

I recall Lewin coming to SA in 1973 and it became clear to me that his political views were more academically on the socialist left than of the more common mainstream social democratic variety. He was known to quote Antonio Gramsci, the Italian philosopher and communist at meetings of unionists, most of whom thought these references were a bit over the top as they were trying to deal with the day-to-day issues confronting workers.

Lewin attempted to use his influence to detach the AWU from the Machine consensus non-factional way of operating which had been traditional in SA and towards the Left. This was the very same endeavour that occupied much of Duncan's time. Lewin had first sought preselection as a Left candidate for the State seat of Albert Park prior to the 1979 election but which was won by the President of the Australian Railways Union, Kevin Hamilton.

The problem for Lewin was that AWU organiser Keith Plunkett was being supported to succeed Don Simmons in the seat of Peake (see below). There were objections by the consensus Machine to two officials from the AWU being pre-selected for the same election.

He then ran unsuccessfully as the Left candidate for the Federal seat of Kingston in the lead up to the 1983 election which was won by Gordon Bilney who had not lived in SA for about 20 years while away pursuing a diplomatic career. Bilney was supported by the consensus Machine, not yet the Centre Left, as Duncan wrongly prefers to call them. He was also assisted very helpfully by Gough Whitlam for whom he had been a foreign affairs advisor when Prime Minister. In 1983 Lewin was the Left candidate in the unsuccessful bid to unseat Chris Schacht as Party Secretary. All this activity by Lewin in the interests of the Left is the reverse of what Duncan says about him.

In 1973, as Duncan well knows, there was no Centre Left faction and the AWU, the union of Clyde Cameron, was part of the Machine consensus which was supported by the likes of Mick Young and Jack Wright also from the AWU. Any activity by Lewin was to disrupt the AWU away from its traditional role as part of the Machine consensus and towards it becoming part of the Left faction promoted by Duncan. This was something that he partially succeeded in doing. Duncan's assertion that Lewin's appointment in 1987 to the Australian Conciliation and Arbitration Commission was to reward him for his role as a clandestine operative on behalf of Centre Left interests is ludicrous**.**

It also can be said that Lewin was well qualified for the role which he competently filled. For anyone wanting a less jaundiced view of Lewin, reference can be made to an unsigned obituary in which the breadth of his interests beyond politics are outlined ('A warrior for social justice and the arts', *The Advertiser*, 9 May 2020). They covered positions in academia, support for Collingwood AFL club, the encouragement of indigenous involvement in Australian Rules and involvement in arts bodies. His passion for Aboriginal art is said to have led to him advocating for Tarnanthi at the Art Gallery of SA. He is described as a friend of and mentor to future Premier Jay Weatherill. This relationship may provide a clue to Duncan's animosity as Weatherill became a member of the so-called Bolkus Left when Duncan and Bolkus fell out.

Duncan provides no details of the basis for the animosity he had towards Lewin apart from the beyond bizarre claim that he was a Centre Left spy. He also comes up with the novel proposition that a person's trustworthiness can be determined by his or her accent or pronunciation of an innocuous word.

In Lewin's case this might run into trouble as a definitive test. Although Lewin's childhood was initially comfortable and cosmopolitan the family became destitute when his father unexpectedly left. He was cared for by the Anglican Church and relatives. The modest background of his family and broken home in Sydney would suggest he should have acquired the more normal pronunciation of the word "issue" that Duncan complains about. On the other hand, he did attend Vaucluse High School whose locality might suggest the later acquiring of the posher mode of speaking.

(ii) Keith Plunkett

If Lewin had a toffy accent, the same could not be said of Keith Plunkett who was a worker with a very Aussie accent. But whether toff or worker they are both the target of Duncan's extreme vitriol, even if thereby his theory of accent determining trustworthiness losses any credibility. Plunkett was a shearer (formerly royalty among Australian workers) who became an AWU organiser in the southeast of SA and then in Adelaide. He was preselected for the State seat of Peake to replace the retiring Don Simmons in 1979 who had been a Minister in the Dunstan and Corcoran Governments.

Although this is a reasonably common career trajectory, Duncan (114-115) asserts that Plunkett was foisted on the electors of Peake and he caused grief to the Party and was bungling, incompetent and undertalented. Further that he had achieved the preselection because of his friendship with Jack Wright (former AWU Secretary and later Deputy Premier in the Bannon Government) of whom he was a devoted and slavish follower.

Duncan does a demolition job on Plunkett in a number of ways. First, when his campaign director for Peake in 1979 Don Simmons told Duncan that as it was his job to win the election, he was forced to send Plunkett to doorknock in an adjoining electorate for fear that he would lose votes if door knocking in Peake. Plunkett was unaware of this manoeuvre and didn't know the difference. This doesn't sound like the actions of the Don Simmonds I knew.

Secondly, in a 1981 caucus ballot Plunkett had incompetently continued to vote for Jack Wright even though he had already been elected Deputy Leader thus rendering his vote informal.

Thirdly, someone in the House of Assembly during a dinner recess swapped around Plunkett's typed up speech notes prepared by someone else which he then read out without realising what had happened. The speech became unintelligible which was a source of great amusement to those in on the joke. The problem with this story is that it is a trope. I have heard it told numerous times about a variety of people who the teller wants to denigrate but never about Plunkett. The telling is usually accompanied by the imbibing of excess alcohol and resulting hilarity.

According to Duncan, the genesis of his animosity towards Plunkett was that after the 1979 election he had shared an office with Plunkett who was informing Jack Wright about Duncan's telephone conversations. Duncan confirmed this by having a conversation about a faked topic which caused Jack Wright to angrily respond to Duncan about it. Reasonable observers may find this a rather juvenile exercise, it was certainly unnecessary. Duncan had fallen out with Jack Wright by this time as he had done by mid-1978 with all of Dunstan's senior Ministers – Des Corcoran, Geoff Virgo and Hugh Hudson.

He had also lost favour with Dunstan, confirmed by the incident of him while Attorney-General attending protest meetings about uranium mining in 1979 when Dunstan was overseas investigating the issue (see above).

According to Duncan, Plunkett destroyed a prized piece of artwork given to him by his wife Julie, for which he will never forgive him. Fair enough, if true. There were obviously tensions in the office which a modicum of common sense should have resolved. Duncan knew of Plunkett's friendship with Wright and that Wright was taking a different view on the emerging factional issues in the Party. He could have conducted his factional conversations which might have involved criticism of Wright in another readily available room in Parliament House.

(iii) Casinos and poker machines.

Duncan (41) explains the opposition he expressed to Dunstan in the early 1970s about the proposal to establish a casino in SA, legislation for which was defeated. He was never enthusiastic about gambling and disliked the idea of poker machines being introduced into SA. He then says he had resigned from the SA Parliament before the Bannon Government Bills that successfully established casinos and poker machines so his moral stance against the poker machine scourge remained unblemished.

Once again Duncan's memory has failed him. He was still in the SA Parliament in 1983 and participated in the debate when the *Casino Bill* was introduced into the Legislative Council on 23 March 1983 by Frank Blevins as a private member's Bill and was the subject of a conscience vote which did not bind Labor MPs. This was when Blevins was a backbencher and prior to his appointment as Minister of Agriculture in late April 1983 following the resignation of Brian Chatterton.

The Bill was the fourth attempt in the previous ten years to get legislative approval for a casino. The Bill passed the Legislative Council and was introduced into the House of Assembly by Terry Groom, the Member for Hartley and a backbencher. Duncan indicated his support for the principle of the Bill by voting for the Second Reading (*Hansard*, House of Assembly, 11 May 1983, 1550). He then supported an amendment which would have required the casino to be run by the Government – *"I am in favour of a Government controlled casino, if a casino is to be established"* (*Hansard,* 11 May 1983, 1563). This amendment was defeated, he opposed an unsuccessful amendment to introduce a sunset clause and then voted against the Third Reading. In this he was joined by two other Labor Members, the Minister of Education, Lynn Arnold and Kevin Hamilton. The vote was 24 to 18 with four Liberal Members in the majority (*Hansard,* 11 May 1983, 1582).

Duncan had left State Parliament by 1992 when the *Gaming Machines Act* which extended poker machines to hotels and clubs was passed. This legislation followed a supportive expression of opinion in the House of Assembly in 1991 shortly after gaming machines had been introduced by regulation into the casino in 1990. On this basis it is correct for Duncan to say his moral stance against poker machines remained unblemished, but he was prepared in 1983 to compromise on a casino where gaming machines were introduced in 1990.

(iv) Mick Young

Duncan's attack on Mick Young around the introduction of the *Gaming Machine Bill* is of much graver significance than his error about not participating in the *Casino Bill* debate. This Bill was introduced on 12 February 1992 again by Frank Blevins but this time as Minister of Finance in the Bannon Government. It was a Government Bill but subject to a conscience vote. It followed a motion passed by the House of Assembly on 4 April 1991 supporting the introduction of coin operated gaming machines in hotels and clubs. It eventually passed both Houses.

Duncan (41) claims there was a huge lobbying campaign launched in the late 1980s for the introduction of poker machines in clubs in SA which eventually resulted in the introduction of them in both hotels and clubs and that Mick Young's involvement was crucial to this endeavour. To quote Duncan in full (41-42):

> *Mick Young, the former Centre Left power broker and long-time Labor Party operative, had resigned as the Member for Port Adelaide in the Australian Parliament, in April 1988. After his resignation, Young set up a lobbying consultancy based on his close ties with the Bannon Government and his similarly close ties with the Hawke Government. His business quickly became very successful. Among his large number of clients was Len Ainsworth, the founder, and that time still the owner of Aristocrat Leisure, the largest poker machine manufacturer in Australia. Aristocrat paid Young to lobby for the introduction of poker machines to SA hotels and clubs. Young was provided with a very deep pocket to achieve the lobbying objective and made money available, or promises of money, to friendly MPs. He soon had a group of state Labor MPs supporting the introduction of poker machines.*
>
> *Initially, John Bannon was ambivalent or lukewarm about the introduction of poker machines, but, as the lobbying continued and his Centre Left faction became more enthusiastic, he, as the State's Treasurer, could see rivers of gold. .... I was unhappy about introducing poker machines into SA and attempted through the Left faction of the Party to resist the pressure. However, it appeared that, with Premier Bannon committed, the Bill had momentum and would pass. Because the Bill was to be subject to the conscience vote, it wasn't possible to oppose poker machines via the ALP councils, where lobbying work had been done by the Left. Before he died, Bannon admitted that he deeply regretted allowing poker machines into South Australia.*

As usual, a couple of corrections are required. First, Bannon was never a member of the by then formally established Centre Left, although it generally supplied support for him in Party debates on policy and ballots. There were some others who escaped the grip of factionalism such as Mike Rann, John Hill and me. When I was elected in 1975 there were no formal factions and Members were not obliged to join one. Today the situation is that anyone who wants pre-selection must be a member of a faction and subject to its dictates unless the factions decide that a non-factional candidate might have a better chance of winning a marginal seat, as was the case with Jane Lomax-Smith in the seat of Adelaide in 2002.

Secondly, Duncan is wrong to say he could not have taken up the issue in Party forums and agitated to oppose the introduction of poker machines. The existence of a conscience vote for MPs has never stopped the organs of the Party adopting a policy, it is just that the policy is not binding on all MPs. We saw this happen with the policy to decriminalise homosexuality (see above).

There is also a major omission from what Duncan says which would not have suited his narrative that Bannon was seduced by rivers of gold and the allegations about the dubious means used to ensure the legislation passed. One of the most prominent advocates for a casino and poker machines was Frank Blevins, a member of the Left faction and claimed by Duncan as a close friend and comrade.

Blevins took a leading role in these gambling initiatives, as with other matters involving individual liberties such as the *Natural Death Act* 1980 which provided that individuals could make a declaration in the event of their suffering from a terminal illness, that their life shall not be prolonged by extraordinary measures. These might seem to be rather disparate measures but were motivated by the same underpinning principles. From his first speech in Parliament in 1975 Blevins proclaimed his commitment to socialism but it had a libertarian edge. On the moral issue he did not think that people who were anti-gambling should impose those views on others including him even though it was not a pastime in which he was likely to engage. (*Hansard,* House of Assembly, 23 March 1983, 551).

On the question of the Government controlling people's behaviour, Blevins drew the line in favour of liberalisation, so that the enjoyment of poker machines could be left to individual choice with sufficient safeguards (*Hansard*, 25 March 1992, 3692). Although not directed personally at Blevins, Labor Member for Spence Michael Atkinson attacked those who supported *"the worn out left-liberal line that people should be able to do their own thing and, if that included ruining their finances and their families through gambling on poker machines, who were we to keep them from temptation".*

Atkinson was having nothing of their *"permissive liberalism"* and said that he had a responsibility to pass laws for good government and to curb vice and protect family life (*Hansard,* 25 March, 3623). Blevins was a socialist, Atkinson from the conservative Right which just goes to show that in the various "– isms" that appear in the political firmament, there is ample scope for personal interpretation of their meaning in practice.

There were not just moral and personal liberty issues at play. Casinos are regarded as important for tourism and the existence of poker machines in NSW and Victoria had put competitive pressure on SA. Some would argue that the extra money injected into the hospitality industry particularly hotels greatly improved their facilities. As we see with the current dilemma faced by Federal Labor over gambling advertisements, the issue of individual freedom (including to make money) versus public benefit has not gone away.

By far the worst part of what Duncan says is the collective smear against State Labor MPs who supported the legislation and the allegation that Mick Young gained their support by making or promising cash payments to them. This was not just the common practice on all sides of politics of a Party or MPs or candidates receiving campaign donations but an allegation of individuals receiving money specifically in return for an undertaking to vote in a particular way.

It is an allegation of corruption and involved the offence of bribery. This is a highly defamatory allegation made against Young and the unnamed Members. The innuendo is that Young's connection to the Centre Left, including Bannon, meant that he could influence its members to support poker machines by cash payments when necessary. He provides no evidence to support this. Those who were in Parliament at the time and are still alive may wish to comment. I was not lobbied and certainly was not offered any cash. Blevins disdained the use of lobbyists and considered those who employed them to have wasted their money (*Hansard,* House of Assembly*,* 25 March 1992, 3629).

Young played a critical role after he became ALP Federal Secretary in 1969 in reforming the Victorian and New South Wales branches and the Federal Conference. Current ALP National President Wayne Swan provides a different view to that of Duncan:

> *Mick was an inspirational man of character. Someone who had an understanding of people and knew the power of plain speaking and strong beliefs. He had an extraordinary – and it's not an exaggeration to say – historically significant influence on the Labor Party. He was above all a great moderniser, who as National Secretary helped Gough get us back into power after 23 years of opposition.*

A former shearer *"who could appreciate classical music, develop a fascination for Chinese culture and feel at home in the company of Zhou En-Lai."* (Hon Wayne Swan MP, *Address to the Mick Young Scholarship Trust Dinner*, Sydney, 8 February 2008.)

Young was a legend of the Labor Movement but is now denigrated by Duncan as simply a *"Centre Left power broker"* and *"Labor Party operative"* as well as a common crook who engaged in criminal activity to achieve aims for his consultancy clients.

(v) Federal Parliament

My knowledge of issues in the Commonwealth Parliament is more limited than in the State. Nevertheless, there are some matters that deserve mention, leaving others with greater knowledge to fill in the gaps.

Duncan was antagonistic to Bob Hawke and initially taken by surprise in 1982 when the Left, including Tom Uren, decided to support Hawke over Hayden for the Leadership prior to the 1983 election (116). They were in their last term and wanted to make sure that Labor won.

Duncan (136-139) asserts that Hawke's friendship with Sir Peter Abeles led to the Government giving preferment to Sky West a company owned by Abeles in relation to northern Australia's aerial coastal surveillance. An existing contract with Amann Aviation was broken to enable this to happen on the basis that Amann were non-compliant, something the High Court later found was not correct. Another potential defamation of someone deceased who by general acknowledgement was a pre-eminent Prime Minister.

Duncan (139-141) says that when the Transport Minister Gareth Evans was overseas, he as the junior minister banned smoking on domestic and international plane flights. Hawke was furious because, as a cigar smoker, he was a supporter of the tobacco lobby even though, as Duncan points out, Abeles was in favour of the ban. I am aware that there are different views on who can claim credit for this desirable initiative.

The factional manoeuvrings in the Federal Caucus are well beyond anything I can understand so I can only offer some cursory observations. Duncan (152) explains how the Left Caucus failed to support him for the Ministry after the 1990 election. After the 1987 election he had the support of Tom Uren and Arthur Gietzelt from NSW to secure his position in the ministry. After the 1990 election the power dynamics had changed, and Gerry Hand and Brian Howe from Victoria held more sway. He also says Robert Ray of the Right had a grudge against him, based on an earlier union dispute involving the AWU, and helped engineer his demise.

The main target of his wrath was former Left colleague and friend from SA, Nick Bolkus. Duncan expected Bolkus to vote for him, but he didn't. He points out that he had supported Bolkus to be on the Senate ticket in 1981 and that Bolkus wouldn't have been in the Senate without Duncan's support. Bolkus had been disloyal, constituting a betrayal that was rewarded by Hawke promoting Bolkus to Cabinet. The mentality seems to be that once a favour is done for someone you have them in your pocket for life.

Duncan was angry and disappointed at his so-called Left comrades (Howe and Hand) who had done Robert Ray's dirty work for him. Duncan and Frank Walker later split from the Left Caucus over support for Keating in his challenge to Hawke and claims that they were influential in encouraging others to do so and thus secure Hawke's demise (158-160). These events led to a split in the Left in SA between the so-called Bolkus Left and the Duncan Left, the latter soon becoming the minority group.

4. Factual errors.

A. *Abolition of the Legislative Council* (33 -34).

Following the 1973 election Labor proceeded with its policy of removing the few remaining property qualifications for the Legislative Council. It eventually was successful and led to the proportional representation system with eleven Councillors elected every 3 years (at that time, now four). According to Duncan, in 1973, when this issue was being considered the Liberals insisted that the Legislative Council be enshrined in the Constitution so that it could only be abolished by referendum and Dunstan had insisted on Labor agreeing to this amendment.

According to Duncan, Dunstan was having nothing of Duncan's suggestion that the Legislative Council not be entrenched but that Labor continue to win enough seats to abolish it by simple amendment of the *Constitution Act*. According to Duncan, Caucus in 1973 approved the entrenching clause, and the Party modified its platform in relation to abolishing the Council.

Duncan's recollection has again seriously failed him, as none of this is true. This conversation could not have happened. The entrenchment of the Legislative Council had already occurred by the *Constitution Act Amendment Act* 1969 assented to on 12 March 1970. This happened following a deal Dunstan had made with then Premier Steele Hall in the House of Assembly on 23 October 1968. In debate over Labor's Bill for full adult franchise in the Legislative Council, Hall agreed to full adult franchise and removal of the property qualifications in return for entrenchment of the Legislative Council. In the event Hall could not carry his colleagues (Ren DeGaris and others) in the Legislative Council with him so the property qualifications were only modified, not completely removed at that time. But Dunstan kept to his deal with Hall and enacted the entrenchment provision.

This was one of the early splits between Hall and conservative Liberals in the Legislative Council and Party generally. A split that continues to play out to this day most recently in the factional splits that developed in the Marshall Government (Martin Hamilton-Smith, *Seven Leaders in Camelot, Thirty turbulent years of politics: An Insider's story.* Wakefield Press, 2023).

B. *Bannon resignation* (172).

Duncan says Bannon remained as Premier until the report of the Royal Commission into the State Bank had been received. This is wrong, Bannon resigned on 4 September 1992 before the First Report was tabled on 17 November 1992.

C. *Uranium trip 1979* (94).

Duncan says Steven Wright, senior private secretary, accompanied Dunstan on this trip and was frequently on the phone to Duncan's private secretary Peter O'Brien. This is wrong. Steven Wright was not on this trip.

D. *Hilton Hotel* (185).

Duncan says the Hilton Hotel was built during the Dunstan Government. This is wrong, it was commenced under the Tonkin Government after 1979. It was opened by the Governor Sir Donald Dunstan on 5 November 1982, the day before the election of the Bannon Government.

E. *Round the Square restaurant* (185).

Duncan says he spoke to Lord Mayor Jane Lomax-Smith who was enthusiastic about the restaurant. He says the restaurant opened in September 1997, although it seems that should be 1998. Planning for the restaurant occurred well before Lomax-Smith took office as Lord Mayor on 12 May 1997. The Council initially approved the development under Lord Mayor Henry Ninio on 19 July 1996 when Lomax-Smith was not present. She was subsequently involved in discussions about it including supporting a cap on expenditure by the Council.

Lomax Smith has told me that, as Lord Mayor, she had to manage the project but was never enthusiastic about it. The restaurant closed down within a year and the friends Duncan had induced to invest in it were not reimbursed for their losses.

F. *Elected by Caucus over McRae (54).*

Duncan says he was elected by Caucus over Terry McRae in 1975 and thus became Attorney-General. This is not correct as, knowing that he could not win, Terry McRae did not contest the ballot. I did, receiving 4 votes including that of Hugh Hudson.

G. *Corcoran supported Bannon for the Leadership after the 1979 election (110).*

This is not completely accurate. After the election Corcoran sought to remain as Leader of the Opposition and only resigned when he realised that he had lost the support of nearly all the Caucus. Given the fiasco that the unnecessary early election in September 1979 turned out to be and which was entirely Corcoran's fault, it is astonishing that he thought he could continue as Leader and did not immediately resign.

H. *Other errors and no Index*

There are minor errors which may not be of great significance on their own but the number of them are symptomatic of the generally sloppy approach to factual accuracy displayed in the rest of the book.

Pages 7 and 8 – Professor Graeme (not Graham) Duncan was Politics Professor at the University of Adelaide from 1969-1975 so could not have, as asserted by Duncan, recruited *"by 1966"* several radical lecturers and tutors (Brian Abbey not Abby) and Bob Catley or RW Connell who was a Flinders academic. Page 10 - John Summers did not become a professor at Flinders, he was a Senior Tutor; it is David St Leger Kelly (not St Ledger). Page 21 – it is Derrance, not Derrence Stevenson. Page 27 – it is Don Eglinton, not Don Egglington. Page 37 – it is Jim Crichton, not Jim Crighton. Page 38-39 – the hotel referred to was the Kariwara, not the Kariwarra. Page 53 - in 1975 Ted Connelly won the seat of Pirie, not Port Pirie which was renamed for the 1970 election. Page 87 - it is Elliott Johnston, not Johnson. Page 88 – it is Phil Cramey, not Phill Cremey. Page 90 - Jennifer Cashmore was not Stewart Cockburn's wife in 1978. Page 131 – Colombo is the capital of Sri Lanka, not Columbo (the famous detective). (Duncan misspells his name)

The lack of an Index is a major failing of the book. It should not have been beyond Duncan's capabilities to have produced one.

5. Final Reflections and comment on Bannon and Rann Governments.

Duncan's main theme in the political aspects of his autobiography is that after Dunstan and him SA would have been just as well off with a Liberal Government (248) as under Bannon, Rann and Weatherill (but not it seems Arnold). This would be comforting to hear for former Liberal Premiers Tonkin, Brown, Olsen, Kerin and Marshall and even Senator Alex Antic, the current right-wing wielder of power in the Liberal Party.

It is a kick in the guts for the many Labor members who have been committed to Labor values and social democratic (or even socialist) principles and worked hard and usually successfully in SA to see Labor Governments elected. Arnold refers to the very sad events in Duncan's life, but it is also sad that he has chosen to write such a jaundiced political memoir. He has a credible record of achievement in the Labor cause now undermined by his self-aggrandisement and unjustified attacks on many former colleagues. He should have taken much more care to ensure factual accuracy.

It is to Duncan's credit that he did not become a lobbyist using the inside information gained in government to advance the cause of private clients. Most people would agree that the commitment and skills he applied to his electorate and campaigning were of a high order. He should be acknowledged for taking on the successful task of defeating the Liberals and getting Robyn Geraghty elected in the seat of Torrens in May 1994, so soon after the crushing defeat in the general election in December 1993. I was still in Parliament then, participated in the campaign and was delighted that we could start the rebuilding process so early. Duncan mentored Frances Bedford who was elected to Parliament and made an impressive contribution to it. She was a genuine trooper but treated badly by the factions because she was seen as part of the Duncan Left.

Duncan's actions (228) in working to avoid the death penalty imposed on Scott Rush, one of the Bali Nine drug traffickers, were commendable and consistent with his long-espoused principles.

It is easy to accept that his prosecution by the Commonwealth Police for offences alleged to have been committed while he was involved in Omnipol, a plastic waste recycling company, should never have gone ahead. The jury took 15 Minutes to acquit after a four-day trial. Whether there was any political involvement is another matter. The media attention was intrusive and unfair but par for the course (201,207,222-227).

It is beyond my remit to engage in a detailed analysis of the Labor Governments that followed Dunstan, but I can make some observations about those of Bannon and to a lesser extent Rann (Reference: Philip Payton, *One and All Labor and the Radical Tradition in South Australia,* Wakefield Press, 2016, Chapters 9 and 10). My knowledge of the Weatherill Government is limited but there will be others who can tackle Duncan's principal thesis that it too was next to useless.

(i) Bannon Government

Reference: (Andrew Parkin & Allan Patience, eds, *The Bannon Decade, The Politics of Restraint in South Australia* (Allen & Unwin 1992). Most of what I have to say is of necessity egocentric, but my defence is the need to respond to Duncan's provocation and demonstrate the falsity of his central thesis. The Bannon Government maintained a commitment to Labor social democratic values albeit with a different style.

First, we mopped up the unfinished business left by Dunstan and Duncan – discrimination because of sexual preference prohibited; sexual harassment a ground of discrimination; abolition of the unsworn statement; rape in marriage; removal of the discriminatory veto imposed on the judicial appointment of Elliott Johnston QC; declaration of MP's interests' legislation; freedom of information laws; and the *Associations Incorporation Act* 1985.

We established a Royal Commission into the conviction for murder of Eddie Splatt which found that the forensic science evidence was flawed. This resulted in a pardon, payment of compensation and importantly the establishment of an Independent Forensic Science Centre to ensure that evidence is assessed by qualified scientists and not the police.

I was responsible for the prosecution for manslaughter of the alleged killers of Dr Duncan, albeit unsuccessfully.

The Electoral Act 1985 was a comprehensive rewrite of electoral laws with 4-year terms for Parliament and truth in political advertising provisions (the first and, until 2020 when the ACT followed, the only such law in Australia). They have been recently described as a *"model for Australia-wide reform."* (*The Advertiser.* Advertisement re proposed changes to electoral funding, The Centre for Public Integrity and others, 29 August 2024, 9). More recently Federal Labor under Don Farrell, the Special Minister of State proposed a similar law but could not get the support of Parliament for it.

The Liquor Licensing Act 1985 introduced major reforms which moved to an administrative, rather than the cumbersome and expensive judicial, model for granting licences and doing away with the requirement to establish the need for some category of outlets.

The Walsh/Dunstan Governments had significantly liberalised liquor laws in 1967 after the restrictions of the Playford years, but our reforms continued the process. The outdoor café society often attributed to Dunstan did not really get under way until after these changes.

The Equal Opportunity Act 1984 modernised the law and provided a more effective means of dealing with discrimination on the grounds of race, sex and disability and which also dealt with discrimination in clubs with both male and female members and started on the issue of superannuation. Later discrimination on the grounds of intellectual disability (1989) and age (1991) were added.

I attended the UN Congress on the Prevention of Crime and Treatment of Offenders in 1985 and was a rapporteur on the sub-committee that produced the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.* In October 1985, I introduced the Declaration of Victims' Rights which covered the treatment of victims in the criminal justice system and for the impact of the crime on a victim to be taken into account (which later included provision for formal victim impact statements).

A Criminal Injuries Compensation Fund financed by a levy on offenders was established (still the only one in Australia) and the amount of compensation available increased substantially. Funding was provided for the Victims of Crime Service. The plight of the victim became a central focus in criminal justice policy in SA and its policies are *"among the most comprehensive and detailed in the world."* (Sharyn L. Roach Anleu, *Ch 12 Criminal Justice and Corrections* in Parkin & Patience. 291).

In 1989, we established the Together against Crime initiative which established a Crime Prevention Policy Unit in the Attorney General's Department and a Coalition against Crime to support measures in the community directed at reducing the causes of crime and the situations in which it could occur as a supplement to police enforcement activity. This initiative was influential in the Keating Government establishing a Community Safety Fund. I was appointed as the first Minister for Crime Prevention in the country.

While these crime prevention policies were continued by the incoming Liberal Government after the 1993 election, they were regrettably abandoned by the Rann Government. The Crime Prevention Unit was closed down and funding for crime prevention stopped. The driver of these cuts was Treasurer, Kevin Foley, who did not have a lot of interest in evidence-based policy in the area of criminal justice and imprisonment.

The Police Special Branch was abolished and replaced by an Operations Intelligence Section with guidelines for the collection of security information by it clarified from those introduced by Dunstan in January 1978 at the time of the Salisbury dismissal and strengthened those promulgated by the Tonkin Government in 1981 to exclude non-violent activity and peaceful dissent, with Ministerial supervision and the continuation of an independent auditor.

We did work on integrity in Government and established an Anti-Corruption Branch in the Police Force overseen by an independent auditor. The Office of the Director of Prosecutions was established following recommendations from the National Crime Authority which had been investigating police corruption in SA.

A Ministerial Code of Conduct was established and a Code of Conduct for MPs proposed but not finalised before the 1993 election (it took almost 30 years before it was eventually done).

A code of conduct for public officials was established along with a public sector fraud policy and legislation to deal with responsibilities of directors of public trading corporations. Members of Parliament were required to disclose donations and electoral expenditure and Ministerial advisers required to declare their interests. The law relating to public offences (corruption and bribery) was modernised and legislation passed for freedom of information (1991) and whistleblowers protection (1993).

The independence of the judiciary was enhanced by removal of magistrates from the Public Service and the establishment of the independent Courts Administration Authority.

On multiculturalism, I was active in building on Dunstan Government initiatives which were generally supported by the Liberals in Government and Opposition. These fed into and complemented the Hawke Governments 1989 *National Agenda for a Multicultural Australia* and were later carried on by Lynn Arnold.

Robert Holton, *Ch 24 Ethnic Affairs* in Parkin & Patience (329) says that I:

> *"played an important role in articulating and implementing a universalistic rights-based approach … with policy objectives in terms of 'ensuring that the attitudes in politics, the bureaucracy and the country are changed to recognise multiculturalism as a main stream concept, not a policy exclusively for minorities but a policy for all Australians.'"*

Holton (334) said that while uncertain how far South Australia led or followed developments elsewhere it could *"plausibly claim a number of pioneering achievements."*

Under Minister for the Environment, Don Hopgood, there were important environmental initiatives including the controversial measure to prohibit native vegetation clearance. There was an increase in the area covered by national and conservation parks. A program to better protect the Adelaide Parklands was developed incorporating a plan to restore previously alienated areas including the Hackney tram and bus depot.

John Cornwall, the Minister for Health, is referred to above. He was an activist Minister who saw the delivery of health care not just as a matter for medical practitioners and hospitals but in the broader context of social wellbeing and economic conditions. He acted on tobacco sponsorship, lead levels at Pt Pirie and drug reform. He oversaw the amalgamation of the Queen Victoria Maternity Hospital with the Children's Hospital to create the Adelaide Medical Centre for Women and Children. He reformed the administration of the Julia Farr Centre (for the seriously disabled) and the IMVS and started the process of establishing a professional ambulance service to take over from the St Johns volunteer service.

His self-assessment was: *"South Australia achieved a series of reforms and initiatives unmatched anywhere in the nation …developed efficient, equitable and accessible health and hospital services."* (*Cornwall*, 1989, 145). He was happy to record that we pursued the most radical reform of drug and alcohol legislation in Australia (83, 91); that radical reform is possible (93); that it was fair to say the SA Government had done quite a lot of good in quiet ways (212); and conceded that despite Bannon's *"cautious conservatism"* all the measures he implemented had Bannon's support and could not have succeeded without it (213).

Hugh Stretton in his Foreword was happy to acknowledge that Cornwall had an approach that gave growing attention to health rather than sickness and had grounds for his calling South Australia as having *"Australia's most efficient, equitable and accessible health and hospital services"* This situation was also said by Stretton to have been achieved together with the Premier, Cabinet, professionals and public servants who cooperated in his work. Cornwall's contribution is acknowledged by Robert Kosky in *Ch 17 Health Policy* in Parkin & Patience (237).

Bannon was a first-rate negotiator which assisted us in obtaining the Formula I Grand Prix and, more importantly, the Collins class submarine project. The Bannon Government's role in this is overlooked by the Malinauskas Government but it was by no means certain in 1985 that the project would come to SA given the serious competition from other States. Whether you support AUKUS or the French project it superseded, there would be no current submarine building in SA without Bannon securing the Collins Class project in the 1980s.

The Adelaide Casino, Hyatt Hotel and Convention Centre were all developed under Bannon. I am sure other former Ministers including Arnold could supplement this brief summary of what the Bannon Government did if minded to do so.

(ii) Rann Government.

It is astonishing as well just plain silly for Duncan with his claim to support the environment to belittle the Rann Government's initiatives in this area. My knowledge is not complete, but it is accepted that SA became a national and international leader in renewable energy and in reducing carbon emissions. Rann, as well as being Premier, was the first Minister for Climate Change in Australia. When elected SA had almost no renewable power, it now has 75 percent, anticipated to be 100 percent by 2030.

Australia's first climate law was passed – the *Climate Change and Greenhouse Emissions Reduction Act* 2007. For the first time in the world SA set interim targets for the percentage of power coming from renewables. SA led in legislating for a feed in tariff to reward householders with solar panels. The economy was enhanced by substantial national funding for wind power. SA has a substantial up take in solar panels.

All this has been acknowledged internationally and at a personal level Rann is Chair of the Global and UK Climate Group which comprises hundreds of sub- national governments and major corporations from around the world. In a recent article SA is acknowledged as an international leader in developing renewable energy, with the Malinauskas Government intending to legislate for a target of 100 percent renewables by 2027 (Petra Stock, "South Australia is aiming for 100% renewable energy by 2027: Its already internationally remarkable"*, The Guardian*, Sunday 8 September 2024)

Rann was also active on other environmental issues – the doubling of the land area under wilderness protection including a substantial part of the Nullarbor; establishing the Arkaroola Protected Area in the Flinders Ranges which prevented mining: and the creation of a network of marine parks around the coast. Duncan is not alone in having been faced with difficult policy choices which some of these initiatives involved.

As Premier, Rann was also the first Minister in Australia for Social Inclusion and had a suite of policies to go with it including a major push on school retention and the "Street to Home" and "The Common Ground" initiatives aimed at providing high end, market standard apartments for rough sleeping homeless people who are also given professional support to tackle alcoholism, drug addiction, mental health issues and provide educational opportunities. Common Ground, which was taken up nationally, and as Prime Minister Kevin Rudd followed by appointing his then Deputy Julia Gillard as Minister for Social Inclusion with his wife Therese Rein becoming national Patron of Common Ground.

There was investment in hospital infrastructure including the new Royal Adelaide Hospital and an expanded tram, train and bus network. Although controversial Rann's desalination plant, powered by renewable energy, will ensure that droughts have less impact than previously, and that Adelaide is future proofed against running out of water.

Duncan has been a long-time strong opponent of the nuclear industry. Presumably he would have supported the Rann Government's campaign to stop the Howard Government establishing a radioactive waste dump at Woomera. The campaign fought in the SA Parliament, in the media and through the courts, culminated in June 2004 when the Federal Court ruled that the Commonwealth's compulsory acquisition of land for a site in South Australia was "unlawful". In July that year the Federal Government announced it was abandoning its plans to build a single national radioactive waste dump in South Australia.

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