LEGISLATIVE COUNCIL

Wednesday 19 October 1994

The PRESIDENT (Hon. Peter Dunn) took the Chair at 2.15 p.m. and read prayers.

LEGISLATIVE REVIEW COMMITTEE

The Hon. R.D. LAWSON brought up the ninth report of the committee 1994-95.

PAPER TABLED

The following paper was laid on the table:

By the Minister for Transport (Hon. Diana Laidlaw)—

South Australian Housing Trust—Report, 1993-94.

MINISTERIAL STATEMENTS

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table two ministerial statements made in another place, one by the Minister for Primary Industries on Tatiara Meatworks Pty Ltd and the other by the Minister for Industrial Affairs on shopping hours.

Leave granted.

QUESTION TIME

POLICEWOMEN

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Emergency Services, a question about women police.

Leave granted.

The Hon. CAROLYN PICKLES: This morning I opened a seminar that was part of the Women's Suffrage Centenary celebrations, Future Directions in Women's Policing, which was attended by a number of women police officers in this State. My speech related to the paucity of women police officers in South Australia, particularly at the higher levels. For the benefit of members I should note these rather serious statistics. In South Australia women make up 14.96 per cent of the Police Force: 82.03 per cent of all female police officers are represented at cadet, probationary constable and constable level and 17.13 per cent of female police officers are represented at senior constable level and above. Female police officers of the rank of senior constable and above make up 2.5 per cent of the force and only 4.59 per cent of all female police officers occupy positions of sergeant and above. This is .68 per cent of the total force's strength.

The Hon. Anne Levy: It is even worse than in Parliament.

The Hon. CAROLYN PICKLES: It certainly is.

The Hon. K.T. Griffin: You have to put that in context.

The PRESIDENT: Order! The Minister will have the opportunity to answer the question.

The Hon. CAROLYN PICKLES: I can respond to the Attorney's interjection.

The Hon. L.H. Davis: After 11 years of Labor Government, they—

The Hon. CAROLYN PICKLES: They are blaming themselves too, so I am asking what strategies you will have. If we look at the management level, that is, inspector and above, we see that there are two inspectors out of 43 and two chief inspectors out of 37. There are no women superintendents, chief superintendents, commanders or assistant commissioners. There is one male deputy commissioner and one male commissioner. Certainly, in his address to the seminar, Assistant Commissioner Murray expressed his concerns about the paucity of numbers and mentioned some methods they are adopting to try to alleviate this. My questions to the Minister are (and the Minister for the Status of Women might take note of these, too):

1. What measures has the Minister taken to ensure that more women are employed in the Police Force of South Australia?

2. What strategies have been developed to ensure that women are integrated at senior management levels of the force?

3. If any strategies have been developed, who will ensure that they are implemented?

4. Will the Minister actively support a recruitment campaign to encourage more women to join the Police Force in South Australia?

5. Will the Minister for the Status of Women work with her colleague to ensure the success of these strategies?

The Hon. K.T. GRIFFIN: I will be pleased to refer those questions to my colleague the Minister in another place and to bring back a reply. I think it ought to be said that it is only in the past four or five years—not much longer—that the Police Force has seemed to be a more desirable occupation for women, and that is a historical position rather than the result of any action taken by previous Labor Governments or the Liberal Government during 1979 to 1982. I hold the strong view that there ought to be a proper representation of women in the Police Force. In fact, when I was acting Minister earlier this year (I am sure it was only coincidental) I was pleased to be able to announce the promotion of a woman police officer to the rank of chief inspector, and I think that is very commendable. I know that among those higher echelons of the Police Force those two very senior officers are also very well respected overseas, because as I recollect one of them was on a training course with the F.B.I. and is probably the foremost expert on certain aspects of police work in Australia as a result of that training. So, as a Government we would certainly be very supportive. I will refer the specific questions to the Minister, as I have indicated, and I will bring back a reply.

The Hon. CAROLYN PICKLES: As a supplementary question, which I had incorporated in my question: will the Minister for the Status of Women work with her colleague to ensure the success of strategies to get more women into the Police Force?

The Hon. K.T. GRIFFIN: I will refer that question and bring back a reply. That is what you wanted, is it not?

FORWOOD PRODUCTS

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Primary Industries, a question about Forwood Products' relocation of employees.

Leave granted.

The Hon. R.R. ROBERTS: I believe that Primary Industries (SA) employees who had been made available to Forwood Products have received separation package offers containing three options. This offer was made last Friday week, and I believe it has caused a great deal of concern. To indicate the sorts of concern being expressed I read from a

letter that was sent to me by the wife of an employee by way of explanation. The letter states:

As the wife of a Primary Industries (SA) employee made available to Forwood Products, I would like to express my concern at the insensitive and inflexible way in which the South Australian Government and Forwood Products are pursuing the privatisation and displacement of Government employees. A package containing three options for the above-mentioned workers was distributed on Friday 7 October 1994, to the surprise of most people.

After employees and families examined the options put forward, it was clear that the move to Forwood Products was inevitable and contained little financial pain. I believe most workers and their families accepted this at the time. On Saturday 8th (the next morning), Forwood Products management discovered that all 500 packages distributed contained major errors in the figures, and workers would now have their pay cut trebled if they wished to continue their current job. Not wanting to be exposed to any legal problems, company managers began to distribute amended offers to employees. These notices were even delivered to home addresses on a Saturday morning less than 24 hours after the first notices were sent out.

The decision on what to do is made worse by the fact that less than two weeks have been given to reply to the offers proposed. This seems hardly enough time to consider what may affect most families financially for years to come.

I feel little thought has been given to the wives and children of the workers. I know personally the stress of major decision making has been compounded by the incompetence of management with the mix up of the proposals. I know that many of the families feel as I do and hopefully this letter brings to your attention some of our concerns.

I also understand that the unions representing the workers in this industry sought the withdrawal of some of these notices so that consultation could take place.

I understand that last Monday a 30 minute meeting was held between the Minister and employee representatives, and I am advised that he accepted at this meeting that he was responsible for the time frame set down in the packages, even though he originally claimed that Forwood Products were forcing the issue and claiming that the Cabinet was forcing the pace. It is a pity that the Cabinet again appears to reject the consultative enterprise bargaining approach to another industrial matter, especially after the success of this approach recently in the matter of public superannuation.

The Opposition clearly favours the consultative enterprise agreement approach rather than the authoritarian and dictatorial confrontationist approach. Proper consultation with employees and their union representatives is preferable to the dispute being created with all the accompanying baggage that goes with it. My questions to the Minister are:

1. Will the Minister withdraw the letters and proposals currently on offer to the work force?

2. Will he rescind any proposals which have the effect of altering conditions or status of employment for Primary Industries South Australia 'made availables'?

3. Will he remove the threat to deem Primary Industries South Australia 'made availables' as being redeployed if they fail to exercise any of the options within the proposed time frame?

4. Will he enter into proper consultation processes with the unions on the issues of future conditions and work arranged for Primary Industries South Australia workers?

The Hon. K.T. GRIFFIN: I will refer those questions to my colleague the Minister for Primary Industries and bring back a reply.

WATER QUALITY

The Hon. T.G. ROBERTS: I seek leave to give a brief explanation before asking the Minister for Transport, representing the Minister for Environment and Natural Resources, a question on filtered water and its cost.

Leave granted.

The Hon. T.G. ROBERTS: In the *Advertiser* this week we have had three front page headlines on the quality of Hills water. On Monday 17 October the headline read, 'Hills water quality shock'. On Tuesday 18 October we had 'Water fears mount', and a number of questions were asked in this place by a colleague of mine, Mr Feleppa, and by the Hon. Mike Elliott of the Democrats in relation to that headline. Today, 19 October, we have a headline, 'Filtered water for 100 000 people'.

The Hon. R.I. Lucas interjecting:

The Hon. T.G. ROBERTS: No, it is not Government action, and if you read the *Advertiser* you will see that it is not Opposition action, either. The *Advertiser* has become the official Government and the official Opposition in this State. If you read the article—

The Hon. L.H. Davis: That says a lot for you, doesn't it.

The Hon. T.G. ROBERTS: Well, it doesn't say much for you, either. It says even less for the Government.

Members interjecting:

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: If there is something less powerful than the Opposition it is probably a Government backbencher. I understand the Hon. Mr Davis's frustration. This issue is something that should give both the Government and the Opposition cause for concern. Two questions were asked on water quality. I do not think the Hon. Mr Feleppa's question got a run. The Hon. Mr Elliott's question may have got a run—

An honourable member interjecting:

The Hon. T.G. ROBERTS: It may not have been in the print media but I am sure he got a run on the radio.

The Hon. R.I. Lucas interjecting:

The Hon. T.G. ROBERTS: How much of a run did you get?

The Hon. R.I. Lucas: I think the cleaner got interviewed, but I didn't.

The Hon. T.G. ROBERTS: Another cause for concern, Mr President! The article states:

Filtration plants are planned for Swan Reach, Nairne and Hahndorf. The Swan Reach plant will supply Barossa Valley and Mid North residents, while the Nairne and Hahndorf plants will supply dozens of Hills townships. An additional 10 smaller plants are proposed for the River Murray townships of Murray Bridge, Tailem Bend, Loxton, Renmark, Berri, Mannum, Barmera, Waikerie, Strathalbyn and Milang.

If we look at and analyse those filtration plants and those townships, I do not think the policy would have been drawn up between Monday night and Wednesday night. I would suspect, being the cynic that I am, that the department had some sort of plan in place and that somebody inside the department either tipped off the *Advertiser* or somebody—

The Hon. R.I. Lucas: I spent half an hour telling them.

The Hon. T.G. ROBERTS: —within the Party, away from the Minister—which is even more disturbing if it was somebody outside the Minister's office—leaked the information. The budget did pre-empt that money would be spent on filtering Adelaide's water and surrounds. We have a whole list of areas that will be filtered, and members on both sides of the House would be thankful for that. The Minister is quoted as saying that there will be no change to the pricing system, even though the—

The Hon. R.I. Lucas: A spokesperson for the Minister—someone walking past the telephone at the time.

The Hon. T.G. ROBERTS: A spokesperson for the Minister said that there would be no change to the pricing system. That gives me cause for concern because the Minister has not made the statement himself. I quote from this morning's *Advertiser*, as follows:

> Water rates have not entered into the plans at all; they are a separate issue altogether.

As a member of the Opposition, I understand that they are a separate issue altogether, but my questions are:

1. How will the cost to Government be assessed and allocated to consumers?

2. Given that water quality at the filter point will rely on the water quality at the pumped end from the Murray, will the Government be extending the wetlands filtering programs and ponding programs on the eastern side of the Mount Lofty Ranges?

The Hon. R.I. LUCAS: As the Minister representing the Minister for Infrastructure today, and as I was the Acting Minister for Infrastructure over the past few days, I would like to answer that question and put some comments on the record.

The Hon. T.G. Roberts: Are you going to give us the full story?

The Hon. R.I. LUCAS: No. I think the events of the past three days in relation to the *Advertiser* probably will not be fully told until the *Adelaide Review* writes either a David Bowman piece, maybe a Chris Kenny piece or a Christopher Pearson piece. I will leave to the fearless pages of the *Adelaide Review* any further comment in relation to what has occurred with this story and the *Advertiser* over the past three days.

The Hon. L.H. Davis: They tried to do something big before Mr Murdoch was in town.

The Hon. R.I. LUCAS: The Hon. Mr Davis makes a comment which may find its way into an *Adelaide Review* article, but I suspect it will not be reported in the *Advertiser*. As I said by way of interjection earlier, I spent some 30 minutes talking to the journalists yesterday in relation to the water filtration and the water quality issue, some of which was reported under the general heading of 'State Government' and which quoted a spokesperson for the Minister—not me, by the way but, I presume, a spokesperson for the absent Minister—and a number of other unattributed comments described on behalf of the State Government.

As much as I would like to indicate to the Hon. Mr Roberts that this Government was able to put together this particular package between Monday morning and Tuesday afternoon, in all honesty and in noting that I do not want to be guilty of misleading the Parliament, I cannot say to him that the Government was in fact able to put together this package between reading Monday morning's *Advertiser* and the copy going to bed late yesterday afternoon for today's *Advertiser*. As I indicated to the *Advertiser* yesterday, basically all of these announcements were made in the budget this year and in subsequent statements soon after the budget, and have been variously reported in some sections of the media by the Minister for Infrastructure and other spokespersons as a result of the budget announcements.

I think it is fair to say that the good readers of the *Advertiser* this morning might have struggled to get that impression. The impression that a reader of the *Advertiser* might have got had they read the front-page story and the editorial was that, as a result of the front-page stories of the past two days, the Government had had a major change of direction, had found $110 million and was now going to filter water for 100 000 lucky residents in the hills and in the lower Mid North part of South Australia. As I said, I cannot indicate that. It is a statement and a series of announcements have been made. The funding that was announced in the budget of approximately $1.5 million this year is for initial feasibility and design work. The number of 13 filtration plants is what is tentatively projected at this stage, and that is the best guess at this stage; two for the Adelaide Hills area, one for the Swan Reach area and up to 10 for the river towns, as described by the EWS. Again, the final decision on whether 13 is the number or whether it will be slightly less will be decided by the EWS and the Minister for Infrastructure after the final feasibility studies have been brought down.

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: You do not think they will go further—well, I will not comment on that. I would be pleased to refer those other parts of the honourable member's question to the recently returned Minister for Infrastructure and ask him to bring back a reply as soon as possible.

The Hon. T. CROTHERS: As a supplementary question: given that the Minister in his statement has indicated the cost to be $110 million for 100 000 people, and that equates to $1 100 per capita for the supply of that filtered water, how much of the additional charges would be borne by those 100 000 people were the EWS to be privatised?

The Hon. R.I. LUCAS: I will refer those questions to the Minister. But I think the honourable member ought to be a bit cautious in making those back-of-the-envelope calculations.

The Hon. T. Crothers: I am simply asking a question.

The Hon. R.I. LUCAS: And I am simply saying that you should be cautious in those back-of-the-envelope calculations, because—

The Hon. Anne Levy: You do not want to believe the figures he gives you. Never believe the figures he gives you; that is what you are saying.

The Hon. R.I. LUCAS: I have more faith in the Hon. Mr Crothers. I give him some credit. Your colleague the Hon. Anne Levy says, 'Never trust your figures,' Mr Crothers, but I must say that I would not be as damning of the Hon. Mr Crothers as the Hon. Ms Levy has been. I have found the Hon. Mr Crothers on occasions to have been right. He has a reputation, at least in the past, of being a bit of a number cruncher in the centre left, and he occasionally got his figures right—and on one recent occasion did pretty well, which I talked about last week—but that is a diversion. First, the $110 million is the best guesstimate at this stage. Final feasibility work needs to be done in relation to the number of plants and obviously the total cost. So, they are only estimates at this stage.

The second issue is that the Government does not have a lazy $110 million of taxpayers' money sitting around for the next two and a half years to put into this project. The announcements made by the Minister are that these schemes would largely be done by the private sector through the build-own-operate (BOO) scheme. Again, that will need to be considered as part of the feasibility study. The Minister's position—and I have heard him mention it on a number of occasions—is that it is not the policy of the State Government to privatise the EWS. I will refer those further questions to the Minister and bring back a reply as soon as possible.

The Hon. T. Crothers: You are proposing that it should be complemented by private capital, aren't you? That is your ideal.

The Hon. R.I. LUCAS: The idea is that the private sector would, in effect, build, own and operate—the BOO scheme. That is the proposition at the moment.

HOUSING TRUST TENANTS

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Housing, Urban Development and Local Government Relations, a question on the removal of tenants from Housing Trust homes at Mitchell Park.

Leave granted.

The Hon. SANDRA KANCK: Housing Trust families at one public housing estate at Mitchell Park have been told by the Housing Trust that they will be moved and their homes demolished. I am informed that is so that more up-market properties can be built on the site to house full rental private tenants. I understand that 20 children of families in these homes who attend Tonsley Park Primary School may be forced to shift schools as a result. This will also have the effect of reducing student numbers at Tonsley Park Primary School, thereby making the school less viable and destroying the community. My questions to the Minister are:

1. Was any consultation undertaken by the Housing Trust with the affected residents at Mitchell Park?

2. How many other Housing Trust residents in South Australia will be affected by such moves to sell Housing Trust homes to make way for private dwellings?

3. What guidelines are being put in place and what consultative processes are being used by the Housing Trust with residents facing eviction because their homes are being sold?

4. How many students will be moved from Tonsley Park Primary School as a result of the Mitchell Park Housing Trust residents having to move; and what are the implications for the resourcing of the Tonsley Park Primary School?

The Hon. DIANA LAIDLAW: I will refer that question to my colleague in another place and bring back a reply. In the meantime, I would add that the Mitchell Park-Tonsley Park area, particularly the Housing Trust area, has been the subject of uncertainty for tenants for some time, initially over whether there was to be a major transport interchange in the region under the previous Government. There was considerable uncertainty for local residents at that time. I was asked by the present Minister if we would be proceeding with such a major interchange proposal, and I have indicated 'No.' I understand that the initiatives that he has now taken are in the light of the changed funding formula under the Commonwealth-State Housing Agreement—

Members interjecting:

The PRESIDENT: Order! I can hardly hear the Minister.

The Hon. DIANA LAIDLAW:—and a general need in the area to upgrade or redevelop houses that have been allowed to fall into considerable disrepair over a number of years because of this uncertainty about the future of those houses and the Tonsley interchange. They have faced an uncertain future for some time, and the houses have been allowed to fall into disrepair because of indecision by the former Government about the Tonsley interchange area. In those circumstances, the Housing Trust was not prepared to invest further funds in those houses. Further to those general comments, I will seek to obtain a specific reply for the honourable member from the Minister.

CREATIVE NATION

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for the Arts a question about Creative Nation and the arts.

Leave granted.

The Hon. A.J. REDFORD: This morning's press and yesterday evening's media contained reports of the proposed Federal Government program involving Creative Nation, in particular a $250 million package made available in the area of arts by the Federal Government. I draw the Minister's attention to an article that appeared in this morning's *Age* commenting on the package written by Mr Kenneth Davidson. In that article Mr Davidson said:

> The Keating Government's cultural statement is elitist, Sydney-centric, gee-whiz ignorant about multimedia and a triumph for cultural bureaucracies.

The Hon. L.H. Davis: He's a Labor journalist.

The Hon. A.J. REDFORD: Yes, he is a Labor journalist. I also understand that the bulk of the information that has come in on this topic to various bodies involved in the arts in the State has been by way of the media reports appearing in this morning's papers. In the light of that, I ask the Minister the following questions:

1. Does the Minister share the views of Mr Davidson as reported in this morning's *Age*?

2. Would the Minister advise what is in this Creative Nation package for South Australia?

The Hon. Anne Levy: Has she read it?

The Hon. A.J. REDFORD: I am sure she has.

3. What was the consultative process adopted by the Commonwealth with the States in developing this package?

The Hon. Anne Levy: Meetings all over the country.

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: I received the paper Creative Nation about three minutes ago. My office has been seeking it for the past 24 hours, following promises from the office of Federal Minister Lee that it would be provided yesterday. I am aware that the Department for the Arts and Cultural Development, at least at 2 p.m., had still not received a copy of the paper. We had, however, received copies of various press releases and, as we all know with press releases, only the good news is spelt out. The trouble for South Australia is that there is not a great deal of good news in this package. I welcome, of course, the extra funds that the Federal Government is going to commit to the arts in general. I applaud the initiatives in terms of film and multimedia because of the additional work that that will provide for artists in South Australia. I also believe that, through multimedia work and CD-ROMs in particular, the arts will become more accessible to a much wider audience than has enjoyed the arts in the past.

Those initiatives, in terms of film and in multimedia technologies, reflect the arts cultural development task force report that we brought out earlier this year and they also reinforce the initiatives that have been taken in this State over at least the past 10 months to ensure that we are well placed in those fields to take up new initiatives if they were offered. The initiatives have now been offered through extra funding. The tragedy for South Australia in this area is the fact that, unlike any other State, there is no specific initiative for South Australia. I note the *Age* this morning was heralding the fact

that 'Victoria wins three arts bodies'. So, the Labor Government has provided to Victoria—where I suspect it thinks it has more marginal seats than it has in South Australia—three major new initiatives for specific institutions. There was no such support provided to South Australia. I had been asked to phone Mr Lee, as I indicated to this place in the past week, in relation to an initiative that the Federal Government was developing for a national gallery of Aboriginal Australia.

Someone from Mr Keating's or Mr Lee's office must have leaked that initiative to the *Sydney Morning Herald* and, after that, press comment and some uproar by people associated with the national museum proposal in Canberra, the Federal Government lost its courage or nerve to pursue this initiative. It is an initiative that should have been taken because South Australia, with the fantastic collections that we have at the South Australian Museum and with the Tandanya initiatives, is best placed in Australia to be the centre for Aboriginal Australia. The Federal Government, including the Prime Minister, recognised that up until a week ago. As I say, the Federal Government has lost its nerve and, as a consequence, this lost opportunity has considerable ramifications for South Australia.

On my assessment we are the only State or Territory in Australia that does not have a specific funding initiative and that is a particular worry for South Australia. I have written to the Prime Minister today to highlight that fact and my correspondence indicates that there will be further negotiations on these issues. I understand from Mr Lee's office that further negotiation would be acceptable. The difficulty is that, unlike the other States and Territories, we are on the back foot. We have to negotiate for further specific funds, rather than being provided with them, as is the case with the other States and Territories.

Members interjecting:

The Hon. DIANA LAIDLAW: There is a lot of noise.

The Hon. Anne Levy interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: There is much squealing and screeching from the other side, but I would have thought that Opposition members would share my concern about the possible future for the Adelaide Symphony Orchestra. There is considerable disquiet throughout the music field about the proposal in the Keating statement to let the Sydney Symphony Orchestra stand alone. If that proposal is pursued and the orchestra goes out of the ABC network, with all the positive links that that provides, one must be most concerned about the future funding arrangements for the Adelaide Symphony Orchestra.

Certainly, I am concerned that representations in the past, in terms of the Adelaide Festival, have not been taken up for it to be a festival of excellence in this country. That issue is also a lost opportunity. The package is a mixed bag for South Australia. Certainly, my initial response from reading the press release and initial media reports, although I have not read the report itself, is that it does reinforce what we have seen in the recent awarding of scholarships: it has a strong focus on the eastern States.

There will have to be something equivalent to a council of war set up in this State in terms of increasing our profile in the eastern States and with the Federal Government and the Australia Council. It is not only on this occasion because it has been true over a number of years that South Australia in the performing and visual arts, in particular, and also in the crafts, has been losing out heavily in funding terms to the eastern States, particularly Sydney and Canberra. I know that this is of concern not only to the Government, and I suspect the Opposition, but to all members of Parliament. It is of particular concern to the arts community and younger people in South Australia who would wish to have a future in the arts in this State. While the perception is reinforced by this cultural statement and the awarding of scholarships that a future in the arts lies only in the eastern States, it will be particularly difficult for us, no matter what initiatives we take, to keep younger people here and for them to believe that they have a future in the arts in this State.

So the perception not only in the arts but in other areas, too-I accept that-is that we have had a drain on younger and experienced people leaving the State over a number of years. We need to turn that around but it is difficult to do so while the Federal Government is awarding the funds in the way that it is at the present time.

PARKING SIGNS

The Hon. BARBARA WIESE: I seek leave to make a brief explanation before asking the Minister for Transport a question about parking signs.

Leave granted.

The Hon. BARBARA WIESE: Recently I have become aware of a trial scheme that is being implemented in New South Wales which, if it is successful, would do away with the many ugly parking signs that exist on suburban streets in Sydney and other Australian cities. This new parking system replaces parking signs with a colour coded system whereby the kerbside is painted in two different colours to indicate to motorists what parking restrictions, if any, operate in that location. In other words, a colour coded system is being trialled. Under the scheme a broken green line painted on the kerb will tell motorists that they can park there; a broken red line denotes parking restrictions and a solid red line denotes no parking.

Signs are being installed at the corner of each street to explain the system and it is expected that, if the system works, not only will there be a large reduction in the number of existing parking signs but also a saving in taxpayers' money through the reduction in the number of signs needed. I understand that the scheme in New South Wales is being supported not only by the roads and traffic authority but also by relevant councils, the police and the NRMA. Since this system has the potential to save money and to reduce visual pollution in suburban streets, will the Minister monitor the progress of the New South Wales trial and, if it is successful, will she consider the introduction of such a scheme in South Australia?

The Hon. DIANA LAIDLAW: The New South Wales scheme is being monitored by the transport authorities across Australia at the present time. The scheme has generated considerable interest because it builds on the fact that lines have been used for years in traffic management terms for directing motorists, whether it be a broken line or an unbroken line indicating whether one can or cannot pass or double lines. Such white lines have been used for years for traffic management and so have coloured lines in terms of yellow lines meaning prohibited use at various sites, indicating to motorists not to park in certain areas. In a general sense that is not new. They are simply extending what has been the practice for many years with the introduction of further colours and, as I say, it is being monitored by all road traffic authorities around the country because of the visual pollution issue and because of vandalism. The vandalism of signs costs

each authority and council a lot of money each year.

The other issues are road safety, the people on cars, bikes or motor bikes who collide with these signs from time to time and generally the cost of the erection of these signs. For all those reasons the trial in New South Wales is being monitored closely. I assure the honourable member that at this time the results look quite good and that they are being quite well understood by the people using that area, so there is some promise for the wider use of this scheme.

TAPESTRIES

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister for the Status of Women a question about the women's suffrage centenary tapestry.

Leave granted.

The Hon. ANNE LEVY: Along with many members of this Council and the other place I attended today's ceremony for the official unveiling of the two suffrage centenary tapestries which have been hung in the other place. I am sure everyone appreciates the artistic merit as well as the strong symbolic value of these tapestries, which will be a lasting reminder of these suffrage centenary celebrations in 1994.

In private conversation I have previously spoken to the Minister regarding the possibility of getting a suitable tapestry to hang in this Chamber so that we, too, could participate in both the aesthetic and the symbolic values of tapestries such as this. After all, the Suffrage Bill was passed in 1894 not only by the House of Assembly but also by the Legislative Council, so both Houses of Parliament were closely involved in achieving that historic milestone.

One of the tapestries in the other Chamber can be taken to be women and Parliament in the nineteenth century and the second one can be taken to be women and Parliament in the twentieth century. It seems to me appropriate that there should be a tapestry for this Chamber which could symbolise women and Parliament in the twentyfirst century. As the Minister will be aware, because of the sloping walls of a large part of this Chamber we felt that the appropriate place to hang the tapestry would be on the wall behind *Hansard* where, if hung high, it would be visible to everyone in the Gallery and to all who walked through the doors at the southern end of the Chamber.

Has the Minister given further consideration to this idea, and does she feel it would be possible to commission a tapestry—I would suggest from the same designer, Kay Lawrence, the person who designed the other two—which could then hang in this Chamber? Even if this is achieved after the end of the centenary year, does the Minister feel that this idea is worth pursuing? If so, what means would she propose to achieve what I feel would be a most desirable addition to this Chamber?

The Hon. DIANA LAIDLAW: I agree with the honourable member that the two tapestries that were unveiled today in the other place are absolutely stunning, and it is superb to see them hanging in the Chamber for which they were designed. They were hanging for all to see during the Women, Power and Politics conference a few weeks ago, but in the actual Chamber they look even more sensational. I urge all members and others in the community to view them, because they live. It is amazing to see the basket weaving and how the community weavers have worked the lace in wools; it is almost as if one were seeing through a lace veil to the documents behind. They are exquisite and a great credit to the designer, Kay Lawrence, Elaine Gardner, the assistant weaver and all the community weavers. They are an asset to this place. I was very pleased that you, Sir, welcomed us to this Parliament today and were part of the ceremony of receiving these tapestries.

The tapestries were commissioned by the Women's Suffrage Centenary Committee, and that is to cease functioning at the end of this year. If we are to proceed with such an initiative we would have to look at another means of commissioning such a work. It would be great if the Parliament itself looked at forming a body to commission a tapestry for this place, whether it be on women's suffrage, which I think would be fantastic, or on some other subject related to this place. There is not only the area behind *Hansard* and the media, but looking around now I see that we have a lot of blank walls on the balcony area, and over time it may be that other commissioned works of art could brighten this place and be of some symbolic relevance to it.

I am keen to see some of my colleagues following Question Time today. There have been discussions in recent weeks about having a sin bin and other disciplines with respect to members of Parliament, but they only have to look at Catherine Helen Spence, Mary Lee or Elizabeth Webb Nicholls and the stern looks on those women's faces, which may bring some members to their senses every now and again when things get out of hand, especially given the way Catherine Helen Spence looks at the Speaker and keeps an eye on the Parliament as a whole. I think that that symbolism and those features are another joy of the tapestries.

STATE FINANCES

The Hon. T. CROTHERS: I seek leave to make a brief statement before asking the Leader of the Government in the Council, representing the Premier, a question about future State Government actions possibly imperilling the nation's already acute balance of payments problems and general indebtedness.

Leave granted.

The Hon. T. CROTHERS: I hear members laugh, and perhaps it was such foolish laughter that led us to the perils that we now suffer from the activities of some of their friends in the 1980s.

The Hon. R.I. Lucas: You were in government.

The Hon. T. CROTHERS: You may interrupt if you wish. If it is your wont to interrupt, by all means do so and continue on in your ignorance.

Members interjecting:

The PRESIDENT: Order!

The Hon. T. CROTHERS: Thank you, Mr President. As my opening remarks would indicate, along with other Australians I have been concerned for some time now with Australia's overseas debts and its balance of payments problems, both of which are interwoven. Australia's present debts, of course, owe the bulk of their origins to the entrepreneurial madness of the 1980s. I understand that in excess of 60 per cent of our present debts of more than $150 billion can be attributed to the private entrepreneurial borrowings of that time, and South Australians, along with all other Australians, are still paying a very high price for that lack of foresight. Let us hear you laugh now. In fact, I understand that it costs the nation some $18 billion per year just to pay the interest on that debt of $150 billion plus, without anything being paid off the principal. Small wonder then—

The Hon. L.H. Davis interjecting:

The Hon. T. CROTHERS: Well, it is going over the top of your head. I am wasting my time directing it to you. Small wonder, then, that our current deficit in respect of this year's balance of payment figures has been calculated to be in the order of $17 billion plus. Of course, these borrowings to which I have already referred are not the only constituent part of the indebtedness of the nation. I am told, for instance, that another part of our problems stems from the fact that because quite a lot of our industry is in the hands of overseas owners much of the profit from these industries is expatriated back overseas to the parent companies, thus further expanding our problems with overseas debt. As well as that, I am also told that this makes future investment in the Australian economic scene even more difficult to attract.

This present Government has already indicated that it is its intention to privatise many of the State Government's instrumentalities. For instance, I am led to believe that already the State Government's computer network has been privatised and that the agent of that piece of privatisation is overseas owned, no doubt leading in the future to the expatriation of their profits overseas. As well as computers, much talk is around the place of privatising prisons, hospitals, etc. Given the amount of money which will be needed to buy such enterprises, there is every likelihood again that they will be sold off to overseas interests, with yet again the expatriation of profits going overseas. Given that every Australian, including we here in South Australia, ultimately pays the price for our overseas debt, my questions are:

1. Will the Premier ensure that no action taken by his Government will in any way further worsen the nation's overseas debts by the expatriation of profits gained from any such privatisation being sent overseas?

2. Does the Premier agree with me that the expatriation of profits from Australia to overseas companies worsens Australia's debt position?

3. Does the Premier agree with me that the expatriation of profits from Australia to overseas companies makes it more difficult for the nation as a whole to attract the type of investment required to ensure the future well-being of our people both here in South Australia and nationally?

4. Finally, but by no means exhaustively, does the Premier agree that actions taken by State Governments throughout Australia can worsen the net debt and the balance of payments problems that currently and futuristically confront us?

An honourable member interjecting:

The Hon. R.I. LUCAS: Mr President, my colleague says this is summer school. The WEA does a nice primer in first grade economics to which we might send the Hon. Mr Crothers along. The other thing I might suggest to the Hon. Mr Crothers is that, if he cannot get one of his colleagues to do so, I will be only too delighted to introduce him to some of his Federal colleagues by the name of Keating, Willis and a few of the other Treasurers over the past few years—

The Hon. L.H. Davis: Dawkins.

The Hon. R.I. LUCAS: Dawkins would be another one. If you want to talk about the overall issues of current account deficits, the balance of payments and those sorts of national and macro-economic issues, you need to look first and pre-eminently at the Commonwealth Government's economic policy. If you want to talk about privatisation and the appropriation overseas of profits, I would advise the honourable member to get on the blower to Mr Keating or Mr Willis and talk about companies such as the Commonwealth Bank, the Commonwealth Serum Laboratories and Qantas. There is some manoeuvring at the moment, I understand from my colleague Mr Davis and others, on ANL, and there has been some discussion about Telecom. The list goes on and on and on. In all those, they have been the policies of the honourable member's own colleagues and, indeed, some of his own factional colleagues in the Commonwealth Parliament.

So, Mr President, although some of the issues in which a small State like South Australia engages might have some marginal effect on the national economic scene, in the greater context, in the context of national and macro-economic policy, the decisions we take are very small in relation to the sorts of decisions that the Commonwealth Government undertakes and has undertaken. I will be pleased to refer the honourable member's questions to the Premier and bring back a reply, but I indicate that I suspect the Premier's response will be somewhat similar to that which I have just given the honourable member.

DAYLIGHT SAVING

The Hon. R.R. ROBERTS: I move:

That the regulations under the Daylight Saving Act 1971 concerning summer time 1994-95, made on 15 September 1994 and laid on the table of this Council on 11 October 1994, be disallowed.

Daylight saving has been a subject of debate in both Houses of this South Australian Parliament since it was introduced in 1971. On many occasions there have been variations on the four month period which was the subject of the 1970 referendum and an overwhelming agreement by the people of South Australia and which was introduced in 1971.

Recently, in an endeavour to stabilise or finalise the arguments in respect of daylight saving and extensions from time to time, my colleague in another place, the Hon. Frank Blevins, on behalf of his country constituency, introduced a Bill which would have required the Parliament to re-examine the situation in respect of daylight saving.

However, despite the preponderance of country members in that other Chamber, there was no support whatsoever coming from the Government side for the Hon. Mr Blevins's private member's Bill relating to daylight saving. Indeed, since that time, these other regulations have been introduced.

I understand that the Premier was a great supporter of this particular extension. In fact, the Premier first floated the idea of moving South Australia to Eastern Standard Time when he first consulted earlier in the year with his other State colleagues from Victoria and New South Wales. The Premier then announced that he had extended the period of daylight saving from four to six months. He later backed away from that position, and we now have a proposal of daylight saving being extended for four weeks every year, apparently to accommodate a two week extension of the biennial Adelaide Festival. I pause here to say that this Government has on a number of occasions supported an extension of daylight saving because of that very important Adelaide Festival.

As you would know, Mr President, this has not always been accepted by rural constituencies, with which I have great affinity. Indeed, the country press has been full of complaints, especially on the West Coast, where the Hon. Ms Schaefer resides. Mr President, you would be well aware of the numerous contributions by country people in respect of daylight saving. Members in another place represent country

electorates, and I note that the Premier himself, whilst promoting this particular measure, has not accepted the advice of his country constituents, although one would have to say that to call the honourable Premier a country member is somewhat an extension of credibility. R.M. Williams boots beating a path from Parliament House to the Adelaide Club hardly constitutes a country member of Parliament.

I would have thought that people such as the members for Custance, Frome and Eyre would have entered this debate with some gusto on behalf of their constituents and moved away from the situation where this was done by regulation. However, the Bill introduced by the Hon. Frank Blevins did fail in the other place. It is interesting to note that it was only the Labor members of that Chamber who supported country constituents, thus reinforcing the assertions of many of my colleagues that in respect of country issues, at the end of the day, it is the Labor Party that looks after people living in country South Australia.

The Hon. A.J. Redford interjecting:

The Hon. R.R. ROBERTS: I note that the Hon. Angus Redford has decided to join this debate, and I welcome that because I understand that the Hon. Angus Redford has something of a rural background. It will be interesting to see, when we call the division later, whether the honourable member, along with his colleague the Hon. Caroline Schaefer, will come across to this side of the Chamber and support their country constituents. Also, the Hon. Jamie Irwin might wish to exercise his roots and support country constituents, despite the fact that his colleagues in the other place did not line up. As to this professed independence within the Liberal Party, this principle that they espouse that they have this great flexibility, we will see just how much credibility comes from that when we invite the Hon. Angus Redford and two or three of his colleagues to come over here and support country constituents in South Australia. I have a letter written by a constituent on the West Coast which appeared in the *Eyre Peninsula Tribune*.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.R. ROBERTS: It states:

> The member for Flinders concedes that there is opposition to extension of SA summer time well into Autumn but believes 'the benefits to the State outweigh the costs'. We assume the 'benefits to the State' is to State coffers—even that is debatable.
>
> Admittedly some occupations would benefit substantially. Hoteliers stand to benefit—trebly so, now that one-armed bandits have successfully held up and overrun South Australia.
>
> How does the member evaluate the costs one wonders. How does anyone evaluate human suffering and hardship? How do you measure fatigue-induced ill-health, tension, family discord due to chronic early morning rush stress, disruption of family routine and collapsed kids in the early afternoon?
>
> To impatiently dismiss the subject as trivia is an admission of the very real hardships the whole exercise incurs in rural South Australia. Further, accusing a fellow Parliamentarian [Hon. Frank Blevins] of attempting to divide the Government when he presents his constituents' needs and wishes should be seen for what it is—a prevalent political ploy, a pathetic distraction tactic to evade the issue, to disguise the cold hard fact that Party room policy has again taken precedence over constituents' wishes.

I can only assume that she is talking about the machinations in the Liberal Party room when the Premier came back to South Australia giving a commitment to his big brother colleagues in another State. This new Premier said that he would change everything in South Australia and would fall in line with his cousins in Victoria and in New South Wales. However, his country colleagues did in fact say—and I give them some credit within the Party room—that they would not cop this Eastern Standard Time routine, and that they would not cop a two month extension. I understand that was after the second debate. It is my information that the Premier did prevail on the Party room to allow him the good grace to be able to say, 'We will have a month' and, reluctantly I believe, the assurance was given to the Premier that they would not embarrass him completely and would allow it.

This probably explains the fact that none of those caucus toadies actually stood up in the Parliament and supported their constituents and denied the Premier the right to have his little victory. This is an issue that has nothing to do with the merits of South Australian industry or festivals. In fact, this is being brought about, we are told, to allow a month's extension for the Moomba Festival. Country constituents are critical about the Adelaide Festival of Arts. They do not see it as the South Australian Festival of Arts, but do believe that there are people who have a great interest in the Adelaide Festival of Arts and they are happy to go along with that. But they can see no merit in the Moomba Festival in Victoria. It is their belief that this regulation ought to be disallowed.

On behalf of the Opposition, I indicate that we will be moving for the disallowance. I suspect that the Democrats have probably been lobbied on a number of occasions. I invite them to stick up for all of South Australia, and rural South Australia in particular. In conclusion, I make a personal plea to members opposite from country backgrounds, such as the Hons Angus Redford, Caroline Schaefer and Jamie Irwin. I am sure, Mr President, if it were possible for you to come down out of that Chair and vote you would be over this side of the Chamber—

The Hon. R.D. Lawson interjecting:

The Hon. R.R. ROBERTS: We should actually bolt this in. Rob Lawson wants to qualify, too. I am happy to have him on the team. There will be a space over here when the division comes. We invite him to come and sit over here.

The Hon. R.I. LUCAS secured the adjournment of the debate.

MODBURY HOSPITAL

The Hon. BARBARA WIESE: I move:

1. That a Select Committee of the Legislative Council be established to inquire into the proposed privatisation of Modbury Hospital and specifically address—
   - (a) costs and benefits to the public resulting from any transfer to the private sector;
   - (b) the benchmarks used to determine any possible change in the standards of health care provided to the public;
   - (c) means by which continued access to at least the same level of public hospital and related health services is guaranteed to public patients;
   - (d) the actual savings that will be made and where they will be derived from;
   - (e) public standards of accountability and consultation demonstrated in the process leading up to privatisation;
   - (f) the terms of any management contract for hospital services; and
   - (g) methods by which Parliament can ensure scrutiny of expenditure of public funds in the provision of health services following the proposed privatisation.
2. That Standing Order 389 be so far suspended as to enable the Chairperson of the committee to have a deliberative vote only.
3. That this Council permits the select committee to authorise the disclosure of publication, as it thinks fit, of any evidence or documents presented to the committee prior to such evidence being reported to the Council.
4. That Standing Order 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses unless

the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

This motion is for the establishment of a select committee to inquire into the proposed privatisation of Modbury Hospital and, as members will see if they read their Notice Paper, there is the suggestion that a number of issues ought to be inquired into with respect to this proposal. It is certainly timely, it seems to me, that this motion is being discussed today, since only yesterday the Minister for Health announced the name of a successful tenderer which will not only manage the Modbury Hospital but which will also construct a private hospital on the Modbury site. The successful tenderer is Healthscope Ltd which is a Victorian company and which I understand operates hospitals in other places. The Minister, in making his announcement yesterday, indicated that there would be an agreement reached between the Government and Healthscope by December of this year—

The PRESIDENT: Order! I notice a cameraman in the gallery filming individual people who are not on their feet, and it is not a full width shot of the Chamber. I ask you not to do that. You may film the member speaking but not other members in the Parliament.

The Hon. BARBARA WIESE: In view of yesterday's decision and the fact that an agreement will be reached between parties by December of this year, the Opposition believes that it is important for this select committee to be established in order that community concerns about the proposal are examined carefully by members of Parliament, because there are some pretty high stakes with this proposal. The future of our public health system is at stake with the proposal that is being put forward by the Government.

I indicate from the outset that the Opposition is not opposed to the construction of a private hospital at the Modbury Hospital site. This has been made clear on numerous occasions and it was a possibility which was investigated by the former Labor Government. However, we have serious concerns about the management of public hospital facilities by the private sector. We believe that the Brown Liberal Government's decision to privatise Modbury Hospital is driven by ideology and cost cutting rather than by concern for the public. The community needs to be convinced that this exercise will result in a quality of care and a range of health services at Modbury Hospital no less than that currently provided, and at lower cost, before this exercise can be supported. The quality of care and the level of services must be maintained into the future; not just for a short period after the transfer.

The Government has claimed great things will happen from the Modbury Hospital privatisation. It says that it will save $6 million a year on the budget. It says that upgraded facilities and services for patients will ensue, including a new 22 bed obstetrics unit, six intensive care unit beds, six coronary care unit beds, and so on, and it says that there will be a new privately funded hospital as well. While the Government is happy to sell the handover of Modbury Hospital to the private sector as some sort of magic pudding, it is not willing to provide any hard evidence of the claims that it has made about the benefits that will flow from it.

We have heard extravagant promises from the Liberal Government before. At this very moment the Minister for Health claims that he is improving health services in spite of the $35 million budget cut to health, and in spite of mounting evidence that the health system is facing a crisis of dimensions never before seen in this State. The Brown Liberal Government has no shame over its broken election promises. It promised to increase hospital funding by $6 million per year and to return all savings made in the health sector to patient services. Why should we believe this Government's assurances on Modbury Hospital when its other promises have proved worthless—all the more so when there is absolutely no evidence provided to back its claims?

The Minister has already demonstrated that he is prepared to be careless with the truth over Modbury Hospital. At a public meeting on the hospital's future on 19 July, the member for Wright delivered a speech on behalf of the Minister, which indicated that the total privatisation of Modbury Hospital was only one of many options being considered, and that its chances of happening were 'virtually zilch'. That was the comment made by the member for Wright on behalf of the Minister. Fortunately, employees and residents of Modbury were not so gullible as to believe the Minister then, and they have even less reason to believe him now. What is at stake with this proposal is the management of a major 235 bed public hospital with a budget of $36 million per year. It is a public hospital, which serves a substantial and growing part of the Adelaide metropolitan area. It provides a comprehensive range of public hospital services, from accident and emergency psychiatric to obstetrics. It is an essential public facility owned not by the Minister but by the people of South Australia.

The Government has claimed that its proposal is not privatisation, as it will retain ownership of the hospital. This playing with words does not change public concerns. Once the staff and management of the hospitals are transferred to the private sector and the contracts are signed, it will be difficult if not impossible to unravel the deal. The Opposition believes that the current management and work force at Modbury should be given the first opportunity to meet the required service delivery and cost outcomes. The Opposition is concerned that they have been completely overlooked in the equation.

The Brown Liberal Government claims to have a policy in its health system called 'contestability', under which public sector employees can effectively tender for their own jobs. This actually occurred at the Mount Gambier hospital. No such opportunities exist in relation to Modbury Hospital. The question should be asked: why is the Modbury Hospital the one which has been chosen by the Government for this step that is now being proposed? Modbury Hospital was one of the metropolitan hospitals with more than 100 beds that was used by the Audit Commission to measure the performance of our hospitals with comparable hospitals interstate. Modbury came out of the study well.

It is becoming clear that Modbury Hospital was carefully chosen to be the first candidate for privatisation, to put some sort of fright into health workers and their unions. It is not a teaching hospital and it is small enough to risk disruption over the privatisation issue, but it is also large enough to send a warning to workers throughout the health system in South Australia. There must also be suspicions that difficult and high cost cases referred to the hospital will in future be passed on to public teaching hospitals to make Modbury a more attractive and profitable proposition.

The privatisation of Modbury Hospital is the first time a public hospital in South Australia has been handed over to a private for profit operator to manage. There are aspects of the privatisation which are unique in Australia. The Minister for Health has also made it clear that all other public hospitals in this State are potential candidates for privatisation. These

facts alone justify close parliamentary scrutiny of the arrangement. Parliament has been provided with absolutely no details of this proposed transfer of one of our major public facilities to a private operator. There are many questions which the Government has not answered and which, in some cases, refuses to answer.

Among the many concerns that the Opposition and the community believe should be examined by the parliamentary committee prior to the privatisation of Modbury Hospital are these: is Healthscope (the successful tenderer named yesterday by the Minister) a suitable and reputable company with sufficient expertise and resources to manage a public hospital as important as Modbury? What is its track record? What is the experience of privatisation of public hospitals elsewhere in Australia, and what lessons can we learn from these? In particular, what example, if any, has the Modbury deal been based on?

What legally binding instruments have been developed and agreed to by Healthscope and the Health Commission to provide the guarantees for service quality, asset protection, default procedures and penalties, staffing issues, and so on, promised by the Minister? What will be the term of the lease of the Modbury Hospital, and what responsibilities during the life of the contract, or at its end, will remain with the Government? Can the cost savings claimed by the Government be verified? Will the funding provided to the hospital for the required services be no greater than that available to a comparable public hospital?

Will the access of Modbury to casemix pool funding be subject to the same provisions and restraints as other public hospitals? Will costs, such as those incurred in preparing legal documents, monitoring the performance of the private operators, separation packages and TSPs, be included as components of the costs of privatisation?

How much of the savings claimed from privatisation are attributable to cost shifting to the Commonwealth (as, for example, through the transfer of certain outpatient and accident and emergency cases to bulk billing private clinics), and is this consistent with the terms of the Medicare agreement?

What is the future of other components of Modbury Hospital, such as Woodleigh House and the IMVS laboratories? Will the proposed savings at Modbury, if they are achieved, be reinvested in the health system in the North-East? What independent financial analysis of the proposal has been undertaken and what are the results of the proposal? Will Healthscope be able to change the level of casemix of services during the course of the contract? What other variables exist in the contract, what are the assumptions underlying these, and are they reasonable?

These are just a few of the questions that immediately spring to mind concerning this proposition. I am sure that many more questions could and should be asked and there are many more questions to which people who will be affected by this proposition will want answers.

The terms of reference of the select committee also include the important measure relating to 'methods by which Parliament can ensure scrutiny of expenditure of public funds in the provision of health services following the proposed privatisation'. As this is the first case of what may be a wholesale handover of public hospital assets by the Brown Government to the private sector, it is vital that we get it right, if it is to happen at all. We should not and will not rely on glib Government assurances of benefits to everyone. If the privatisation of Modbury Hospital is truly a win-win situation, as the Minister claims, the Government should have no qualms about exposing this arrangement to full parliamentary scrutiny.

In view of the speed with which the Government is pushing ahead with this proposition, as there are so many questions that have been asked by concerned people about it and as it is intended that an agreement should be reached by December, it is essential, in the eyes of the Opposition, that this proposed select committee should be established without delay to ensure that members of Parliament have the opportunity to monitor and scrutinise the decisions being taken by the Minister. For that reason, I ask members to consider and respond to this motion as quickly as possible to allow the committee to be established with as little delay as possible so that it can commence the task of scrutinising the Government's actions.

The Hon. SANDRA KANCK: The move by this Government effectively to privatise Modbury Hospital must be examined. If savings are to be made, the public, who have invested a great deal of money in this facility over the years, needs to know about it; if there are benefits healthwise, the public needs to know about them; and if there is a downside the public needs to know about it.

I understand that the original proposal put forward by the previous Government was for the construction of a 60-bed private hospital on site, but this new proposal by this Government goes a lot further in that it lets the private operator take over the running of the rest of a public hospital. Even the earlier proposal under the previous Government leaves me mystified. Given that I live in the north-eastern suburbs, I cannot see the need for another private hospital. The North-Eastern Community Hospital is very concerned about this proposal. It seems unnecessary from the point of view of the arrangements that presently exist with private doctors in the area. There are exemplary arrangements between the private doctors and Modbury Hospital. I am told by a doctor who already has private patients in Modbury Hospital that, when someone arrives in casualty and is subsequently admitted, the hospital contacts that person's general practitioner within 24 hours and lets the GP know that the patient is in the hospital so that the GP can take control of the situation if need be.

Questions need to be answered about the guarantees that the Minister is offering to Healthscope. Until now nobody has been able to find this out, because the Minister has argued commercial confidentiality. If we assume that the agreement goes ahead and if the private operator does not meet the conditions of agreement with the Government, how will a health consumer know that they are being sold short and what they have to complain about? Presently if something goes wrong in a private hospital and its facilities and equipment are not adequate enough to look after a private patient, that patient is put in an ambulance and sent to a public hospital. The interesting thing is that the cost to the public hospital will be paid to the public hospital. However, in the case of Modbury Hospital, the private operator will get the payment, not the public hospital. Even though all the infrastructure and equipment that has gone in over the years has been paid for by the taxpayer, that private operator will get the profit. In a sense, the taxpayer will have been subsidising the profit of Healthscope.

It is not just the taxpayer in general; it is the local community. Modbury Hospital is very much part of the local community and the north-eastern suburbs. I have been an in-

patient there twice, as well as having used the outpatient facilities on a number of occasions. The members of the Ladies Auxiliary there—I knew one of them until she died last year—have worked their butts off. They have earned millions of dollars for that hospital, which have gone into facilities and extra equipment to make things better for the patients. They will be devastated to see these items virtually handed over to a private operator.

As the Hon. Ms Wiese has said, this is now moving with a great sense of rapidity. Although I would have liked time to prepare a longer speech, I appreciate the sense of urgency for us to get this committee under way. As there are so many unanswered questions about this proposal, the Democrats will support the motion.

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

BENLATE

The Hon. M.J. ELLIOTT: I move:

That this Council calls for—

1. an immediate halt to the sale of Benlate in South Australia;

2. an urgent investigation by the Department of Primary Industries into the detrimental effects of Benlate on crops and human health;

3. the State Government to support affected growers in their legal action against the manufacturers of Benlate should the investigation confirm detrimental effects.

Earlier this year I was approached by a vegetable grower who claimed that his livelihood had been destroyed by a readily available fungicide named Benlate. My initial reaction was one of scepticism. One does not expect a well known, widely used and registered chemical, with all that that entails, to be responsible for the death of vegetable crops. Nevertheless, I sought from him further information and found that there are currently at least 10 growers in Adelaide who estimate that the combined damage to their businesses totals about $20 million, with individual damage costs ranging from $250 000 to $2.5 million.

They have received, as yet, very limited assistance from the chemical company, DuPont, or from the Department of Primary Industries. What has followed has been an extensive five month investigation, the results of which I am now putting before this Council. In my view, the evidence is overwhelmingly in favour of the growers. It is unfortunate that this matter needs to come before Parliament. However, when individual small growers, many now bankrupt or almost bankrupt, have to take on a powerful, multinational company it is an uneven battle. The apparent failure of the Government to confront this issue increases the necessity for parliamentary intervention.

As I have said, at least 10 nursery growers and market gardeners in Adelaide have suffered losses estimated at $20 million, allegedly due to a common garden chemical fungicide. The chemical allegedly responsible is Benlate, a fungicide produced by the chemical giant DuPont. There have been reports of serious plant injury in the United States, in particular in Florida. DuPont has paid out $500 million in out of court settlements in the United States as a result of the chemical, but the company has not admitted liability for the problems faced by Australian users or others around the world—those who have remained ignorant of its problems and have continued using it right up to this year.

In the United States, 1 900 claims were lodged against DuPont, with 1 400 of those in Florida. Affected growers claim the fungicide has caused stunted growth, with deformed roots, yellowed stems and leaves, with some plants ultimately dying. There is also evidence that Benlate remains in the soil, causing harm to future plantings. Benlate has also been linked with causing physical harm to humans and, in particular, to the incidence of babies being born without eyes, although DuPont has denied all claims that Benlate could lead to birth defects or infertility. The power of a multinational should not be able to suppress the legitimate rights of ordinary individuals.

Australian claims are no less legitimate than in the United States. They are simply smaller in number. They lack financial strength, Government support and perhaps our legal system is inadequate compared to that in the United States. Benlate has destroyed livelihoods. Many Adelaide growers have lost a major proportion, if not all, of their livelihoods through damage caused by Benlate. The experiences of these growers in areas such as the Adelaide Hills, McLaren Vale and Virginia has been similar to that described in the United States with the fungicide affecting both the plants and causing residual problems in the soil.

A local scientist, a senior lecturer in organic chemistry at Flinders University, has done tests which have revealed that samples of Benlate taken from affected properties around Adelaide contained dibutylurea. This acts as a chemical herbicide which is toxic to plants. One Adelaide grower has had his Benlate tested in a United States laboratory, which identified another herbicide as being present—sulfonylurea. I have received an extensive amount of information from the United States about this issue. One Florida newspaper has described the story of Benlate as a tale without equal in modern agriculture, which left Florida farmers with little to do than watch as their crops withered and died.

I will now go into the details about Benlate. Benlate is the trade name for a fungicide that is labelled for use on a wide range of fruit and vegetable crops and ornamental plants. Benlate is manufactured by DuPont, one of the chemical giants, and the wettable powder formulation came onto the market in 1969. In late 1987, DuPont replaced Benlate WP with an easier to mix granular formulation, Benlate DF. Both have been commonly used in Australia, and for many years Benlate was a staple for nursery growers trying to prevent fungal outbreaks. However, over the last few years Benlate has been linked to health problems and to plant damage in the United States, England, New Zealand and Australia.

Since 1991 there has been a recognition that the product Benlate has produced deleterious effects in crops and that serious problems exist. The dry flowable granular forms of the fungicide—Benlate 50 DF, Benlate 1991 DF and Tersan 1991 DF—were removed from the market in the United States in March 1991, when DuPont issued a stop sale and recall on these products. This followed reports of stunted root and plant growth. The recall occurred initially in the United States, but Benlate DF supplied from the United States was recalled in Australia following notification in a press release from DuPont dated 12 June 1991. However, the recall was not at all well publicised in Australia, with many growers finding out only by accident that the product had been removed from the market—some did not find out at all.

The retailers also appear to be uninformed of the recall. I have been told of a nursery at Yorketown where Benlate DF was still on their shelves for sale in 1992 or 1993. They had no idea that the product had been recalled. In September 1994 Benlate DF was seen by a grower at Callington, and only three days ago a bottle of recalled Benlate was seen for sale

at Currency Creek. The wettable powder formulation, Benlate WP, is still on sale in Australia. However, there is evidence that this formulation has also caused problems in plants.

The symptoms associated with Benlate were listed in a University of Florida bulletin dated September 1991, entitled 'Production Management and Fungicide Alternatives to Benlate on Ornamental Crops'. These symptoms are: (1) plant growth is stunted; (2) leaves are smaller than normal, often occurring in rosettes; (3) leaves are twisted; (4) leaf margins are turned down or cut; (5) chlorosis or leaf yellowing similar to iron or manganese deficiency symptoms—leaves may have a mottled appearance; (6) necrotic leaf tips or margins—a small leaf with a necrotic tip may have margins that are turned down or cupped; (7) new stems are elongated with long and narrow leaves; (8) leaf drop; (9) a portion of the root will appear darker than normal a few inches behind an active growing root tip. The outer root tissues can be stripped from the darkened area.

DuPont gave its reasons for the recall of the Benlate produced in the United States in its Australian press release of 12 June 1991. DuPont stated that:

> Trace levels of herbicide were detected in some batches of US manufactured Benlate DF which might be available in Australia and New Zealand.

However, the United States branch of DuPont subsequently determined that none of the contaminated and atrazine-tainted material had reached the field. DuPont spent $12 million on studies to investigate the problems associated with the use of Benlate, which included hiring a panel of six outside scientists to review their work, and field tests conducted on four Florida nurseries where DuPont had previously settled claims to show the symptoms were not duplicated.

As a result of their findings, DuPont announced that Benlate had not been the cause of the problems encountered by growers and that DuPont was not at fault. Instead, DuPont blamed conditions, including weather, plant disease, herbicide abuse, nutrient imbalance and nematode infestation. The DuPont agents in Australia have also absolved themselves from blame, and say that the growers own practices or external conditions are the reasons for the plant damage. However, affected growers have challenged the testing methods used by DuPont scientists. They asked whether there is evidence that testing was done at temperatures of greater than 30 degrees celsius, and in conditions of high heat and humidity. They argue that these are the conditions in which plants grow in glasshouses, especially in the areas with warm climates like Florida and South Australia.

To start off with, and leading up to its announcement denying liability, DuPont had demonstrated a willingness to cooperate with the affected parties in the United States. DuPont began settling claims by growers who had problems with their crops that they attributed to the contaminated Benlate: 1 200 claims were filed in Florida; and 1 900 nationwide. DuPont had paid $500 million in claims by 5 November 1992 and $400 million of that amount was paid in Florida. Florida was the United States State hit the hardest by the crop damage blamed on Benlate. It is significant that the climate in Florida is similar to South Australia's, where the Australian incidents of Benlate damage have been reported.

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: I think there are others, but they are the ones I am particularly aware of. In the United States DuPont was initially quite helpful to growers and concerned about the damage to their plants. A press release issued by DuPont on 15 November 1991 states that DuPont would assist growers who would like help in disposing of the plants and plastic materials that came into contact with Benlate in public landfills in Florida. However, DuPont has since become far less responsive to the claims of those who have linked their plant damage to Benlate. Growers have had to prove that the injury to their plants was caused by Benlate, which has led to hundreds of lawsuits being filed in the United States. In Australia, DuPont has denied all liability at all stages, and there is yet to be a lawsuit filed here. The question remains: if DuPont was not at fault, why did DuPont pay out $500 million to growers in the United States—unparalleled generosity? DuPont's representative, Morris Bailey, has given the reason for its payments as being a matter of moral obligation.

He says that it seems clear that Benlate was involved in some way with the damage, although he stresses that DuPont knew there was no contaminant in it. However, more recently, DuPont company records that were produced in a US court reveal they knew that Benlate was the primary causal agent. DuPont field agent, Larry B. Gilham said that Benlate was the only common denominator with all the complaints. Moreover, where there were multiple applications DuPont has seen an increase in the severity of symptomology. The causes of the plant damage are still inconclusive, although answers have been suggested.

Margaret Kelly in a March/April 1994 issue of *Floraculture International* puts forward alternative reasons for the damage to plants. She states that contamination by sulfonylurea herbicides (called SUs) has been put forward as a possible cause of the damage. These SUs were manufactured at the same factory as Benlate DF, and the suggestion is that some of the poisonous herbicides got into the fungicide potion by accident. Sulfonylurea herbicides are especially potent, and they are 100 times more toxic to plants than any other herbicide on the market prior to 1982. According to some sulfonylurea product labels, one teaspoon per acre could effectively kill weeds for two years.

An alternative theory is that the dry flowable (DF) formulation has altered the product or simply that there is an innate problem with Benlate which is displayed only under hot and humid conditions.

Turning to the chemical details, since its recall in 1991 scientists have been investigating the chemical components of Benlate. Benomyl is the active ingredient of the fungicide formulation, Benlate, used for disease control in numerous crop species. Benomyl is translocated within plant tissues and interferes with mitosis and microtubule formation in pathogenic fungi. In early 1994 there were two major discoveries by scientists at the University of Florida and the Florida Department of Agriculture. In late April they confirmed that Benlate DF had become contaminated with powerful, plant-killing sulfonylureas. The Florida Agriculture Commissioner, Bob Crawford, announced that the scientists found that eight batches of Benlate contained a DuPont sulfonylurea called Londax.

Secondly, scientists at the University of Florida, in the Institute of Food and Agricultural Sciences, have found that Benlate's active ingredient, benomyl, breaks down and reacts with water to form a chemical called dibutylurea. This dibutylurea is a breakdown product that poses immediate toxic effects to plants. The study by H. Anson Moye, Donn G. Shilling and others discovered the formation of dibutylurea from n-butyl isocyanate in Benlate formulations and in plants, and was published in the *Journal of Agricultural and Food Chemistry* in April 1994. Experiments showed that

DBU appeared in a significant number of the formulations sampled. Various concentrations of DBU were found in the 37 Benlate formulations by extraction with ethyl acetate. Weight percentages of DBU ranged from a low of .13 per cent to a high of 8.85 per cent. Twenty-one of the formulations analysed contained levels of DBU greater than 1 per cent by weight. Fourteen of the 37 formulations were selected at random and were not associated with perceived plant damage. Thirteen of the 37 were unopened until laboratory or greenhouse studies were conducted, and those that were opened were stored in a humidity and temperature controlled laboratory facility after opening, not exceeding 70 per cent relative humidity and 27 degrees celsius. Those formulations that had been opened by users ranged widely in their storage conditions, probably being stored in farm chemical sheds or warehouses that are typical in Florida.

Experiments showed that when moist Boston fern and cucumber plants are exposed to n-butyl isocyanate, N.N. dibutylurea is formed in or on the plants' leaves. The report details that although these experiments were designed only to provide an answer to the question of whether DBU could be formed in or on plants as a result of butyl isocyanate exposure, it became obvious within 24 hours that both sets of plants were experiencing phytotoxicity. After 24 hours, the ferns began to show formation of brown or bronze spots on the leaves. After 72 hours they were totally brown and fell from the stems when handled. No discolouration was noted for the untreated (control) plants.

The cucumber plants exposed to butyl isocyanate vapours behaved somewhat differently. A spotted browning of the cotyledons was first noted at 24 hours, followed by a browning of the guttation water exuding from them. By 72 hours, this browning to the mature leaves had increased but had not covered the entire leaves, as had occurred from the ferns. After 72 hours the mature leaves exhibited intravenal yellowing and a yellowing around the edges. No discolouration or guttation was noted for the untreated (control) plants. Easily measurable levels of DBU were found in both treated fern and cucumber leaves (6.95 min). No DBU was found in the control plants.

However, whether the plant phytotoxicity that was observed was due to butyl isocyanante, DBU or the butylamine salt was not addressed by the experiments. H. Anson Moye states in a press release dated 14 February 1994 that:

> We have still not established a cause and effect relationship between dibutylurea and other crop damage, such as stunted leaves and erratic growth.

However, the second study to appear in the *Journal of Agriculture and Food Chemicals* in April 1994 examined the effects of dibutylurea on plant growth and physiology. Headed by Donn G. Shilling, the research team discovered that N.N-dibutylurea is phytotoxic to plants when applied at relatively low rates as a drench to their roots. They looked at its effects on corn and cucumber plants as examples of hardy and sensitive plant species. The dibutylurea was applied at two different growth stages: at the time of seeding and to the roots of 10-day-old plants. The objectives of the study were to evaluate the effects of DBU on, first, plant growth, secondly, cellular integrity, photosynthesis and respiration and, thirdly, chloroplast ultrastructure.

The results of the experimentation were that corn was unaffected by DBU regardless of rate or time of application. It was unaffected by all rates of DBU applied at seeding or to the roots of established plants. DBU also did not affect respiration by hydrilla, seed germination or seedling emergence of cucumber. However, the effect on established cucumber plants was found to be significant. DBU reduced root and shoot growth of cucumber when applied to the root zone of established plants. Root biomass was reduced on a proportional rate depending on the concentration of DBU applied. Shoot growth was similarly inhibited. Cucumber shoot height was not affected by DBU when applied at 5.6 kg ha or less but was inhibited by 69 per cent and 100 per cent at 11.2 and 22.4 kg ha respectively. When DBU was applied at seeding, both root and shoot growth of cucumber were affected.

DBU and diuron affected chlorophyll *a* fluorescence by hydrilla, reducing the peak to terminal fluorescence ratio. DBU and diuron inhibited photosynthetic oxygen evolution. DBU at 5.6 kg ha caused several abnormalities in the mesophyll cells of treated cucumber plants. DBU caused dilation of chloroplast granal and stromal lamallae of treated leaf tissue. The research found that a dose-response relationship was produced characteristic of phytotoxic compounds when applied either to the root zone of emerged cucumber plants or to sand planted with cucumber seed prior to germination. While it did not affect the germination or the emergence of the corn, leaf margins of 10 day old cucumber plants became chlorotic within eight hours of treatment. Chlorosis was rapidly followed by necrosis; in other words, they died.

The symptoms recorded for DBU were similar to those reported for diuron, a commercial substituted urea herbicide that inhibits photosynthesis. Diuron is a herbicide that inhibits photosynthesis and ultimately kills the plants. It does this by blocking photosynthetic electron transport and ultimately causing cellular disruption. It appears from this research that DBU affects the photosynthesising process in plants. This would explain why the chemical did not affect the seed germination or seed emergence of cucumbers. However, the scientists recognise the limitations of their findings. The University of Florida news release concludes:

> Scientists are still investigating exactly how dibutylurea could be formed during the synthesis, formulation or storage of Benlate DF, or perhaps even after Benlate DF is applied. They're also investigating whether dibutylurea will persist in different type of soil over time under varying weather conditions.

Regardless of these possible limitations, it is significant that DuPont has not challenged the methodology of the work done at the University of Florida or its findings that DBU is a degradation product of benomyl. The butyl isocyanate eliminated by benomyl in water is a related chemical to methyl isocyanate, which caused death in Bhopal in India some years ago.

There has been some testing on samples of Benlate DF and WP in Adelaide. The Senior Lecturer in Organic Chemistry at Flinders University, Dr Malcolm Thompson, has done some analysis on Benlate DF and WP, and he confirms that they contain dibutylurea. He has tested samples of Benlate provided by three of the Adelaide growers whose crops were seriously damaged after contact with Benlate. One of these was Benlate WP, and dibutylurea was found in all three samples. Dr Thompson does not have the equipment available at Flinders University to do quantitative testing. It appears that the breakdown product, dibutylurea, is found in all formulations of Benlate, which was the experience in the experiments in Florida.

Samples of the Benlate DF used by an Adelaide cucumber grower were sent to the United States for testing. The herbicide, sulfonylurea, was found in the chemical. The

findings by scientists in Florida and in Adelaide go a long way to disproving DuPont's position that Benlate is not the cause of the plant problems. The discovery of sulfonylureas and dibutylurea in benomyl is strong evidence that there are inherent problems in the make-up of Benlate DF. It may be that the sulfonylurea was an accidental additive, but it appears that dibutylurea is an inevitable product of breakdown. The serious effects that DBU was found to have on plants leads to the suggestion that it is the cause of the wide-scale phytotoxicity observed in crops.

I hope members were tolerant of the scientific aspects, but it is important that all that is put on the record so that people can understand that, although DuPont might be fairly good at saying in a press release that it is a load of nonsense, quite a lot of extensive scientific work has been done, and I can assure members that I am quoting only small parts of it at this stage.

It is perhaps worthwhile now to look at the Adelaide experience. The United States situation needs to be explained, for it is there that the crop damage has been profound, leading to an initial acceptance by DuPont of liability and voluntary payouts totalling $500 million. However, there are growers in Adelaide who used Benlate from 1991 on and whose crops have been obviously and critically damaged as a result. I have been told that at least 10 people have lost a major proportion, or even all, of their livelihoods through the damage caused by the fungicide Benlate. They estimate that their combined losses are $20 million. The experience of these growers in areas such as the Adelaide Hills, McLaren Vale and Virginia has been similar to that described in the United States, and Florida in particular. A representative from the growers affected in Adelaide has been in contact with individuals in Florida who have sent him copious amounts of material explaining the situation there. These growers have described that, where Benlate has been applied to plants, it has produced marked effects within a short period of time.

Mr Ivan May owned a nursery that sold orchids and ornamental plants in McLaren Vale. He used Benlate DF in May or June 1991, and when he used the product he had no knowledge of the problems that had been encountered in the United States, or that it had been removed from the market there. He found this out only by accident through friends in the orchid industry. He has told me of his observations of the plant damage. Where plants were drenched or their pots submerged in the Benlate solution, chlorosis set in within 24 hours. Where plants were sprayed with Benlate, the chlorosis took slightly longer to set in, although it was generally within two weeks, depending on the extent of the spraying.

The stems and leaves of plants were seen to discolour and go yellow, the root systems were damaged and the growth that did occur was stunted and deformed. All the plants that came into contact with Benlate died, although those which did not remained healthy.

Mr May tells me that when DuPont's agents first visited his property they admitted that their product Benlate was at fault. DuPont later denied any such admissions. The Department of Agriculture removed plants for testing and blamed pathogens as the cause of the plant damage. However, if pathogens were the culprit then all plants at his nursery should have been affected. He tells me that there was an obvious link between the plants he drenched in the Benlate solution and the plant death. Indeed, I have seen photographs which confirm that the deaths occurred in a block, and that was the block that was drenched. Mr May has become bankrupt as a result of the damage to his plants through Benlate use. The devastation to his plant supply was such that he lost his nursery and his home, and now lives with his mother-in-law. As the damage first occurred in 1991, he no longer has any plant materials to use as evidence.

However, there is a recent example of plant injury in Adelaide where a family of carnation growers used Benlate WP in March 1994. I note that that is the product which was not withdrawn. In contrast to the Benlate DF, this WP (wettable powder) formulation is one that has remained on the market as safe to use. Testing by Dr Malcolm Thompson has found that this Benlate WP contains dibutylurea. As I recall, his very words were that it was a particularly dirty sample, and I understand that he meant by that that not only dibutylurea but also quite a few other compounds had formed within it.

Eric and Jayne Warnock used Benlate WP on their carnation plants on their property in Mount Compass in 1994. They have also experienced the symptoms now associated with Benlate-caused plant damage. I visited their property and saw first-hand the condition that the plants were in. The Warnocks have about eight greenhouses in which they grow mostly carnations, but also raspberries and, more recently, snow peas. The carnations are hydroponically grown in boxes of 3mm white marble chip. They have chosen to plant in boxes to prevent disease spreading. Eric Warnock sprayed the plants with Benlate on 4 or 5 March 1994. He used a single application of Benlate, and sprayed it using equipment on the back of his tractor.

One week after the plants were sprayed, Jayne Warnock went to Queensland for two weeks. When she returned from her holiday, the changes to the health of their plants was marked, even after three weeks. The youngest of the plants, which were only a few months old, had gone yellow in colour and seemed to be dying off. The family believed that someone, maybe a rival grower, had put a herbicide, Round-Up, into their water tanks and that the plants were dying off because of this. They then attempted to neutralise the effects of Round-up by the recommended method of diluting ammonium nitrate in the watering system. This had no effect, suggesting that the herbicide was not the cause of the damage.

The health of the carnation plants continued to deteriorate, and the older, more established plants began to show evidence of damage. The Warnocks observed:

1. Stunted growth;
2. Knotted and deformed root systems;
3. Flowers changed colour. Those that had been red went white, the pink ones went very pale, and other strains of colour underwent similar aberrations.

The family estimates that it has lost a year's production of carnations. Before March this year, they were supplying 11 florists, whereas now the number has been reduced to three as their supply has been so severely reduced. They used to cut 120 bunches of carnations twice a week and are currently cutting only 30 to 40 bunches once a week. Their crops have been previously described as the best and healthiest carnations in Adelaide. Their crop of raspberry plants that grew alongside the same greenhouses that contained the carnations also suffered from contact with the Benlate spray. Jayne Warnock ate these raspberries before it became obvious that they were unhealthy and then died, and was afflicted subsequently with stomach pains and has had to have her gall bladder removed in the past month.

Unlike many growers whose Benlate containers were removed by DuPont's agents and not returned, this family

still have the container for the Benlate that they used upon their plants. Their experiences with Benlate have occurred in 1994, three years after the problems were first highlighted in the US. They used Benlate WP, which was never linked to plant damage by DuPont as Benlate DF was, and its label was GA May 1987. This Benlate was bought from the McLaren Vale Mitre 10 around 1987, and the family had not used the chemical since 1989-90 before they used it earlier this year with its disastrous effects. There was no expiry date on the bottle of Benlate. The bottle was kept in the intervening period in a cupboard in a well-insulated shed which has a fairly even temperature. Although these flower growers are recognised as people who would be expected to use Benlate, they never received any circular warning against using Benlate.

The experience of this carnation grower also illustrates that the effect of Benlate also extends beyond the life of the original plant treated with the fungicide. This grower tried to replant snowpeas in the growing medium from which the unhealthy carnations were removed. These also took on the similar symptoms, for they were stunted in size and had poorly formed root systems. Other growers have told me of similar difficulties of replanting, and I have observed all of this myself.

One of the top cucumber growers in Adelaide (Mr Antonas) swapped to Benlate DF after using Benlate WP for around 17 years with no problems, and the new product devastated his crops. He used the direct to ground drenching method. As a result the roots of his plants became matted and burnt and were nearly non-existent, and no fruit was showing. Not only did he lose that crop, but his soil can no longer grow anything, meaning that he has lost his source of income.

Benlate use appears to have far-reaching ramifications for soil degradation. This issue of soil-degradation has also been encountered in the United States, where it has been reported that problems persisted even after pots and soil were discarded and greenhouses scrubbed. Even where everything affected by the spraying had been thrown away, the same problems occurred all over again. Dr Hilton Biggs from the University of Florida Institute of Food and Agricultural Sciences has studied these residual problems with subsequent crops, by looking at the growth of cucumbers in media from a nursery and a vegetable farm that had 'recropping problems'. The plants showed phytotoxic effects similar to Benlate-treated plants in fresh medium. Biggs says his studies indicate Benlate residue is not only in the soil—it is in the containers, structures, and spray equipment and occurs in the highest concentrations in areas where more chemical is applied.

There is also evidence from an Adelaide grower that the effects of Benlate are so powerful that, where plants were killed by Benlate and dumped on the ground, the weeds and the pasture under the dead plants were also killed. There have been reports that this ground remained barren and sterile and that no weeds grew for two years. These long-lasting effects of Benlate are significant for growers who attempt to rebuild their crops after the damage caused by Benlate. The fact that the new crops planted in the Benlate-contaminated medium continue to show the same symptoms of injury as the plants initially affected makes it very difficult for them to start afresh. It also cannot be beneficial to the environment in general to have these chemicals remaining in the soil for such a long time, especially as it can seep into the ground water. In each case, the growers have approached both DuPont and the Department of Primary Industry, although with little success.

The Adelaide growers have expressed their concerns about the attitude of the then Department of Agriculture to their problems. Plant samples were taken away for testing, but in each case the department reported they could not find Benlate was at fault. Instead, blame was laid on the presence of salt, nemotodes or pathogens. However, if pathogens were the cause of the damage, then all the plants should have been affected, as the pathogens would have spread throughout the greenhouses. The growers could see with their own eyes that the plants affected were those that came into contact with Benlate, whereas the control plants remained healthy.

I have been contacted by Dr Malcolm Thompson, the Senior Lecturer from Flinders University, in a letter dated 18 October 1994. He was very concerned about the effects of Benlate and the way that the growers, in particular, the cucumber grower, were treated by the authorities. His letter states:

> Almost one year ago I was approached by one of the top cucumber growers in SA to analyse two samples of Benlate DF. His claim at the time was that his livelihood had been ruined by this farm chemical. I was inclined not to believe him. Through a series of coincidences I have been introduced to Mr Ivan May, and have acted as a chemical consultant to him for about six months. I have visited the property of the Warnocks also. I have done samples of Benlate DF and WP and confirm that they contain dibutylurea. I believe Mr Antonas has been treated shamefully by both the Department of Agriculture and DuPont. I went to see the Department of Agriculture myself and interviewed a senior officer in relation to the cucumber grower in January of this year. I was told more or less to keep my nose out of the problem.
>
> Mr Antonas has gone from being a top cucumber grower to a broken man. His health is ruined and he has damage to his eyes which could well be the result of his contact with Benlate or the gaseous decomposition products it produces. The gases are of a similar nature to those released in the Bhopal disaster in India some years back. He has lost his source of income, his soil will no longer grow anything.
>
> He had been using Benlate WP for something like 17 years with no problem. His problems surfaced with the change to the DF (dry flowable) formulation. As a chemist I would have to say that there is much in this that I don't quite understand. It is clear, however, that the chemistry has been known since 1828 when Freidrich Wohler first synthesised urea from an ammonium cyanate and disposed of the 'Vital Force' theory which had held sway for many years. Wohler showed that organic compounds could be synthesised from non-living inorganic matter and allowed the science of Organic Chemistry to begin. It had previously been thought that organic (carbon based) compounds could only be made in living organisms which had the 'Vital Force'.
>
> An entry in the Merck Index of 1976 is virtually identical with the current entry and both say that Benomyl is not the active fungicide but a breakdown product, Carbendazim, is the active fungicide. For at least 20 years it has been known that Benomyl will break down to butyl isocyanate and that butyl isocyanate will produce dibutylurea. Why all these problems have now suddenly surfaced is therefore a bit of a mystery, but of the facts there is no doubt.
>
> Mr Antonas is an Australian born Greek. He has a heavy accent and limited education. He has tried very hard for years to get some satisfaction and I am only amazed that he is still sane. He has been pushed from pillar to post in his attempts to get some help with his problem.
>
> I am writing this letter to you to support you in your efforts and in the hope that Mr Antonas is seen to be the person who was first affected and somehow recognised that Benlate DF was the problem. I hope that his case will not be lost in the maze of complications and other claims.
>
> My name is Dr Malcolm Thompson BSc(Hons), PhD, FRACI C Chem. I am senior lecturer in Organic Chemistry at Flinders Uni. I have been a practising chemist all my life. I am now 63.
>
> Yours sincerely,
>
> Malcolm Thompson.

I must say I have a great deal of sympathy for the individual grower who gets treated by departments as if they do not know what they are talking about, that they have got it wrong and should go away. The fact that Mr Antonas, Mr May and others have persisted is a great credit to them, but they should never have been put through what they have been put through.

DuPont has also been unhelpful to growers in Australia. DuPont's agents in Australia have ultimately denied all responsibility and all liability for the effects of Benlate on these crops. However, one nursery owner at McLaren Vale, who encountered problems in 1991 when he used the drenching and spraying methods to apply Benlate, contacted DuPont's agents in Sydney. They came onto his property and admitted that it was a Benlate problem, but DuPont later denied this by arguing that his use had been an unregistered one, without explaining what this means. Growers in the United States have been more successful in their claims against DuPont.

I now turn to the history of the success or otherwise of lawsuits in America. Outside the US, including Australia, there have been no successful claims for damages, although Margaret Kelly states that there have been up to 400 claims lodged in the United States. The first case went to trial in the Federal District Court in Columbus, Georgia, on 6 July 1993 and was settled out of court for $4.25 million. This was only a fraction of the damages sought by the four growers from Alabama, Georgia, Hawaii and Michigan. In that case the growers claimed that the Benlate had been contaminated by a sulfonylurea herbicide, Londax, and they used internal DuPont documents to show a DuPont researcher had found sulfonylurea contamination. DuPont claims their initial finding was a mistake. However, according to the *Wall Street Journal*, Judge J. Robert Ellis ruled DuPont could not dispute this testimony because they had destroyed so much of this researcher's computer tapes.

Then, in September 1993, a court in Arkansas found DuPont liable for damage from Benlate DF to the crops of 23 farmers, which were mainly tomato crops, and awarded them $10.65 million. A Florida court also awarded an orchid grower $3 million for damage to plants, which included stock plants in that same month. In October, a Texas court found DuPont not liable in the case of a pecan grower seeking $900 000. DuPont plans to appeal all the decisions found against it. The Florida Agriculture Commissioner, Bob Crawford, has announced that he has filed an administrative action against DuPont for selling an adulterated and mis-branded pesticide.

He looks at the evidence that some Benlate was contaminated with sulfonyl urea herbicides, and the finding by University of Florida scientists that dibutylurea is a break-down product in benomyl and says:

> This points to a pattern of sloppy manufacturing practices on the part of DuPont.

The corporation sold a product that was supposed to be a fungicide, and it was contaminated with potent plant killers. Considering the number of people affected in the US there have been relatively few cases brought to court so far. The pattern of cases in the US has shown that legal action is a lengthy and costly business. I suppose that is not surprising when you take on one of the world's biggest multinationals. The growers are also faced with the intimidating task of taking on that multi-million dollar company, which definitely has the power on its side. Those in Australia who have tried to speak out against DuPont have met with resistance. Considering the seriousness of the damage, neither DuPont nor the Department of Primary Industry have been very concerned about those people affected.

I now turn to the matter of health risks. Benlate has also been linked with causing physical harm to humans and, in particular, to the incidence of babies being born blind or without eyes. This condition of being born without eyes is a rare one called anophthalmia. While half the cases of anophthalmia are thought to be caused by genetic factors, the other half is a mystery. In both New Zealand and England there have been cases of anophthalmia which have been linked to Benlate. In New Zealand, as reported on the TV3 Network's *Searching for Answers* earlier this year, three women who worked at the same local council and who were exposed to Benlate had babies born with deformities. One child was born blind, another has suffered from fits since birth, and probably the worst case was the birth of a child without eyes and a double cleft palate. All three women can identify that they used Benlate over a protracted period of time. In each case, it was found that there was no genetic disorder.

Another woman, who did an apprenticeship at the same Parks Department, discovered at 25, two weeks after her wedding, that she was infertile. She was diagnosed as having entered a premature menopause and suffered from hot flushes. She had also come into contact with Benlate spray. This New Zealand review only examined the effects of Benlate on health and did not consider its effects on plants nor the degradation of benomyl. New Zealand is not the only country where Benlate has been connected with birth deformities. Five clusters of two or more eyeless children have been born in rural Great Britain.

Seven out of the 26 parents say they have used or been exposed to Benlate or a similar chemical spray. Many live in areas exposed to chemicals, for over 20 parents say they were aware of chemical spraying in their areas. One woman interviewed said that she used Benlate on her vegetable garden whilst she was pregnant and that, moreover, there was no warning on the packaging about the need to wear masks. The Australian television program *Landline* looked at the effects of Benlate on these children in England. Dr Vyvyan Howard, from the Liverpool University of Foetal Pathology, stated his concerns that foetuses are susceptible to far lower amounts of toxins than the testing would suggest.

He says that the safety doses might not be sufficient. During pregnancy, the eyes are formed in the first four to 10 weeks. Dr Howard expresses anxiety that if the mother is exposed to benomyl at this stage, the development of a child's eyes may be harmed forever. There appears to be a link between Benlate and eye damage in the foetal stages. The programs outline that experiments on rats in California demonstrated that where rats were exposed to benomyl, the active ingredient of Benlate, 44% of the animals produced offspring with severe eye defects. When a protein deficiency was also included, the figure rose to above 60%.

However, DuPont has denied all responsibility, and dismiss all claims that its product Benlate could lead to birth defects or infertility. Regarding the effects of Benlate on plants, DuPont has made its own investigations into crop damage, but found no links to benomyl. It points out that the Environmental Protection Agency in the United States, the most stringent regulatory authority in the world, cleared Benlate. The equivalent British authority, the Pesticide Advisory Committee, cleared Benlate, as did the relevant

bodies in Sweden, Australia and New Zealand. In Australia, the National Registration Authority has put Benlate through the same safety evaluation to which all agricultural chemicals are subject.

Dr Priestly, on the *Landline* show, spoke of the National Registration Authority's awareness of the overseas reports, but said that there is evidence of different use patterns between different countries. In Florida it is now thought that benomyl is responsible for a range of health problems. While there is no central birth defects register, it seems that migrant farm workers may be more susceptible than some. Dr Avery Weiss, formerly a paediatric ophthalmologist, found that there is a higher incidence of malformations in lower-socioeconomic groups, who are attracted by the work and the warmer weather in Florida. At the time of the *Landline* report the birth defects had not yet been examined.

However, with respect to general health, 70-75% of farmers complained of health problems. In the summer of 1992 the Florida Department of Health and Rehabilitative Services surveyed 75 growers who believed the product had impaired their health. The most common symptoms were headaches, stiff joints, shortness of breath and fatigue. Others included rashes, throat irritation, nausea, short-term memory loss and nosebleeds. An American blueberry grower who used Benlate DF repeatedly during 1991 has encountered respiratory and intestinal problems, kidney and liver troubles, hair loss, swollen joints, hives and muscle deterioration.

Nursery growers in South Australia allege that they have also suffered from their contact with Benlate. One grower recently had her gall bladder removed in circumstances where she attributes the cause to the product Benlate. Others have experienced dizziness and headaches after exposure to Benlate. One grower has damage to his eyes, which could well be the result of his contact with Benlate, or the gaseous decomposition products it produces. However, there is no labelling on Benlate to warn of the health risks. There is no suggestion that protective clothing should be worn. There is no warning against use during pregnancy.

I now move to the issue of labelling. The labelling system has been altered in the United States. On 11 September 1991, DuPont deleted various uses under Benlate and Tersan labels in the United States. These were:

1. All ornamental plant uses under Benlate or Tersan wettable powder labels.
2. All greenhouse site uses for either Benlate or Tersan 1991 WP products (e.g. leaf mould on greenhouse-grown tomatoes).
3. All plant propagule dip or drench treatments for both Benlate or Tersan 1991 WP (e.g. pineapple, strawberry, sugarcane).

However, these uses have not been withdrawn on Australian labelling. The Department of Primary Industry or the National Registration Authority which handle the labelling of chemicals do not seem to be concerned about the possible dangers of Benlate use as recognised in the US. In fact, it seems as though Australia has been treated like a third world nation. The labelling process needs to be investigated, for many of those people in the business of growing fruit and vegetables and ornamental plants speak English as a second language. For the protection of these people, the warnings and prescribed uses of chemicals must be especially clear. The labelling system should be aimed at the understanding levels of people with limited education.

To conclude, I fear that Benlate has not only caused irreparable damage to crops and to soils but has also destroyed many livelihoods. There are also lingering questions about its potential health effects. The reticence of the chemical company DuPont and the Department of Primary Industry to assist these growers and to admit that there is a problem is a major concern.

While DuPont continues to deny responsibility, the evidence of plant damage in the United States and the successes in the US courts go towards establishing DuPont's liability. The University of Florida research that reveals the presence of both the herbicide, sulfonylurea, and the toxic breakdown product, dibutylurea, in Benlate products indicates that the chemical formulations of Benlate DF and WP contain serious risks to plant growth. Both sulfonylurea and dibutylurea have now been identified in Benlate used by growers in Adelaide, who have suffered significant losses.

Both DuPont and the Department of Primary Industries have been irresponsible about the recall of Benlate DF, for they have failed to adequately remove the product from the market and failed to notify the dangers of the product. It is a concern that the soil and health problems may remain unresolved for years. The power of a multinational should not be able to suppress the legitimate rights of ordinary individuals. I urge all members in this place to support my motion.

The Hon. CAROLINE SCHAEFER secured the adjournment of the debate.

SUPREME AND DISTRICT COURTS (APPOINTMENT OF JUDGES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 7 September. Page 281.)

The Hon. R.D. LAWSON: I oppose the second reading of this Bill, which was introduced by the Hon. Sandra Kanck. Before coming to the particular provisions of the Bill, I believe it is appropriate to examine briefly the present position in Australia and elsewhere regarding the appointment of judicial officers. In this country, appointments to all State and Federal courts are made by the Executive Government. Except in the case of the High Court, the Executive Government has complete freedom of action to appoint persons who are qualified under the relevant statutes, usually legal practitioners of a number of years standing. In the case of the High Court, the Commonwealth Attorney-General is required by the High Court of Australia Act 1979 to consult with the States before recommending an appointment. In this State the Attorney-General recommends appointments to Cabinet, except in relation to the Industrial Court, where the recommendations are made by the Minister for Industrial Affairs. Cabinet may of course approve or reject the Attorney-General's recommendations.

In the past, prior to making a recommendation, the Attorney-General consulted informally with members of the judiciary, the legal profession and perhaps more widely. Such consultation was quite common, but it was neither mandatory nor invariable. Prior to the last State election, the Liberal Party adopted a policy on the appointment of judges which, as it relates to this matter, is as follows:

> In seeking to ensure the best available men and women are appointed as judges and magistrates, a Liberal Government will firstly seek adequate and informed advice from the judiciary, the legal profession and other community leaders; secondly, consult with the Leader of the Opposition or the Leader's nominee about each such appointment to the Supreme Court.

So, that is the current position in this State, and our Attorney-General has announced that he is presently undertaking that consultative process in relation to the next appointment to the Supreme Court.

The Hon. Sandra Kanck: Which community leaders is he talking to?

The Hon. R.D. LAWSON: The Hon. Sandra Kanck says, 'Which community leaders?' It is a matter of discretion in relation to the particular appointment, and we, on this side of the Chamber, have confidence that the Attorney-General will approach appropriate community leaders. The position in the United Kingdom is as follows: most appointments to the judiciary are made on the recommendation of the Lord Chancellor; some higher appointments, such as the Master of the Rolls, are made on the recommendation of the Prime Minister; there is no formal process of screening proposed appointees; and the Lord Chancellor's office makes inquiries of the judiciary and the legal profession concerning the suitability of prospective candidates. In that country, a Courts and Legal Services Act was passed in 1990. That Act widened the eligibility for appointment to the bench to include, for example, solicitors, but it did not otherwise restrict the discretion or the powers of the Lord Chancellor.

In the United Kingdom they claim that since the mid-1940s appointments have been made on merit and Party political considerations have not played any significant part in judicial selection. So far as I have been able to see, there is no pressure currently for the establishment of any form of judicial commission or committee such as that proposed in this Bill. However, the Lord Chancellor is under some pressure similar to that which is being applied in this country to appoint representatives of more so-called minorities, namely, women and non-whites.

In the United States there is a different mechanism for the appointment of judges. Many judges in that country are elected, and the situation there is not comparable with that which pertains here. However, certain States subscribe to what is called the Missouri plan, under which candidates for election to the judiciary are vetted by a local judicial commission for qualifications and suitability. Federal appointments are screened by a committee of the American Bar Association called the Committee on the Federal Judiciary. So, it is clear from that very brief observation that, whilst there is consultation in the United States with the legal profession, there is no mechanism similar to that proposed in the present Bill.

In New Zealand the same appointments procedure applies as pertains in this country. In 1979 a Royal Commission recommended the establishment of a Judicial Commission in New Zealand, but that recommendation was not adopted by either Labor or National Governments.

In Canada there are mechanisms designed to depoliticise the process of selecting judges. In 1985 the Canadian Bar Association prepared a report entitled, 'The Appointment of Judges in Canada,' and it described the position in that country as follows:

> There has been a long history of patronage appointments to the bench by both major parties in Canada. Although there have been some commendable exceptions, the practice of appointing the party faithful to the bench has been all too common. . . .
>
> If an entrenched Government party systematically appointed only its own supporters to the bench, the result would be public cynicism and a perception by non-supporters of the party that their prospects for judicial preferment were non-existent. . . public concern has been heightened by recent events surrounding the appointment of judges. Actions by politicians at both the provincial and federal level have provoked controversy in Canada in the last few years.

It is clear that there have been problems in Canada, and it is perhaps appropriate to examine the two situations which apply there. Different processes apply to Federal and Provincial appointments. With regard to Federal appointments, in 1967 the Trudeau Government adopted the practice of seeking the opinion of a committee of the Canadian Bar Association before appointing any Federal judge. That was the culmination of many years of agitation by the Canadian Bar Association, which had begun as early as 1949, and the practice adopted in Canada was modelled closely on the American Bar Association's Committee on the Federal Judiciary.

The role of the Canadian Bar Association's Judicial Committee is based upon an informal arrangement; it has no statutory basis. The committee has 23 members, with representation from all Provinces and Territories. The committee comes into play in the middle of the selection process; namely, after candidates for appointment have been identified by the Minister for Justice but before the Minister makes his recommendations to Cabinet. The names of prospective appointees are given to the chairman of the committee, and those names are circulated to all 23 members. Questions are asked about legal ability, temperament, character and health of the nominees, and committee members report individually to the chairman. The committee does not vote on nominees, nor does it compare candidates for a particular vacancy or rank them. In each case the chairman, on the basis of members' reports, arrives at a determination whether a candidate is 'qualified', 'highly qualified' or 'not qualified'. The chairman ranks the candidates in those three orders, and the chairman's report is given to the Minister on a confidential basis.

There has been some criticism of that system. One commentator has concluded that this process tends to express the outlook of that 'small phalanx of lawyers who rise to positions of prominence in professional organisations'. But, on the whole, the system has worked well.

I turn next to Provincial appointments in Canada. There are different procedures in different Provinces. In some Provinces judicial councils or selection committees are responsible for making recommendations to the Attorney-General on judicial appointments. The first such council was established in 1969. The councils are set up by statute and they comprise judges, lawyers and lay members. The councils assemble biographical data on candidates and interview them and council members check candidates' qualifications and suitability with their own constituencies. For example, lawyers check with the legal community and governing bodies of the profession. The council draws up a short list of names for the vacancy to be filled and submits it to the Attorney-General.

In British Columbia the Attorney-General is obliged by law to select the candidate from among the names submitted by the council or to ask the council for further recommendations. In other Provinces this is not mandatory, but in practice the Attorney-General chooses from the council's list. The authors of the Canadian Bar Association report, to which I referred earlier, say that the system of judicial councils has significantly improved the quality of appointments and is working well. Those authors noted that, even where an Attorney-General is free to appoint persons not on the list submitted by judicial councils, he does not in practice appoint people from outside the list.

I should emphasise that the system of judicial commissions in Canada has arisen as the result of a particular

problem, and that problem, which I identified at the outset, is the appointment of political cronies in the exercise of political patronage. That is not suggested in the Hon. Sandra Kanck's speech as being the reason which motivates her Bill, and, so far as I am aware, it is not a problem in this country.

Over the years there have been proposals to change the method of judicial appointment in this country. I start as early as 1977 with an address to an Australian legal convention by the then Chief Justice, Sir Garfield Barwick. In relation to the selection of the judiciary, he said:

> We still have the manner traditional in the United Kingdom. The choice of the appointee is made by the Executive Government or by some one or more members of it.
>
> In my view, the time has arrived . . . when the privilege of the Executive Government in this area should at least be curtailed. One can understand the reluctance of a Government to forgo the element of patronage which may inhere in the appointment of a judge. Yet I think that long-term considerations in the administration of justice call for some binding restraint of the exercise of this privilege.

Sir Garfield Barwick continued:

> I make bold to suggest that, in all the systems of Australia where appointments to judicial office may be made by Executive Government, there should be what is known in some systems as a judicial commission . . . saddled with the responsibility of advising the Executive Government of the names of persons who, by reason of their training, knowledge, experience, character and disposition, are suitable for appointment to a particular office under consideration. Such a body should have amongst its personnel judges, practising lawyers, academic lawyers and, indeed, laymen likely to be knowledgeable in the achievements of possible appointees. . . Some may prefer to pass the actual choice of appointee to such a body: others may prefer that recommendations only may be made by it; yet others may prefer to require the submission by that body of a short panel of names outside of which the Executive Government may not go: or may not go without public explanation of the reason for doing so.

The Hon. Sandra Kanck has some sort of ally for her proposal in Sir Garfield Barwick. That proposal was made by Sir Garfield Barwick in 1977, and one may be forgiven for thinking that it was prompted by the appointment in 1975 of Senator Lionel Murphy to the High Court of Australia, who, I think it fair to say, Sir Garfield Barwick did not regard as a suitable appointment. At all events, that suggestion by Sir Garfield Barwick was not taken up by any Australian Government, nor did it receive much support.

There have been a number of publications by both academic and other legal writers and judges on the subject. Professor James Crawford, a well-known constitutional lawyer, graduate of Adelaide University, subsequently a professor at Sydney University and now at Oxford University—

The Hon. A.J. Redford interjecting:

The Hon. R.D. LAWSON:—one of his claims to fame being, as I just learnt, that he tutored the Hon. Angus Redford.

Members interjecting:

The Hon. R.D. LAWSON: Having regard to that piece of intelligence, I am reluctant, therefore, to quote him as an expert! Professor Crawford wrote in support of the existing system relating to the appointment of judges, as follows:

> The arguments for the present system are . . . strong. In practice, Party-political appointments have been rare, and those which may have originated in party manoeuvring have been defensible on other grounds. The danger of an 'independent' commission is that it would produce 'safe, uncontroversial' appointments, and that it would tend to limit the range of candidates. Domination of such a commission by judges and senior professionals would tend to self-perpetuation, whereas, in courts as in Government, changes of course from time to time are desirable. No adequate system would have failed to appoint a Griffith, an Isaacs or a Dixon, but would a judicial committee have appointed Ninian Stephen, John Bray, Felix Frankfurter or Bora Laskin?

So, Professor Crawford is saying that judicial commissions, especially committees from a widespread range of personnel, would be likely to make safe appointments rather than allow an Attorney of the day to be imaginative and to make selections that would enhance the work of the court.

In the 1983 Boyer lectures, Justice Michael Kirby, now President of the New South Wales Court of Appeal, had this to say:

> The call for the establishment of . . . a judicial commission has been made in Britain, New Zealand and Canada. So far, nothing has come of it and I hope nothing will. It has all the hallmarks of an institutional arrangement that would deprive our judiciary of the light and shade that tends to come from the present system. In our judges we need a mixture of traditionalist and the reformist. Institutionalising orthodoxy, or worse still judges choosing judges, is quite the wrong way to procure a bench more reflective of the diversity of our country. Fortunately, I do not see politicians of any political persuasion surrendering to the temptations of a judicial appointments commission.

The Hon. A.J. Redford: He obviously hadn't heard of the Democrats.

The Hon. R.D. LAWSON: He had not heard of the Democrats, nor was he aware of the Hon. Sandra Kanck's proposal. The advisory committee on the Australian judicial system was one of the five committees established to advise the Constitutional Commission, which was charged with the responsibility of considering ways in which the present Australian Constitution might be changed. The advisory committee, which published its report in 1987, did not support the establishment of a judicial commission and it specifically rejected the Canadian model, to which I have already referred.

The commission's conclusions on this point may be summarised by saying that it saw no need for commissions in this country and the likely result of their establishment is that it would become unnecessarily difficult to appoint any person who is known to have some political affiliation or association.

The committee did dilate upon on that subject at some length. It considered that committees of so-called experts would always be looking for the grey candidate, the neutral candidate, rather than one who might have adopted a particular position, be it political, social or economic, and that the fears expressed by Professor Crawford and Justice Michael Kirby would be fulfilled.

Justice Brennan of the High Court of Australia wrote a paper entitled 'Judging the Judges'. It was published in 1979 in the *Australian Law Journal*. He did not favour the appointment of judicial commissions of experts, but he did consider that a process of mandatory consultation could have some merit.

In September 1993 the Federal Attorney-General (Hon. Michael Lavarch) produced a discussion paper entitled 'Judicial Appointments—Procedure and Criteria', which was prompted by the fact that little was known about the appointment processes and because there were no established internal rules for selecting judges. That report noted that the most frequent criticism of the current system is that it leaves the appointment of a judiciary that is unrepresentative of society, in the view of the authors of this report. They say:

> The judges on Federal and State courts are overwhelmingly: male; former leaders of the bar; appointed in their early fifties; and products of the non-Government education system.

So, it is clear from that quotation where the authors of this report are coming from. So far as I am aware, the Attorney-General did not publish any further paper or conclusion as a result of the discussion paper.

However, the Law Council of Australia—the body which includes, as part of its membership, the professional organisations of lawyers throughout the country—did make a formal submission, which, in my view, contains a good deal of sense and proposals which are practical and worthy of consideration. I will paraphrase the Law Council's proposals. First, the fact that a high quality judiciary has been produced in Australia, and has resulted from the existing selection system, suggests that radical change in the system is not required. They make the point that merit alone must remain the basic criterion for judicial appointment.

The Law Council says that judicial appointees need a combination of legal skills, and those include personal qualities essential for the office. The criteria for merit necessarily include: first, a range of legal skills which are acquired only by appropriate training and long experience and, secondly, a range of personal skills. The Law Council thought there was no need to establish a commission to advise on judicial appointments, although they did consider that there was a need for wider consultation on judicial appointments. However, the consultation process need not be too formal or structured.

I interpose here that the system adopted by the Liberal Party and the Liberal Government in this State, and which I quoted at the outset of this address, meets the criteria of the Law Council, in that it is neither formal nor structured, but does involve a wider consultation than had hitherto applied. The Law Council went on to say that the concept of a representative judiciary is fundamentally dangerous and should be rejected. It is inconsistent with judicial independence and appointment on merit. The council states:

> Judges should be chosen for their capacity to represent the whole community, not sections of it. The idea of a representative judiciary is at odds with the very terms of the judicial oath.

The authors went on to say that the criteria for judicial appointment which may change over time could be described in a protocol which, while not having the force of law, would help to make the process more transparent. In South Australia the Liberal Party has made the process more transparent by describing in advance what was proposed, and the Attorney, when he embarked upon the current process, made a statement to the same effect.

The Law Council took the view that in the case of Federal appointments consultation by the Attorney-General with the President of the Law Council and the President of the Australian Bar Association, with others, would be entirely appropriate and, likewise, for State appointments, consultation with the representatives of the local associations would also be appropriate.

In conclusion, the Law Council concluded that the present method of selection and appointment of judges should be retained but that the Attorney-General should be encouraged to consult well informed bodies and persons, including the present judges.

The Senate Standing Committee on Legal and Constitutional Affairs published a report in May 1994, 'Gender bias and the judiciary'. It is this report to which the Hon. Sandra Kanck referred in her second reading speech in support of her Bill. The committee's recommendations were many, but the principal amongst them is as follows:

> That all jurisdictions, whilst continuing to select judges on the basis of merit, should strive to increase the diversity of appointees to judicial office.

That sentiment, namely, continuing to select on the basis of merit whilst striving to increase the diversity of appointees, is one that I support. Much criticism of our judiciary tends, in my view, to be ill informed.

On the subject of the composition of the judiciary, the Senate report quotes a statement by Mr Rodney Meagher QC, now Mr Justice Meagher of the New South Wales Court of Appeal. Speaking on suggestions to make the judiciary more representative, Mr Meagher made the following comment:

> An ideal legal profession should obviously be composed of 5 per cent convicted criminals, 5 per cent drug addicts, 5 per cent dole bludgers and 30 per cent cretins, just like the rest of the community.

That statement tends to highlight the absurdity—

An honourable member: Who said that?

The Hon. R.D. LAWSON: Mr Meagher. Whilst one might complain about the language used by Mr Meagher — and I am not saying that I necessarily agree with it—it does point out the absurdity of seeking to have a judiciary that is representative of the community in the sense of representing every interest within the community.

I oppose the proposal in the Bill. In my view it would be contrary to proper constitutional practice and democratic theory for an elected Government to relinquish its power of appointment of judges in favour of an unrepresentative and a non-elected body. It must be remembered that if the performance of a judge is ultimately found to be deficient, the Government which appointed him or even that which happens to be in office at the time is likely to suffer political opprobrium, so the appointment of judges is an important political function.

In my view it is unacceptable for executive Governments to delegate powers of appointment to bodies over whose membership the Government might have no control, and there is no reason to suppose that the membership of a judicial commission might not be motivated by political considerations. There can be no guarantee that a board comprising judges, representatives of the legal profession, legal organisations and other community organisations would not itself adopt a Party political stance in relation to appointments.

This Government has already taken the step, for the first time in South Australia's history, of adopting a policy that requires the Attorney to consult with legal and community interests. That is an entirely appropriate response to the needs of the community. In my view there is no need for a judges' selection committee of the kind envisaged in the Bill.

I should also say in support of the current system of consultation that it has the support of the Advisory Committee on the Australian Judicial System, which reported in 1987 in its publication 'Australia's Constitution, Time to Update' that there should be a recognised practice that, before appointing judges to, in this case, Federal Courts, the Attorney should consult on a confidential basis with the Chief Justice of the court concerned and with the leaders of the appropriate professional organisations to obtain their views about persons who are eligible for appointment, qualified to do the work of the court and who appear to have the necessary qualities.

A former Chief Justice of the High Court, Sir Harry Gibbs, wrote a paper, 'The Appointment of Judges' in 1987 and it was reported in volume 61 of the *Australian Law Journal*. Sir Harry also expressed support for the view that

the Attorney-General of the day to engage in some consultation before recommending appointments. Sir Harry stated:

> In the end, we must depend upon the statesmanship of those in all political Parties.

From my point of view, members of this Parliament, members of the Government and the Opposition ought not abdicate responsibilities in relation to these matters to outside bodies such as a judges' selection committee. The appointment ought be made by the Government and be open to criticism by the Opposition if criticism is appropriate. Committees of the type such as the judges' selection committee are answerable to no-one.

In conclusion on this aspect, I should say that I oppose the establishment of the judges selection committee proposed by the honourable member on at least four grounds. First, it might and probably would inhibit innovative appointments; secondly, it represents an abdication of political responsibility; thirdly, it would be ineffectual window-dressing; fourthly, it probably disqualifies anybody who has participated in political activity; and, finally, in the circumstances it is unnecessary.

I now turn to some other aspects of the honourable member's proposal. In the schedule to the Bill are set out what appear to be the criteria for appointment to the bench. It is proposed that those criteria be in writing, and they contain the following 13 or 14 qualifications and characteristics: extensive experience and knowledge of the law; respect for his or her colleagues; commitment to uphold the rule of law and dispense impartial justice; personal qualities which the public would expect of members of the judiciary, such as fairness, empathy, integrity, patience, an even temper and gender and cultural sensitivity; proven advocacy skills; good communication skills; legal analytical ability; practicality and commonsense; the ability to act in an independent manner; administrative skills; efficiency, including the ability to make timely decisions without compromising the quality of decisions; wide community awareness and an interest in issues that are broader than simply the law; a history of involvement in community organisations or activities; and a willingness to participate in professional training.

Most people would regard many elements of that list as containing an appropriate description of the qualities one would seek to find in a judge. But in my view it is entirely unnecessary to list qualities of this kind. In a sense this is an insult to the intelligence of those responsible for the appointment of judges. Of course one knows that a judge is required to have extensive experience and knowledge of the law; of course one appreciates that a judge must be fair and have integrity and good communication skills. It is entirely unnecessary to have a list of this kind. In my view, the best statement of the appropriate criteria for the appointment of judges is that which came from Lord Hailsham, Lord Chancellor, who had been Lord Chancellor for a number of years. His address on this subject was published in the *Law Society Gazette* in the United Kingdom on 28 August 1985. His Lordship stated:

> My first and fundamental policy is to appoint solely on merit the best potential candidate ready and willing to accept the post. No considerations of Party politics, sex, religion, or race must enter into my calculations and they do not. Personality, integrity, professional ability, experience, standing and capacity are the only criteria, coupled of course with the requirement that the candidate must be physically capable of carrying out the duties of the post, and not disqualified by any personal unsuitability. My overriding consideration is always the public interest in maintaining the quality of the Bench and confidence in its competence and integrity.

In my view it is unnecessary for the criteria to be listed in the rather elementary way in which the Hon. Sandra Kanck's Bill does. I certainly do not agree that willingness to participate in professional training is a necessary criterion for a judicial appointment, because I suspect the motivation of that is to ensure or seek to obtain political correctness in judicial behaviour. In my view that type of interference with judicial independence should be resisted.

The Hon. Sandra Kanck said that she would dearly have liked to deal with matters such as the accountability of judges. I would make only one comment on that. It seems to me that judges are almost the most accountable of anyone in our society. A judge is required to state reasons for every decision that he or she makes. His or her reasons are open to scrutiny, appeal and review, are appealed against frequently and are reviewed; and many decisions are overturned or varied. Almost no-one else in the community is required to state reasons for every decision taken, to state those reasons at length and to have them open to scrutiny and being overturned. Judges are accountable, and the myth that is being developed that they are not accountable is simply that—a myth.

There is no assurance that candidates selected by the bureaucracy established under this Bill would be better than candidates selected under the present mechanism. Nothing is said in the Bill nor in the speech in support of it to suggest why a person nominated by the Offenders Aid and Rehabilitation Services would have any particular expertise to exercise in the making of judicial appointments, nor a representative of the Children's Interests Bureau or the Multicultural and Ethnic Affairs Commission or the Victims of Crime Service Incorporated or the Women's Electoral Lobby. These organisations are no doubt all worthy organisations, but there is no reason why the Attorney-General ought to be limited to consulting with them. Under the present arrangement he is at liberty to consult with whomever he considers might have something of value to say on the subject. Therefore, I oppose the second reading of this Bill.

The Hon. CAROLYN PICKLES secured the adjournment of the debate.

AUSTRALIAN BROADCASTING CORPORATION PROGRAMS

Adjourned debate on motion of Hon. A.J. Redford:

> That this Parliament deplores the reported proposals concerning the changes to the production of local current affairs and news programs of the Australian Broadcasting Corporation and further calls on the ABC not to reduce local production of current affairs and news programs in any way.

which the Hon. Anne levy had moved to amend by leaving out all words after 'Parliament' and inserting the following:

> congratulates the board of the Australian Broadcasting Corporation for not accepting the changes proposed by management for altering production of local current affairs and news programs, and calls on the ABC not to reduce local production of current affairs and news programs.

(Continued from 7 September. Page 283.)

The Hon. A.J. REDFORD: In closing the debate on this motion, I can indicate that I support the amendment moved by the Hon. Anne Levy, which was moved because events overtook the motion and indeed the board of the Australian Broadcasting Corporation brought the management of the Australian Broadcasting Corporation to heel. It is pleasing to

see, at least at this stage, that commonsense prevailed. I would like to take this opportunity to thank all members for their contribution to this debate, and in particular the contribution made by the Hon. Anne Levy.

In concluding, I might sound a note of caution. I am concerned at the announcement yesterday of the Federal Government to shift the Sydney Symphony Orchestra outside the ABC, and I do have some concern as to what the effect of that might be on the other symphony orchestras throughout Australia. This city and indeed this State has had a very proud tradition in the area of the arts. The contributions of many of my predecessors in this place and the other place have been enormous. One only has to consider the initiative of Liberal Governments in relation to the Festival of Arts and at the ability of the Hon. Don Dunstan who put arts on a very high platform, where it deserved to be. The continuing contribution by members who were or are in this place is to be congratulated. It is really disappointing to see that the Federal Government has this view that the eastern States have some sort of dominant role in the area of arts in Australia. I would hope that commonsense will prevail and that perhaps some of the initiatives of this State can be properly recognised in the future.

Amendment carried; motion as amended passed.

GAMING MACHINES

Adjourned debate on motion of Hon. Anne Levy:

That this Council—

1. Notes that the then Shadow Minister of Transport moved to amend the Gaming Machines Bill on 7 May 1992 to require that at least 1.5 per cent of gaming machines turnover be set aside in a fund to assist welfare agencies dealing with gambling addiction and to make payments to other community organisations disadvantaged by gambling in their fundraising.

2. Notes that members on both sides of Parliament, and in both Houses, said that their support for the Gaming Machines Bill was subject to promises of additional Government support for agencies dealing with gambling addiction.

3. Calls on the Government to honour the commitment given by the previous Government, at the time gaming machines legislation was introduced, to make up to $2 million in the first instance available from the Government's gaming machines revenue to welfare agencies to deal with the social problems associated with gambling.

(Continued from 7 September. Page 282.)

The Hon. T. CROTHERS: In rising to speak in support of this motion, I note that there is an amendment on file which seeks to delete paragraph 3 of the original motion and replace it with a subsequent paragraph, and I have no problems at all with that. I simply indicate that for the record. In rising to support my colleague the Hon. Anne Levy with respect to her motion on gaming machines, I wish to place some matters on record relative to the last Parliament when the parent Bill covering gaming machines was fully and exhaustively debated by both this Chamber and members in another place. If memory serves me right, that Bill was narrowly carried in this place. Both major Parties in that Parliament had declared the matter to be a conscience vote, and an examination of the voting patterns clearly indicate that members of both major Parties proceeded to vote in that manner.

As a consequence of the passage of that Bill, and the preparedness of the then Government to commit up to $2 million in the first full year of operation of extra funds to family and community development funds to assist people who may have become gambling addicts as a consequence of the introduction of poker machines into South Australia, there was much toing and froing amongst members over this money; that is, as to whom the money should be given, how it should best be spent and, indeed, whether $2 million was enough money in respect of that which it was purported to address. To that end, that Parliament and this Chamber decided to set up a select committee to investigate the matter. I happened to Chair that select committee. The other three members on that committee of that last Parliament were the Hon. John Burdett, the Hon. Carolyn Pickles and the Hon. Dr Bernice Pfitzner.

It is worth placing on record the terms of reference of that select committee, which were to consider the following:

a. The extent of gambling addiction that exists in South Australia and the social and economic consequences of that level of addiction;

b. The social, economic and other effects of the introduction of gaming machines into South Australia;

c. Any other related matters.

Truly, by any standard, they were very broad terms of reference, and so they should have been, in my opinion. Let me say it was the then Government's indicated willingness to expend moneys on gambling addiction which finally carried the day and brought about the passage of the Bill through this Chamber at that time. Unfortunately, that committee was only able to meet—and I speak from memory now—seven or eight times, and was therefore unable to discharge its functions before Parliament was prorogued prior to the 11 December 1993 State election. I personally found that to be a great shame, and unfortunately someone had gone to the press at that time and indicated that the Government of the day was trying to stall the select committee. That, believe me, never was the case, and in fact never was even near the case. The facts of the matter belie that rumour. I only simply say that because I had the press ringing me up as the Chairperson seeking as to whether or not I would confirm that such was the case. Of course it was not and never was. As I said, the facts of the matter that I will now tabulate in generic terms belie that rumour.

The facts, as I recall them, were that three of the four members separately suffered illnesses of a long and protracted type. Three of the members were, at different times, overseas, and we had all the problems in the world securing a suitable person as the committee's research officer. Again, it was most unfortunate that the work of that committee was incomplete at the time of the rising of the Parliament for the last election. I also note that in spite of the fact that the present State Government, whilst reconstituting other select committees of the last Parliament, has been strangely silent and inactive in respect of the future of the previous Parliament's select committee into gambling addiction. Indeed, one wonders why this is so.

In respect of general support for the Hon. Anne Levy's motion, let me canvass the following reasons both in support of and to reinforce the references she herself has made in speaking to the matter on 10 August just past. She, like I, can recall the vigour with which the present Minister for Transport and the Deputy Premier of the present Government spoke in favour of legislating into existence the provision for the adequate funding for the gambling addiction program, and the great fervour which both members oratorically addressed the matter of funding being enshrined into statute. Let me say that I believe that they were both quite right then and, if they are to support this matter, that will confirm my belief—

The Hon. Diana Laidlaw: Did you support me then?

The Hon. T. CROTHERS: I certainly did, yes.

The Hon. Diana Laidlaw interjecting:

The Hon. T. CROTHERS: You do that, and you will be pleasantly surprised at the veracity of the present speaker.

The Hon. Diana Laidlaw interjecting:

The Hon. T. CROTHERS: No, it was not. I go on—if you will let me finish—to further draw to the conclusion which occurred on the exhaustive night in question. As I said, if the Minister for Transport and the Deputy Premier were to again, with the same fervour as shown then, support the motion of the Hon. Ms Levy at this point in time I would be very pleased, because it would be consistent with the position that they both adopted at the time of the debate and the passage of the parent Bill. I make the point in respect to their contributions in relation to the 1.5 per cent had a decided impact on the manner in which the Bill was dealt with in this Chamber. As I recall, the Bill was carried in this Chamber by 11 votes to 10, truly a very narrow margin.

The Democrats, at that time, in this place, withdrew an amendment which they had on file in favour of the Laidlaw amendment, and, as a consequence, supported the Bill. Others in this Chamber also were led to support the Bill because of the Government's guarantee and the Laidlaw amendment. As I recall it—

The Hon. Diana Laidlaw interjecting:

The Hon. T. CROTHERS: And I hope the Minister was one that was much heartened by what ensued as a consequence of her amendment. I go on to delineate that. As I recall, the Laidlaw amendment was not proceeded with because of the then Government's guarantee of up to $2 million. In my view, given all of those matters which I have covered, it would be a political farce of the first order—

The Hon. Diana Laidlaw interjecting:

The Hon. T. CROTHERS: Certainly not. Humbug maybe but hypocrite never.

Members interjecting:

The Hon. T. CROTHERS: When empty vessels start making utterances it is because one is touching on the bung valve in the vessel, and I hope that is not the case with the Minister for Transport as she continues to interject. The then Labor Government had guaranteed that it would make $2 million available if in fact that was the requirement of the House relative to satisfying those concerned in order to try to achieve passage of the Bill. I say to the Minister for Transport: divine providence and the good graces of the Hon. Anne Levy have provided her with the opportunity to once again support such a provision.

It was a provision which she and the Deputy Premier very ardently embraced just over two years ago. I would hate to think they will not now do so simply because they have gone from State Opposition to State Government in that time period to which I have just referred. Failure on their part to do so could possibly lead to the conclusion that when all is said and done they were simply grandstanding for electoral gain back in 1992, just over two years ago. I ask them and others to exercise their moral conscience and—

The Hon. L.H. Davis: You'd have a pretty big box in the grandstand yourself.

The Hon. T. CROTHERS: Well, the Hon. Mr Davis has taught me well, except for the fact that his box was withdrawn under the grandstand about nine months ago. I ask them to exercise their moral conscience and support the Levy motion with the same vigour that they exhibited back in mid-1992. I support the motion, commend it to all members and urge them, just by way of consistency and to fill the gap left by the select committee not being able to discharge its functions, to support the Levy motion.

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

SHOP TRADING HOURS (EXEMPTIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 October. Page 385.)

The Hon. T. CROTHERS: The Aunt Sally for the Government backbenchers rises again like a phoenix from the pyre. I have a copy of the Supreme Court decision which, by a majority of two to one, ruled in favour of the Minister's capacity to issue certificates of exemptions by regulation. But it is not for those reasons that I am on my feet today. I am on my feet today because, as a member of Parliament, non-hypocritically and in a non-humbug way I am appalled at the way in which the powers of this Parliament are being ill-used and abused by some of the Ministers of the Crown. And in respect of that—

The Hon. L.H. Davis: You have sat dumb for many years while the Labor Party was in power. You are a late developer.

The Hon. T. CROTHERS: That does not make it right. Two wrongs never made a right; you know that.

The ACTING PRESIDENT (Hon. M.S. Feleppa): Order!

The Hon. T. CROTHERS: Is the honourable member implying by that interjection that his Government is now wrong?

The Hon. L.H. Davis: Not at all.

The Hon. T. CROTHERS: That is the logical inference.

The Hon. L.H. Davis interjecting:

The Hon. T. CROTHERS: That is the logical inference, Mr Davis. I support this private member's Bill which was, in my view, moved of necessity by my colleague the Hon. Ron Roberts. I understand that the Leader of the Democrats both in this Council and within this State is of a like mind. The Bill does not seek to take away the Minister's power to give certificates of exemption to the present Act; instead the amendments seek to prevent any abuse of ministerial power by ensuring that such a ministerial certificate is issued as authorised by regulation. That will have the effect of placing the matter before each House of this Parliament; if it is then the wish of the Parliament, the regulation will have legal effect provided that it is not dealt with by either House within 14 clear sitting days of each House; on the other hand, if any member of either House is dissatisfied with the regulation or, as is the case here, perceives there is some political chicanery or expediency attached to the regulation, any member is entitled to move disallowance of the regulation, which is, in effect a act of estoppel on the subject until that motion is defeated or withdrawn or elapses.

The question may well be asked as to why the two opposition groups in this Council would, at this early stage of the life of the Government, seek to move such an amending Bill. The telling of that tale, for those of us who know, is a very sad recital indeed. I remind the Council of some parts of this very sad tale. Pre-election promises given by the present Government, then in Opposition, were as follows:

First, on 14 July 1993 a meeting which was organised by the Small Retailers Association of South Australia was attended by the then Opposition spokesperson for industrial

relations, the Hon. Graham Ingerson—and indeed he is the very Minister for that portfolio in this present Government—and he said that there would be no extension of existing shopping hours for the life of the next Liberal Government. Again, at a rally held on the steps of this very Parliament just two days prior to the last State election, the very same person gave an unequivocal commitment to a rally of small business people that there would be no extension of shopping hours whilst he was Minister for Industrial Affairs. Again, in a press release dated 26 October and headed, 'Longer supermarket trading hours—hundreds of small business jobs to go', the same Minister said:

> For a start, the Shop Trading Hours Act requires the Government to consult with shopkeepers affected by this move before there is any extension under section 13, and unless the Government is about to ignore the Act—

what a bit of crystal ball gazing that was—

> there can be no immediate introduction of extended hours.

The present Minister was very clear in his own mind concerning extended shopping hours, at least prior to the last election.

To facilitate matters further, when he became Minister, he then set up a committee headed up by Mr Glen Wheatland, a man who is personally known to me. This committee, which from now on I will refer to as the Wheatland committee, conducted a survey, the results of which clearly showed that only 20 per cent of those surveyed were in favour of extended hours and that 80 per cent were either opposed to extended hours or in fact wanted trading hours to be further reduced. I think of that 80 per cent 70 per cent were opposed to an extension of trading hours, and the other 10 per cent wanted trading hours to be reduced. Flying in the face of this survey, a majority of the Wheatland committee proposed phasing in a total deregulation of trading hours to 24 hours per day, seven days a week. Indeed, the Hon. Mr Ingerson himself said that, on the basis of evidence before the committee, he could not understand how the Wheatland committee could support total deregulation.

The problems that the Government, when it was in Opposition, had created for itself by trying to be all things to all people prior to the last election, for the express purpose of electoral gain, were fast coming home to hunt it. How true for the present Government is that immortal quote, 'Sow the wind, and reap the whirlwind', for by now the big battalions, fastening on to the recommendations of the Wheatland committee, were gathering and beginning, to the Minister's total discomfort, to commence nipping at his flanks.

Then someone—no-one knows who—set up the Freedom to Shop Association, and all hell broke loose, for the big battalions saw the Wheatland committee report as their heaven sent (or perhaps sent by some other evil force) opportunity to dip their oar in troubled water, with a view to achieving their aim, which was to take more trade and jobs away from small businesses and, to that end, their aim obviously would be in line with the recommendations of the Wheatland committee report. Thus, by the processes of physical exhaustion, they believed that they would so deplete the energy reserves of small business people that the big battalions would gain absolute monopoly control over the delicatessen area and other areas of small business.

Meanwhile, the distraught Minister was to'ing and fro'ing all over the place in respect to which position he and his Government would finally take over trading hours. In their endeavours to be people for all seasons, in line with other promises given prior to the last State election, finally some creative mind came up with the idea that all hopes might be assuaged by the Minister proclaiming by regulation that the central business area of Adelaide would be entitled to apply for certificates of exemption from the Act for Sunday trading, effective from 1 November 1994.

What an absolute turnaround by the Minister and his Government from their pre-election commitments. It borders on the bizarre. I, for one, am certain that the Government, by its own perfidiousness, has inflicted a futuristic electoral wound on itself. I know that many of the Government's backbenchers are extremely worried at the effect the Government's turnaround on Sunday trading hours will have as they struggle next election to hold onto their seats.

The Hon. L.H. Davis: Name them.

The Hon. T. CROTHERS: That is for me to know and you to find out.

Members interjecting:

The Hon. T. CROTHERS: I can name 10, as a consequence of this. It will linger on and, in my view, rightfully so. I conclude by asking the Council to support this amending Bill, so that the lesson is driven home to the present Government that it must never again act in such a deceitful, scurrilous and perfidious way. This Parliament, in particular, must protect the small people in our community. As is the case here, it is sometimes their only hope. Let us therefore restore some democracy again to our parliamentary system in South Australia, and I suggest that we can start best in doing that by supporting this amending Bill and preventing this Minister from ever doing such a dastardly thing again. In the immortal words of that Liberal turned Democrat, Senator Chipp, 'Let's keep the bastards honest.' We best do that by supporting the Bill brought before us by the Hon. Mr Roberts. I ask members to support the Bill.

The Hon. R.D. LAWSON secured the adjournment of the debate.

[Sitting suspended from 6 to 7.45 p.m.]

TWO DOGS ALCOHOLIC LEMONADE

The Hon. T.G. ROBERTS: I move:

> That the regulations under the Beverage Container Act 1975 concerning exempt containers—Two Dog Alcoholic Lemonade, made on 4 August 1994 and laid on the table on this Council on 9 August 1994, be disallowed.

I move this motion on behalf of the Hon. Carolyn Pickles. South Australia has a strong tradition of returning deposit-bearing containers to retailers and depots. The roadsides in this State bear the fruits of that legislation. The differences that we see when we cross the borders are apparent. As soon as one leaves South Australia and drives into Victoria, one finds the roadsides littered with throw-away containers. On a recent trip to Western Australia I was surprised that the amount of roadside debris was so great. Indeed, I was disgusted. In South Australia we tend not to notice that our roadsides are clean until we go to another State which does not have the same legislation. There appears to be no attempt in the West or in Victoria to clean up roadside debris because there is no incentive to do so. There is no incentive to retain and clean up the containers which are causing the problem, and the problem is left with local government.

The practice commenced in the late 1800s when the soft drink industry operated a voluntary deposit system on refillable glass soft drink bottles which were returnable via

retailers. Many kids earned their pocket money in this State by returning empty lemonade and beer bottles. They were able to survive, during difficult economic times, on the pocket money that they earned from selling those bottles.

The Hon. R.D. Lawson: Not only kids.

The Hon. T.G. ROBERTS: Not only kids. The Adelaide Bottle Company, which is still in operation, also commenced hiring refillable glass pick axe bottles to the local brewers in 1887. The company ensured the return of its bottles by paying a small fee for each container returned via a network of marine store dealers. The Hon. Robert Lawson made a point about its being not only children. Indeed, some adults made their living in this State, particularly in country areas, through the marine store dealer operations, dealing in pick axe bottles only. As a kid one would marvel at the number of bottles that they processed in order to make a living out of returning those bottles. There was a great tradition of emptying the beer bottles first. The bottles would be put into wooden crates which would be put out for collection or one would take them to the marine stores for emptying. Some kids who were more mischievous than others would drain the bottles before the collector came around.

I should like to bring honourable members up to date on more recent history. South Australia led the way in Australia with the introduction of the Beverage Container Act by Glen Broomhill, who was a Labor Minister in this State, in 1975. The beverage container legislation is an incentive of the application of the polluter pays principle in that it internalises litter and waste cost. There is a direct cost to the consumer if a choice is made to litter or bin such a container. When containers are littered, there is an incentive for others to collect them. Therein lies a problem in Western Australia and Victoria.

Legislation acts to prevent container littering as well as minimising the impact of those containers which are thrown away. Whilst the initial legislation was biased in favour of refillable glass bottles, there was some redirection in the legislation following the High Court determination of the Castlemaine Tooheys (Bond) challenge in 1990. The legislation now contains no incentive for brewers to use refillable beer bottles. While some brewers have continued to use refillable bottles, this choice is now cost related. The present-day effectiveness of deposit legislation is in any case independent of whether or not containers are refillable as the deposit ensures the return of the containers as opposed to a litter or landfill fate.

The legislation covering refillable or returnable containers is vital to encouraging recycling and reuse. Although there is an incentive with the large pick axe bottles and their equivalents today, as regards the smaller bottles and containers there is no real incentive to return—only to recycle as broken glass. In many instances that is no real incentive at all, because many manufacturers do not want to go into the process of using recycled broken glass; they prefer to manufacture their own containers.

The legislation applies to carbonated soft drinks—non-refillable glass, cans, PET and plastic; waters—all containers; beer etc—all containers; wine-based beverages—all containers; spirit-based drinks—cans and plastic; cider, wine and spirits—plastic and cans.

The exemptions are milk—all containers, glass, HDPE, liquid paper; alcohol—glass; non-alcoholic cider—glass; water/waters/soft drinks—deposit-bearing glass designed to be refilled (P-AX); wine, wine-based one litre—cardboard/plastic/foil/foil casks; wine in 250 ml—plastic/foil known as sachets or, in some cases, handbags. It also covers beverages not defined as beverages—no deposit—fruit drinks.

One can see the difference: if one looks at the debris that litters the Patawalonga, one will find that there is very little debris that has a returnable deposit on it. It is all the containers that have no deposit which you will find in the drains and the outlets around the metropolitan area. The South Australian Government response to Tooheys High Court decision was to introduce a 4¢ deposit on wine and beer containers, and in April 1990 we tabled a regulation under the Beverage Container Act which introduced 5¢ deposit for beer and wine containers at collection depots and 10¢ at point of sale. There was bipartisan support for that measure.

In the late 1990s the then Minister for the Environment, Susan Lenehan, initiated a review of the non-alcoholic beverage containers.

The Hon. R.I. Lucas interjecting:

The Hon. T.G. ROBERTS: Studying hard, I understand. Wide consultation resulted in a report to Kym Mayes, who was then the Minister for the Environment, in October 1992. He announced in late October 1993 that a Labor Government would introduce a uniform deposit of 5¢ for all containers of less than one litre, currently exempted under legislation, including fruit drinks, but excluding the two litre HDPE milk containers and wine containers. The rationale behind this move was a question of litter in our streets, streams and creeks. This is litter from casual purchase, for example, flavoured milk cartons, fruit juice cartons and white milk containers that could be collected by a comprehensive household recycling scheme, and people were encouraged to do that. As I said, these are the ones that turn up in our system and find their way down to the Patawalonga.

The Labor Government insisted that the industry fund the recycling program, and that involved $400 000. The then Minister argued that he did not expect the litter problem from white milk containers with a comprehensive recycling collection program and that similar beverages should be treated uniformly, and in this respect I refer to carbonated soft drinks, concentrated cordials, fruit drinks, fruit juices and flavoured milk. There would, of course, be an additional cost to the manufacturer which would have varied between 1¢ and 5¢ a container.

Arguments have been put that container deposit legislation has been achieved at considerable cost, and from time to time exaggerated amounts have been estimated as the cost of operating the system. It is true that there must be a cost in operating deposit legislation as a litter control system, just as there is a cost in the additional anti-litter measures that are run interstate. Clean-up programs also cost money. So, there are comparisons to be done. As I said, the South Australian system is far more efficient with a deposit legislation and a voluntary 'some winners' system than it is just to have rubbish collection because there is no incentive to do that, particularly in isolated areas.

The average consumer is, of course, more interested in the bottom line: how much does it cost me? Indications are that South Australian consumers are not being disadvantaged by container deposit legislation and yet have all the benefits accruing from it. The South Australian position makes a strong commitment to beverage container deposit legislation as a tangible, ongoing and effective means of addressing beverage container litter. However, the Labor Government approach to litter control was multi-faceted, as it provided maximum flexibility.

For example, a study in 1992 showed that the South Australian Government spent nearly twice as much on the activities of KESAB, such as 'Put it in a bin' and 'Tidy Towns', as it does on the administration of the Beverage Container Act. Moreover, whilst a 1990 household survey by McGregor Marketing determined that many South Australians would be supportive of the extension of deposit legislation to other types of containers such as food bottles and jars, this path was eschewed in favour of kerbside recycling initiatives. Kerbside recycling is seen as the most appropriate measure to aggregate materials, which, for the most part, are used in the home and are rarely littered.

Unfortunately at the moment, the kerbside recycling programs are not being matched by a market for the recyclable materials. Thus in South Australia container deposit legislation, education initiatives, clean-up campaigns, on-the-spot-fines and kerbside recycling are all seen to be complementary to, rather than substitutes for, each other. Combined, I believe, they provide both litter prevention and control as well as resource recovery.

South Australia led the way in Australia with the introduction of container deposit legislation. The system has been embraced by the community and established in this State as something of a pioneer in recycling. Community concern for the environment continues to focus on waste management, and many questions have been asked in this Council about the future program that the current Government has in coming to terms with all the problems associated with waste management. I must say to the Council that I perhaps may have applied for a pair to enable me to attend at Highbury tonight a meeting of about 500 residents who are concerned about such a landfill there.

The process of change necessary to address these issues by necessity involves manufacturers, consumers and all levels of Government and has been frustratingly slow. However, the pace of reform is accelerating and there are new initiatives. As the environmental agreements on sustainable development signed at the historic United Nations meeting on the environment in Rio de Janeiro in 1992 are implemented, new and endurable industries and markets will be created in our region that will provide new trade and investment opportunities.

Of course, container deposits address only part of the problem and solutions must include a hierarchy of waste management practices, beginning with waste minimisation, and including recycling, resource recovery and environmentally sound disposal methods. Since the introduction of container deposit legislation, circumstances and products have changed. It seems anomalous that glass bottles containing non-carbonated beverages and food products in glass and plastic containers do not attract deposits, while carbonated beverages in glass or plastic do, although the containers are somewhat similar.

The question is whether there is a case for the existing legislation to be completely overhauled to include all containers—and I hope the Government is considering that—or whether the industry is able to offer alternatives to deposits, protect resources and minimise waste. They do not appear to be too happy about doing that. Clearly, industry has a responsibility to research this area and to work out containers that are able to be recycled and reused so that we do not have a complete throw-away mentality.

If we are to meet the target set by ANZECC of a 50 per cent reduction of solid waste for disposal by the year 2000, quite fundamental changes will need to be made. It appears that with the extension of a lot of our operating dumps there does not appear to be a solution to the problem being proffered by this Government. Recycling has been embraced by all levels of government in South Australia, and local government authorities are now becoming increasingly involved in the introduction of schemes for the collection, separation and reuse of products, but markets have to be found for these products; otherwise the problem you then have is warehousing of the final product after it has been separated and recycled.

I believe it is essential that greater emphasis be placed on the development of products and markets for recyclable materials. In the case of paper, cardboard and pulp products, unfortunately the domestic market is not sizeable enough to encourage people to sell into it; the market forces are preventing all those recyclable products to be soaked up. I understand that the international market is now starting to feel the pinch. So, there has to be new product developments emanating out of those recyclable programs.

One way in which we can overcome a lot of the problems associated with waste through recycling is to design containers that are able to be either recycled or reused. In the case of the Two Dogs lemonade, the alcoholic lemonade, which I understand is selling quite well, I can understand the Government's intention to give the company an exemption period during which it may not have to abide by the legislation. I can understand the attraction of that for the Government and for the company to get established so that it can become an export oriented producer in this State.

All the indications are that the product has established itself in very short timeframe. The market is soaking up—if that is the right word—all the Two Dog lemonade that is being made.

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: I do not think they are putting it in 18 gallon kegs for the honourable member just yet. The problem at the moment is being able to sustain the levels for the market as demand is outstripping supply. The equilibrium for the product will be met shortly and the case for the exemption will fall on ears that may be a little more susceptible to make an exemption for the container. It is my view that the product will stand on its own two feet in the marketplace. The indications are that it could stand a 5¢ levy, as other containers do, and it could compete in the marketplace with the extra impost of the container legislation that applies to most other similar products in South Australia.

The problems encountered by the manufacturers of Two Dog lemonade are that when they look at similar products where some containers are exempt they might believe that they are being victimised. It is the job of the Government to be firm and, if at a later date the company can show that the 5¢ container legislation or the 5¢ tariff on the returnable bottles is impacting on their business, it may be that they ought to make an application for the exemption. I thought it a little presumptuous to make the application before the product was put on the marketplace. With that long history and those few words of application to the theory in principle of Two Dog lemonade, I support the motion.

The Hon. A.J. REDFORD secured the adjournment of the debate.

EASTER (REPEAL) BILL

(Second reading debate adjourned on 12 October. Page 390.)

Bill read a second time and taken through its remaining stages.

GAMING MACHINES

Adjourned debate on motion of Hon. Anne Levy (resumed on motion).

(Continued from page 484.)

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I move:

Leave out paragraph 3 and insert new paragraph as follows:

3. Congratulates the Government on establishing a Gamblers Rehabilitation Fund which will have access to funding of $1.5 million in 1994-95 to initiate programs to deal with gambling addiction.

The first two paragraphs of the motion are statements of fact. The first paragraph notes that the shadow Minister of Transport, when in Opposition, did move an amendment to the Gaming Machines Bill and the second paragraph notes that members on both sides of Parliament, and in both Houses, said that their support for the Gaming Machines Bill was subject to promises of additional Government support for agencies dealing with gambling addiction. Therefore, on behalf of the Government, I do not want to speak against those paragraphs containing statements of fact.

As to my amendment, I indicate that the Government in its first year has taken significant action in establishing a Gamblers Rehabilitation Fund on this important issue. Those members who did go through that long and tortuous debate on the poker machine legislation will know that this was one factor that did influence members or certainly took up some time in the Committee stages of the Bill. It did influence some members in their attitude to the Bill, not all members but there were a number of members who did speak on the issue. The amendment moved by the Hon. Diana Laidlaw was defeated by a majority of members in this Chamber. I cannot remember what the vote was, but it was a reasonable size.

The Hon. M.J. Elliott: Did you vote against it?

The Hon. R.I. LUCAS: Yes; did you?

The Hon. M.J. Elliott: No.

The Hon. R.I. LUCAS: I am more of an economic rationalist than you are.

The Hon. M.J. Elliott: I am more pro family than you.

The Hon. R.I. LUCAS: I have a bigger family than you have. The Democrats talk about it—the Government gets on with it! I will ignore those provocative diversions from the Hon. Mr Elliott. The majority of members in this Chamber who did go through that debate will be appreciative of the fact that the fund has been established. Some members might want to see a bigger sum of money; some may have argued for a smaller sum but, nevertheless, no-one can argue that $1.5 million in 1994-95 is an insignificant sum.

This sum of money will certainly allow a number of new programs to be initiated and perhaps also the continuation of some existing programs to assist those people in the community who already have a gambling addiction and, perhaps, if there is to be an increased number of persons suffering from a gambling addiction, also to provide assistance to those people as well. The sum of $1.5 million in 1994-95 comprises two separate components. There have been negotiations with the Independent Gaming Corporation, which has made a contribution of $1 million in 1994 to fund rehabilitation assistance for gamblers addicted to gaming machines, and there was also the announcement by the Premier on 23 August of this year to provide $500 000 of Government funding in this year to assist in the provision of programs for dealing with gambling addiction.

The fund will be to provide programs for gamblers in need of rehabilitation and for family counselling services. Funding of the programs will be authorised by a committee comprising representatives of non-Government welfare agencies and the Department for Family and Community Services. The welfare agencies and the department will have the opportunity to submit programs to the committee for its consideration. As members will now be aware, the $500 000 that is going in from the Government is being achieved through a contribution or an increased take from the Adelaide Casino, and that will be achieved by increasing the Casino levy on video gaming machines from 4 per cent to 4.2 per cent, so that will now be set at the same rate as that applying to other establishments operating gaming machines. That will result in a contribution of about—

The Hon. R.R. Roberts: In other words, the punter pays for his own rehabilitation.

The Hon. R.I. LUCAS: Is that consistent with the user pays philosophy?

The Hon. R.D. Lawson: The loser pays.

The Hon. R.I. LUCAS: Loser pays philosophy, as my colleague the Hon. Robert Lawson says. It may well be consistent with that. I am advised that that levy is likely to amount to about $800 000 in a full year and, therefore, that will clearly continue to be a significant sum of money from the Government via an increased take from the Adelaide Casino going into the Gamblers Rehabilitation Fund. As members will be aware, these decisions taken by the Government were made after a lot of consultation with the South Australian heads of Christian churches, representatives of non-Government welfare agencies, the Independent Gaming Corporation and the Casino Supervisory Authority. They were discussions in which the Treasurer was involved, but the Premier also took a personal interest and involvement in these discussions, especially with the heads of the Christian churches. The Premier was a key mover and shaker, as he always is, and he certainly was a key mover and shaker in ensuring that there was a contribution and that funding was provided to this fund.

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: A lot of action; yes. The Hon. Terry Roberts says that the Premier is a man of action, and I can only agree with that interjection. I am told that this fund will also fund a program to the extent of about $50 000 to monitor the social impact of gaming machines to assist in the effective targeting of rehabilitation programs. So, it clearly will provide a range of programs to assist family counselling and also to undertake a monitoring program for the social impact of the introduction of the machines. Again, my recollection is that it was an issue that was raised by a number of members when we debated the legislation. I do not want to spend too much time on my feet congratulating the Government; I will leave that to others to do.

The Hon. M.J. Elliott: I will do that in just a second.

The Hon. R.I. LUCAS: The Hon. Mr Elliott tells me that he will congratulate the Government next. If that is the case I will sit down very quickly, because I look forward to that. It does not happen often. The Hon. Mr Elliott is obviously in a magnanimous spirit this evening and is about to congratulate the Government on its actions in this area. On that basis I will sit down now and urge members to support the amendment.

The Hon. M.J. ELLIOTT: I rise to support the motion. I do congratulate the Government on being consistently inconsistent, and we can rely upon that. Unfortunately, to some extent I think the Opposition might be a little guilty of being inconsistent as well.

The Hon. T.G. Roberts: Explain.

The Hon. M.J. ELLIOTT: I will explain. I recall very well the gaming machine debates into the very early hours of the morning, and I think most of the people in this place would also recall them. The Democrats certainly took the view that gaming machines would make no positive contribution to South Australia and society, and we opposed their introduction.

An honourable member interjecting:

The Hon. M.J. ELLIOTT: It was on a conscience vote, but we both took that view. If we look at the issue we find that the shadow Minister of Transport at the time moved a motion that required at least 1.5 per cent of gaming machine turnover to be set aside in a fund. My recollection is that the majority of the then Opposition supported such a move and that the majority of the Government opposed it, saying it was not necessary because the Government would do this and they did not want it entrenched in legislation. I recall personally noting at the time that I would prefer to see things in legislation, because things that are not embedded in legislation governments tend not to do. Whether it is a present or future Government, a change of Minister or Government is sufficient—and sometimes not even that is necessary—for promises to be forgotten, and they certainly seem to be very non-binding.

The Hon. Anne Levy: I never forgot mine.

The Hon. M.J. ELLIOTT: You might not have forgotten them—

The Hon. Anne Levy interjecting:

The Hon. M.J. ELLIOTT: The point I am making is that the then Opposition substantially supported the idea of a levy and the then Government substantially opposed it. We are now in a position where the Government is not putting in anywhere near as much as we would have hoped. The present Government and then Opposition is now taking the contrary view that we do not need to put in as much and the Opposition, which said we did not need to embed it in legislation, is now complaining bitterly that the Government is not doing anything about it. To that extent, I think that there has—

The Hon. Anne Levy interjecting:

The Hon. M.J. ELLIOTT: Your promise is worth nothing if you are sitting on the Opposition bench, basically, in relation to something that is in legislation—and governments and Ministers change. I think we need to reflect back on what happened at the time the legislation was passed, and I would say it is a great pity that it was not embedded in the legislation. The Hon. Diana Laidlaw was trying to do the right thing, with the support of most of her Party, who now no longer share the view that they had—

The Hon. R.I. Lucas: It was not a Party view; it was a conscience vote.

The Hon. M.J. ELLIOTT: No; but the majority of members of your Party had that view. A lot of them must be sitting there very quietly. The Hon. Mr Lucas at least is being consistent; he opposed the levy and he is not too keen on the Government putting in too much money now, either. However, I find him inconsistent, because he often takes the high ground on moral issues and yet I see this as very much a moral issue. He shares part of the blame for the destruction that will be and has already been wrought on a large number of families in South Australia, along with the others who agreed to the introduction of the gaming machines into South Australia. I find it absolutely stunning that the Government can be so lousy that it will put in only $500 000 when the money it is making out of the gaming machines makes that pale into insignificance.

An honourable member interjecting:

The Hon. M.J. ELLIOTT: I do not know what the figure is; I do not have it with me. However, I suspect it would be lucky to be 1 per cent of the profits it is making out of gaming machines. I am absolutely stunned that Government members can be so damned lousy when they know there is a huge amount of pain being created in this community.

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: I do congratulate you. I said I would and I did—true to my word.

Members interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT: I did not say I would not end up calling you a swine or something like that later on. I just said I would congratulate you at some point. Although this motion is not binding, the motion as originally moved is all that we have left since the 1.5 per cent was not incorporated in the legislation itself. I will certainly not be supporting a Government amendment to congratulate itself on what it has done when what it has done is appallingly insufficient. I think a call for the Government to make a contribution of $2 million is quite moderate, so I will be supporting the motion as moved.

The Hon. R.R. ROBERTS secured the adjournment of the debate.

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE BILL

Adjourned debate on second reading.

(Continued from 6 September. Page 256.)

The Hon. R.R. ROBERTS: I did want to make a couple of remarks about this Bill. During the long and protracted discussions we had in this place last year in respect of this Bill, I made very clear during those discussions that it was my view, and I will continue to support the view, that where those people 16 years of age or older are in full possession of their faculties and have been advised on the ramifications of medical treatment, they ought to be able to make a decision as they do under the current law. I made clear then my view with respect to the appointment of medical agents, and I need to reiterate that I believe that is a decision that ought to be taken by those 18 years of age or older.

I have had discussions with a number of parents, and parents throughout South Australia have indicated to me on several occasions that, whilst they are obviously concerned about the rights of individuals and the rights of children, it is a very strong view held by many people in the community that in many instances Governments have taken away the rights of parents. I will be supporting throughout this Bill the position that, where medical treatment decisions in life and death situations have to be made to 'pull the plug', as has become quite common terminology, where people will be left in a moribund or vegetative state, the decision ought to remain the right of parents and/or guardians until the person is 18 years of age. The logic behind that is that there is a separation which is accepted by all members of the

community: when a person turns 18, they make contracts and are then divorced from the family unit. I believe that that accords with the rights of the parents, which I believe are just and appropriate.

Also with respect to medical agents, it is my view that those medical agents ought to be 18 years of age and over. So, it will be my intention to support throughout this Bill those concepts that, where decisions are made by a third party, those third parties ought to be 18 years of age or over, and that the decision in respect of the allocation of those awesome responsibilities of life and death ought only be made by persons who are 18 years of age and over.

I understand it is the intention of the Council tonight to go into Committee on this very important Bill. I have a view that, because of the nature of this Bill and because of the important consequences for the community and the great deal of concern that has been expressed by numbers of people—and I am sure all members here have been lobbied by various groups with respect to this Bill—we should not proceed tonight. I note that as late as today the Attorney-General has laid on the table another 25 amendments. It may well be argued that some of those are relatively simple amendments, but they have been added to the some 50 odd other amendments. I for one have been in the Chamber most of the day and have not had the chance to consolidate these amendments. I certainly believe that, because of the serious nature of this Bill and its importance to all citizens of South Australia, there ought to be an opportunity for all members to have all the amendments consolidated before we go into Committee.

I would prevail on the Council tonight, because of the long and protracted nature of this Bill, to agree with my suggestion. It did lay on the table of this Council last year for some eight months before we actually decided to tackle it near the end of the session, and then it dropped off the back of the bus, as we say. I believe that we will not go all that far tonight with this Bill and I suggest we ought to avail ourselves of the opportunity to take all the amendments and consolidate them. I am often interested in amendments that are proposed by the Hon. Mr Griffin. I was interested in his contribution to this debate in the last Parliament, and I would like the opportunity to go over all these amendments and those of the Hon. Diana Laidlaw, the Hon. Bernice Pfitzner and the Hon. Robert Lawson, so I can put them in some semblance of order and so feel more confident about tackling the Committee stage of this Bill.

I also draw attention to the fact that we members in Opposition do not have the services of hot and cold running assistants, as is the case in Government and, before the Hon. Rob Lucas leaps to his feet and points out the vagaries of the past, I am quite prepared to admit that this is a problem members opposite faced. However, nonetheless, it does not alter my predicament that I do not feel that having another 25 amendments laid on the table this afternoon makes for a proper forum for a sensible debate on this issue. I understand that, while I am speaking in this debate, it does not give me the right to adjourn the debate, but I would prevail upon my colleagues in this Chamber to assent to my request that this matter be put off until such time as all members have an opportunity to consolidate all amendments, and we can then come back and tackle this Bill with the amount of consideration that I believe it deserves.

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I rise to speak briefly in response to the comments of the Hon. Mr Roberts. The decision obviously rests with the majority of members in this Chamber, but as one member I think we should press on with the debate tonight. It has been hanging around for a little while. I understand that the Whips and certainly leaders have been urging members to try to catch up with the past debate, remember how we voted last, and look at the amendments as they are filed.

Most of the amendments have been on file for some time. The Attorney-General will indicate broadly some of his amendments, but my understanding is that a good number of those are consistent with the issues that the Attorney raised when last it was debated. There are one or two new issues.

The Hon. Barbara Wiese: I hope he will be briefer in his explanation.

The Hon. R.I. LUCAS: The Attorney is always concise, as the Hon. Ms Wiese would know. I want to suggest to the Hon. Mr Roberts and to the Chamber that we push on with the debate. Last time the debate was handled relatively amicably between all members of the Chamber, and there was an understanding that once we got through the Committee stage we would recommit various clauses if members felt they had got something wrong in their own thinking, or there had been an error in the amendments, or—what sometimes happens when you have half a dozen different people moving amendments with one being supported and the next one being defeated—a deficiency had been found in the two packages of amendments.

I would think that a sensible course of action (and the Hon. Diana Laidlaw, not me, is responsible for the Bill) would be to follow the previous Government's method of handling this issue: we press on and go through the Committee stage, with a general understanding that there will be the odd clause here and there that needs to be recommitted, because someone wants to rethink a position, or we must work through a slightly changed amendment, or maybe Parliamentary Counsel says there is an inconsistency between the two. That is, in my judgment, a sensible course of action. Certainly, I will not support an adjournment. I would like us to continue, if we can, to our normal time tonight and continue with the process tomorrow and, hopefully, break the back of some of the key decisions we will have to make.

The Hon. M.J. ELLIOTT: I have not made a contribution so far on the second reading debate, having had ample opportunities when this legislation was previously before us. I have not put amendments on file, partly because the issues I was mostly concerned about have been addressed within the Bill as it came to us. Some of the issues I raised last time have been picked up, and the few remaining issues of concern to me appear to have been picked up by amendments of others in this Chamber. I do not think it will help the issue by having another set of amendments before us. I share the view of the Hon. Mr Lucas that we go ahead.

I have spoken with a couple of people already and my preferred position is to go into Committee and then report progress, to give us all a chance to digest what we have ended up with at the end of the Committee stage, and that we may recommit. My preference would be to finish it off today and tomorrow and come back on Tuesday, giving us very little work to finish it off. We could finish it as perhaps the first item of business on Tuesday. But, if we have left any anomalies within the legislation, or there have been errors some people think they have made on reflection, they will have a chance to address them. That is certainly my preferred

position, and I would like to put that on the record. Once again I reiterate my support for the general thrust of the legislation.

The Hon. BARBARA WIESE: I want to contribute briefly to this debate as well. When the matter was last before us I was the Minister handling this legislation, and the product that we finished with at the end of the debate last time—although we did not actually quite complete the issue—was something of a dog's breakfast, if I might put it that way. There were certainly many inconsistencies with the Bill by the time we had considered all of the amendments before us, and it is quite possible that the debate this time might very well end up in a similar position.

I therefore agree very much with the comments that have been made by the Leader of the Government, and also the Hon. Mr Elliott, that we should nevertheless proceed through the Committee stage and report progress, so that we can take stock a second time and see just what we have achieved and, if there are some inconsistencies, we should try to thrash those out once we have dealt with all of those amendments that are currently on file. I am sure that with some common-sense and reasonable discussion we might end up with a Bill which is not necessarily what we might all agree with as individuals but nevertheless a piece of legislation that is a reasonable and consistent compromise.

The Hon. K.T. GRIFFIN (Attorney-General): I feel that having prompted the first contribution from the Hon. Mr Ron Roberts I ought to at least make several observations, but not of any great length. I recognise that the amendments I have put on file are extensive and are much later certainly than I would have wished to have them on file. But members on both sides of the Chamber will appreciate that this Bill does raise some very complex issues, and the Bill, as the Hon. Barbara Wiese has said, when it was last considered by the Council did end up being internally inconsistent and was essentially a dog's breakfast. It is very difficult, even working with this Bill, to try to bring it into a coherent state. Certainly, I believe my amendments, if carried, will achieve a lot of that, although others may disagree.

The Hon. Anne Levy: It will certainly bring about consistency but not necessarily in the way we would like.

The Hon. K.T. GRIFFIN: I was going on to say that others may not agree. A number of issues are essentially drafting; some amendments ensure consistency of approach throughout the Bill; and some issues are of substance on which undoubtedly there will be significant disagreement, particularly if one seeks to bring objective tests to bear rather than subjective tests in certain processes which have to be exercised under this Bill. I agree with the approach that has been suggested by several members, that when we get it through this Committee stage it would be helpful to allow it to lay on the table, hopefully reprinted, so that we can then see if there are again inconsistencies with what the majority of the Council may have in fact accepted, and ensure that we do not send the Bill to the House of Assembly in a form which is internally inconsistent.

I suppose, having had another look at the Bill we ended up with last time, the sensible thing may have been to start it afresh, but that is not possible and, in the circumstances of the last debate, members would not appreciate that approach. On the other hand, we do have to send something to the House of Assembly which is coherent and which is certainly consistent throughout.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Objects.'

The Hon. DIANA LAIDLAW: I move:

Page 1, line 22—After 'treatment' insert 'to allow persons over the age of 16 years to decide freely for themselves on an informed basis whether or not to undergo medical treatment'.

This is the first of a series of amendments designed to reinstate 16 years as the age at which young people can consent to medical treatment. As members would be aware, the Consent to Medical and Dental Procedures Act 1985 enshrines 16 years as the age at which young people can consent to medical treatment—a situation which had been recognised to that time. The existing legislation, which has been in place for nine years, works well in practice and, if one is looking for indicators, the absence of complaints to either the Children's Interests Bureau or the South Australian Health Commission is a useful guide.

In 1985, the Act adopted a sensible approach to the increasing autonomy and rights of young people. It recognised the principle of emerging and developing maturity—a maturity that is supported by the research literature on developmental psychology. To revert to a requirement of 18 years of age as the Bill currently seeks to do would be a regressive step. It would be seeking to enforce legally a state of dependency long after young people can make informed decisions.

A major concern is that raising the age to 18 would deter young people, who are taking responsibility for their own health care, from seeking medical advice. Health professionals working in the area of sexually transmitted diseases are particularly concerned about the implications of a shift to 18 years. Infection rates of young people for certain sexually transmitted diseases do not encourage complacency. Last year, for example, the STD clinic saw 710 new cases in males and females under 19 years of age. So, to seek to raise the age to 18 years, thereby making young people's access to health services more difficult, runs counter to Government and community emphasis on sexual responsibility and prevention of sexually transmitted diseases, HIV and AIDS. It establishes a large credibility gap for those services, which currently have a widely advertised mandate to provide confidential services as a means of encouraging and facilitating access to young people. So, there are a host of practical reasons as well as, I would argue, widespread support for maintaining 16 years as the age for consent to medical treatment. Conversely, there is considerable concern at the prospect that such a retrograde step may be taken as to raise the age to 18 years. Bodies such as the Children's Interests Bureau, Action for Children and health professionals, whose daily work brings the practical realities of the situation into stark focus, have expressed concern at the prospect that this Parliament may take such regressive action.

The AMA sees it as an 'an undesirable spin-off of this Bill'. One could hardly argue that the AMA is a radical and irresponsible force in our community. The Queensland Law Reform Commissioner, who was about to base his recommendations on the 1985 Consent to Medical and Dental Procedures Act, found the proposed changes to be 'extraordinary'. He had argued that a change from 16 to 18 years would be taking the law back to the middle ages. I would urge support for my amendment.

The Hon. CAROLYN PICKLES: I support the amendment moved by the Minister for all the reasons that she has

put so eloquently, and also because the Labor Government introduced the original legislation to make 16 years the age at which a person may consent to medical treatment. It is consistent with our policy, and I support it.

The Hon. K.T. GRIFFIN: I oppose the amendment, but let me say in this context that I do not oppose the reduction to 16 years as the age at which a person may consent to medical treatment. There are certainly amendments within the Bill which are being proposed and which I will support to, in effect, maintain the *status quo* in respect of the issue of consent to medical treatment.

The problem with this amendment is that it probably attempts to pre-empt the other issue which arises, and that is whether a person under the age of 18 but over the age of 16 may be able to make an anticipatory grant or refusal of consent to medical treatment, or appointment of an agent to consent to medical treatment under clauses 6 and 7. I would certainly not agree to the ages in those two clauses being reduced to 16, because clauses 6 and 7 require a much more significant level of experience and anticipation of what the future might hold with respect to making decisions about the important issues raised in those clauses than consenting to medical treatment as and when the need for it arises.

If one looks at the proposed amendment, one will see that it is to amend paragraph (a), which presently relates to consent to medical treatment. We need not amend it if we are focusing only on consent to medical treatment; there is an amendment by the Hon. Robert Lawson to add a new clause 5A, which addresses the issue of consent in that respect, and other amendments are to be moved by the Hon. Diana Laidlaw to clause 11 which may well be acceptable subject to an amendment or two which we can debate at the time we get to those proposals.

However, for the moment, the objects are clear; the object is to make certain reforms to the law relating to consent to medical treatment, and one does not need to address the age of 16 at that point. However, if one looks at the amendment one will see that it is to add 'to allow persons over the age of 16 years to decide freely for themselves, on an informed basis, whether or not to undergo medical treatment', and I would suggest that that goes further than merely consent to medical treatment, which is the issue that I indicated I am prepared to support.

The objects are broad; there is no need to refer to the age at which consent may be exercised or when persons may be allowed to make decisions for themselves about medical treatment, as that is different from the issue of consent, and we ought to leave the objects as they are.

The Hon. ANNE LEVY: I am sure it will come as no surprise that I support this amendment and do so most wholeheartedly. I do not accept the arguments put forward by the Attorney-General. Clause 3 deals with the objects of this Act; one of the titles of the Bill includes the words 'Consent to Medical Treatment', and it seems to me that it is most appropriate to indicate in the objects of the Act that persons over the age of 16 years are able to consent validly by themselves to medical treatment. While the word 'consent' does not appear, I defy anyone to say that 'deciding freely for themselves on an informed basis' means anything different from giving an informed consent. To me, they are synonymous.

I have previously spoken about the necessity for retaining the age of 16 as the age for consent to medical treatment in this State. It has served us very well. Since it was first introduced over 10 years ago, to my knowledge there have been no problems in having 16 as the age for consent to medical treatment. Initially there was some confusion. Some people thought that it was the age of consent for sexual relations; but once that was sorted out—that it was the age of consent to medical treatment—it has worked very well in the community.

Since the debate began in this place, I, and I am sure many others, have received a large number of letters from people who are alarmed at the thought that we might in some way be raising the age of consent to medical treatment from 16 to 18 years. This alarm is being widely expressed throughout the community, including many medical groups. The Medical Women's Association is one group which has contacted me. Only today—

Members interjecting:

The CHAIRMAN: Order!

The Hon. ANNE LEVY: It is a very funny issue, is it not, Mr Chairman? Only today I received a letter from the Chair of the board of directors of the Women's and Children's Hospital urging us to maintain 16 as the age of consent. One issue which she raised and which has not been raised with me by any other group is worthy of mention. She feels that raising the age of consent would cause many practical problems, including issues which may result from child physical and sexual abuse. If there is physical or sexual abuse of children, particularly by parents, to say that parental consent must be obtained before medical treatment can be sought is to condemn children to continued physical and/or sexual abuse. I doubt whether any member in this Chamber would approve of that course of action.

The Hon. Barbara Wiese: Perhaps we should lower it.

The Hon. ANNE LEVY: It is and has been 14 years in New South Wales for many years. I am not aware that there have been any problems in New South Wales through having 14 years as the age of consent to medical treatment. However, 11 years ago this Parliament decided that it should be 16 years. I hope that it will continue to feel that 16 is the appropriate age and not take the retrograde step of raising it to 18 years.

The Hon. BERNICE PFITZNER: Although I passionately support the reduction from 18 to 16 years, like the Attorney-General I do not think that this is a suitable place to put the reduction because these are the objects of the Act. The age of 16 years is really a strategy to achieve the objects. Although here it is reducing the age to 16 years for consent to medical treatment, there is the other controversy of reducing the age to 16 for the appointment of an agent. On clause 4 I shall speak more fully about the reduction of the age. However, I do not support that it be put in the objects of the Act.

The Committee divided on the amendment:

AYES (14)

Cameron, T.G.	Crothers, T.
Davis, L.H.	Elliott, M. J.
Kanck, S. M.	Laidlaw, D. V. (teller)
Lawson, R. D.	Levy, J. A. W.
Lucas, R. I.	Pickles, C. A.
Redford, A. J.	Roberts, T. G.
Weatherill, G.	Wiese, B. J.

NOES (6)

Feleppa, M. S.	Griffin, K. T. (teller)
Irwin, J. C.	Pfitzner, B. S. L.
Roberts, R. R.	Schaefer, C. V.

Majority of 8 for the Ayes.

Amendment thus carried.

The Hon. DIANA LAIDLAW: I move:

Page 1, lines 28 and 29—Leave out 'the dying and to protect the dying' and insert 'people who are dying and to protect them'.

This is a simple amendment; some would even argue that it is a matter of semantics. We should not lose sight of the fact that we are talking about people, in particular people who are dying. The language as it stands could be said to depersonalise the issue. The amendment seeks to redress the situation.

Amendment carried; clause as amended passed.

Clause 4—'Interpretation.'

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

Page 2, after line 3—Insert definition as follows:
'anticipatory direction'—see section 6.

This amendment seeks to explain the term anticipatory direction. The explanation is necessary because of an amendment I will be moving to clause 7(7), and probably I ought to explain that amendment now, so that honourable members will understand why I am moving the present amendment. Clause 7(7) now provides:

The powers conferred by a medical power of attorney must be exercised in accordance with any lawful directions contained in the power of attorney.

This provision was not amended when what is now clause 6 was put in the Bill. Clause 6 provides that a person can give directions about the medical treatment he or she wants or does not want, if he or she is incapable of making decisions about medical treatment in the future. When a person is given such a direction any medical agent should be obliged to observe those directions, as well as any directions in the medical power of attorney. The amendment I propose in clause 7(7) requires the agent to exercise his or her power consistently with any directions in an anticipatory direction. So, it is an endeavour to ensure consistency of approach.

The Hon. DIANA LAIDLAW: I support the amendment.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 2, line 9—Leave out '18' and insert '16'.

Essentially, one could argue that it is consequential on the passage of the earlier amendment in relation to the objects and it does define a child as a person under 16 years of age.

The Hon. K.T. GRIFFIN: It is not so much consequential, I would suggest, upon the earlier amendment, but more necessary for the amendment which is going to be addressed under clause 11. It is in that context that I am prepared to indicate that I am going to support it, although I am not going to support, as I indicated earlier, the amendments to reduce the age of 18 years to 16 years in clauses 6 and 7 when we get to those amendments. But, looking at the Bill, the only relevance of the definition of child is in the context of the provision of medical treatment to children which we deal with later.

The Hon. BERNICE PFITZNER: Having put that same amendment on file, I also believe that it is not appropriate that it be put in the objects, but that it is appropriate that it be put in this clause, for the same reason, namely, that it is relating to the medical treatment of children, and in that context I do believe that it should be 16 years of age rather than 18.

The Hon. SANDRA KANCK: During my second reading speech I indicated my concern about the Bill with its current provision of 18 years of age and said I would be supporting any amendments that brought it down to 16 years of age. I simply want to reiterate what I said there in perhaps slightly different words; that maturity has nothing to do with age. I am sure if you were to take someone like the AIDS victim, Eve Van Grafhorst, at five or six years of age she had a far greater maturity and wisdom about death and the decisions that she had to make than many people at 50 or 60 years of age.

The Hon. BARBARA WIESE: Since I did not address this issue in my second reading contribution and have not addressed it since a similar Bill was last before the Parliament, I simply want to place on the record my support for this amendment. I feel very strongly that we should preserve the current law. There are no reasons that I know of why it ought to be changed. I know of no problems that have arisen with respect to the law as it stands. To leave the Bill in the form that it left the Parliament last time with respect to this age question would be a retrograde step and would certainly leave me to consider whether or not I would support the legislation at all, if this matter were not addressed and the age reduced to 16.

The Hon. R.R. ROBERTS: I am supporting this particular amendment. It is consistent with a statement that I made prior to the Committee stage of this Bill. It clearly determines that a child under 16 is under direct parental guidance and, in so far as decisions for personal agreement to medical treatment are concerned, it is consistent with what I said, that I believe that a 16 year old in full faculty and fully aware of the circumstances can make those decisions, and therefore I will be supporting this on that basis.

The Hon. R.D. LAWSON: I also support this amendment. The expression 'child' is only used, as the Attorney mentioned, in one section of this Act; that is, section 11. Section 11, as it stands, requires a medical practitioner before administering medical treatment to a child to seek the consent of a parent or guardian of the child. So, the only effect of this definition is to address that particular section.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 2, lines 12 to 16—Leave out the definition of 'extraordinary measures'.

This amendment needs to be considered in conjunction with the amendment to clause 4, page 2, which after line 20 inserts a definition of 'life sustaining measures'. Advice from palliative care specialists in this State and interstate indicates that the ordinary extraordinary distinction should be avoided. The term has been almost entirely abandoned in North America. The use of the term 'conventional treatment' in the definition could result in substantial disagreement as to what is meant by conventional treatment in a given situation. A definition of life sustaining treatment is more specific and preferred by practitioners who are confronted with such situations on a day to day basis.

I would like to add that the Minister for Health has also received correspondence from Professor Margaret Somerville, who was born and used to live in Adelaide and who now practices at Magill University in Canada. She is a lawyer and a pharmacist and is known as an authority in this area. Her advice is that the ordinary extraordinary distinction should be avoided, as I indicated. She said that it is not the measures that tend to be characterised as ordinary or extraordinary, but the persons to whom those measures are applied and the term allows the introduction of subjective judgments under the facade of there being objective assessments. It is for that reason that she has argued very strongly when assessing the Bill that we should be removing 'extraordinary

measures' and inserting in its place a reference to 'life sustaining measures'.

The Hon. BERNICE PFITZNER: I oppose the amendment because, although I support the change of the definition, I think one should still use the term 'extraordinary measures'. Clause 16(2) provides in line 4:

> . . . the patient's representative to the contrary, [is] under no duty to use, or to continue to use, extraordinary measures. . .

If the Minister's amendment passes, we would have to substitute 'life sustaining measures' and it would then read 'under no duty to use, or to continue to use, life sustaining measures in treating'.

The Hon. Anne Levy interjecting:

The Hon. BERNICE PFITZNER: Let me elaborate my reasoning. As medical practitioners we are always inclined to keep on with life supporting measures. When we do not want to, we do not use those words but use 'do not resuscitate'. There is the additional wording of 'if the effect of doing so', but there may be some people who are mischievous and may claim that they are under no duty to use or to continue to use life sustaining measures. Further, in line 10, subclause (3)(b) provides:

> (3) for the purposes of the law of the State. . .
> (b) the non-application or discontinuance of [life sustaining measures] in accordance with subsection (2) does not constitute a cause of death.

I believe that 'extraordinary measures' is better than 'life sustaining measures' for those of us who are medical officers. We find it difficult to stop life sustaining measures and we do not find the same difficulty when we are asked to stop using extraordinary measures. True, there is 'if the effect', but sometimes the 'if' is not understood.

The Hon. SANDRA KANCK: The term 'extraordinary measures' is one that, if there were legal challenges along the way, could be used as the basis for such a challenge if it is left in the Bill. What might be an extraordinary measure today, with the advance of medical technology, could be an ordinary measure tomorrow. In almost any area of specialty in medicine, the specialist can argue that his methodology or equipment is not extraordinary but is run of the mill. For that reason we need to move to 'life sustaining measures' instead of 'extraordinary measures'.

The Hon. CAROLYN PICKLES: I support the amendment, which is a clearer definition of the Bill's purpose and I do not understand the Hon. Dr Pfitzner's comments about clause 16 because the words 'if the effect' clarifies the situation for me and I am sure it clarifies the situation legally. I think 'life sustaining measurers' as described in the amendment makes it very clear precisely what it means and it makes clause 16 even clearer.

The Hon. A.J. REDFORD: If this definition is adopted, is there a possibility of deliberately providing a non-terminal incompetent patient of appropriate tube feeding with the intention of causing death?

The Hon. DIANA LAIDLAW: No. From both the medical and legal perspective the answer is 'No'. In response to the remarks of the Hon. Sandra Kanck, she is right as to the issue of litigation. While I did not spell that out specifically in moving my amendment, I did use the expression that the term has been almost entirely abandoned in North America, which members know is the home of litigation and which is one of the reasons why it has been dropped, that is, because of the confusion that has arisen. It is for that reason also that Dr Michael Ashby, Director, Palliative Care, Medicine and Radiation, Royal Adelaide Hospital, and also Director, Mary Potter Hospice, Adelaide, recommended to the Minister that the amendment be introduced. It has been supported by the Minister.

The Hon. A.J. REDFORD: Can the Minister explain why the term 'temporarily' is included in the definition? Why does it pertain to someone who is temporarily incapable of independent operation?

Members interjecting:

The CHAIRMAN: The Hon. Mr Elliott.

The Hon. A.J. REDFORD: Mr Chairman, I do not want the answers to my series of questions interrupted because, if ultimately there is a dispute in court about the intention of this place, some of the Minister's responses might be critical to that interpretation.

The CHAIRMAN: That cannot be taken into account. While we are waiting on advice, we will hear what the Hon. Mr Elliott has to say.

The Hon. M.J. ELLIOTT: The issue here is the question of where a particular bodily function may not be operating temporarily. It is possible that a person has other injuries that will leave them forever in a moribund state, which is where it relates to clause 16. One might be able to assist them by way of ventilation or some other way of getting some body function that is temporarily not working to continue to function but, at the end of the day, one has not done anything in terms of whether or not this person is going to be in a moribund state.

The Hon. A.J. REDFORD: Does that not mean, as to the other physical injury, if someone has two or three physical injuries, one of which is temporary, but the others are permanent, that you are dealing with three physical conditions, all of which are temporary?

The Hon. M.J. ELLIOTT: If you had three conditions that are all temporary you will not be in a moribund state at the end of it all. It would seem to me that a person may have severe brain injury from which they have no prospect of recovery and which is permanent, but some other treatments might be applied, because they have some other organs damaged as well which will recover in time. If they get through that temporary period and remain permanently in a moribund state, what you are saying is that there is no point in the application of the temporary treatments if there are other injuries or disease or whatever which will leave that person in a permanently moribund state.

The Hon. DIANA LAIDLAW: In response to the Hon. Angus Redford's question, I have been advised that it covers a situation where a person may be in a moribund state, for instance, where a heart could theoretically be restarted but it does not have to be or is not restarted. That is the situation.

The Hon. K.T. GRIFFIN: I think it ultimately comes down to a question of one's preference as to whether the description is 'extraordinary measures' or 'life sustaining measures', because I do not think that the fact that the words 'in relation to a person suffering from a terminal illness' have been left out really has any bearing on the ultimate use of the description, particularly if one looks at clause 16(2) as it presently is, remembering that I have quite extensive amendments when we finally get to that clause. If one takes it in the context of clause 16, a medical practitioner responsible for the treatment or care of a patient in the terminal phase of a terminal illness, or a person participating in the treatment or care of the patient under the medical practitioner's supervision, in the absence of an express direction to the contrary by the patient or the patient's representative, is under no duty to use or to continue to use extraordinary

measures. As I understand the Hon. Diana Laidlaw's amendment on file, that would be changed to 'life sustaining measures'. You then go back to the definition.

If the change in terminology is adopted by the Committee, the definition means what is in this definition clause and in no other respect is it to be interpreted. That is where I join issue with the Hon. Sandra Kanck it does not matter whether techniques, knowledge, etc. might change in the future, because 'extraordinary measures' or 'life sustaining measures' means only what is in the definition. It is medical treatment that supplants or maintains the operation of vital bodily functions that are temporarily or permanently incapable of independent operation. In terms of the substance of the legislation, it really does not matter whether one prefers to stay with 'extraordinary measures' or moves to 'life sustaining measures'. If one stayed with the description of extraordinary measures, I would suggest it would then need to be amended to pick up the amendment of the Hon. Dr Pfitzner, which then brings it very much in line with that which the Hon. Diana Laidlaw is moving. It is a question of preference whether you want 'extraordinary measures' or 'life sustaining measures'. It does not make any difference to the issue at this point, and even with my amendment I do not think it will make any difference because, when my amendments come up for consideration, if the Committee accepts 'life sustaining measures' as the description it prefers, I will seek to move my amendment in amended form.

The Hon. A.J. REDFORD: Why is the word 'terminal' absent from this definition? Is 'moribund state' a term that has some specialist meaning in the terminology used by medical practitioners and, if so, what is meant by the term 'moribund state'?

The Hon. R.D. LAWSON: I support this amendment. The expression 'extraordinary measures' appears in the Natural Death Act, which is the existing legislation. It seems to me that 'life sustaining measures' describes more accurately what we are talking about. If, for example, one were to be explaining the effect of this Act to a client, particularly one who might wish to give a special direction in a medical power of attorney, it seems to me that the expression 'life sustaining measures' is one which more easily conveys exactly what is meant.

The Hon. BERNICE PFITZNER: I move:

Page 4, lines 14 to 16—Leave out 'but does not include medical treatment that forms part of the conventional treatment of an illness and is not significantly intrusive or burdensome' and insert ', and includes assisted ventilation, artificial nutrition and hydration and cardiopulmonary resuscitation'.

The Hon. DIANA LAIDLAW: In answer to the Hon. Mr Redford, 'moribund' means a deathlike or dying state; a person who is comatose. With respect to the definition, the reason why the term 'terminal illness' has been removed is that, as the Attorney explained when speaking to this issue earlier, this definition must be read in the context of clause 16(2), and it is in clause 16(2) that we see the reference to terminal illness.

The Hon. R.I. LUCAS: Does the advice available to the Minister indicate that 'extraordinary measures' as currently used would include assisted ventilation and artificial nutrition?

The Hon. DIANA LAIDLAW: Yes.

The Hon. Bernice Pfitzner's amendment carried.

The Hon. R.D. LAWSON: I move:

Page 2, line 19—Leave out the definition of 'Guardianship Board'.

This amendment arises from the fact that later on in the Committee stage I will be moving that the Supreme Court be substituted for the Guardianship Board. It is my view that the Supreme Court is the more appropriate forum for determining questions under this Act, especially in the initial stages. One might hope that, in the fullness of time, it might be possible, after a body of precedent is built up, to allow the jurisdiction to pass to some other tribunal, but until that occurs it seems to me to be appropriate that we use the Supreme Court as the forum. I am fortified in the fact that the Attorney, in amendments foreshadowed by him, supports the supervisory jurisdiction for that court.

The Hon. K.T. GRIFFIN: As the Hon. Mr Lawson indicates, I have an amendment to clause 9 which will address this issue later. I have a very strong view that, where it is a matter of life or death, you do need to have in place appropriate mechanisms for reviewing decisions taken, and that the Guardianship Board is not the appropriate body for that purpose. If one looks at clause 9 as it presently exists, there is no appeal from the decision of the Guardianship Board under that clause. I think that makes the Guardianship Board a law unto itself. Because of the quasijudicial nature of that board, it is not truly independent such that it can make this decision.

If one goes to the jurisdictions overseas, particularly in the United Kingdom, it is the court that makes decisions about this issue, medical treatment, and there have been some notable precedents created by decisions of the courts, particularly in the United Kingdom, but also in other countries such as Canada and the United States. The argument may well be that it is an expensive jurisdiction and not flexible. Notwithstanding that that may be a criticism, it does not accord with the facts in these sorts of cases. Before the Guardianship Board was established, the Supreme Court did exercise and in fact still exercises jurisdiction under the Aged and Infirm Persons Property Act, and from personal experience the jurisdiction was inexpensive and the decisions were made quite quickly but with a proper attention to detail.

It may be argued that getting to the Supreme Court can be a long process. Again, that is not in accord with practice. Applications can be made to the Supreme Court and actually heard on the same day. That does happen frequently in a variety of areas. *Habeas corpus*, for example, is one of those where urgent decisions have to be taken where a person alleges that he or she is unlawfully detained. In those circumstances, quick decisions can be taken, but we must remember that what we are talking about here are basically persons who are in the terminal phase of a terminal illness or in a persistent vegetative or moribund state, and presumably that condition has persisted for not just a matter of hours but more likely days or even months and difficult decisions might have to be taken.

In circumstances where there is a disputed decision, someone may be alleged as the agent or attorney as having an interest which militates against the best interests of the patient. There might be a significant conflict for a variety of reasons. In those circumstances it is important in my view that the resolution of those sorts of issues ought to be resolved in a court which is truly independent rather than a body such as the Guardianship Board which is more used to dealing with issues of custody and property than with these life or death decisions. Therefore, I propose to support the amendment by the Hon. Mr Lawson and also move at a later stage my amendment in relation to the supervisory jurisdiction of the Supreme Court.

The Hon. DIANA LAIDLAW: I oppose the amendment. I opposed it the last time when the Hon. Trevor Griffin moved it, and on that occasion the majority of members in this place also opposed it. Therefore it is not in the current Bill, but I will explain again my reasons for doing so, particularly as the Hon. Robert Lawson, who has moved this amendment, was not in this place at the time. This amendment is the first of a series designed to place the jurisdiction to review a medical agent's decision with the Supreme Court rather than with the Guardianship Board. Clause 9 provides for a review of the medical agent's decision in certain circumstances. Members may recall that the select committee rejected the notion of any form of review or appeal of a medical agent's decision. The committee believed that, just as a decision in relation to treatment which one makes when one has full capacity is not subject to review or appeal, nor should the decision of one's agent be subject to review. However, after further consultation and receipt of submissions, a limited form of review was ultimately accepted and incorporated into the Bill in this place.

Upon reflection, one can perhaps anticipate some practical difficulties with the provisions as they now stand. I have amendments on file to deal with the situation. Indeed, some members would prefer to revert to the select committee's original position of no review or appeal, and I am inclined to be one such person. It is the medical practitioner, not the medical agent, who will actually carry out the treatment, so there is already a limitation on the powers of the medical agent. If the medical practitioner believes that the decision of the medical agent is in some way flawed as the Bill stands, he or she may apply to the Guardianship Board for a review.

I believe that the ability to apply for a review should not go beyond the treating medical practitioner, and the amendment I have on file to move at the appropriate time seeks to deal with that situation. However, to seek to place the jurisdiction to review the medical agent's decision with the Supreme Court and to broaden even further the range of persons who may apply for review to include the public advocate is to take the Bill into a realm beyond which the select committee had in mind and certainly what members had in mind when the Bill was last before this place. I for one do not support it.

The Hon. CAROLYN PICKLES: I do not support this amendment. I was one of the people, such as the Hon. Ms Laidlaw, who supported the original concepts of the select committee which did not mention the Guardianship Board. I did not support the amendment when it was moved in this Chamber previously, and my inclination is to oppose clause 9 completely. Therefore, I oppose this amendment.

The Hon. ANNE LEVY: Mr Chair, I would appreciate guidance from you and/or the Minister. As I indicated in my second reading contribution, I strongly oppose any form of appeal to anybody. If I am competent, I make these decisions for myself. If I am not competent, or suspect that I may not be competent at some particular time, I entrust someone with the medical power of attorney which gives them the right to make decisions on my behalf. I will not do this unless I trust someone implicitly and, if I trust them implicitly, I certainly do not want lawyers coming in and interfering—be it as public advocates, Supreme Court judges, or any form of lawyer—with my personal decisions and with the person to whom I have given the right to make those decisions on my behalf if I am not able to.

I certainly do not want the Supreme Court brought in. While not necessarily agreeing with the Bill introduced by the Hon. Sandra Kanck regarding the appointment of judges, I do have certain reservations about the quality of some of our judges, and the thought that they could overrule what I have expressly wished fills me with horror.

The Hon. Sandra Kanck: You could have rougher than usual handling.

The Hon. ANNE LEVY: Indeed, there might be rougher than usual handling set down by the Supreme Court.

An honourable member interjecting:

The Hon. ANNE LEVY: No, indeed. The judge might override my medical agent to whom I have given that power, and I certainly strongly object to the idea of the Supreme Court interfering. However, I do not like the idea of the Guardianship Board, either.

The Hon. K.T. Griffin: We are not making this law just for you.

The Hon. ANNE LEVY: First, it is a conscience vote, and, secondly, there are many—

The Hon. K.T. Griffin interjecting:

The Hon. ANNE LEVY: Quite. And I do not wish to impose on any other South Australian what I do not wish imposed on myself. While I do not want that imposition I do not see that any other South Australian should have that imposition, either. I seek advice as to how I should vote on this amendment. I suppose, if there has to be—

Members interjecting:

The CHAIRMAN: Order! The honourable member is asking for advice. We will try to answer it, if we can.

The Hon. ANNE LEVY: Thank you, Sir, if I can put the question against the inanities coming from the other side.

The CHAIRMAN: That will not help. Just put the question.

The Hon. ANNE LEVY: I suppose, if there has to be an appeal system, I would prefer it to be the Guardianship Board than the Supreme Court, which would suggest that I should vote against this amendment. However—

The Hon. Diana Laidlaw: You have a dilemma.

The Hon. ANNE LEVY: The amendment being put is to leave out the definition of the Guardianship Board, which I would be very happy to do because I do not want the Guardianship Board there at all. On the other hand, I would rather have the Guardianship Board than the Supreme Court. I suppose I can vote for the definition of the Guardianship Board, but then vote against the appeal rights of the Guardianship Board and, as indicated by the Attorney-General, if we have to recommit to tidy up and make consistency, at that stage the definition of the Guardianship Board would be cut out as it would be superfluous. Am I right in that reasoning?

The Hon. DIANA LAIDLAW: Certainly, what the honourable member has just outlined makes some sense. There is another way of doing it and that is voting for the amendment. I do not propose to do so, but it is a dilemma. I accept the situation as the honourable member has outlined it. It is not an easy situation. The way the honourable member has suggested she should vote certainly makes some sense in the circumstances.

The Hon. BARBARA WIESE: I rise to agree wholeheartedly with the comments made by my colleague, the Hon. Ms Levy. I, too, object very strongly to the thought that, in this situation where we are discussing providing the opportunity for individuals to appoint a medical agent to act on their behalf in accordance with their wishes at a time in the future when they may not be in a position to make decisions of their own, any decisions taken by that individual should

be subject to interference by anybody; this is also objectionable to me.

When this matter was last before the Parliament I opposed the idea that either the courts or the Guardianship Board should be involved in this process, but ultimately I was prepared to accept a role for the Guardianship Board on the basis that some members of the Council at that time were prepared to support the legislation if that role was included in the Bill.

It therefore seemed a compromise worth making in order to achieve the broader benefits that could be brought about by the legislation itself. I am certainly not prepared to go any further than adding a role for the Guardianship Board. I would object strongly to the courts becoming involved in this situation. I think that a more informal process is desirable if there is any role to be played by an outside organisation at all.

However, I am faced with the same dilemma that has been outlined by the Hon. Ms Levy, because my preferred position is to have both the Guardianship Board and the Supreme Court proposition defeated.

The Hon. M.J. ELLIOTT: I indicate right now that I will not have a bar of the Supreme Court getting involved in this matter. The Government likes cutting down on numbers of teachers and nurses; I like cutting down on the number of lawyers in this State. The questions that will be put before the Guardianship Board are not questions of law.

The Hon. K.T. Griffin: They may well be.

The Hon. M.J. ELLIOTT: They are not questions of law. If members read clause 9 carefully they will see that you must not be in the terminal phase of a terminal illness; you must be suffering from an illness that is not terminal phase, and that is the only time at which a dispute can arise at all, and it would have to be established that not only was the agent acting contrary to any expressed direction that may have been given by the patient but also that, in acting in such a way, it was actually putting the patient at a risk to which they were otherwise not subjected. Those are medical questions; certainly they are not legal questions. Judges have enough problems with the law without giving them anything such as questions of medical fact to worry about.

The Hon. CAROLYN PICKLES: It would appear to me that those people who wish both to retain the Guardianship Board and to oppose clause 9 should oppose this amendment, which is what I intend to do, because, as the Hon. Ms Levy pointed out, if the proposal to delete clause 9 is successful, the Bill can be recommitted to delete the interpretation of the Guardianship Board, and that would seem to me to solve the dilemma both of the people who wish to retain the Guardianship Board and of those who wish to have it deleted altogether.

The Hon. A.J. REDFORD: I support these amendments. I will just deal with what I can only describe as some rather inane criticisms that have been put forward in this place of both the Supreme Court and the legal profession, with some sort of 'let's bash lawyers' attitude.

The Hon. Mr Elliott is giggling away, but I will explain one thing very clearly to him: no lawyer has ever walked into a courtroom without a client; no lawyer ever initiated a legal proceeding without a client; and the fact of the matter is that lawyers are driven by clients who have a particular interest. They do not come down from the sky and suddenly start doing things themselves. In dealing with a topic as sensitive as this, to suddenly turn around and say, 'We are not going to allow courts to do it, because one judge on one occasion used the term "rougher than usual handling"' is an absolutely outrageous and ridiculous argument. If members think that that has been an intelligent debate, they have been here too long.

The second point that has been made as to why the Guardianship Board should be retained, or why there should not be any review, is that the select committee said so. I was not here when the select committee was around.

The Hon. Anne Levy: I didn't say that.

The Hon. A.J. REDFORD: I know you didn't say that, and I didn't say you said that. That is akin to saying, 'I will adopt a particular position because someone else adopted a particular position.' If members in this place are going to take that point of view, they are abrogating their responsibility. If the select committee had a particular reason why it took that viewpoint, I would be interested to hear it.

I thank the Hon. Barbara Wiese because she put some legitimate reason and a particular viewpoint that deserves some reasoned response. She did not partake in some lawyer bashing exercise or say that, because some other committee said that it did not want this, members of the Council had better just trot along behind it and follow it. As I understand it, the Hon. Barbara Wiese said that, when she makes a medical power of attorney, she does not want third parties to interfere with it. In other words, she does not want situations arising where the busy bodies of this world—probably in some cases represented by lawyers who, of course, will take all the blame, according to Mr Elliott—judges or third parties interfere with that process.

I am sure the Hon. Barbara Wiese will correct me if I am wrong, but I understand that that is her criticism of allowing any right of appeal or any interference by a third party. The problem I have with that argument—and I have some sympathy with it—is that from time to time people will make medical powers of attorney which are or which may be unclear, and the person to whom that medical power of attorney is granted may need some assistance.

If members wish to consider the amendments that have been put by the Hon. Trevor Griffin, they will see that there is a provision where a person who has been granted that power of attorney can go to the court and say, 'I do not know what to do here; I have been given this direction, and it was pretty clear when it was given to me, but I never anticipated this particular circumstance. I think that I should be doing this, but give me a bit of advice.' I believe that the person to whom you grant that power of attorney is entitled to that assistance. To leave a person hanging there all on their own, in my submission, is unfair on that person.

The second point I want to make relates to the debate we are having about whether or not the Guardianship Board is more appropriate than the Supreme Court. I think that Mr Fred Field, who currently heads the Guardianship Board, would agree with me when I say that Supreme Court judges have greater skills and a broader depth of experience than members of the Guardianship Board itself. As I recall, the Supreme Court is made up of some 13 or 14 judges who, despite what some people have said in this place previously, come from a fairly broad range of backgrounds and who have been involved in a fairly broad range of experiences. We have at least one woman on the Supreme Court bench, and hopefully that will change in the future; and we have on the Supreme Court bench people who have practised in all sorts of areas, and it is my view that Supreme Court judges are eminently well qualified to deal with this issue.

It is suggested that the Supreme Court would act slowly in that process or would not be reactive. All I can do in

relation to that point is repeat what the Hon. Robert Lawson said when he made his second reading contribution—and I must say that I concur in his views and that that has been my experience: in cases such as this, you will find that judges are extraordinarily reactive, extraordinarily helpful and, with very rare exception, they would understand the delicate nature of these matters.

The Hon. T.G. Roberts: Eventually.

The Hon. A.J. REDFORD: Eventually. The other important matter that I should put is this: the Guardianship Board, as such, is not prone to providing open court decisions. Generally, its proceedings are held behind closed doors; in many cases it does not have to provide reasons for its decisions; and generally, what goes on within the Guardianship Board is not open to public scrutiny. One of the most important issues that has arisen in this particular topic over the years has come from the United States and the very highly publicised and reported cases that have occurred from time to time, and that has enabled the public to focus its mind on the issues that arise from time to time in these areas. Who in the nineteenth century would have predicted some of the ethical problems that have confronted some of the medical profession and families in the latter half of the twentieth century with the advent of medical advances? Who would not avail themselves of the advantage of looking at previous decisions that had been made in areas such as this to assist them in making their decisions in the future?

If one takes the Guardianship Board approach, that is less likely to happen because it is behind closed doors, there is not the publicity and its decisions are less likely to be reported. One is likely to find more applications to the Guardianship Board because people are wandering around in ignorance. One of the biggest advantages of having open courts is that the lawyers and the public can look at a decision, apply a set of their own facts to it and say, 'That is what the court would do in this situation. We will not bother to go to the court because we know what it will do.' However, with the Guardianship Board, where it is done behind closed doors, one does not have that knowledge. Every person who wants assistance from the Guardianship Board will go to the Guardianship Board, and we will almost certainly increase the likelihood of a litigious process in that case. There seems to be some antipathy in this place towards lawyers and judges, for whatever reason, but I have to say that the Supreme Court is the most eminent tribunal in this State. Quite frankly, when talking about matters of life and death, it is an insult to say, 'Let us not give it to the premier body of this State; let us give it to the C or D grade team.' It does not stand up to any logical examination.

The Hon. BERNICE PFITZNER: I oppose this amendment. In so doing, I support the initial concept and spirit of the Bill that was introduced originally in which the medical agent's decision was final. In schedule 1—'Medical Power of Attorney'—we have the patient saying:

> I authorise my medical agent to make decisions about my medical treatment if I should become unable to do so for myself.
>
> I require my agent to observe the following conditions and directions in exercising, or in relation to the exercise of, the powers conferred by this power of attorney.

The agent then has to sign an acceptance of the power of attorney, saying:

> I. . . accept appointment as a medical agent under this medical power of attorney and undertake to exercise the powers conferred honestly, in accordance with my principal's desires so far as they are known to me and, subject to that, in what I genuinely believe to be my principal's best interest.

Therefore, I think the medical agent's decision should be final. But then we have this review of the medical agent's decision. If that has to be so, I would prefer to have the Guardianship Board rather than the Supreme Court. I say that because I have worked medically with the Guardianship Board. The Chairperson is legally qualified, but some members of the board have expertise in mental incapacity and in social work and ability.

The CHAIRMAN: Order! There is too much backchat.

The Hon. BERNICE PFITZNER: I think that the Guardianship Board is more attuned to these kinds of medical issues and concerns than the Supreme Court. Therefore, I oppose the amendment.

The Hon. R.D. LAWSON: I will not respond to the violent prejudice of those who have attacked the profession of which I am proud to be a member. This provision relates to clause 9: it relates to circumstances in which a medical practitioner responsible for the treatment or some other person in a close personal relationship wishes to have some guidance. A similar situation often arises in relation to the administration of the estates of deceased persons. The trusted adviser is appointed as a trustee of the will and he or she is given important discretions to exercise, but often unforeseen circumstances arise which require that person to approach somebody for guidance and assistance. In that situation, my view is that the Supreme Court rather than the Guardianship Board is the appropriate body. The Attorney-General said that the court is accustomed to dealing with matters at short notice. He mentioned *habeas corpus*. Custody matters arise in certain situations where the parents are not married, and that court responds appropriately and quickly—within hours. For example, commercial decisions are disposed of in courts within hours. Injunctions are regularly granted. In the Supreme Court there is always a duty judge in chambers to hear applications at short notice.

The Hon. Anne Levy: If it is in chambers, it is not open to the public.

The Hon. R.D. LAWSON: They can adjourn into court. They are available in their chambers and they will walk into court and hear an application. The rules provide for applications to be made orally, and they are made orally in cases of emergency. In any event, if honourable members, notwithstanding their denigration and ill-tempered criticism of the judiciary, think that the court will abdicate its responsibility to this community by reason of a provision such as this, they are mistaken. People who are concerned about what they should or should not do in a particular circumstance will go to the Supreme Court for a declaration, and the court will exercise the power irrespective of a provision such as this. Given those circumstances, we might as well make that court the court to determine issues which arise.

The Hon. ANNE LEVY: Despite what various members have said, I do not think it is in any way disrespectful for me to say that there is not one member of the Supreme Court whom I would appoint as my medical agent. I know a number of members of our Supreme Court, I have a high regard for them personally, but I would not appoint one of them as my medical agent. If I were appointing a medical agent, I would appoint someone who is much closer to me than any member of the Supreme Court. If I appoint a medical agent, I want that medical agent to make the decisions for me, not somebody else. I do not want anybody to override the decisions that the medical agent is making on my behalf.

The Hon. R.D. Lawson: Or not making.

The Hon. ANNE LEVY: Or not making, I agree. If I am not capable of making these decisions and I appoint a medical agent to make or not make decisions on my behalf, I want that person to make the decisions, not a member of the Supreme Court or a member of the Guardianship Board.

The Hon. R.D. Lawson: The same as a will.

The Hon. ANNE LEVY: The same as a will, I agree. I think the principle is very clear. If I am competent, I make these decisions myself and no one can go to the Supreme Court, the Guardianship Board or anywhere else to override what I say I want done about me. If I am not competent, I appoint someone to make these decisions on my behalf.

The Hon. Diana Laidlaw: You don't have to appoint anybody, anyway.

The Hon. ANNE LEVY: If you don't want to, you don't have to appoint anybody, obviously. That is very obvious. But if I am appointing a medical agent, I can assure honourable members that it is not disrespectful on my part to say that I would not appoint any member of our Supreme Court to be my medical agent. In consequence, I do not want any of the Supreme Court judges making decisions about me. Decisions about me are going to be made by me or the person I have appointed as my medical agent. If the medical agent wishes to have advice before making a decision, there are plenty of places where they can get advice. Advice from the Supreme Court is not an advice, it is an order. It is removing the responsibility from the medical agent and making the decision instead of the medical agent making it. But, obviously, if my medical agent wishes to consult with people to clarify his or her ideas there is no shortage of people with whom my medical agent can discuss matters before making the decision himself or herself, which I have asked him or her to do on my behalf. I do not want other people interfering with—

The Hon. L.H. Davis: We've got the point.

The CHAIRMAN: Order! I think the member is becoming repetitive now. You have been over that argument, well explained. I would ask the member to roll it along a bit, thank you.

The Hon. ANNE LEVY: Mr Chair, I think I have indicated, and I hope people have understood, why I oppose having anyone review the decision of a medical agent. I wish to indicate that I will be voting for the retention of the Guardianship Board in response to the answer given by the Minister, while having made it perfectly clear that I do not want the Guardianship Board, but I regard it at this stage as the lesser of two evils.

The Hon. K.T. GRIFFIN: I respect the point of view of the Hon. Ms Levy. She is entitled to hold that point of view. The fact of the matter is that I do not agree with her. I do not agree, as she interjected at a very early stage, that she is making a personal decision, that it is a personal vote on this Bill. The fact of the matter is that although we have a right at any time to make a personal decision as a matter of conscience on any legislation before the Parliament, we are, nevertheless, making legislation which affects the whole of the State and the people within it, not just those who are in the State now, but in the future, too. Now, it may be—

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: I am not arguing about that. I am just saying that I have a different point of view.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: I am disagreeing with you, but I am respecting the fact that you have a different point of view.

The Hon. Anne Levy: My position is that I do not impose on other people what I do not want for myself.

The Hon. K.T. GRIFFIN: Okay, that's fine, but the fact of the matter is that we are making a law for all South Australians, not just for today or tomorrow but possibly for years into the future. If one looks at the Consent to Medical and Dental Procedures Act 1985, that has been in existence for nearly 10 years without any change. That has to deal with a variety of situations. Of course, the problem one has is that you can never foresee all of the variables that are likely to occur for which this legislation may not be suitably drafted. There may be, for example, situations where there are significant conflicts of interest. A person who appoints an agent or an attorney today may not review that appointment for five years, but in five years time may be in a hospital bed, and there may be decisions to be made about that person in circumstances which are quite different from those which existed at the time that the patient made the appointment.

It may be that there are some personal benefits to be gained by the agent keeping the patient alive. There may be distinct advantages in pulling the plug financially and for other reasons. It is those circumstances against which legislation has to guard. I do not believe that there is very much protection at all, even in the provision for the Guardianship Board to review certain aspects of a power of attorney. It is for that reason that I hold the strong view that the Supreme Court is the body which is best equipped to make decisions in those circumstances which either may not be foreseen, or in circumstances where the relationship between the person appointing the agent and the agent have either deteriorated, or otherwise changed significantly, so that the agent is not then objectively assessed as the best person to make a judgment about what should or should not be the medical treatment afforded to the person who granted the power of attorney.

It is in those circumstances that you do have to have somebody who objectively can assess all of the facts. I accept that the Hon. Ms Levy would not want to appoint any Supreme Court judge as her agent. That is acknowledged, but that is not the issue. The issue is: what do you do in circumstances which have not been envisaged by the person appointing the agent, totally unforeseen, which, in fact, act against the interests of the person appointing the agent or attorney in the years ahead? The Guardianship Board is some measure of protection, but I would suggest an inadequate measure of protection in those circumstances.

The Hon. R.R. ROBERTS: I will not be supporting the amendment; I will be supporting the Guardianship Board. There is not one human activity or relationship which is covered by the law where there has not been a dispute. The reasons that we make the law is so that we have a clear definition of what is required. There seems to me, a very strong chance that, with the best intentions, you can appoint a medical agent under one set of circumstances, with full knowledge of what the prospects are, and those circumstances may change over time. There is a situation where that person can act capriciously or frivolously or without due regard and there will be a dispute. I can also envisage a situation where a parent has a child who might be 18 years and two months and has appointed a medical agent. The parent may believe that that child, or now adult, whom he has raised for 18 years is not being properly served by his medical agent and wants to have some relief. It has to be remembered that under any of those circumstances they then have to prove their case. People have advocated in most areas of legislation that we

have to have some right of appeal against decisions that are made. If someone sells—

The Hon. K.T. Griffin interjecting:

The Hon. R.R. ROBERTS: That is right. If someone sells you a bodgie car, we demand that there has to be some right of appeal. If they want to kick you out of your house, there is a tenancy tribunal. Here we are talking about probably one of the most precious things, the taking away of someone's life or terminating someone's life, and people are saying there ought not be any situation where you can appeal. It really comes down to the question of whether we go with the Hon. Mr Lawson's proposal that it be the Supreme Court or whether we go for the Guardianship Board's proposal, which we have actually countenanced in another debate at another time, when we canvassed most of the same arguments we are now canvassing again, and we settled on the Guardianship Board.

I believe that there is a need for an appeal mechanism or a disputes resolution procedure. I express again that, under those circumstances, the person applying for that relief has to prove its case, anyhow. We are providing something we demand in almost every other area and I believe we are going to finish up with one or the other. My preference at this stage is the Guardianship Board, because it is probably much more easily accessed by people of limited means than the Supreme Court. I do not know the vagaries of how the Supreme Court works, because I am not a lawyer. I appreciate the views of the Hon. Rob Lawson, the Hon. Mr Redford and the Attorney-General. The Guardianship Board appeals to me. I will not be supporting the amendment but I will be supporting the Guardianship Board.

The Hon. BARBARA WIESE: I do not want to prolong the debate because we have spent much time on this matter. In the debate about whether we should be going to the court or the board we are losing sight of the legislation's purpose. A vast number and a clear majority of people in our community fear the prospect of being in a hospital at some stage unable to make decisions for themselves and having other people prolonging their lives and not allowing them to die with some dignity. The purpose of the legislation is to enable people to appoint an agent to make decisions on their behalf, people who will understand their wishes and desires to be allowed to die with dignity and who will make decisions that are in accordance with the wishes that they have expressed.

Those members here for the debate last time will recall the question asked about the form used to allow people to appoint a medical agent and what it would contain or look like. It was the view of the then Minister for Health, and I am sure it would be the view of the current Minister, that there should be provision on the form to be completed by people wanting to appoint a medical agent to specify a whole range of wishes or actions that they wanted their agent to take in certain circumstances. So, to the extent that an individual is able to anticipate the conditions under which they would wish an agent to act in certain ways, they can specify it on this instrument, to be signed by the individual, and that provides considerable guidance for such an agent.

Members should be reminded also that such a power of attorney can be withdrawn at any time. Should I decide that the person whom I appointed as medical agent had suddenly turned against me or at some stage might wish to pull the plug, as the Attorney described it, in order to benefit from my estate or the like, I could revoke the powers bestowed upon that person.

Members interjecting:

The Hon. BARBARA WIESE: It is highly unlikely that I would not have had those suspicions long before I reached a comatose state if there was such an individual interested in pulling the plug in order to obtain my vast wealth. As to one of the issues raised by the Hon. Mr Redford concerning the issue of advice, he seemed to suggest that it was necessary to have either the courts, the Guardianship Board or someone available from whom a medical agent could seek advice. Nothing in this legislation prevents a medical agent seeking advice at any time. If an agent believes they are not able to decide about a medical procedure or the like, they are at liberty at any time to seek advice from whomever they wish to help them fulfil the wishes of the person they represent to the best of their ability.

The Hon. M.S. FELEPPA: I am sure the Minister's response to my question will assist me in coming to a decision. If I appoint a person close to me to carry out such delegated decisions in case I am in a life threatening situation relating to artificial life support, perhaps subject to medical decisions by hospital staff, and that person dies in a road accident, who will exercise my decision?

The Hon. DIANA LAIDLAW: No-one, unless you have appointed someone else.

The Hon. M.S. FELEPPA: If I am at a stage where the medical staff are hesitant to stop artificial mechanisms to terminate my life, what is the situation?

The Hon. K.T. Griffin: If there is any doubt it would go to the Supreme Court.

The Hon. M.S. FELEPPA: That is what I wanted to hear. Who will take the responsibility when medical staff have taken action without following my wishes? What legal step is involved? Could there be a legal challenge by my relatives?

The Hon. DIANA LAIDLAW: The honourable member could have a number of medical agents, but they have to be ranked. If the fifth ranked person in a series of six medical agents died, it would make no difference because the reference would still be made to the list of preferences. There is a preference of order. If the person ranked first in order died, it would fall to the person second ranked. If only one person was nominated and died, there would be no-one to represent the honourable member's wishes in that situation. The position would be as it is now, with the medical practitioner making the decision. When the matter was last before this place the honourable member voted for the Guardianship Board to be the reference in case of dispute.

The Hon. M.S. FELEPPA: I remain unconvinced. What happens if I have appointed two brothers, two sisters or two friends and they both die in the same accident?

The Hon. DIANA LAIDLAW: The honourable member should refer to schedule 1. With respect to the medical power of attorney, schedule 1 provides that when you have nominated your agents you would set out in the form the name, address and occupation of the agent; if two or more agents are nominated, the order of appointment must be indicated by placing the numbers 1, 2 and 3 beside each name. This indicates that if the first is not available the second is to be consulted; if the first and second are not available the third is to be consulted, and so on. It should be noted that a medical power of attorney cannot provide for the joint exercise of the power. That is made quite clear in schedule 1 of the Bill, and that clarifies the honourable member's queries.

The Hon. CAROLYN PICKLES: As the honourable member would know, at the present time we do not have this law intact, but to my very personal knowledge what happens is that the medical practitioner will consult with the family

about what the wishes are, and the next of kin usually makes a decision. In the case of the honourable member, his wife would make that decision. Under this new legislation, the medical power of attorney would be delineated. If somebody is a bit concerned that the medical agents will die out or be killed off, all I can suggest is that one should make a wide variety of choices so that you have covered all contingencies. It would be most unlikely that this would arise; it could, in some circumstances, but at the present time if one wants to use the present legislation it is always advisable to have more than one person well aware of your wishes so that every contingency is covered.

The Hon. R.D. LAWSON: I have one point arising out of the Hon. Mario Feleppa's comment. If there were no medical agent there would be no decision to review under the existing clause 9 of this Bill. There would be a patient who was in a comatose state; and a medical practitioner who had a problem in relation to the manner in which he should approach the treatment of that patient could, if he wished to receive the protection of the court, apply to the Supreme Court irrespective of anything contained in this legislation, which does not cover that situation at all.

The Hon. Carolyn Pickles interjecting:

The Hon. R.D. LAWSON: Yes; in my second reading speech I indicated a number of cases in which that had happened.

The Hon. M.J. ELLIOTT: One thing that has been learnt in this debate is what bait to use. The first point that has to be made is that there is no requirement to appoint a medical power of attorney at all. If you choose to do so, which I imagine a large number of people will not, it is your choice and you will choose someone whom you trust implicitly, or you might choose a number of people and put them in order. If they happen to predecease you, then you will be in the same position as you are currently in as the law now stands. Of course, you do have another option. We have not as yet explored it, but under schedule 2 you may decide not to have a medical power of attorney at all but simply to give an advance directive, which can be a very elaborate document that gives clear guidance. You could give that to your attorney or to doctors. Frankly, I think that is the preferred path anyway; to burden anybody with decisions, even though you trust them, is probably unfair. The advance directive is the preferable way to go.

That aside, I am concerned that the Attorney-General started using language like 'pull the plug'. I think it is a bit mischievous, because the power really only resides with the person to whom you give the medical power of attorney when there is a terminal illness in a terminal phase. That is the only time they can 'pull the plug', so-called.

An honourable member interjecting:

The Hon. M.J. ELLIOTT: I said, 'so-called'. He is making it sound as if they will pull the plug prematurely where you would not have died but would have gone on to live a happy existence thereafter. It goes further; a number of other protections are written in. If one looks at clause 15, the medical practitioners still have to act with good faith and without negligence and also in accordance with proper professional standards of medical practice. There is no way known that a person maliciously could give an instruction to a doctor to ask them to do something that they would not do in their normal course of practice anyway, which is what the term 'pull the plug' implies. To that extent I am saying that there is a bit of mischief in using that term, because there is also the protection of the obligations of a doctor. There is no way known that doctor can pull the plug just because he or she has been instructed to, because a person wants to create some mischief and collect the dough, because the doctor would immediately expose himself or herself to a malpractice suit. That would be an extremely dangerous thing for that doctor to do, as well as the protection which the—

An honourable member interjecting:

The Hon. M.J. ELLIOTT: Clause 15 provides a quite clear instruction about when the medical practitioner is protected. Finally, clause 9 provides that the only appeal that can ever be successful is an appeal in relation to a person who is not in the terminal phase of a terminal illness. In those circumstances, it is an issue which I think is appropriately handled by the Guardianship Board. The question that will be asked will be a medico-social ethical question and not a legal question.

The Hon. G. WEATHERILL: I have listened to this debate and, when the Hon. Mario Feleppa asked a question about what happens if you appointed two people and they both died before they were able to make the decision, the trio of lawyers opposite mentioned the Supreme Court. I do not know whether that is right or wrong because, after listening to the Hon. Barbara Wiese talk about the document that would be filled in with the agent and the specifics on that document, I would imagine that there would be copies of that around which could be presented to be board or to the family rather than the Supreme Court making a decision, so that the board could make the decision rather than the Supreme Court. Is that correct?

The Hon. DIANA LAIDLAW: It is entirely possible. It would just mean that, if you appointed two agents, they both died in the same accident and you had none, I would be very surprised if either the document was not available or others were not aware of the wishes or aware of the document and there were not some discussions with the medical practitioner. I would think that, even without resort to the Guardianship Board, some commonsense approach would be reached with the medical practitioner. One can go to the Supreme Court if one wishes to. I would have thought in most situations where there is death and dying and a lot of tension the last thing one would be thinking about doing is going to the Supreme Court.

The Hon. M.J. ELLIOTT: In response to the Hon. Mr Weatherill's question, if you fall in schedule 1, you are granting medical power of attorney and the instructions within it are to whomever you appoint. You would have some argument about whether or not there are specific instructions within that to transfer to anybody else. However, if you fill in the form under schedule 2, which is an advance medical directive, those instructions stand regardless whether or not you have appointed an agent. In those circumstances, if you are concerned about both your agents dying in a road accident, by filling in an advance directive under schedule 2, you have clear instructions not only to agents but to anyone else, including your own general practitioner who may be acting on your behalf.

The Hon. K.T. GRIFFIN: In relation to the Hon. Mr Weatherill, if the agents whom you have appointed are either not around because they are out of the country, they are dead or for some other reason, there is no-one to exercise the authority given by the power of attorney. I accept what the Hon. Diana Laidlaw says, and that is presumably there may have been some discussion with the medical practitioner, and someone may have a copy to get some appreciation of the patient's wishes. The problem is that, if there is no agent exercising the responsibilities conferred by the Act and in

accordance with the power of attorney, the medical practitioner may then not be protected from a prosecution for murder.

The Hon. Diana Laidlaw: That is exactly the situation today.

The Hon. K.T. GRIFFIN: Of course it is. That is what I am saying. The other point I want to go on to make is that, at the present time, in those circumstances, a medical practitioner or a relative, if there is in some circumstances a dispute, can go to the Supreme Court for a declaration, or an injunction as the case may be, and, under the provisions which I have in clause 9, I would envisage that it is still appropriate for the Supreme Court itself to make an order relying upon the provisions in the power of attorney which cannot be exercised because either the attorney is not there or for one reason or another.

The Hon. BERNICE PFITZNER: I would like to respond to the Hon. Mr Feleppa's query about what one does if one does not have an agent. As the Hon. Michael Elliott says, schedule 1 appoints a power of attorney, and some people may not have any close friends whom they trust at all so they do not appoint any power of attorney, and they move on to schedule 2. Schedule 2 appoints an advance directive in which you write your own decision of what you want people to do when you are in a terminal phase of a terminal illness and when you are incapable of making that decision. If you have forgotten to write schedule 2 of what should be done to you if you are not in a position, then there is the third option which happens now, in which you would be in a moribund state and when the doctors, nurses and close relatives would consult and make decisions. Then they would put up the sign which says, 'Do not resuscitate,' and that would be the end. That is what happens now.

What the Hon. Trevor Griffin says is correct: that the medical practitioner is liable to be prosecuted if anybody brings a case against him, but this has not happened because there is in-depth consultation. This Bill is essential because in part 3 it provides the medical practitioner protection if the patient did not have any advance directive or any medical agent. They are protected if they do it in accordance with proper standards, even though the incidental effect is to hasten the death of the patient. Those are the options.

The Hon. R.I. LUCAS: I have listened with interest to the contribution of the Hon. Robert Lawson in relation to this debate. As I understand the options that confront me and members, it appears that there is an option of either the Supreme Court, or the Supreme Court and the Guardianship Board, but there is not an option of not having the Supreme Court at all.

A range of scenarios has been made out by members. According to the Hon. Mario Feleppa, it is quite clear that the Supreme Court would have jurisdiction. The Hon. Robert Lawson indicated in his earlier contribution that, in other circumstances, irrespective of what members do in relation to this Bill and whatever they might want to do, the Supreme Court will still be there. So, I will go for the best of both worlds and have both!

The Committee divided on the amendment:

AYES (10)

Cameron, T.G.	Crothers, T.
Davis, L. H.	Feleppa, M.S.
Griffin, K .T.	Irwin, J. C.
Lawson, R. D. (teller)	Redford, A. J.
Roberts T.G.	Schaefer, C. V.

NOES (10)

Elliott, M. J.	Kanck, S. M.
Laidlaw, D.V.(teller)	Levy, J. A. W.
Lucas, R.I.	Pfitzner, B.S.L.
Pickles, C. A.	Roberts, R. R.
Weatherill, G.	Wiese, B. J.

The CHAIRMAN: There are 10 Ayes and 10 Noes. I cast my vote in favour of the Ayes.

Amendment thus carried.

[Sitting suspended from 10.56 to 11.12 p.m.]

The Hon. DIANA LAIDLAW: I move:

Page 2, after line 20—Insert definition as follows:

'life sustaining measures' means medical treatment that supplants or maintains the operation of vital bodily functions that are temporarily or permanently incapable of independent operation, and includes assisted ventilation, artificial nutrition and hydration and cardiopulmonary resuscitation;

My earlier amendment, which was carried, deleted reference to 'extraordinary measures', on the basis that I now move the amendment to insert a definition of 'life sustaining measures', and I now do so.

Amendment carried.

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

Page 2, lines 26 to 28—Leave out this definition and insert—

'medical treatment' means treatment or procedures administered or carried out by a medical practitioner in the course of medical or surgical practice or by a dentist in the course of dental practice and includes—

(a) the prescription or supply of drugs;

(b) the artificial administration of nutrition or hydration;.

This amendment alters the definition of 'medical treatment' by providing that medical treatment includes the artificial administration of nutrition or hydration. Nasogastric tube feeding is a common technique of feeding patients with a wide variety of illnesses. Because nasogastric tube feeding is simple there is some question as to whether it falls within the term 'medical treatment'. Nasogastric tube feeding generally fulfils a need that is separate and distinct from the patient's disease and is part of the basic necessities of life. As an American judge put it:

> The process of feeding is simply not medical treatment, and is not invasive. Food and water are basic human needs. They are not medicines and feeding them to a patient is just not medical treatment.

The question whether artificial feeding was medical treatment was considered in Bland's case in the United Kingdom. The question was peripheral but a lot of evidence was heard on the matter. The House of Lords regarded the question as irrelevant in Bland's case. The House of Lords considered that the answer to the problem could not depend on fine definitional distinctions.

To avoid any arguments about whether or not artificial feeding is medical treatment, I think we should supply the answer now. We should make it quite clear that a person, in giving directions about his or her future medical treatment, can give directions about whether he or she wants or does not want artificial feeding, and this amendment will achieve that end.

The Hon. DIANA LAIDLAW: I am pleased to accept the amendment.

The Hon. M.J. ELLIOTT: The definition which is now being proposed by the Attorney-General relating to the artificial administration of nutrition or hydration I presume could also include gastronomy tubes, which are far more intrusive than a simple nasal tube to which the Attorney

refers. Some forms of artificial administration of nutrition or hydration can be quite invasive. As I said, a gastronomy tube is one example of that.

The Hon. K.T. GRIFFIN: It is not a question of whether or not it is invasive: it is a question of whether or not it is a medical treatment. However the administration of nutrition or hydration is provided by artificial means seems to me important to be within the definition of 'medical treatment' for the purposes to which I have referred.

The Hon. M.J. ELLIOTT: This is one of these amendments that come on file quite late, but it appears to me that this does have the capacity certainly to undermine other parts of the legislation. I refer members to clause 7(6)(b)(i), which talks about not authorising the agent to refuse natural provision or natural administration of food and water. What 'medical treatment' is talking about now is not the natural provision of food or water: it is talking about using other methods. One needs to be aware also that the denial of such treatments is supposed to be happening only in terminal phases of terminal illnesses.

It appears to me that what the Attorney-General is now doing is putting back into the legislation the capacity to administer, during a terminal phase of a terminal illness, something quite invasive, like a gastronomy tube, which would fit under the definition of artificial administration of nutrition. It may not be the intention but that is what it does.

The Hon. K.T. GRIFFIN: That is certainly not the intention, and my understanding is that that is not the consequence of it. It will not undermine the capacity of someone in their instructions to avoid making a decision in respect of artificial administration. The whole concept is designed to focus upon the issue of what is 'medical treatment'. As I say, there have been some arguments and debates, particularly in the United States and also in the United Kingdom, about what is 'medical treatment', and this is designed to ensure that that question is beyond doubt. It is not put in there with any intention of undermining any of the subsequent provisions of the Bill, and I do not believe it will undermine it.

The Hon. M.J. ELLIOTT: I would certainly make the note that it is going beyond what the Bill currently has as a specific provision in relation to food and water, which is covered by clause 7(6)(b)(i). We have natural provision of food and water mentioned in clause 7(6)(b)(i), but if we go to clause 7(6)(b)(iii) we see that the Attorney-General has managed to expand it by changing the definition of 'medical treatment'. If the Attorney-General wants to change definitions about administration of food and water I think it should have been done through clause 7(6)(b)(i) rather than through the back door, through clause 7(6)(b)(iii).

The Hon. ANNE LEVY: As I read the amendment moved by the Attorney-General, contrary to what the Hon. Mr Elliott fears, I think this is increasing the autonomy of the patient. We are stating quite clearly that people have the right to consent, and that implies non-consent to medical treatment. If medical treatment includes the artificial administration of nutrition or hydration, it means that an individual will have the right to refuse that if they wish, or instruct their medical agent to refuse it on their behalf. If it is not defined as medical treatment, although I am legally entitled to refuse medical treatment, it can be said, 'But nutrition is not medical treatment, so you cannot refuse that.' It seems to me that by including artificial administration of nutrition or hydration, which can include very invasive procedures, it gives people the right to refuse it if they wish.

The Hon. M.J. Elliott: No; it states that the agent cannot refuse it in clause 7(6)(b).

The Hon. ANNE LEVY: No; the agent cannot refuse natural—

The Hon. M.J. Elliott interjecting:

The Hon. ANNE LEVY: The medical power of attorney cannot authorise an agent to refuse the natural provision or natural administration of food and water. Tubes to me are not natural. It means they cannot refuse a sip of water from a cup or a bottle, but they would be able to refuse tubes, and they might not be able to do that if the artificial administration is not part of medical treatment.

The Hon. BERNICE PFITZNER: I would like to support the Hon. Michael Elliott's reasoning, because in clause 7(6)(b)(iii) we specifically define that the medical treatment should apply only to drugs and not to artificial administration of putting tubes into different orifices. Clause 7(6)(b)(i) does not authorise the agent to refuse natural provision, and that is fine; then it does not authorise the agent to refuse medical treatment—

The Hon. K.T. Griffin: That is part of the conventional treatment of an illness and is not significantly intrusive or burdensome.

The Hon. BERNICE PFITZNER: Yes; but if the Attorney-General's amendment is carried, that medical treatment will be significantly intrusive and burdensome, because that artificial administration will be putting tubes down your throat and so on.

The Hon. K.T. Griffin interjecting:

The Hon. BERNICE PFITZNER: No; you can't, because you have redefined what medical treatment now is.

The Hon. A.J. Redford: That is not the way it is interpreted.

The Hon. BERNICE PFITZNER: I am sorry, but it does not authorise an agent to refuse medical treatment and, at this stage, medical treatment is the prescription or supply of drugs. It does not authorise an agent to refuse medical treatment that is part of the conventional treatment of an illness and is not significantly intrusive or burdensome. That is what the definition of medical treatment is now. If we change it to the amendment, medical treatment will include artificial administration, which in some cases is very significant and intrusive.

The Hon. A.J. Redford interjecting:

The Hon. BERNICE PFITZNER: No, it does not. The medical treatment has been changed.

Members interjecting:

The CHAIRMAN: Order!

The Hon. BERNICE PFITZNER: It does not authorise the agent to refuse medical treatment which is part of the conventional treatment of an illness and is not significantly intrusive or burdensome. My contention is that if we change the definition of medical treatment to the new definition, it will have inbuilt in it intrusive and burdensome.

The Hon. K.T. GRIFFIN: If we define medical treatment in the way proposed in my amendment, it includes the prescription or supply of drugs and the artificial administration of nutrition or hydration. That is medical treatment and it is clear. We do not have arguments about naso-gastric tubes and whether or not they are medical treatment; this definition says that they are. We then have to go to clause 7(6):

> A medical power of attorney—
> (b) does not authorise the agent to refuse—
> (i) the natural provision or natural administration of food and water; or—

I have an amendment on that later and we can argue that substantive issue then—

(ii) the administration of drugs to relieve pain or distress; or

(iii) medical treatment that is part of the conventional treatment of an illness and is not significantly intrusive or burdensome.

Even though we have said that the artificial administration of nutrition or hydration is part of the medical treatment, if it is significantly intrusive or burdensome the agent is authorised to refuse it. It cannot be any clearer than that.

The Hon. M.J. ELLIOTT: I can only look at the Bill and potential Act as I would like it to be interpreted. I should like to be able to leave an instruction which said that if I am in the terminal stage of a terminal illness or in a moribund state I do not want to be connected to drips. As the amendment is proposed, the agent could not refuse a drip because it would be argued that the drip is not significantly intrusive or burdensome, but that it is medical treatment which cannot be refused. That is the effect.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: No; that is the effect of it. It means that if I am in the terminal stage of a terminal illness or moribund, any instruction that I left to the effect that I did not want to be left connected to a drip would have to be ignored because it would not be a legal instruction and the agent could not refuse a drip. That is the effect of the amendment. I think that people need to be aware that that is the effect. It goes to the very heart of what the legislation is about, and I am sure that the Attorney-General is aware of that.

The Hon. K.T. GRIFFIN: The big argument is: what is medical treatment? If one wants to go to the Supreme Court and argue whether naso-gastric tube feeding is or is not medical treatment, that is fine; do not amend it. However, if we amend it, it enables the agent to refuse the artificial administration of nutrition or hydration or other procedures which are not part of conventional treatment or which are significantly intrusive or burdensome.

So if the treatment is significantly intrusive or burdensome you can refuse it even though within the definition of 'medical treatment' we include the artificial administration of nutrition or hydration. If you argue that you do not want to have even a drip, it seems to me that, if it forms part of conventional treatment and it is not significantly intrusive or burdensome, you must go in a different direction. Even if you oppose my amendment, this Bill will still not allow you to refuse that drip.

The Hon. R.I. LUCAS: In response to the Hon. Mr Elliott's question regarding his wanting to refuse a drip at any stage, could he not do that through an anticipatory direction by indicating in writing beforehand?

The Hon. M.J. Elliott: To the agent.

The Hon. R.I. LUCAS: That is what I am clarifying. I thought that the anticipatory direction would allow you to write down your instructions whether or not you had an agent.

The Hon. M.J. Elliott: It is only an instruction to the agent. At the end of the day, it is the agent who does the refusing.

The Hon. R.I. LUCAS: So, even if you state in your anticipatory direction that you do not want that, what the Hon. Mr Elliott is arguing is that—

The Hon. M.J. Elliott: That is an instruction to the agent. The agent attempts to carry out your instruction, but cannot do so.

The Hon. R.I. LUCAS: Even if you put it in your anticipatory direction under schedule 2, that direction could not be carried out by a medical power of attorney, if you had one. Would the anticipatory direction work if you did not have a medical power of attorney?

The Hon. M.J. Elliott: Yes.

The Hon. R.I. LUCAS: My understanding was that if the Hon. Mr Elliott wanted to do that he could fill out an anticipatory direction, not have his medical power of attorney, and he could still achieve not having a drip. As I read the Hon. Mr Griffin's amendment, part of what the Hon. Mr Elliott is saying, if you have a medical power of attorney, is probably correct, that is, you would be able to refuse, for example, nasogastric feeding if it was significantly intrusive or burdensome.

When we last debated this matter, the Hon. Bernice Pfitzner argued that, from a medical point of view, in the early stages nasogastric feeding might not be significantly intrusive or burdensome, but as an illness progressed it may well become significantly intrusive or burdensome. If the Hon. Bernice Pfitzner's arguments when last we debated this matter were correct, in some cases you would be able to and in some cases you would not depending on whether someone made a judgment as to whether or not it was significantly intrusive or burdensome.

The Hon. M.J. ELLIOTT: With reference to clause 7(6)((b), I anticipated a power of attorney being granted under schedule 1. Under schedule 1 instructions can be given. The point I was making was that if you followed that course and under clause 3 of schedule 1 you set out conditions, one of which being that you did not want to be put on a drip or to have nasogastric feeding, you would give an instruction to your agent. Your agent acting on your instructions would then go to refuse. However, under the amendment proposed by the Attorney-General, an argument would then revolve around whether or not a drip or tube was significantly intrusive or burdensome. It is quite possible that it might be argued that it is not. Therefore, despite your very clear instructions, they would be overruled.

I find that unacceptable. Whether or not that was the Attorney-General's intention is beside the point. That is certainly the way it stands at present. He may have a point in terms of whether or not it is seen as medical treatment or simply the provision of food. There may be the need for a further amendment, but the effect of this amendment is to stop many people from asking for the most obvious things they would give by way of instruction. Probably one of the most common instructions would be, 'I want food to be withheld if I am in a moribund state with no hope of recovery.' That would be the most common instruction and it is the instruction most likely to be struck down by the amendment.

The Hon. DIANA LAIDLAW: I can help clarify the situation. I suppose everybody is right in a sense, but some of the fears are genuine. I have an amendment on file to remove subclause (6)(b)(iii) of clause 7.

The Hon. M.J. ELLIOTT: Having picked up the point made by the Minister, I then ask the question—and I guess the Attorney-General might be able to answer since he is amending the definition of medical treatment—where else in this Bill is the term 'medical treatment' used such that his particular definition he sees as making a significant worthwhile change?

The Hon. K.T. GRIFFIN: I suppose it can arise in clause 6(3)—the question of what is medical treatment. It arises in clauses 7, 8, and 11.

The Hon. M.J. Elliott: It is not so much where it appears; it is where your amendment is intended to have effect.

The Hon. K.T. GRIFFIN: It is mostly intended to have effect in relation to clause 7. I thought I had made that fairly plain.

The Hon. R.D. LAWSON: I rise to say that, in my view, the interpretation of the Hon. Mr Elliott is correct in relation to clause 7(6). In other words, if this amendment is carried and if clause 7(6) remains in its present form, it would not be possible for any patient to give an effective medical power of attorney which contained a provision prohibiting drips and nasogastric things.

The Hon. BERNICE PFITZNER: If the new definition is put in it would read in clause 7(6)(b) that it does not authorise the agent to refuse natural provisions; that it does not authorise the agent to refuse the drugs for pain; that it does not authorise the agent to refuse medical treatment. You are changing the reference to medical treatment, which is not only drugs, but also includes tubes—artificial. Then you have the last part.

The Hon. K.T. Griffin interjecting:

The Hon. BERNICE PFITZNER: Yes, but it is contradictory. You are saying the agent cannot refuse medical treatment which includes these artificial administrations. Then, finally, you are referring to what is not significantly, intrusive and burdensome. These artificial administrations are intrusive and burdensome. When you put a tube in your nose it is; when you put a tube in your throat it is; or tubes anywhere. They are all significantly intrusive and burdensome. It is contradictory.

The Hon. CAROLINE SCHAEFER: I support this amendment. I do not have the legal or medical knowledge of some of my colleagues but as I understand it this amendment merely clarifies and adds definition to the meaning of 'medical treatment'. The argument then appears to be: what is significantly intrusive and burdensome, and when does that take effect? As I understand it, medical powers of attorney can be granted. If I grant medical power of attorney, am I either permanently or temporarily incapable of making the decision myself? If I am comatose after cardiac arrest, with every chance of recovery, pulmonary cardiac resuscitation is not intrusive. If I am temporarily unconscious, nasogastric feeding is not intrusive. It is only if I am in the terminal phase of a terminal illness that those treatments become intrusive. The argument as to whether or not this clause and this new description of medical treatment is relevant does not seem to me to be what we are arguing about. The definition of what and when treatment is significantly intrusive and burdensome seems to be what we are arguing about, and that varies very much with the condition of the person who is granted the medical power of attorney at the time.

The Hon. DIANA LAIDLAW: I did not indicate that it was conditional on my amendment to clause 7(6)(a)(iii). In the circumstances, it may be best for me to indicate that I will not support this amendment. I will move my amendment to clause 7(6)(b)(iii); if that passes, then we can recommit in terms of medical treatment.

The Hon. A.J. REDFORD: I suggest, in the most polite fashion, that the Minister reconsider what she just said. I will explain why I put it in these terms, particularly with regard to the vote we had before the break where there is an overall supervisory capacity in the hands of the court. My view is that we can be more confident about broadening the scope of this Bill. If you adopt the Attorney's suggested amendment by broadening the definition of 'medical treatment', then you give particularly clause 6 a greater impact. Clause 6 provides:

> A person over 18 years of age may, while of sound mind, give a direction under this section about the medical treatment that the person wants. . .

Assuming that clause 6 remains unamended, I believe the Attorney-General's amendment makes clear that these sorts of drips and things of that nature are part of something that can be included in the anticipatory grant or refusal of consent to medical treatment. So, it clarifies and broadens clause 6, and that is in accord with my personal views. I would then have to say that, if we do not succeed in the deletion of clause 7(6)(b)(iii), we can come back and revisit the definition then, rather than reject the broadened definition, then run into problems on clauses 6 and 7. I suggest we accept the honourable member's definition; we leave clause 6 alone because it broadens clause 6; and we boot out clause 7(6)(b)(iii). The end result will be what we are seeking to achieve.

The Hon. SANDRA KANCK: I oppose the amendment. I refer to an article in the *Australian Health Law Bulletin* of April 1994 by Dr Michael Ashby, whom the Minister has already mentioned. On this aspect he states:

> Likewise, natural provision of food and water means the provision of food and drink to be taken voluntarily by mouth to satisfy hunger or thirst and may include physical assistance if requested by the patient from another person but does not include the administration of fluids or nourishment via nasogastric tubing or an intravenous line.

Dr Ashby is working in this field on a daily basis with patients who are dying and I am inclined to follow his advice, because he does know what is needed and what happens in this circumstance. It is well worth while taking note of what he has to say in his definition.

The Hon. R.I. LUCAS: I want to revisit the point touched on by the Hon. Rob Lawson and the Hon. Michael Elliott as to clause 7(6)(b)(iii), and the Hon. Angus Redford has just addressed that as well. I understand that the Hon. Mr Griffin is saying that the medical power of attorney will be able to reject nasogastric feeding which is significantly intrusive or burdensome.

The Hon. K.T. Griffin: That's right.

The Hon. R.I. LUCAS: However, the medical power of attorney will not be able to reject nasogastric feeding which is not significantly intrusive or burdensome. It then hangs on the question of whether or not there is a distinction. As I referred earlier by way of interjection, I recalled the debate last time and referred to the superior medical knowledge of the Hon. Dr Pfitzner and I want to quote from her comments indicating that there were circumstances, in her professional judgment, where in certain cases nasogastric feeding may well be significantly intrusive or burdensome and in other cases not. The Hon. Bernice Pfitzner stated:

> I thank my colleague. . . Those implements in themselves are not intrusive or burdensome; they only become so when the patient cannot tolerate these implements in their particular environment. So, as my colleague the Hon. Carolyn Pickles says, initially they do not cause a burden; they are not looked upon as being intrusive. . . .

It is important to insert the word 'significant' there, although the Hon. Bernice Pfitzner does not specifically mention that. She states:

> . . . after a while they become so because those areas around where the surgical instruments are placed become painful. They cause soreness and become significantly intrusive and burdensome.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: I am not the medical expert and I suggest to the Hon. Mr Elliott that neither is he.

The Hon. M.J. Elliott: Dr Ashby is—

The Hon. R.I. LUCAS: Your colleague quotes Dr Ashby and I am quoting Dr Pfitzner who is here participating in the debate; Dr Ashby is not.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: That is why I am quoting Dr Pfitzner. The Hon. Carolyn Pickles referred to a personal experience (but I will not go into all the details) and talked about a person in the initial phases of illness who was given a tracheotomy in order to help breathe and feed. She stated that initially this was keeping the person alive, for which all were extremely grateful at the time; however, after a short period of time this medical procedure which initially was life saving became painful, became intrusive and burdensome, I am sure the Hon. Carolyn Pickles would say significantly so. She went on to make the point in supporting the comment that the Hon. Dr Pfitzner was making that individuals made judgments, in the case of the Hon. Carolyn Pickles and her family, and medical experts, like the Hon. Dr Pfitzner, made judgments and you could distinguish between nasogastric feeding or something like that where, in certain circumstances, it was significantly intrusive and burdensome but where in other circumstances it might not be significantly intrusive and burdensome.

In conclusion, as I understand the Hon. Mr Griffin's amendment, what it is attempting to say to us is that the medical power of attorney (the agent) will be able to reject such treatment if it is significantly intrusive or burdensome. So, when we get to the painful end of the treatment, the agent will be able to reject it, but in the early stages, in the cases that were indicated, when it is not significantly burdensome or intrusive, the agent will not be able to refuse it as the agent will not be able to refuse the natural provision of food and water. This was an argument that Mr Atkinson in another place raised, as members will know. We followed it through at great length when we were last here, and I think that is the point the Hon. Mr Griffin is making.

I am sure it will be given serious consideration, and it is worthy of support by members. It is an advance on where we were before, because the Hon. Mr Griffin has picked up on the point raised when last we discussed this issue. The only option we had then was either natural provision or natural and artificial, and we did not really have this option of whether or not the nasogastric feeding became significantly intrusive or burdensome. I think the Hon. Mr Griffin has now refined his amendment, therefore some of the amendments members had last time should not be as strong this time, because the Hon. Mr Griffin has tried to meet those criticisms in a very sensible way.

The Hon. M.J. ELLIOTT: The question whether something is significantly intrusive or burdensome will be the difficulty at the end of the day—whether or not a nasal tube or a drip is considered to be intrusive or burdensome. I rather suspect you could pick experts on either side as to whether it is or is not. One of the things this Bill is trying to tackle is the difficulties that medical practitioners have when people are clearly in the terminal stage of a terminal illness and are moribund, and they really do not have clear guidance as to what to do. What we are trying to do under this legislation is to enable the patient to give guidance, either by way of an agent or by way of instruction, as to what is to happen. That is what we are trying to achieve. I do not want to have anything that is open to interpretation. We are trying to clarify it when in fact the danger is there still is a lack of clarity because there will be an argument about what is and is not intrusive.

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: That is right; if we get rid of that, it is solved. But in terms of people who are not in the terminal stage of a terminal illness, it is the old pulling of the plug concern again. If you look at clause 15(c), you see that quite plainly a doctor who, under the instructions of an agent, tried to withhold feeding by way of a nasal tube, or whatever, would not be acting 'in accordance with proper professional standards of medical practice' and would be criminally liable for doing so. I can only presume that that—

The Hon. Caroline Schaefer: So the agent should be, as well.

The Hon. M.J. ELLIOTT: No. If you give an instruction to your agent that you want the tubes to be disconnected, if you are in the terminal stage of a terminal illness, you should be able to give that instruction and know that it will be carried out. Because 'significantly intrusive and burdensome' is open to interpretation, I will not know for a fact that, having left that instruction, that instruction will be carried out. That is why I find the amendment unacceptable. I should be able to leave that instruction, and most people in our society believe they should be able to leave that sort of instruction, and we should not have an amendment that prevents it from occurring.

The Hon. CAROLINE SCHAEFER: I want to clarify that division 2, 'Medical powers of attorney', applies not just to those in the terminal phase of a terminal illness. One can exercise medical powers of attorney regarding those who are temporarily unable to make decisions for themselves. All this debate about having tubes removed in the terminal phase of a terminal illness is referring to part 3, division 2 of this Bill. I think we need to look once again at the fact that these are powers that can be exercised when someone is temporarily unconscious after a football match. It is not purely for someone who is dying.

The Hon. SANDRA KANCK: I refer again to the correspondence I have had from Dr Michael Ashby, and I quote directly from him as someone who works in this field, as follows:

> Artificial feeding and hydration techniques require intrusion upon the person; medical and nursing skill for insertion and maintenance have significant side effects and are often instituted for incompetent patients without their consent. They frequently become blocked or dislodged, often by the patient removing the tube, which may then be forcibly replaced. For many people this prospect is an affront to their dignity, particularly if undertaken for an irreversible incurable condition and without their explicit consent.

Further in this letter he would probably give some assurance to people who think that patients will be starved, by stating:

> It should be emphasised that slowing and eventual cessation of oral intake is a normal part of the dying process. In no situation is food and drink 'withdrawn', it is always provided when requested by the patient. Terminally ill patients do not starve to death, the cause of death is the underlying condition and not starvation. Adequate oral care, together with the appropriate use of subcutaneous fluids for symptomatic dehydration, are usually sufficient to prevent distressing side effects of poor or absent oral intake. Appropriately sized and flavoured meals and drinks should always be made available to patients.

He then he goes on with the definition that I read out earlier from the *Australian Health Law Bulletin*.

The Hon. R.D. LAWSON: If this amendment is carried and the definition of 'medical treatment' is amended, and if

the Attorney's foreshadowed amendment to clause 7(6)(b)(i) is adopted, is it not the case that it would not be possible to give a direction by medical power of attorney which precluded drip feeding and other invasive measures of nutrition?

The Hon. Anne Levy: That would apply whatever the definition is, because it is all-embracing.

The Hon. R.D. LAWSON: No; the definition of 'medical treatment' would remain.

Progress reported; Committee to sit again.

CRIMINAL LAW CONSOLIDATION (FELONIES AND MISDEMEANOURS) AMENDMENT BILL

Returned from the House of Assembly without amendment.

SOUTH AUSTRALIAN OFFICE OF FINANCIAL SUPERVISION (REGISTER OF FINANCIAL INTERESTS) AMENDMENT BILL

Returned from the House of Assembly without amendment.

STATE DISASTER (MAJOR EMERGENCIES AND RECOVERY) AMENDMENT BILL

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

SMALL BUSINESS CORPORATION OF SOUTH AUSTRALIA ACT REPEAL BILL

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

ADJOURNMENT

At 12.3 a.m. the Council adjourned until Thursday 20 October at 2.15 p.m.