LEGISLATIVE COUNCIL

Tuesday 25 October 1994

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

STATUTES AMENDMENT (CLOSURE OF SUPERANNUATION SCHEMES) AMENDMENT BILL

Her Excellency the Governor, by message, intimated her assent to the Bill.

PAPERS TABLED

The following papers were laid on the table:

By the Minister for Education and Children's Services (Hon. R. I. Lucas)—

Reports, 1993-94—
- Construction Industry Training Board.
- Economic Development Authority.
- MFP Development Corporation.

By the Attorney-General (Hon. K. T. Griffin)—

Reports, 1993-94—
- Australian Financial Institutions Commission.
- Forwood Products Pty. Ltd.
- Legal Services Commission of South Australia.
- State Electoral Office.

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

Reports, 1993-94—
- Board of the Botanic Gardens.
- Department for Recreation and Sport.
- Enfield Cemetery Trust.
- Local Government Finance Authority.
- Office of the Commissioner for the Ageing.
- South Australian co-operative Housing Authority.

Regulation under the following Act—
- Controlled Substances Act 1984—Declared Prohibited Substances—Cannabis Samples.

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

Reports, 1993-94—
- Art Gallery of South Australia.
- South Australian Film Corporation.
- State Theatre Company of South Australia.

WORKCOVER

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a ministerial statement on WorkCover made in another place by the Minister for Industrial Affairs.

Leave granted.

FEMALE GENITAL MUTILATION

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to make a ministerial statement.

Leave granted.

The Hon. K.T. GRIFFIN: Female genital mutilation, otherwise known as female circumcision, is a practice which mainly occurs in, but is not confined to, a number of African countries. It may range from the ritual nicking of the female genitalia to what is known as infibulation, which is the wholesale removal of all external female genitalia and the closure of the vaginal opening.

The Liberal Government believes that female genital mutilation is an horrific practice that is totally unacceptable to the South Australian and to the Australian community. There is no doubt that it is the duty of the Government to use its best efforts to eliminate the practice. The only question is how best to do it. As a part of a strategy to this end, the Government has decided to introduce legislation to criminalise the practice specifically.

Female genital mutilation has been on the agenda of the Standing Committee of Attorneys-General. In July, the New South Wales Government announced its intention to proceed with specific criminal legislation. That legislation was passed in September. The other States indicated that, whilst at that stage they did not intend introducing legislation, they would keep an open mind on this issue. The matter is to be considered again at the next meeting of the Standing Committee of Attorneys-General, which will be held next week in Melbourne.

The issue has been considered by a number of other ministerial councils. I understand that at the Health and Welfare Ministerial Council meeting held in Perth earlier this year Ministers 'affirmed that female genital mutilation is a totally unacceptable practice in Australia'. Ministers agreed that all States, Territories and the Commonwealth take whatever steps necessary to put an end to the practice of female genital mutilation. Ministers endorsed the view that legislation, in itself, is insufficient to end the practice and supported each State and Territory's implementing community consultation and education programs.

The issue was also considered most recently by the Ministerial Council of the Ministers for the Status of Women meeting in Adelaide. At that meeting the Ministers supported the need for community education aimed at the eradication of the practice of female genital mutilation and agreed on the necessity for community education being put in place with regard to the law as it affects female genital mutilation.

The issue has received considerable attention in recent months. The report by the Family Law Council was tabled in the Commonwealth Parliament on 27 June 1994. In July 1994, the Queensland Law Reform Commission released its draft report on female genital mutilation. Consistently with commitments I have given previously, I intend preparing an overview of the various reports, including the Queensland draft report. This overview will be available shortly, either prior to or at the time the legislation is introduced.

The issue of female genital mutilation is a complex one. There is a view that female genital mutilation is covered by the existing general criminal law. There can be no doubt that it is a practice relevant to and covered by child abuse law. It is my view and that of the Government that the best way to convey a message to the community that the practice will not be tolerated is to enact specific legislation that targets female genital mutilation.

There is a concern that the enactment of specific legislation to address the issue will serve only to ensure that when the practice is carried out it is carried out in secret, in unsafe and unsanitary conditions and that the victims will not access medical aid for fear of the law. There has never been an easy answer to this view. Certainly, the Government is sensitive to the need not to be heavy handed with the women who may be or have been subjected to this practice. These women may be viewed as victims of the offence. However, the Government strongly believes that the protection of children is paramount.

On the other hand, the Government does not believe that legislation by itself will solve the problem. It is vital that legislation be part of a total package with a significant focus on education to change the culture and the identification and counselling of high risk groups and individuals.

I intend at the next Standing Committee of Attorneys-General to pursue a cooperative approach between the States, Territories and the Commonwealth on the design and funding of community education programs. I will also work closely with my colleague the Minister for Community Services and other Ministers on the detail of delivering such programs to target communities in South Australia.

The Hon. Carolyn Pickles: And the Opposition, as I asked you to.

The Hon. K.T. GRIFFIN: Yes, and the Opposition, too.

STEAMRANGER

The Hon. DIANA LAIDLAW (Minister for Transport): I seek leave to make a ministerial statement on the subject of SteamRanger.

Leave granted.

The Hon. DIANA LAIDLAW: In a ministerial statement on 6 September I outlined the decisions the Government had taken with regard to the future operation of SteamRanger's tourist train services between Mount Barker junction and Victor Harbor. I noted that the Government, like the former Government, considered that SteamRanger's plight was a direct result of the standardisation project funded by the Federal Government and that, therefore, the Federal Government and not the State should pay compensation for any injurious effect arising from this project.

To this time, the Federal Minister for Transport, Mr Brereton, had refused to accept any funding responsibility for the relocation of SteamRanger to Mount Barker. For its part, the State Government has been reluctant to see the SteamRanger service sacrificed because of Federal Government intransigence. Accordingly, on 6 September, I advised this place:

1. That the State Government was now prepared to make funds available from the sale of land at Dry Creek which could realise up to $625 000;

2. That these funds are conditional on SteamRanger reducing the estimated 'like for like' relocation costs from $2.1 million to $1.26 million; and

3. That I was authorised to seek a funding contribution from the Federal Government to meet half the relocation costs.

Later, I wrote to Mr Brereton, the Federal Minister for Transport, proposing that part of any Federal Government contribution '. . . could be met by reallocating $250 000 that has not been spent as part of the Federal Government's One Nation allocation of $8 million to the Outer Harbor intermodal container transfer facility'.

I also sought Mr Brereton's urgent assistance to explore other avenues of Federal funding so that the cost of this $1.26 million project (that was the reduced cost) could be shared equally between the State and Federal Governments. Five weeks later, on 13 October, Mr Brereton replied:

> I note your advice that South Australia has achieved the full scope of works for the Outer Harbor project for $250 000 less than allocated. Should South Australia, in conjunction with the SteamRanger group, be prepared to fund the cost of the relocation other than the $250 000, I would be prepared to examine reallocating the savings achieved on the Outer Harbor project to the SteamRanger relocation project. I would, however—

and I stress these words—

> need your assurance that you would not seek any further Commonwealth funding whatsoever for this project.

On the basis that 'something is better than nothing' I welcome this belated contribution from Mr Brereton and the Federal Government, and I will write to Mr Brereton today accepting the terms. However, the sum of $250 000 falls far short of the $650 000 the State Government was seeking as a fair and reasonable contribution from the Federal Government. The shortfall has been compounded by SteamRanger's advice to me that it can reduce—albeit reluctantly—the estimated cost of relocation to $1.335 million, not $1.26 million, as proposed by the Government—leaving a shortfall overall of nearly $500 000. That is $500 000 on the reduced budget with which the Government believes this project could be realised.

Last week, I again met with representatives of SteamRanger. In the light of the shortfall, I asked whether they wished to proceed with the project or to abandon it. I received a unanimous and unqualified answer in the affirmative. Today, therefore, I am pleased to announce that SteamRanger will locate its operation to Mount Barker and commence its services from this site in May. However, this decision presents some dilemmas for SteamRanger. In addition to seeking work in kind amounting to the value of $400 000, the members will have to abandon the construction of a $500 000 shed to house the locomotives and the railcars. This is not an ideal course of action, as SteamRanger volunteers have recently spent countless hours and many dollars eradicating rust from locomotives in particular.

Later today I understand SteamRanger will confirm its intention to launch a public appeal for funds to help meet some of the costs associated with the relocation to Mount Barker and thus ensure the survival of this historic railway service. I hope that the appeal will be well supported by South Australians and steam enthusiasts throughout the nation. In the meantime, I share the disappointment experienced by SteamRanger representatives and rail enthusiasts that the Federal Government has not seen fit to match the State Government's contribution of $625 000, and I am disappointed—as are people involved in the SteamRanger project—particularly in light of the fact that earlier this month the Federal Government announced 'an investment' of $1.29 million to establish a historic tourist rail service between Castlemaine and Maldon in Victoria.

I wish to record my thanks to representatives of SteamRanger and officers within the Department of Transport who have worked long and hard, and with considerable patience, to help ensure the survival of SteamRanger as an asset for South Australia. Finally, I advise that the South Australian Railway Historical Society (SA Division) Inc., the operator of SteamRanger, has agreed that a Government representative be a member of the board in the future.

QUESTION TIME

WORKCOVER

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Attorney-General a question about a police inquiry.

Leave granted.

The Hon. CAROLYN PICKLES: Today in the *Australian* the Premier was reported as saying that the investigation into the WorkCover Reform Bill was *sub judice*. He stated:

The matter is now *sub judice*. It is being investigated by the police and quite rightly should be dealt with by the police.

The Attorney tabled a document in the Council today along those lines. My question is: is the matter in fact *sub judice* within the usual meaning of that term?

The Hon. K.T. GRIFFIN: It is not for me to give legal advice to members. I have not seen the article to which the honourable member refers. I will look at it and, if it is appropriate, I will bring back a reply.

The Hon. CAROLYN PICKLES: I ask a supplementary question. I am happy to provide the Attorney with a copy of the article, and I ask whether he will bring back a reply later during Question Time.

The Hon. K.T. GRIFFIN: I will look at the article and take some advice on it. I may or may not be able to bring back the answer by the end of Question Time. If members keep asking me questions, I will not be able to leave the Chamber in order to obtain the appropriate advice.

The Hon. R.R. ROBERTS: I seek leave to make an explanation before asking the Attorney-General a question about WorkCover and the Government Investigation Unit.

Leave granted.

The Hon. R.R. ROBERTS: A ministerial statement has been tabled today in respect of the investigation of WorkCover into what appears to be fairly much a knee-jerk response to the unexpected release of the Government's WorkCover Bill. The police have been involved, and that is explained further in the ministerial statement today. I note from the statement that the investigation was prompted by the Chief Executive Officer. Great pains have been gone to to ensure that it is clear that the Minister himself did not need to direct the inquiry within WorkCover. In fact, he claims that he was, I believe, in Malaysia at the time, and one can only assume that the Acting Minister was not involved.

However, I am aware that there is a Government Investigation Unit within the Attorney-General's Department. My question is: was the Government Investigation Unit of the Attorney-General's Department directed to investigate this release and, if not, is it the Attorney-General's intention, without consulting the Minister for Industrial Affairs, to conduct any further inquiries into this particular matter?

The Hon. K.T. GRIFFIN: The question is somewhat puzzling. The Government Investigation Unit has been in existence for the past 15 or 20 years, and I think the number of staff increased during the administration of the previous Labor Government. The Government Investigation Unit comprises five officers, some of whom, if not all, are former police officers. Their task is to follow up investigations for Government agencies whether it be into fraud or a range of issues which are not necessarily suited to the police, in the nature of proofing a witness or a whole range of issues in which Government investigation officers may from time to time be involved, generally with the concurrence of the Chief Executive Officer of the department at the request of other agencies.

I do not think my predecessor ever got involved in day-by-day supervision of the work of the Government investigation officers. I certainly have not and I do not intend to. As I understand, there are parameters within which they work and those parameters at the very least are the law, and they seek to investigate issues which relate to the affairs of Government—not partisan Government but the Executive Government. I do not know whether the Government Investigation Unit was involved in respect of the matter to which the honourable member refers. I would be surprised if it had been. If there is any allegation of fraud or corruption then it is not appropriate that the Government Investigation Unit be responsible for conducting those investigations because, essentially, they are police matters. Whether they be police in the broader sense or the Anti-Corruption Branch is really a matter for the law enforcement agency. It is not a matter for me or any other Minister to give directions that it shall investigate or not investigate where it is an issue of a breach or a suspected breach of the law.

I recollect that I answered this last week in much the same way when the issue was raised. It is not a matter of Ministers or anybody else giving directions to police to have matters investigated. That cannot be done, anyway, under the Police Regulation Act. The only directions the Minister can give to the Commissioner of Police are those which are given in writing and gazetted. That amendment was made in about 1978-79 after the Salisbury issues arose. That has been in the law for quite a long period of time. From time to time there may be members of Government who suggest that a breach of the law has occurred, and the police then have a discretion as to whether they will pursue that. That is the normal relationship of Government to police.

Members opposite would be the first to complain and to raise objection if law enforcement agencies became an arm of the Executive Government in enforcing Government directions. They are there to investigate breaches of the law or suspected breaches of the law and to take whatever action is necessary in order to bring offenders to justice. In terms of the Government investigation officers, I am not aware that they were involved in any way. On the fact of it, I would not have thought it appropriate for them to be so, but I am prepared to make some inquiries and to bring back the reply in due course.

ANTI-CORRUPTION BRANCH

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation prior to asking the Attorney-General a question about the Anti-corruption Branch.

Leave granted.

The Hon. T.G. ROBERTS: Mr President, in relation to the—

The Hon. L.H. Davis interjecting:

The Hon. T.G. ROBERTS: No, this is a spontaneous question in relation to the answer.

The Hon. K.T. Griffin interjecting:

The Hon. T.G. ROBERTS: That's right, it is quite methodical.

Members interjecting:

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: Mr President, this is a spontaneous question asked in response to the answer given to the question asked by the Hon. Mr Ron Roberts.

Members interjecting:

The PRESIDENT: Order! I cannot hear.

The Hon. T.G. ROBERTS: In view of the explanation that the Attorney-General has just given the Hon. Mr Ron Roberts in relation to the parameters by which the Attorney-General is able to trigger investigations, are there any circumstances under which it would be appropriate for the Anti-Corruption Branch to report to a Government Minister or his or her staff in relation to a proposed or current investigation?

The Hon. K.T. GRIFFIN: I will need to take that question on notice. There may be occasions where it is appropriate. For example, Attorneys-General (my predecessor included) would receive a report from the Police Commissioner in accordance with the Commonwealth Telecommunications Act on telephone intercepts. I may well, as the Minister finally responsible for the administration of justice in the criminal law, be informed of particular matters which are issues of concern to the Director of Public Prosecutions.

As with my predecessor, I do not seek to become involved or to influence decisions whether or not prosecutions should be launched and, if they are launched, what course should follow. My responsibility is to ensure that the proper framework for the administration of justice is in place and that, if there are matters which are in accordance with the law and which are required by me to be addressed either by the DPP or by the police, I will address them. There may be circumstances in which information comes to me as Attorney-General which is confidential to me and which may relate to decisions that the DPP is proposing to take or not to take in relation to particular matters. I do not think one can ever lay down a hard and fast rule about this, but I am prepared to give some further consideration to the question and bring back a reply.

It ought to be recognised also that in the proclamation which established the Anti-Corruption Branch there is the provision for the appointment of an independent auditor for that branch. Members may recall that the previous Government abolished what was then called Special Branch and replaced it with both the Bureau of Criminal Intelligence, I think it is called, and the Anti-Corruption Branch, and special provisions were set out in the Order in Council that dealt with the issue of independent audit of the functions carried out by those agencies.

The Hon. T. Crothers: Was that the last Government or a previous Labor Party Government?

The Hon. K.T. GRIFFIN: If one has to be pedantic about it, a previous Labor Government. It may not have been the one immediately prior to the 1993 election, but a previous Labor Government. So, we have not changed any of those. In fact, if we had, they would be on the public record because we would need to change them by way of Order in Council published in the *Government Gazette*. As I said, I am happy to take the honourable member's question on notice and, if it needs to be taken further by way of answer, I will bring one back.

IMAGES OF SADNESS EXHIBITION

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for the Arts, in her capacity as Minister for the Status of Women, a question about the 'Images of sadness' art exhibition.

Leave granted.

The Hon. SANDRA KANCK: Last Sunday I had the opportunity to attend the opening of an exhibition entitled 'Images of sadness', a collection of paintings about domestic violence by the artist Bob Mills. An extract from the open invitation gives some background to the exhibition and describes the purpose of the artist, as follows:

> The exhibition by South Australian artist Bob Mills is a personal reflection on the experiences of friends that have encountered situations of domestic violence. Bob has been able to capture the emotions of such situations in an extraordinarily graphic yet sensitive way. The series of paintings serves as a sombre reminder that, despite this year being the United Nations Year of the Family, there is still much that needs to be done before many families are able to live in safety and security.

It further states:

> The paintings in this exhibition are being shown in order to give the public an opportunity to share in the experiences of one man on this disturbing subject.

It is indeed disturbing. It is not a pretty exhibition: it shows women and occasionally children in states of abject sadness and depression, many times unseeing and faceless, as little more than battered and bruised bodies without identities. The exhibition, which was launched by local media personality Paul Makin, will run for two weeks in Adelaide, closing on Sunday 6 November, and then it is hoped that the exhibition will tour the regional areas of the State. However, funding is required for the country tour to go ahead and such funding has been difficult to acquire.

I have been informed that, had the paintings been incomplete, financial assistance could have been given but, because the exhibition is already complete, no funding is currently available via the normal channels. As we are all aware, the rural area is currently suffering increased poverty and too many women have become more susceptible to domestic violence as a result. An art exhibition such as this is a prime opportunity to provide information about domestic violence to all South Australians, including those living in rural areas, in a non-threatening yet effective way.

The organisers believe that it would be particularly useful for people living in rural communities as information could be made available at the exhibition about domestic violence outreach services and the steps people can take to help eliminate domestic violence. My questions to the Minister are:

1. Has the Minister had an opportunity to view this most valuable exhibition? If so, what impact did it have on her?

2. Is the Minister aware of the domestic violence being experienced by some rural women and would she agree that exposure to the Imagines of Sadness exhibition could play an important educational role for these women and their menfolk?

3. Given that 1994 is the Year of the Family, will the Minister, as both Minister for the Arts and Minister for the Status of Women, make money available so that this impressive exhibition can be made available to all people in South Australia, in particular those in our State's rural regions?

The Hon. DIANA LAIDLAW: In relation to the first question, I have not seen the exhibition, but I still have a week and a half to go and it is my intention to do so. In answer to the second question, I certainly do appreciate the horror of domestic violence and agree that much must still be done before families are able to live in a safe and secure environment in this State and hopefully elsewhere. I was interested in the honourable member's statement that it has been difficult to acquire funds for this exhibition to tour country areas because, from inquires I have made on the same matter, I have determined that the Arts Department has no record of the particular organisation having made any application for funding for this project. The South Australian Country Arts Trust has also advised the same. The South Australian Country Arts Trust manages a touring exhibition program to regional areas, and interested exhibitors can make application to it for assistance under the program.

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: Yes, that is correct. During this year the program has been much in demand and

I understand that it is in fact booked out a year ahead. Part of this is due to the lengthy process of booking venues and making other administrative arrangements. I would encourage the group that has organised this important exhibition (I am sure it is excellent also, but I will have to wait and see for myself) to make contact with the South Australian Country Arts Trust and discuss its proposal with them, and I believe that the trust will go out of it is way to give every assistance possible.

ADELAIDE LENDING LIBRARY

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister for the Arts a question on the City of Adelaide Lending Library.

Leave granted.

The Hon. ANNE LEVY: The City of Adelaide Lending Library, housed in Kintore Avenue, despite its name, is jointly funded by the State Government and the City of Adelaide under an agreement which is to expire fairly soon. I understand that negotiations have been going on for some time between the Libraries Board and the City of Adelaide regarding future arrangements for funding and organisation of the City of Adelaide Lending Library. A report—the Middleton report—was commissioned and made various recommendations and proposed several options. This report was made to the City of Adelaide and certainly suggested an administrative amalgamation between its library in Kintore Avenue and the one in Tynte Street, North Adelaide.

My concern is particularly with regard to the funding. Currently the funding is on a 50/50 basis for the Kintore Avenue Library between the Libraries Board and the City of Adelaide. The Middleton report made very clear that this library was under-funded in view of the heavy demands placed on it and that considerably more funding was required. I understand that the agreement is to provide more funding for the Kintore Avenue City of Adelaide Lending Library and that the administrative amalgamation between that library and the North Adelaide library in Tynte street is likely to occur, although I agree that it is a matter for the City of Adelaide and not for the Libraries Board.

With regard to the funding, if a 50/50 funding arrangement remains between the State Government through the Libraries Board and the City of Adelaide and this funding is to be increased, my concern, if extra funds have to be found by the Libraries Board to contribute to the extra funding for the Kintore Avenue Lending Library, is where this money will come from.

It could come either from an increased allocation to the Libraries Board from the State Government, but there is no indication of that in the budget papers. It could come from the money set aside by the Libraries Board for all public libraries around the State, but this would, in effect, mean a decrease in funding to all other council run libraries around the State, and I am sure that would not be received kindly by the Local Government Association or any councils in the State.

The PRESIDENT: There is a considerable amount of opinion in this question. The honourable member should not—

The Hon. ANNE LEVY: I am stating three options, Mr President.

The PRESIDENT: You are putting one opinion and another. I suggest that you ask your question, sticking to the facts.

The Hon. ANNE LEVY: The third option is that the money is taken from the budget of the State Library by the Libraries Board, which means that there will be a decrease for the running of the State Library on North Terrace. That is not an opinion but fact. Has an agreement on the future funding for the City of Adelaide Lending Library in Kintore Avenue yet been signed between the City of Adelaide and the Libraries Board? If so, will the Minister make public provisions of that agreement? If it has not yet been signed, will the Minister agree that when it is signed she will make public and table in this Chamber what the agreement is? Will she indicate, if there is increased funding from the Libraries Board, which of the three options for funding will be followed?

The Hon. DIANA LAIDLAW: The agreement has not yet been signed and therefore I cannot make it public, but I assure the honourable member that it will be made public when signed. A number of difficulties have been encountered in negotiating the transfer of existing staff. The situation reached a deadlock some time ago and it has taken some fine discussion by the Chairman, in particular, with representatives of council, to win the confidence of the Adelaide City councillors, in particular the paid staff. However, considerable progress has been made in recent weeks, both with the Adelaide City Council and with Treasury. Treasury has now agreed to support the additional funds which the State Government would need for its part of the agreement—$245 000 in 1994-95 and $160 000 in a full year. That will be coming from the State Local Government Reform Fund to facilitate this agreement.

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: Yes, we need to find an extra amount from State sources as well as the Adelaide City Council's being prepared to pledge an increased sum. The council has agreed to that, but the sticking point has been the transfer of staff. As the honourable member would be aware in relation to all other public libraries, where we operate them in partnership with local government, it is the local government that engages the staff. We believe that the Adelaide Lending Library should be on an equal footing with other public libraries that have such a heavy involvement from local government.

I note also that we are about to finalise the agreement for public libraries generally as a future funding arrangement. That certainly has to be concluded by the end of the year and good progress has been made in that regard.

The Hon. Anne Levy: Will you table that one, too?

The Hon. DIANA LAIDLAW: You did as Minister, and I am certainly prepared to make those documents available. However, like any of these matters in terms of negotiations about finance, they are particularly tense at this time when the State Government has little disposable income and when local government is facing difficult times as well. However, progress is being made for both the City of Adelaide Lending Library and for public libraries in general. Before the end of the year I will be pleased to provide more detailed information for the honourable member.

POLICEWOMEN

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Emergency Services and the Minister for the Status of Women, a question about SA police and policewomen.

Leave granted.

The Hon. A.J. REDFORD: I remind members that last Wednesday, 19 October, in this place the Leader of the Opposition was critical of the South Australian Police Department and, in particular, referred to the paucity of women officers in South Australia and specifically at higher levels of the service. She provided the Council with a series of statistics and, with the assistance of the Hon. Anne Levy, stated that the performance of the South Australian Police Department is worse than the parliamentary performance in relation to representation by the female sex.

The Hon. Carolyn Pickles: I didn't say that at all.

The Hon. A.J. REDFORD: You didn't say that, but the Hon. Anne Levy said it by way of interjection and you said 'I agree.' It is in the *Hansard*.

The Hon. Carolyn Pickles interjecting:

The Hon. A.J. REDFORD: You said it. She stated—

The Hon. Carolyn Pickles interjecting:

The PRESIDENT: Order!

The Hon. A.J. REDFORD: In response to that and in response to a speech by Ms Carolyn Pickles, the Leader of the Opposition in this place, the South Australian Police Department released a media statement that afternoon. In that media release the Commissioner of Police stated:

> Women have played an important role in policing since the appointment of the first woman officer, Miss Kate Cox, in 1915.

I think it is important that we get this on the record. It continues:

> Women have made significant progress in their advancement in policing and I am sure that this will continue to be the case. . . I am particularly concerned with the statement made by Miss Pickles that when a pregnant patrol officer is removed from patrol duties and moved into an office job the months that she is not on patrol is [sic] deducted from the years of service which can seriously affect her chances of promotion. This is clearly not the case.

The Commissioner went on to state in the press release that no woman returning from accouchement leave had been denied an opportunity of reemployment. He reaffirmed the high regard in which the department holds women police officers.

Also on that day, Ms Pickles implied that the Police Department is sexist in nature and, in particular, in relation to the recruitment of women. The Commissioner pointed out that one-third of applicants for the service are women and 38.5 per cent—three per cent higher than the number of applicants—of those recruited are women, therefore showing a positive bias in favour of women.

He also pointed out that of the total strength of the Police Force 15 per cent are women, and of those women employed in the Police Force 86 per cent are under the age of 34. Therefore, there is an increasing trend for women to be represented in the Police Force.

In addition to this information, we also have the rather extraordinary contribution made in relation to this topic of the status of women by the Deputy Leader of the Opposition in this place, the Hon. Ron Roberts. In the Port Pirie *Recorder* last Tuesday, the Hon. Mr Roberts was quoted in relation to his appointment as Deputy Opposition Leader in the Legislative Council. He quite correctly pointed out that he would serve as the deputy to Carolyn Pickles. He then went on to make this rather extraordinary comment:

> Labor has three women in shadow Cabinet, one of whom is Opposition Leader in the Legislative Council.

So far so good; he is absolutely correct. He then goes on to make the following rather astounding claim:

> My appointment as Deputy Leader certainly makes the Opposition in South Australia the most progressive and forward thinking group in the Parliament.

Members interjecting:

The Hon. CAROLYN PICKLES: I rise on a point of order, Mr President. The honourable member is expressing an opinion, which is against Standing Orders.

The PRESIDENT: I ask the honourable member not to include opinion in his question.

The Hon. A.J. REDFORD: Obviously the implication of the statement made by the Hon. Mr Roberts is that it is his appointment to the position of Deputy Leader that is important rather than the number of women in the Cabinet. In the light of the rather extraordinary comments from the Leader opposite and the rather extraordinary claim to fame by the Deputy Leader, I ask the Minister the following questions:

1. Has the Attorney-General any further information that might assist the Leader of the Opposition in relation to the questions asked by her last week in respect of women police?

2. Is the Minister for the Status of Women satisfied with the initiatives taken by the South Australia Police Force to improve the proper representation of women in the Police Force?

3. Will the Minister for the Status of Women continue to be involved in the enhancement of the role of women in the Police Force?

4. Does the Minister think that the appointment of the Hon. Ron Roberts overshadows the fact that the Opposition has three women in the shadow Cabinet?

The PRESIDENT: Order! Before the question is answered, I point out that there was considerable opinion in that question. That is not acceptable. I suggest that in the future the honourable member rephrase his question so as not to include opinion.

The Hon. K.T. GRIFFIN: I suppose we can take the questions from third to first—not in any order of importance necessarily. However, I suppose one could reflect that perhaps the question might even be out of order in the sense that it was not really a matter of public importance.

There are probably members who would agree that the appointment of the Hon. Ron Roberts did make the Labor Party more progressive and forward thinking. That is a matter for the judgment of not only his Party but also the public.

An honourable member: His family.

The Hon. K.T. GRIFFIN: Maybe his family, too. However, I do not think that under parliamentary privilege I really ought to make the sort of observations that one might expect a Minister to make about a colleague, even if on the other side, in these particular circumstances. That is a matter—

An honourable member interjecting:

The Hon. K.T. GRIFFIN: I refer the public to the *Hansard* and to the Port Pirie *Recorder*.

Members interjecting:

The Hon. K.T. GRIFFIN: It may well have helped the honourable member to get the No. 2 position on the Opposition benches in the Legislative Council.

In respect of the other questions, I did have some information last week which indicated that there had been significant progress within the Police Force in respect of the involvement of women as they move up to the higher ranks. I do not have that information with me at the moment. However, I will undertake to give further consideration to the question and bring back a detailed reply.

WORKCOVER

The Hon. T. CROTHERS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Industrial Affairs, a question about the police inquiry into the unexpected release of the Government's WorkCover Reform Bill.

Leave granted.

The Hon. T. CROTHERS: Recently, the Minister for Industrial Affairs stated in another place:

> No Government Minister had any involvement with the instigation of the police inquiry into the unexpected release of the Government's WorkCover Reform Bill.

This assurance was given by him on Thursday last week. Yet, in spite of the foregoing, Mr Bob Dahlenburg, of the WorkCover Advisory Committee, has stated that the Minister for Industrial Affairs ordered the police inquiry into the union officials who were then taken by the police for questioning about the matter under discussion. Therefore, I believe—and so do others—that something appears to be rotten in the kingdom of Denmark. My question to the Attorney is a very simple one: does the Attorney consider it proper for the Minister to issue instructions for such an investigation to be commenced?

The Hon. K.T. GRIFFIN: There may be something rotten in the kingdom of Denmark, but that is not South Australia. I understand where the honourable member is coming from. I refer the honourable member to the ministerial statement of the Minister for Industrial Affairs that I tabled earlier today. In relation to the WorkCover issue, he specifically said:

> On Tuesday 20 September, the WorkCover Chief Executive Officer Mr Lew Owens instructed and authorised WorkCover's fraud department to contact the South Australian Police Department to obtain their assistance in interviewing personnel outside of WorkCover.
>
> Mr Speaker, it was not until late on Thursday 22 September that WorkCover advised the office of the Minister for Industrial Affairs that WorkCover had requested South Australian Police Department assistance in their investigation.

I am not familiar with what Mr Dahlenburg may or may not have said, and in that respect it is an issue that I will further consider rather than answering it on the spot.

The Hon. T. Crothers: And will you bring back an answer?

The Hon. K.T. GRIFFIN: I may need to bring back a reply: I will look at it in the context of the advice that I receive.

SOUTH AUSTRALIAN FISHING INDUSTRY COUNCIL

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Primary Industries, a question about the South Australian Fishing Industry Council.

Leave granted.

The Hon. M.J. ELLIOTT: The fishing industry earns South Australia about $186 million a year in exports, but many industry members are concerned that there is a lack of support for the industry from the State Government. This follows a letter from a Liberal member of Parliament, which brings into question the future of the fishing industry's peak body, the South Australian Fishing Industry Council. The letter from the Liberal member for Flinders (Liz Penfold) stated that she had confirmed with the Minister for Primary Industries' office that it was most unlikely that future SAFIC fees will be collected by the Government because of its freedom of association policy. If the SAFIC levy, which the Government has now put at $230, is no longer collected, that will leave SAFIC without funds and possibly without a future. It has been suggested that the Minister would prefer the money to go to various integrated management committees (IMCs) in each fishing sector, even though there appear to be concerns within the Government as to whether these groups represent the interests of the majority of users. I note that that is also contained in Ms Penfold's letter—that the Government has some doubt about whether some of those IMCs are democratic. I recently attended a SAFIC meeting, which included representatives from most fishing sectors. There appeared to be unanimous support for the continuation of the collection of fees to fund SAFIC. My questions to the Minister are:

1. What commitment does the Government have to the continuance of SAFIC?

2. How can the Government justify the collection of fees to go to integrated management committees but say the distribution of fees to SAFIC is not justified?

3. Is the move not to collect funds motivated by a desire to silence an independent voice and a sometime critic of the Minister and the Government?

The Hon. K.T. GRIFFIN: I will refer those questions to my colleague in another place and bring back a reply.

WORKCOVER

The Hon. M.S. FELEPPA: As a supplementary question to that asked by my colleague of the Attorney-General, under what circumstances does the Attorney-General consider it to be appropriate for Ministers to table in Parliament police reports on the results of a specific investigation?

The PRESIDENT: Order! I will allow that question as a separate question.

The Hon. K.T. GRIFFIN: I will give some consideration to that. I am not sure of the context in which it is being requested but, if the honourable member wishes to clarify it, I will give consideration to it and bring back a reply.

RURAL FINANCE AND DEVELOPMENT DIVISION

In reply to the **Hon. R.R. ROBERTS** (10 August).

The Hon. K.T. GRIFFIN: The Minister for Primary Industries has provided the following response:

1. There are 142 approved consultants, duly nominated by the following professional associations.

AAAC:	Australian Association of Agricultural Consultants	21
ARAC:	Australasian Register of Agricultural Consultants	14
PISA:	Primary Industries, South Australia	39
ASPCA:	Australian Society of Certified Practising Accountants	0
ICAA:	Institute of Chartered Accountants in Australia	0
NIA:	National Institute of Accountants	51
FPA:	Financial Planning Association	11
AAPV:	Australian Association of Pig Veterinarians	6
		142

2. I am informed that 14 of the 142 are former PISA staff who have now established their own professional agricultural consultancy business and have been nominated by their professional association AAAC or ARAC as being suitable candidates to perform consultancy work under the Property Management Planning Grant Scheme.

Five of the above former PISA staff accepted Targeted Separation Packages (TSP's) in 1993 and were granted approval by former DPI Chief Executive Officer, Mr Ray Dundon under delegation from the previous Labour Government Minister, Mr Terry Groom to be

placed on the register subject to joining a recognised professional agriculture consultancy association, AAAC or ARAC.

3. To date there has been one consultant removed from the approved register.

The consultant was removed following complaints from primary producer clients, rural counsellors and lending institutions who were unhappy with the standard of reporting. This action was only undertaken following a series of meetings with the consultant concerned. Subsequent work submitted continued to be of an unsatisfactory nature. The Ombudsman's office is investigating this on behalf of the consultant.

I refute the claim that consultants have been removed from the register because they refused to write viability reports that suited Rural Finance and Development (RF&D) views, and would be pleased to further investigate any evidence that can be provided to support the claim.

RF&D have a role to protect the interests of primary producers of SA and will counsel/remove consultants if the quality of work is not up to the required reporting standard or if client complaints are received and justified.

It is important to note that the selection of the consultant from the approved Register of Consultants rest solely with the primary producer and does not involve RF&D.

FORWOOD PRODUCTS

In reply to **Hon. R.R. ROBERTS** (18 October).

The Hon. K.T. GRIFFIN: The Minister for Primary Industries has provided the following response:

1. Yes, the Minister has prevailed upon Forwood Products to enter meaningful negotiations with Mr Gibbett via the appointment of a commercial arbitrator.

2. Forwood has confirmed its willingness to continue to supply shavings to Mr Gibbett upon him:

- providing evidence from the Australian Quarantine Inspection Service that the product is suitable for use as a packaging for the export of live crayfish;
- providing an appropriate indemnity to Forwood against any future claims arising from the use of this material as food packaging recognising that it is not produced specifically for this purpose by any of Forwood's mills; and
- establishing appropriate batch testing procedures to ensure future supplies are free of contamination which could arise inadvertently from production and processing operations at both Forwood and Brisk plants.

PRISONS, OVERCROWDING

In reply to **Hon. C.J. SUMNER** (7 September).

The Hon. K.T. GRIFFIN: The Minister for Correctional Services has provided the following response:

1. The Department for Correctional Services is a signatory to the Standard Guidelines for Corrections in Australia (1994) which is based on the United Nations Standard Minimum Rules for the Treatment of Prisoners.

An Australian document sets standards for the control of prisoners in Australia. Recommendation 5.23 of the Standard Guidelines for Corrections in Australia (1994) states in relation to accommodation:

> In new prisons, accommodation should generally be provided in single cells or rooms. Provision may be made however, for multiple cell accommodation for the management of particular prisoners.

This Government has moved to stop offenders receiving early release under policies which were approved by the previous Government. As a consequence, the number of prisoners remaining within the prison system in South Australia has increased and the Department for Correctional Services has converted some existing accommodation to provide for increased prisoner numbers. This action is not inconsistent with recommendation 5.23 of the Standard Guidelines for Corrections in Australia.

Further, Yatala Labour Prison's 'E' Division, which was opened in February 1988 and has operated with two person cell accommodation, has not experienced a greater number of incidents, including assaultive behaviour, than other divisions within the prison which provide single cell accommodation.

2. The policies of this Government which relate to dual cell accommodation are not inconsistent with the Standard Guidelines for Corrections in Australia (1994). However, the Correctional Services Department takes necessary steps to ensure that dual cell accommodation does not increase tension in the prison system.

In particular, prior to making a decision regarding the doubling up of remand prisoners at the Adelaide Remand Centre, remandees are inducted through an induction unit. Unit 1 is used for this purpose and prisoners are inducted to the routines of the centre and informed of the services available to them. During this time remand prisoners are evaluated with respect to their compatibility for sharing a cell with another prisoner. Issues which are considered are whether the remand prisoner is smoker/non-smoker, communicable disease status, and general medical and mental condition. In addition, Level Managers must approve the compatibility status of the remandees.

The Department for Correctional Services operates within the provisions of the Occupational Health, Safety and Welfare Act and recognises a duty of care towards both staff and prisoners.

CRIME STATISTICS

In reply to **Hon. A.J. REDFORD** (11 October).

The Hon. K.T. GRIFFIN: One of the aims of the evaluation of Victim Impact Statements was to assess whether their introduction in 1989 had led to any change in the number of restitution and compensation orders issued by the courts. For this assessment to be made data were required for a period before and after 1989. These data were readily available for the Supreme and District Courts over the time period required. However, for the Magistrates Court, data on restitution and compensation orders were not available prior to 1991. Such information has been collected since the computerisation (Court's Criminal Case System) of court records in 1991 and will be available for future evaluations or any other purpose.

WATER MAINS

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Minister representing the Minister for Infrastructure a question on burst water mains.

Leave granted.

The Hon. G. WEATHERILL: Last week in this place, the Hon. Trevor Crothers asked a question on the EWS, and he was given a reply by the Minister for Education and Children's Services on the increase in burst water mains in South Australia. At the time, the Minister believed that the lack of new mains being laid and lack of maintenance was contributing to the amount of burst mains in South Australia. Has there been an increase in the number of burst water mains in South Australia? If so, to what does the department contribute this? This year, we have had the driest year on record in South Australia, and that would cause a lot of ground movement. If we compare this year with the previous five years, what has been the increase and to what has it been contributed? When the contractors in EWS take over the department, which has been indicated, will they still carry out the policies of the Labor Government, that is, to restore the water supplies as quickly as possible within a maximum of eight hours each time we get a burst water main?

The Hon. R.I. LUCAS: I will refer the honourable member's questions to the Minister for Infrastructure and bring back a reply. My recollection of part of my response last week is that I referred to statements that the Minister for Infrastructure has made comparing South Australia with other States this year as opposed to the last five years. I do not have that information available, so I will refer the honourable member's questions to the Minister and bring back a reply.

TAFE EQUAL OPPORTUNITY UNIT

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 TAFE Equal Opportunity Unit.

Leave granted.

The Hon. ANNE LEVY: I am sure that no member of this Chamber needs to be reminded that this year is the centenary of women's suffrage. One would expect, consequently, that much would occur this year to enhance the status of women and that certainly nothing would be done to diminish it. I have been told that the TAFE Equal Opportunity Unit has been abolished. Many people have expressed concern to me that this should occur in 1994 which is, as I say, a year when one might expect enhancement of the status of women, not diminution of it in this way.

The Minister has made great play of the fact that, as Minister for the Status of Women, she has an overview of all matters in Government which affect women. I ask the Minister: was she consulted before the abolition of the TAFE Equal Opportunity Unit; did she agree with its abolition; did she know of its abolition before it was abolished; if she agreed to its abolition, will she explain on what basis she could possibly agree to the abolition of an EO unit, particularly in 1994; and, if she did not agree with or was not aware of its abolition, will she take up the matter with the relevant Minister and persuade him that such an abolition is disgraceful, particularly in 1994?

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: Mr President, perhaps you could clarify at some stage when you will accept a comment and when you will not. This is not a reflection on you, but some mixed standards seem to be being applied today. In response to this question, I advise the honourable member that I was not consulted about this matter, nor was I aware, nor do I know that it is a fact, but I will make inquiries and bring back a reply to the Parliament as soon as possible.

HOSPITAL FUNDING

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Minister representing the Minister for Health a question about hospital funding in country areas.

Leave granted.

The Hon. R.R. ROBERTS: Yesterday, I received a telephone call from a Mrs Stephanie Dunning who lives in Port Pirie. Mrs Dunning has a two year old disabled child who is in need of paediatric physiotherapy. After considerable time, she was able to enrol him in a therapy class which has until now cost her $3 per session or $6 per week. She was recently advised, as late as yesterday, that due to casemix funding implications and budgetary constraints the service is to cease this Friday. I am further advised that the physiotherapist has been told that she will finish on Friday because of the same budgetary constraints.

Port Pirie Hospital is a regional hospital which services the hinterland as well as the city, and I am advised that the physiotherapist has some 40-odd clients whom she services regularly. Mrs Dunning has been told that the use of the therapeutic swimming pool will now cost $10 per session. It ought to be pointed out that, because of his condition, Kieran Dunning, who is also a cranio-facial patient, needs two people in the pool at any one time. If during the sessions he will need the help of a paediatric physiotherapist, it will cost the Dunnings an extra $30 per session, which will mean that each session will cost $40.

I am aware of the concerns about funding arrangements for country hospitals in a whole range of areas. I understand that a number of emergency meetings are currently being held in several country areas which are concerned about the future of country hospitals because of the changed funding arrangements that have been introduced by this Government. Indeed, I am aware that a meeting will be held at Booleroo Centre and that an emergency meeting will be held tomorrow night at Ceduna for the same reason. These changed arrangements are, I am told, inflicting enormous hardship and concern on people such as the Dunnings in Port Pirie.

My question to the Minister for Health is: in the interests of equity, social justice and community service obligations and in the light of the proposal to decentralise services in South Australia, what arrangements will be made by the Minister to provide relief for people such as Mrs Dunning and her son who live in rural South Australia who are affected by the lack of services and the overwhelming cost burdens that they are currently experiencing as a consequence of these changed funding arrangements?

The Hon. DIANA LAIDLAW: I have received some advice about this case, which is as follows. The Port Pirie Regional Health Service Physiotherapy Department employs four physiotherapists, one of whom is a qualified trainee on secondment from the Royal Adelaide Hospital. On 20 October 1994, the Royal Adelaide Hospital advised the Senior Physiotherapist of the Port Pirie Regional Health Service that the traditional arrangement for seconding Royal Adelaide Hospital physiotherapy staff will cease on 31 October 1994. The Chief Executive Officer of the Port Pirie Regional Health Service has subsequently requested the Physiotherapy Department that it maintain the current pattern of service for at least the next three weeks whilst the impact of this staff reduction can be assessed and alternative arrangements considered.

During this period the Chief Executive Officer is also planning to request the Royal Adelaide Hospital to maintain the traditional arrangement—although I understand that such a request has not been received at this stage. Accordingly, the Minister's office advises that there will not be any change by the Physiotherapy Department of the Port Pirie Regional Health Service to the fees charged or the services provided to Kieran Dunning at this time.

PERSONAL EXPLANATION

The Hon. R.R. ROBERTS: I seek leave to make a personal explanation.

Leave granted.

The Hon. R.R. ROBERTS: During Question Time, the matter of my modesty was raised in the Council. It attracted great interest from members opposite; that became infectious, and it filtered through to my colleagues. The report in *The Recorder* was accurate in that I did point out part of what I said in the press release.

The Hon. A.J. Redford interjecting:

The PRESIDENT: Order!

The Hon. R.R. ROBERTS: The Hon. Mr Redford has fallen for the trap of new players in thinking that everything put in a press release actually gets printed. As explanation for the Hon. Mr Redford and all concerned members opposite, including Mr Davis, who is obviously concerned about my health, well-being and future prospects in this Council, what

we were talking about was the appointment of the new leadership team on this side of the Council. We were pointing out the differences between our team and the team opposite.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.R. ROBERTS: I pointed out to the *Recorder* and to the other country press that what the Australian Labor Party has done in keeping abreast of modern trends—

The Hon. R.I. LUCAS: I rise on a point of order, Mr President. In a personal explanation the member must explain where he claims to have been misrepresented and limit his personal explanation to that.

The PRESIDENT: I accept the point of order. The Hon. Ron Roberts is straying a bit wide.

The Hon. R.R. ROBERTS: Mr President, I was endeavouring to meet the requirements as laid down. The quote in the *Recorder* is the end of a situation where I was explaining to those readers of my press release—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.R. ROBERTS:—that the difference between the Labor Party and others was that we have women in our party in leadership positions, we have trade unionists—

Members interjecting:

The PRESIDENT: Order!

The Hon. Diana Laidlaw: You were the best thing that ever happened to the Labor Party.

The Hon. R.R. ROBERTS: Exactly. I agree with the Hon. Diana Laidlaw implicitly, even though she is out of order—and I know we are being very technical about Standing Orders today, but you cannot change the habits of a lifetime.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.R. ROBERTS: The point being made was that the Labor Party, on electing me—

Members interjecting:

The PRESIDENT: Order! I suggest that the member come to the point.

The Hon. R.R. ROBERTS: Mr President, I am trying to come to the point.

The PRESIDENT: It is a personal explanation and we are getting a little wider than that. I have given the member a fair bit of latitude and I suggest that he come to the point.

The Hon. R.R. ROBERTS: The point of the quote was that, because the Labor Party had appointed me as a country member, it showed that it was worried about what was happening in country areas. The point concerned the balance of the leadership team of our Party. It was not about—

The PRESIDENT: Order! That is not a personal explanation.

The Hon. DIANA LAIDLAW: Mr President, I rise on a point of order. First, I would challenge whether the honourable member has not strayed far from what is tolerable on a point of order and, secondly, is it relevant that none of the Labor women have stayed to listen to this personal explanation?

The PRESIDENT: Order! The member asked for leave to explain and there was an enormous amount of interjection from my right, but he was given leave and so I suggest that members give him the right to ask his question. As to the personal explanation, I point out to the member that it does not require detail about his Party or other matters other than the personal explanation for himself.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.R. ROBERTS: From the start, the point of this personal explanation, despite the interjections, has been to explain the comment which touches on my modesty, and everyone here knows how modest I am.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.R. ROBERTS: The point in relation to the quote was the capping of an explanation to my readers that we had balance and that my appointment represented—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.R. ROBERTS:—the Labor Party's recognition of the needs of country people, that my being made Deputy Leader recognises the worth of country people. It was meant to explain that members opposite in their Cabinet do not have anybody from a country area, unlike us on this side of the Council.

Members interjecting:

The PRESIDENT: Order!

MEMBER'S LEAVE

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

That three days' leave of absence from 1 November 1994 be granted to the Hon. S.M. Kanck on account of absence overseas leading the First Delegation to Vietnam of the Australian Political Exchange Council.

Leave granted.

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE BILL

In Committee.

(Continued from 20 October. Page 533.)

Clause 6—'Anticipatory grant or refusal of consent to medical treatment.'

The CHAIRMAN: At present we have before the Committee an amendment from the Minister for Transport, namely, page 4, line 5—Leave out '18' and insert '16', and we have had a considerable debate on this amendment.

The Hon. DIANA LAIDLAW: Mr Chairman, it would be my recommendation that the matter be put straight to the vote.

The Committee divided on the amendment:

AYES (9)

Crothers, T.	Elliott, M. J.
Kanck, S. M.	Laidlaw, D. V.(teller)
Levy, J. A. W.	Pickles, C. A.
Roberts, T. G.	Weatherill, G.
Wiese, B. J.	

NOES (10)

Davis, L. H.	Feleppa, M. S.
Griffin, K. T.(teller)	Irwin, J. C.
Lawson, R. D.	Lucas, R. I.
Redford, A. J.	Roberts, R. R.
Schaefer, C. V.	Stefani, J. F.

PAIRS

Pfitzner, B. S. L.	Cameron, T. G.

Majority of 1 for the Noes.

Amendment thus negatived.

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

Page 4, line 6—After 'if he or she is' insert 'at some future time'.

The amendment is stylistic. Clause 6(1) says that a person may give a direction about the medical treatment that the person wants or does not want if he or she is in the terminal phase of a terminal illness or in a vegetative state and incapable of making decisions about medical treatment when the question of administering the treatment arises. The person will not be giving the directions when he or she is in this state, which is how the clause now reads. The person will be giving the directions to take effect if at some time in the future he or she is in that state.

The Hon. M.J. ELLIOTT: I would want to be absolutely confident that this is only a stylistic change and that the effect might not be to preclude a person who is in the terminal phase of a terminal illness but still capable of making decisions from giving a direction before becoming incapable of making decisions.

The Hon. K.T. GRIFFIN: I am confident that it does not preclude that. One must read paragraphs (a) and (b) together, because clause 6(1) operates when a person is in the terminal phase of a terminal illness or in a vegetative state that is likely to be permanent, and incapable of making decisions. My amendment does not create a problem in relation to the circumstances to which the Hon. Mr Elliott refers, where a person might be in the terminal phase of a terminal illness but still capable of making decisions.

The Hon. DIANA LAIDLAW: That is the advice that I have received; that what the honourable member is seeking is actually implicit in the Bill as it is at the moment, and this just makes it absolutely specific. Perhaps, in a sense, it is pedantic, but I do not intend to object. I am pleased to support the amendment.

Amendment carried.

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

Page 4, lines 7 and 8—Leave out 'in a vegetative state that is likely to be permanent' and insert 'in a persistent vegetative state.'

This replaces the words 'in a vegetative state that is likely to be permanent' with 'in a persistent vegetative state'. My advice is that in the context of the sorts of issues we are addressing in this Bill all the cases and the literature refer to 'persistent vegetative state', and in those circumstances it would appear to me to be appropriate to reflect that in this legislation, rather than reinventing something that has been referred to in cases and in the literature by way of description as a 'persistent vegetative state'.

The Hon. DIANA LAIDLAW: I really do not see much reason for changing this. Nevertheless, the advice that I have received in both legal and medical terms is that it does not really make much difference but, if it is something about which the Attorney feels strongly, and it is true that PVS is a term used commonly in the hospital system, I am pleased to accept the amendment.

The Hon. M.J. ELLIOTT: I think this amendment has the potential to lead to a difference in interpretation. The difference between 'a vegetative state that is likely to be permanent' and 'a persistent vegetative state' might be open to some argument, and it could leave a person not able to be appointed as an agent because you would have to be able to prove the person was in a persistent vegetative state, and that is a much harder test than a vegetative state that is likely to be permanent. So, a person is in a vegetative state and there is then an argument as to whether or not it is persistent or likely to be permanent and, therefore, whether or not a person can act as an agent. I think the test is being made a much more difficult one by the change in wording, and I do not think that the effect is the same.

The Hon. DIANA LAIDLAW: I indicated that I have received legal and medical advice on this. For the record I should note that Dr Michael Ashby is overseas at the present time. He has been an important figure in the development of this Bill from the select committee time to today. Dr Roger Hunt, the Medical Coordinator of the Southern Community Hospice Program was very involved in the preparation of the Bill, with advice to successive Ministers and, on a daily basis, with many of the people whom we are seeking to help in relation to this legislation. He is also a clinical lecturer at the Flinders University and his advice is that in medical terms there is no difference between 'persistent vegetative state' and 'in a vegetative state that is likely to be permanent'. I can appreciate the honourable member's concern but in medical terms there is no difference. In legal terms, I have been advised from the highest authority (other than the Attorney-General) that there is no difference.

I indicated when speaking earlier that my reason for accepting this is possibly out of deference to the Attorney-General's higher office, but for no other reason than that, because there is not seen to be any difference in legal terms and certainly not in medical terms, and that was one of my principal concerns.

The Hon. K.T. GRIFFIN: I am seeking to eliminate the potential for revisiting some of the legal issues if these matters eventually go to court. All I can say is that my advice is that, whilst there appears to be no difference in effect, in all the cases when one is talking about medical treatment or palliative care, persistent vegetative state is the concept that is used, certainly more frequently than that description which is referred to in the Bill. I take the view that, if it is likely to eliminate an area of debate in the future because it is phrased in different terms from what may have been the description in both the cases and literature, then let us avoid it.

Amendment carried.

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

Page 4, line 9—Leave out 'incapable of making decisions' and insert'not competent to make decisions'.

Clause 6(1)(a) provides that a person can give directions about the medical treatment he or she does not want if he or she is incapable of making decisions about medical treatment when the question of administering the treatment arises. The amendment changes 'incapable of making decisions' to 'not competent to make decisions'. I expressed my concerns about the word 'incapable' when the measure was last debated, prior to this session, and sought to have it amended to 'mentally incapable'. However, that was not accepted. Various groups had made representations that this phraseology was stigmatising.

I am now proposing, as I indicated on the last occasion we debated this concept, that the test be competence, in the sense of cogitative ability. To make a contract to plead to a criminal charge, to make a will or to consent to medical treatment is a recognised legal concept. It does not have the unacceptable connotations of 'mentally incapable' and overcomes the problems I highlighted when this was debated previously.

I recognise that the Hon. Robert Lawson previously put a viewpoint (which was not finally accepted by the Committee) that there was a more well developed concept of 'capacity' than 'competence'. 'Competence' in the sense of cognitive ability on my advice, in relation to consent to medical treatment, is the same as 'capacity', but it seems to

me that it cannot be read in the undesirable way that 'capacity' could be read in this Bill, that is, physically incapable or, perhaps, simple indecision.

Clause 4(2), which was amended to include a reference to 'competent', originally referred to 'mentally competent', whereas 'incapable' is the word used in other provisions of the Bill. There is a necessity to have consistency throughout the Bill and, although this may be revisited when we recommit the Bill after it has been through this run, I suggest that to ensure consistency with the approach that has previously been adopted by the Committee the issue of competence is the concept that out to be accepted.

The Hon. R.D. LAWSON: I should have thought that 'incapable' was the appropriate expression in this context where anticipatory grounds might be made in circumstances where the underlying competence and mental capacity was not an issue but the person was incapable at that time of making decisions. The person may have the competence but is precluded by reason of incapacity from making a decision on that occasion. I should have thought that it would be appropriate to draw the distinction between being competent in a legal sense and incapable in the manner in which the provision is drawn.

The Hon. DIANA LAIDLAW: I acknowledge that when the Bill was last before this place the Hon. Trevor Griffin raised this issue in terms of mental incapacity. As he acknowledged earlier, he has moved away from that concept in addressing the same issues at this time. The Government remains of the view, however, that 'incapable of making decisions', not only as the Hon. Robert Lawson has indicated, is slightly wider in terms of its impact. We also argue that it is more user friendly in terms of its language. We feel inclined to stay with the expression 'incapable of making decisions'.

The Hon. K.T. GRIFFIN: The problem about which I spoke on the last occasion that the other the Bill was before us was that 'incapable of making decisions' does not simply relate to questions of incompetence, incapacity or however you like to describe it, or perhaps being competent but for some reason not being able to make a decision can extend to the undesirable connotation of prevarication and inability to make up one's mind.

A person may well be competent to make a decision but may be uncertain or otherwise unable to make up his or her mind about the decisions which out to be taken. It is undesirable to get into the realm of allowing these decisions to be made when it is a matter of prevarication and does not go to the question of competence or incapacity of a person to make a decision, because that is what we are really talking about: we are talking about a person who is presently of sound mind and who looks ahead to the future and says, 'If I am in a terminal phase of a terminal illness or in a persistent vegetative state, I am not competent to make decisions or, because of the circumstances, I am incapable of making decisions.' It seems that 'competence' is a more appropriate description of those circumstances than is the reflection of incapability.

The Hon. M.J. ELLIOTT: I will digress slightly, but at the end of the day it may be relevant to the wording we finally use. A question that concerns me is that it would be possible for a person in a terminal phase of a terminal illness to be mentally competent but be absolutely incapable of conveying their wishes.

Members interjecting:

The Hon. M.J. ELLIOTT: No, you could be conscious and be incapable of conveying a decision in some circumstances.

An honourable member interjecting:

The Hon. M.J. ELLIOTT: That is an important question: how do you know?

The Hon. Diana Laidlaw interjecting:

The Hon. M.J. ELLIOTT: That's right, but you could have a person who is not in any position to convey their wishes. A stroke is an example of that, where the thinking faculties may be operational but they may not have any capacity perhaps to relay their thoughts. I am not sure that either wording we have at this stage necessarily covers that sort of situation.

I know that we have all sorts of arguments about whether or not this person really knows what is going on. That argument can go on almost forever. That is one of the arguments about Jon Blake. Some people are saying that he is blinking and conveying thoughts, and the doctors are saying that they believe that there is absolutely no mental activity going on at all.

The Hon. Diana Laidlaw: Is he incapable, or just not competent?

The Hon. M.J. ELLIOTT: You have that question and, even so, having that argument itself—whether 'incompetent' or 'incapable' is the correct wording—does either of those take into account the question of being able to convey any thoughts that the person may or may not be having? Perhaps we need to consider that in relation to these words as well.

The Hon. K.T. GRIFFIN: If one takes the example that the Hon. Mr Elliott raises, I do not think I am capable of answering that in medical terms, or even in legal terms. There is a difficulty. I have not had sufficient experience with people who are in such a position that in no way can they communicate what they wish or do not wish. I think it will be very difficult to make that decision, even if we are using the word 'incapable'. However, even in those circumstances, I would still prefer to make a judgment about a person's competence than just about the physical circumstances. I acknowledge that it is a difficult area. As I said, I tend to err on the side of caution rather than extravagance in this case.

The Committee divided on the amendment:

AYES (6)

Davis, L. H.	Griffin, K. T. (teller)
Irwin, J. C.	Roberts, R. R.
Schaefer, C. V.	Stefani, J. F.

NOES (12)

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

PAIRS

Lucas, R.I.	Pfitzner, B.S.L.

Majority of 6 for the Noes.

Amendment thus negatived.

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

Page 4, Lines 17 and 18—Leave out 'in a vegetative state that is likely to be permanent' and insert 'in a persistent vegetative state'.

We have already resolved the question whether we should be talking about the vegetative state that is likely to be permanent or someone being in a persistent vegetative state. So, that issue has been resolved.

Amendment carried; clause as amended passed.

Clause 7—'Appointment of agent to consent to medical treatment.'

The Hon. DIANA LAIDLAW: I move:

Page 4, line 27—Leave out '18' and insert '16'.

We have had an interesting debate over the past week on the age at which one can consent either to medical treatment or to an advanced directive, and now we are addressing the same issue of age in relation to medical power of attorney. When we considered medical treatment, the Committee determined in majority that 16 years and not 18 years was the most appropriate age. There was a very close vote a moment ago after a long debate last week about whether it should be 16 or 18 years in relation to an advanced directive.

Now I will argue that 16 is the most appropriate age, not 18, in relation to a person's being able to agree that they can exercise a medical power of attorney, that is, in the sense of appointing a medical agent. I believe that if you can argue that a person at 16 years is capable of requesting and seeking medical treatment then they are equally able at that age not only to give an advanced directive but also to appoint a medical agent.

As I said, if you are capable of making a decision about what medical treatment you want and when, surely the Parliament, with any sense of consistency and respect for the young person at that age, would argue that they were equally capable of appointing a medical agent. Certainly, that is my view. I respect the fact there will be others would not hold that view, but I find that I am not capable of accepting the inconsistencies in their arguments.

It was the select committee's view, after assessing this issue at great length—I think almost two years—after looking at it in the House of Assembly and after receiving the widest evidence from the community, the medical profession and the legal profession, that 16 years was the appropriate age for a person to appoint a medical agent.

It is interesting to reflect on the differences between the House of Assembly and the Legislative Council. It is sometimes argued that members of the House of Assembly, because they service smaller electorates, become closer to the people in their electorate. Many of them serve in marginal seats and are tentative about sensitive issues such as this one and how they will be received in the electorate. Yet, it was in the House of Assembly, notwithstanding all those facts and sensitivities, that the select committee—

The Hon. Carolyn Pickles: And just before that.

The Hon. DIANA LAIDLAW: And just before a State election, yes—proposed 16 years of age, and the other place adopted 16. Yet when it came to this place—a place where members have longer terms of Parliament (and I do not uphold this argument) and where members are often seen by many to be less accountable to the people and have a less direct relationship with a local electorate—

The Hon. M.S. Feleppa: That is not entirely correct.

The Hon. DIANA LAIDLAW: No; I'm not saying that it is a view I hold, but it is a view that is widely held, that we sit in this Chamber unrelated to what is going on in the wider community. Often we in this place have the advantages of not being natural conservatives and saying 'No' to everything all the time but, because of the comfort of our longer terms and because we have terms that stagger Parliaments, we should be more courageous and forward looking in many of these areas. In this issue, it is the House of Assembly members who have the confidence in people generally and particularly in people in terms of their competence at the age of 16. It is an interesting reflection on this place, but I will not get into that debate further.

It is interesting that the sensitivity of this issue is one with which the House of Assembly can grapple and accept, yet this place has had difficulties with it to date. I hope the difficulties will not continue because surely, as we accepted last week, a person of 16 can not only drive a car—and that would have to be one of the most responsible roles you could have in society today—but can have the maturity to determine what they want in their medical treatment. Why do we not have the confidence then, that the same people, age 16, have the maturity to appoint a medical agent to look after their welfare?

The Hon. K.T. GRIFFIN: I do not agree with the propositions put by my colleague. It is a question not of having confidence in young people but of making a proper assessment from one's own experience and perspective with children who have recently passed through that age of 16 and 18 and contact with a wide range of their friends, as well as contact with the community. It is in that context that I express a very strong view that 18 is the earliest age at which a person should be able to make a medical power of attorney, which covers a wide range of issues about medical treatment well into the future, perhaps at a point where they are not able to anticipate adequately what the consequences may be. There are important decisions to be taken. There is no doubt that medical practitioners and parents will certainly consult, even with a 14 or 15 year old, as decisions have to be taken in respect of medical treatment, and the amendment which the Hon. Diana Laidlaw is proposing in relation to clause 11 will deal with the immediate issue of medical treatment for children in a way which has been within the law up to the present time and which I would suggest will maintain that position.

I do not think the fact that members of the Legislative Council do not have small electorates to service has any relevance to the issue at all, with respect to my colleague. All members in this Chamber do get out to meet a whole range of different people within different communities throughout the State—country and city—and are as much in contact with public opinion and with the needs and aspirations of their constituencies as members of House of Assembly. It is not a matter of courage or confidence or however you would describe it: there may be a difference of opinion between members in the two Houses.

In the House of Assembly, one has to acknowledge that there are differing points of view on this matter. It just so happened that there was a majority who were in favour of 16. What does that say about the minority? It does not say anything other than that they, from their experience and their own personal views, have a different view of what the age should be. So for the reasons which I espoused on clause 6, I continue to oppose 16 as the age at which a person may be able to make a medical power of attorney and appoint an agent to make quite significant decisions later in life.

The Hon. R.R. ROBERTS: I, too, will be opposing this measure. I, like the Attorney-General, do take exception to the sensitivity question that has been commented on by my colleague the Hon. Mario Feleppa, whose sensitivity to social issues and the issues of people in the community is well known and has been demonstrated on many occasions besides this. I can assure my constituents that I will not be making a decision based on the fact that I have an eight or a three year term: it will be on the merits of the argument. However, on

the substantive merit of the argument, we have canvassed many of these issues, and I just remind members of the contribution made by Rob Lawson about powers of attorney in all other areas. I have made my position clear: when it comes to decisions made by a third party, it ought to be 18, and those people who take on that awesome responsibility ought to be adult in every sense of the law, as in most other areas.

As a matter of Party policy, where decisions are made by individuals with respect to their own health immediately and where they are competent to do that it ought to be 16, and consistent with that philosophy I did in early stages of the Bill support 16 where personal decisions about their health are concerned, but on this occasion, consistent with my arguments in this debate on this occasion and the previous time that it was before this Chamber, I will be supporting 18 here. In clause 3, which deals with the eligibility to be appointed as an agent under the medical power of attorney unless they are over 18 years of age, I intend to support that also.

The Hon. M.J. ELLIOTT: There seems to be an amazing logical inconsistency, where people could vote for new clause 5a which provides that a person over 16 years of age may make decisions about his or her own medical treatment, as validly and effectively as an adult, which is what this Council put in quite strongly. You can make a decision about any medical treatment whatsoever now but, on the other hand, if this person knows that they are suffering from an illness which will eventually lead to their not being able to express their view (and we have already denied them the right to be able to express it in advance)—

The Hon. R.R. Roberts interjecting:

The Hon. M.J. ELLIOTT: We have. We did that in the previous clause, by way of an advance directive.

The Hon. R.R. Roberts interjecting:

The Hon. M.J. ELLIOTT: Yes, that's right. We denied it at the age of 16. You can talk about whatever treatment you want now, but you can't talk about what treatment you might want if you are incapable of passing those wishes on later. That is one extreme logical inconsistency. We are also saying that whilst they can make decisions about what they want, if they are no longer in a position to make those decisions due to failure in their health, they cannot even delegate their decision making power, which we have already acknowledged they have, to someone else. I add that the delegation must be to someone over the age of 18 anyway, not to their classmate or someone like that. It is an absolute logical inconsistency to say that a person can today make whatever decision they like about anything that affects their health but they cannot for tomorrow make any form of advance directive either directly or via an agent.

The Hon. CAROLINE SCHAEFER: Mr Elliott has spoken somewhat eloquently about young people who are dying. The assumption is that anyone who is going to appoint a medical power of attorney is dying. That is not necessarily the case. What about a young person who appoints their mate and is then rendered in a vegetative state through a car accident? The parents have absolutely no say over what will happen to that person. I agree that there must be a mandatory age, but I support 18 because, as the mother of three young adults, I believe that the difference in the ability to make a decision and the inconsistency between a 16 year old and an 18 year old are quite remarkable.

However, putting that aside, if we make the age 16, a medical power of attorney will be the only power of attorney that can be granted under the age of 18. So, when we are talking about consistency, we need to look at that matter. I also take some offence at the idea that I am not sensitive or courageous and do not know what I am talking about if I disagree with people in this room.

The Hon. R.D. LAWSON: I oppose this amendment because a person under the age of 18 cannot make a will, enter into a contract, make a power of attorney, cast a vote or appoint an agent for any other purpose. If we are to reduce the age of majority, we should do so by way of some general law and not by stealth.

The Hon. ANNE LEVY: I support the amendment. It seems to me that young people who are capable of making decisions about their own health should be able to appoint an agent to make decisions for them if they are incapable of doing so. I also am a mother, and I had every confidence that my children at a much younger age than 16 were perfectly capable of being able to make decisions that affected themselves, particularly regarding matters of such gravity. I feel that it is insulting to young people to suggest that they are not capable of making sensible decisions. Someone by way of interjection suggested that young people of 16 can and do leave home. If a young person of 16 has left home—

The Hon. M.J. Elliott interjecting:

The Hon. ANNE LEVY: For very good reasons, yes. Without going into the reasons why young people leave home, it is a fact that many do. If at the age of 16 or 17 they can make decisions about their health, it seems to me to be perfectly proper that they should be able to appoint someone to act on their behalf, if they are not capable of making decisions, particularly if they live separately and independently from their parents and, for very good reasons, may not wish to be associated with them. One may deplore that they have such an attitude regarding their parents, but one would need to know the reasons why, as the fault can be on both sides. In such a situation, it would seem to me to be quite anomalous if they cannot get someone to act on their behalf. Any decisions would then have to be made by a parent, who may be thousands of kilometres away and on quite a different wave length from the individual concerned.

The Hon. SANDRA KANCK: I support the amendment. There is a saying that goes: if you love something set it free; if it comes back, it's yours; if it doesn't, it never was. I think this has something to do with what we are dealing with here: do we actually have enough courage in our relationship with our children to let them go free and make their own decisions? If we have done the right thing by them, I am confident that they will make the right decisions and that we will be part of those decisions. For that reason, I support the amendment, because I know that, given the right opportunities, children of 16 can and do make the right decisions.

The Hon. CAROLYN PICKLES: I support the amendment reducing the age to 16. It seems to me to be consistent with my support all the way through the Bill of the concept that 16 year olds are quite capable of making decisions about whether or not they should have certain kinds of medical treatment or appoint an agent. Members have made their point regarding this matter, but I think it is logical that I should support the age of 16, as I have done throughout the Bill.

The Hon. BARBARA WIESE: I support the reduction of the age to 16 for the purpose of the appointment of a power of attorney, because it seems to me that the only young people who are likely to think about the question of making a medical power of attorney are those who are terminally ill

or having to face some important decisions in their life relating to their health.

The Hon. M.J. Elliott interjecting:

The Hon. BARBARA WIESE: Exactly; they are not likely to become ill to spite their parents. In those circumstances, a young person who can make decisions now about their health and medical treatment should also be able to make decisions about whether or not someone on their behalf should make decisions for them should they themselves become incapable of making a judgment. Because I feel strongly that young people in those circumstances should have that right, I support the reduction of the age.

The Hon. T. CROTHERS: I did not intend to enter into the debate, but it seems to me that the Bill that is now before this Council is yet again another example of the sort of liberal philosophy that has endowed parliamentary thinking in both this place and another place for the past 30 years in respect of forward legislative thinking. If one addresses a Bill such as this, which, in the main, shows some forward thinking, it is lack of courage or lack of a liberal, in the broad sense, consideration not to support the fact that 16 ought to be the age at which the processes of decision-making that are so necessary under the aegis of this Bill should be arrived.

It seems to me to suggest that, and by way of interjection I indicated that one of the litmus tests one can apply to what I have asserted in respect of the processes of maturity becoming ever more enhanced at younger and younger ages is to ask the question: how many people under 18 years of age have fully fledged their wings, left home and are living quite responsibly on their own?

An honourable member interjecting:

The Hon. T. CROTHERS: I get a snide aside from the colleague to my right. He has always been fairly well on my right, by the way.

The Hon. R.R. Roberts interjecting:

The Hon. T. CROTHERS: I am sure you will. The colleague to my right says, 'Very few.' That is not true. I am glad you are not my father; I might have started the trend early. That is simply not true. By any standard, the number of people who are fully fledged and who have left the nest at 18 years of age is much greater today than was or has ever been the case. In some instances, that is due to a lack of proper parental upbringing. Sadly, that is the case in some instances. But despite that, in most of the cases—some of my children left the nest at 18, and I realise that could leave me open to all sorts of snide remarks—they have not suffered as a consequence. They are now just as law abiding—maybe more so—as their father. But they are certainly as law abiding as any other citizen in this State who has decided to stay at home until such time as he or she marries. If you want to put it to the litmus test that that is the way the youth of today are advancing then that is the question you ask. You do not make assertions based on someone coming from the backwoods in Georgia or somewhere else. You do not make those types of assertions—

The Hon. Diana Laidlaw: Or Port Pirie.

The Hon. T. CROTHERS:—or Port Pirie, yes indeed—unless you can develop that sort of litmus test. The true test which bears out that which I have said both now and in my only other previous contribution is that maturity is coming earlier today than was the case. It was 21 in the 1890s. It was 21 in the 1950s. But with the avalanche of information, whether we like it or not, it is now our lot to have to either suffer or receive gladly that which, in my view, has in a sociological sense changed the age at which the younger members of our society mature—not totally but certainly sufficiently enough for me to suggest to this Council that if we want to adopt this Bill, forward looking as it is, then some of the thoughts injected into it have to be just as forward looking, otherwise it is a matter of taking two steps forward and two steps backward. I have no doubt that, within four or five years time when courage picks up apace, the Bill will be back before us for amendment. I do not think that we ought to wait that long. I think the time is nigh, and I would hope that my small contribution may well have convinced those few amongst us who do not see it that way—even those odd members who correspond with the Port Pirie *Recorder*.

The Hon. DIANA LAIDLAW: The Hon. Bernice Pfitzner, who is unable to be here today, has a similar amendment on file to reduce the age that a person can appoint a medical agent from 18 to 16. Therefore, she would be supporting this amendment. I do not want to dwell on this issue for long because I think most members have made up their mind. However, because some members on this side have personalised this issue of age by references to their children or generally about children, I would like to make two points.

First, this Bill does not seek to enforce all 16 year olds or in fact all 18 year olds to appoint a medical agent. It simply gives an option to a person that at 18, as the Bill provides now, or at 16 which is my preference, they can appoint a medical agent if they so wish. There is nothing obligatory or compulsory about this. Secondly, I would like to indicate—and I think the Hon. Mr Crothers and possibly the Hon. Anne Levy made this point—that, for instance, my 15 year old niece is more than capable in my view of making a decision now not only about medical treatment but also about whether she can appoint an agent. I think it is a great pity in this instance if the Parliament denies her, when she reaches the age of 16, the right to nominate me or her family to be such a medical agent. I think it is extraordinary the fear that dominates this Council from time to time about the abilities—

The Hon. M.J. Elliott: Personal insecurity.

The Hon. DIANA LAIDLAW: Well, maybe personal insecurity, but it is—

Members interjecting:

The Hon. DIANA LAIDLAW: Well, I do not know what it is, but why would some feel such fear to entrust a person who may wish to exercise this right?

Members interjecting:

The CHAIRMAN: Order!

The Hon. DIANA LAIDLAW: As I said, I think there are members opposite who left school (it may have been the Hon. Mr Weatherill) at the age of 14 and went out to the workplace. In terms of age, people are particularly responsible and able to make a decision if we in fact give them the opportunity to reason this through and exercise the option. I wanted to record that on behalf of my nieces and nephews because, in terms of both the travel that they do interstate and overseas and the responsibilities they take in the house and for their school work, I have every confidence that they would equally be able to exercise such responsibility in terms of nominating a person to be their agent.

The Council divided on the amendment:

AYES (9)

Crothers, T.	Elliott, M. J.
Kanck, S. M.	Laidlaw, D. V.(teller)
Levy, J. A. W.	Pickles, C. A.
Roberts, T. G.	Weatherill, G.
Wiese, B. J.	

NOES (9

Davis, L. H.	Feleppa, M. S.
Griffin, K .T. t.)	Irwin, J. C.
Lawson, R. D.	Lucas, R. I.
Roberts, R. R.(teller)	Schaefer, C. V.
Stefani, J. F.	

PAIRS

Pfitzner, B. S. L.	Cameron, T. G.

The CHAIRMAN: There being 9 Ayes and 9 Noes, I cast my vote for the Noes.

Amendment thus negatived.

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

Page 4, line 27—After '18 years of age may,' insert 'while of sound mind,'.

Clause 6(1) provides that a person may make an anticipatory grant or refusal of consent to medical treatment while of sound mind, but there is no requirement that a person must be of sound mind when making a medical power of attorney. This amendment will provide that a person must be of sound mind when making a medical power of attorney and ensures consistency with clause 6.

The Hon. DIANA LAIDLAW: We accept that.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 4, after line 34—Insert new subclause as follows:

(3A) The fact that a person has an interest under the will, or in the estate, of the grantor of a medical power of attorney does not invalidate the appointment of that person as a medical agent, or the exercise of any power by that person under a medical power of attorney.

This clause seeks to make clear that the fact that a person has an interest under the will or in the estate of the grantor of a medical power of attorney does not invalidate the appointment of the person as a medical agent or the exercise of any power by that person under a medical power of attorney. The Hon. Angus Redford raised a question as to whether a person who was to be a beneficiary under a will, for example, could be a medical agent. The person one appoints as a medical agent will no doubt be someone close or in whom one has trust; in many cases it will no doubt be a spouse. The amendment seeks to make clear that such a person can be validly appointed as a medical agent, notwithstanding that they stand to benefit from the will or estate of the grantor.

The Hon. K.T. GRIFFIN: I am still contemplating this; it may be one of those on which we will recommit. I can understand the sentiments of it in terms of the wish not to invalidate appointments, particularly where a member of a family may be making decisions on behalf of another member. However, the difficulty is that there may well be a conflict of interest, whether within the family or outside the family, and the real concern is how one identifies, first, the potential conflict and then addresses the issue in terms of the exercise of the power. I have not yet resolved in my own mind how we should address this; I should have given some more thought to it, but it seems to me to be quite inconsistent for someone who is likely to benefit quite significantly from a decision to keep someone alive or to make a decision to withdraw the life support system, where that person may have a substantial benefit or be likely to gain a substantial benefit from it.

For example, it may be that there is a life interest held by the person who is the medical agent, and the life interest, obviously, continues only whilst the grantor of the power of attorney survives. The moment of death is the moment at which the life interest will terminate. On the other hand, there may be a substantial financial advantage in making the decision to no longer maintain the support systems because there is a significant legacy, bequest or other provision in a will for the person who is making the decision, the agent. In those circumstances it seems to me to be quite improper for the decision to be made by that person, yet if the interest is a minor interest or if it is an interest shared equally between, say, all children of the grantor, in those circumstances one could acknowledge that there is unlikely to be a significant conflict of interest.

Those who approach this issue on the basis that the agent will be altruistic and will not be motivated by any material benefit in taking one decision or the other are not really addressing the issues that arise in family or other circumstances in the real world. But I am not sure how that can be identified. It may be there is a requirement for the identification of the interest. It is probably a good reason why in those circumstances—

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: It may be. You might trust someone now but in five years' time there may be different circumstances.

The Hon. Anne Levy: Then you can revoke it.

The Hon. K.T. GRIFFIN: Of course you can revoke it, but perhaps you do not get to revoke it before you end up in the vegetative state. There are all those sorts of possibilities. It is quite naive, I suggest—

The Hon. Diana Laidlaw: I'm surprised you'd let anybody make a will.

The Hon. K.T. GRIFFIN: You let people make wills, but those people who—

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: If you want your local newsagent to make your decisions for you, that is your choice. But circumstances change; that is all I am saying. In circumstances of life or death, where there is a pecuniary benefit at the end, there does have to be at least a *prima facie* suspicion that there will be a problem. For that reason, recognising that there may be a problem with it, at this stage I indicate that I will not be prepared to support it, but I think it is something we need to revisit on the recommittal to endeavour to resolve that potential conflict position.

The Hon. CAROLYN PICKLES: I support the amendment. It seems that if you shut out everybody who might have a financial interest in your will you shut out everybody who is close to you. It may be your partner, your children, your sister, brother, aunts or uncles. Whom do we have left? Lawyers, I suppose. Quite frankly, I would want somebody I am close to, somebody I have known for a long time and whom I trust to make these decisions on my behalf, and that is likely to be somebody who may benefit from my will. I do not see the objection to this. One does not have to have this power of attorney. It is not enforced on people: it is a free choice that people make. I do not know that hundreds and thousands of people will rush into this without a lot of careful thought and consideration being given to it. I sometimes find this debate amazing; people must have some strange relationships. It is a matter of trust of people you know. You would want somebody whom you knew very well to make these decisions on your behalf. It could be your doctor. You might wish to have your doctor make the choice, although I personally would not do that.

Members interjecting:

The Hon. CAROLYN PICKLES: It may be a doctor who is not working on your behalf.

The Hon. R.I. Lucas: A doctor of philosophy.

The Hon. CAROLYN PICKLES: Yes. I am married to a doctor of philosophy.

The Hon. Anne Levy: So it will be in her case.

The Hon. CAROLYN PICKLES: It certainly would be a doctor of philosophy in my case.

An honourable member interjecting:

The Hon. CAROLYN PICKLES: I do not think Dr Cornwall is a doctor of philosophy. However, I think there is a lot of unnecessary angst about this clause and it is unnecessarily restrictive if we do not support it. I wonder whether the Attorney might like to give me a list of people whom he would be willing to support if this legislation goes through.

The Hon. M.J. ELLIOTT: It seems that without this legislation there are people who influence the doctor's decisions now. People in the family have a vested interest in the outcome and who could say to the doctor now, 'We want you to keep trying to keep this person alive.' The things one says one fears are probably easier without this legislation than with it. At least under this legislation you can say whom you want to make decisions on your behalf. Currently under the law the direct relatives will be queued up having their two bob's worth and all applying various pressures on the doctor. Who is to say that those pressures will be altruistic? They could be very much self interested and one may fear somebody one considers to be self interested and who may try to accelerate or slow down things by the influence they bring to bear on the doctor's decision making. So, the fear that the Attorney-General is expressing should be turned around, and we should be looking at the current situation. I argue that this is a significant improvement.

The Hon. ANNE LEVY: I certainly support the amendment. The fact is that appointing medical attorneys is not obligatory. If anyone fears that someone named in their will might want to bump them off, they obviously would not appoint that person as a power of attorney. If they are concerned about conflict of interest, they will not appoint a medical power of attorney. As has been stressed, it is not obligatory; it is only if someone wishes it, and in those circumstances they will obviously want to appoint someone in whom they have complete trust. If you do not have complete trust in someone you certainly will not appoint them as your medical attorney.

As others have said, it is the person in whom one has a complete trust who is likely to be named in the will. The Attorney-General's suggestion that if the person named in the will stands equally with others in the will a conflict of interest would be reduced seems to be unnecessarily harsh on only children, or does it make a difference if there are two children and one is appointed as a medical attorney and the other not? This may reflect the fact that one happens to live down the street and the other lives 10 000 kilometres away. Does that in any way reduce a conflict of interest? Does it in any way reduce any potential conflict of interest? It seems to me to be a nonsense.

The essential point is that appointing a medical power of attorney is not obligatory; no-one need do it if they do not wish to; and if they wish to do so the natural person will be the person on this earth whom they trust most.

The Hon. CAROLINE SCHAEFER: I have some difficulty with this. I am inclined to support the amendment. I have made perfectly clear that I would not wish to appoint a power of attorney because I would not wish to put that sort of responsibility on anyone who was close to me. I would prefer that that decision be left in the hands of the medical professional people who were dealing with me at the time. However, if I did wish to appoint a medical agent it would certainly be someone who was named in my will. I hope that there is sufficient safeguard elsewhere in the Bill to compel the agent to act in the best interests of the patient at the time, as is similar to the Hippocratic oath for doctors or medical professionals. If I am not convinced of that I will readdress it at the recommittal of this Bill. At this stage I will support the amendment.

The Hon. R.D. LAWSON: I also support the amendment. It seems that in absence of a provision such as this there is little point in providing for medical powers of appointment. The medical power of appointment has to be accepted by the person to whom it is granted. Strangers would not readily accept a medical power of appointment. I am sure no lawyer would accept a medical power of appointment from a client. A close personal relationship must exist before this mechanism will be adopted. Without this provision you would effectively disqualify those persons who are the natural holders of these powers such as spouses, children and relations.

The fear about a provision such as this is based upon too cynical a view of human nature. The Hon. Caroline Schaefer said she would prefer to leave it in the hands of the doctor, and I can readily understand that. However, if one takes a cynical view, a doctor has a pecuniary interest in maintaining the life of his patient. Once a patient dies he no longer gets his fee. There is a conflict of interest in that sense, but one must overlook conflicts of that kind. There is also a potential conflict of interest when one appoints one's spouse, for example, as trustee of one's will: when one selects one child ahead of another to occupy positions of trust under wills and powers of attorney. Also, one does not know who would be disqualified in a provision such as this. With a will one knows precisely who are the beneficiaries of the estate. If one does not have a will but dies intestate, there is a complex mechanism for determining the identity of the person who has an interest in one's estate. That can be very widespread, and the law presently undertakes inquires to ascertain who that is. It might be relations many steps removed who have an interest in one's estate and who would be disqualified from being the holder of a power of attorney but who would be absolutely unaware of the disqualification. I strongly support this amendment.

The Hon. DIANA LAIDLAW: The Hon. Bernice Pfitzner also supports the amendment that I have moved. Generally, it is the case in this Parliament that we deal with laws where we are focusing on corrupt and bad elements in society, where people have done wrong, and we are seeking to redress that. We have a tenancy to think on the evil, the bad, the narrow, the wrongdoer—those who will sin. What is so exciting about this piece of legislation is that it is so foreign to this place: we are actually talking about trust, care and love and believing that there are in society relationships which are valid and which should be supported and encouraged. We are talking about human dignity, not human error, shame and corruption, which is the general work of members in this place.

Amendment carried.

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

Page 5, line 5—Leave out 'medical power of attorney lapses' and insert 'the person is disqualified from acting as a medical agent under the medical power of attorney'.

As I explained earlier, this amendment will ensure that if a person becomes ineligible to become a medical attorney the medical power of attorney does not necessarily lapse as it does under the provision at present. If there are other medical attorneys, their appointments continue to be valid and they can exercise the powers under the medical power of attorney.

The Hon. DIANA LAIDLAW: I accept the amendment.

Amendment carried.

The Hon. K.T. GRIFFIN: I think I have already lost on this issue relating to the amendment to line 14. It is similar to the other areas where incapability of making decisions remains in the Bill, in clause 6 in particular. Although I still believe that the amendment which I moved is the correct description of the state of the grantor which must exist at the time the decision is taken, nevertheless I defer to the fact that a majority of the Committee has not agreed with that position. So, I will not move that amendment. I move:

Page 5, lines 15 to 19—Leave out this paragraph and insert—

(b) does not authorise the agent to refuse the provision of food or water (to be taken by the grantor, with or without assistance by mouth); and

(c) does not authorise the agent to refuse the artificial administration of nutrition or hydration unless the grantor is in the terminal phase of a terminal illness and has expressly authorised the agent to refuse artificial nutrition or hydration in those circumstances; and

(d) does not authorise the agent to refuse—

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

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

I had originally proposed to delete 'the natural administration of food and water', which is subparagraph (i) of paragraph (b), on the basis that the Bill as it exists at the present time would allow an agent to withhold nutrition from a person who is temporarily unable to be fed naturally, for example, a post-operative patient or a person who is in a coma from which full recovery can be expected. In no way is that a proposition which I would be prepared to support, particularly when the focus of this Bill ought to be on more extreme circumstances.

If there is to be any withdrawal of food and water it should be only in the context of the care of the dying and under the strict controls set out in clause 16. I have a later amendment which does partially address that issue.

My present amendment seeks to accommodate my view that an agent should not be authorised to refuse the natural administration of food and water, that is, to be taken by the grantor with our without assistance by mouth, and to qualify the artificial administration of food and water by indicating that it does not authorise the agent to refuse the artificial administration of nutrition or hydration unless the grantor is in the terminal phase of a terminal illness and has expressly authorised the agent to refuse artificial nutrition or hydration in those circumstances.

I acknowledge that the Hon. Mr Elliott has suggested that by including in my amendment the requirement for an express authorisation of the agent would in fact mean that in many instances what may have been a general medical power of attorney, which does not specifically refer to this, would in fact mean that a number of people would not in that event have their wishes honoured.

I indicate that, whilst that may be one of the consequences, I do not agree that that is necessarily a bad thing, although, if it means that we are in some way to reach some accommodation that I should remove the requirement for an express authorisation in the power of attorney, I am prepared to consider that during the course of the debate and particularly as we recommit.

I would be very much opposed to the amendment which the Hon. Diana Laidlaw is yet to move that the medical power of attorney should not authorise the agent to refuse medical treatment that is part of the conventional treatment of an illness and is not significantly intrusive or burdensome. We have had this debate at some length whilst the Hon. Dr Bernice Pfitzner was present. However, it suggests to me that it would allow a range of instructions to be given by an agent, even where a person is not in the terminal stage of a terminal illness. I think that that is objectionable. This amendment is designed to bring those issue together.

The Hon. DIANA LAIDLAW: I move:

Page 5, lines 17 to 19—Leave out 'or' and all words in lines 18 and 19.

I will speak to this amendment in a moment. In the meantime, I would like to address the amendment moved by the Attorney-General and indicate that I staunchly oppose it. There are not many issues in this Bill on which I would want to take a last stand. However, this one is such an issue. Subclause (6)(b) indicates various actions that an agent cannot authorise. Therefore, the clause seeks to set a base line below which an agent should not be permitted to make decisions.

The select committee decided on the evidence before it that the threshold was to be the natural administration of food and water and the administration of drugs to relieve pain and distress. Nasogastric feeding is regarded by many as intrusive. It is very definitely intrusive treatment if it is not what the patients wants. The select committee heard evidence from experts in palliative care that a natural part of the dying process is to reject food and water as death approaches. I spoke to Dr Ashby last week, and he made a commonsense statement. He said that, when one feels generally sick, one also has no wish for food and water. However, when one is dying one tends to feel 10 to 20 times sicker than one would normally feel when one is sick. So, when one thinks about it, his statement that people wish to refuse water and food as death approaches is quite natural.

In no situation is food and drink withdrawn: it is always provided when requested by the patient. Of course, a humane doctor and nurse (and doctors and nurses are generally humane by nature) will always make sure that the patient's lips are moist and the like. To have food and water forced upon them through nasogastric feeding is an oppressive act that can cause extreme distress and discomfort. This is the view not of me, having witnessed a near death experience of a sister, but of Dr Ashby and others in the palliative care and hospice business. The select committee, having heard the evidence, believed that it was an area where a person ought to be able, either by specific instructions in the instrument of appointment of a medical agent or by their choice of an agent, to ensure that their wishes can be carried out. The committee did not consider it fair or reasonable to expect an agent to permit the refusal of the natural provision of food or the natural provision of water; therefore, the clause sets this base line. Because it sets this base line, it is a critical clause for the whole of this Bill.

Considerable discussion about my amendment occurred when we were debating the definition of 'medical treatment' last week. One of the reasons I indicated that I would not be prepared to accept the Attorney-General's definition of 'medical treatment' at that time is that I wanted to be

confident that subclause (6)(b)(iii) had been removed from this Bill, and only then would I be prepared to look at a change in the definition of 'medical treatment',a change in definition that is reasonable on its own but not when one reads it together with subclause (6)(b)(iii). Therefore, I seek to remove it.

The notion which underpins the Bill is that of patient autonomy. A patient, when conscious, has the right to make the choice that they do not want certain forms of treatment. They have the choice to decide what in their view is intrusive and burdensome. The ability to appoint a medical agent is an extension of the notion of patient autonomy. The medical agent will be someone one trusts—nobody could argue with that; it would be illogical to do otherwise—to step in and make those decisions in circumstances where one lacks the capacity to decide for oneself. It may be that specific and detailed directions have been left to cover all manner of treatment. Clause 7(6)(b)(i) and (ii) establishes the base line below which a medical agent cannot go. As I indicated before, I wish the Bill to provide that this baseline be that an agent cannot refuse the natural provision and administration of food and water, and the agent cannot refuse the administration of drugs to relieve pain or distress.

Clause 7(6)(b)(iii) brings more circumstances below the baseline in a way which the select committee did not recommend, having heard evidence from a wide range of people and practitioners in this field. So, I am trying to restore this Bill in this part to the recommendations of the select committee and in the interests of patient autonomy and dignity.

The Hon. M.S. FELEPPA: I wish to support the Attorney-General's amendment. Subclause(6)(b)(i) seeks to remove the word 'natural' from that provision, and the deletion of that word would remove the possibility of deliberately depriving a non-terminal incompetent patient of proper tube feeding with the intention of causing death. The word 'natural' should be taken in a very plain English definition to mean 'as provided by nature' so that food should be taken by the mouth and swallowed naturally, which is the natural way. By removing the word 'natural', I believe that 'without taking extraordinary measures' could still be read as 'refuse'. I wish to support the Attorney's amendment.

The Hon. R.I. LUCAS: The Attorney-General made a statement, which was partially supported by the Hon. Mr Feleppa, that a person could have the artificial provision of nutrition and hydration refused by a medical agent when in the normal course of events of treatment that person could fully recover. Will the Attorney-General take me through that? I would be most concerned if a combination of provisions in the Bill allowed the circumstances the Attorney was talking about to eventuate.

The Hon. K.T. GRIFFIN: One has to recognise that clause 7 does not relate only to those circumstances where a grantor of the power, that is the patient, is in the terminal phase of a terminal illness or in a persistent vegetative state. It is a broad power to authorise an agent by a power of attorney to make a variety of decisions, whether expressly provided for or expressed in more general terms.

Subclause (6) seeks to identify the limit of the medical power of attorney. It 'authorises the agent, subject to any conditions and directions contained in the power of attorney, to make decisions about the medical treatment of the person who granted the power if that person is incapable of making decisions on his or her own behalf'. I have put this argument before about what is incapacity, whether it means a person is incapable of doing something. It is my argument that it can include prevarication and uncertainty and not just be as a result of being in a persistent vegetative state. It can also mean that if you are not in the terminal phase of a terminal illness, paragraph (a) still applies. You might still be incapable; you might be in a coma, and in those circumstances paragraph (a) would still authorise the agent, subject to conditions and directions, to make decisions about the medical treatment. So, it is very broad.

Paragraph (b) seeks to say that, notwithstanding the breadth of the authority given to the medical agent, the agent cannot do a number of things. As it stands at the moment, the Bill does not authorise the agent to refuse the natural provision or natural administration of food and water. Initially, I intended to move an amendment which was a bit more limited than my present one which sought to deal with the provision of food or water, but it seems to me that there may be circumstances in which it may be appropriate to address the issue of artificial administration if a person is in the terminal phase of a terminal illness. If subparagraph (i) of paragraph (b) remains, it is quite possible that, regarding a person who is temporarily unable to be fed naturally—for example, a post-operative patient or a person in a coma from which a full recovery can be expected—the agent may still be authorised to refuse the artificial provision or administration of food and water.

The Hon. R.I. Lucas: Even where there is the likelihood of an almost 100 per cent chance of recovery, the medical agent could refuse?

The Hon. K.T. GRIFFIN: That is correct.

The Hon. A.J. Redford interjecting:

The Hon. K.T. GRIFFIN: It is correct. If there is almost a 100 per cent prospect of recovery by a patient who is in a coma, that person is incapable of making decisions—that is provided for in paragraph (a)—but the medical power of attorney 'does not authorise the agent to refuse the natural provision or natural administration of food and water'. What does that mean? It means—

The Hon. G. Weatherill interjecting:

The Hon. K.T. GRIFFIN: Yes, but if they are in a coma they may not be able to take naturally the provision or administration of food and water. I seek to pick that up in my amendment. The natural provision of food and water is, presumably, through the mouth, and anything other than that is artificial. It is my view that paragraph (b)(i) cannot, in any event, stand as it is.

I do not think anyone disagrees with the administration of drugs to relieve pain or distress. I disagree strenuously with the proposed amendment to delete subparagraph (iii) of paragraph (b), because that would enable a medical agent perhaps to refuse the administration of insulin to a person in a diabetic coma or pulmonary resuscitation, a blood transfusion or a tracheotomy. In those circumstances, one must make a judgment as to what is or is not significantly intrusive or burdensome. However, there will come a point at which treatment may become burdensome, and the way in which I have endeavoured to address that is to leave in a provision, which is almost identical, in my paragraph (d).

My amendment seeks to guard against the circumstances to which I have referred and to allow an agent, in the circumstances of an incapacity to make decisions, to make certain decisions but not to refuse the provision of food or water with or without assistance by mouth and only in the terminal phase of a terminal illness or, where it is expressly authorised in the power of attorney, the artificial administra-

tion of nutrition or hydration. I have indicated that, if the question of express authorisation is the only problem that members have with this, I am happy to give further consideration to that matter, but we must insist that the medical agent in the wide circumstances covered by clause 7 be not able to refuse not only the natural provision or natural administration of food and water but also artificial administration in the sorts of circumstances to which I have referred.

The Hon. R.I. LUCAS: I recall going through this matter in the previous debate, and I thank the Attorney-General for refreshing my memory. I have significant concerns about this provision. The problem, as the Attorney-General says, is that we are talking about people who are not in the terminal phase of a terminal illness. My colleague the Hon. Ms Laidlaw's amendment will make the provision even broader. The Attorney-General has cited the example of a post-operative patient who, with normal treatment by way of a nasogastric drip in intensive care and in the next stage of recovery, has almost a 100 per cent guarantee of survival. So we are not talking about the terminal phase of a terminal illness, but this Bill and the amendment moved by my colleague suggests that a nasogastric drip, which for some illnesses is a normal treatment in the process of recovery, could be refused by a medical agent.

My understanding is that this Bill is not meant to be about that, that it is meant to be about the terminal phase of a terminal illness. We have debated how long that period might be but, putting that to one side, this Bill is meant to be about care of the dying. We are not talking about people who, for a short period of time and in the normal course of events, are incapable of making decisions following an operation, but the medical agent can refuse a nasogastric drip or some sort of normal treatment and thus bring about the death of that person when that person had almost a 100 per cent chance of recovery.

This was one of the major issues upon which there was vigorous debate when the Bill was last before the Council. I presume we will have the same vigorous debate again. I strongly oppose that sort of provision in this Bill, which is supported by those people pushing the Bill in the community and others, because I believe it takes it far beyond what is stated: care for the dying. As the Attorney-General said, subparagraph (iii), which the Hon. Diana Laidlaw seeks to remove, talks about medical treatment which is part of the conventional treatment of illness. The Attorney-General referred to diabetics. Many members of this Chamber would have had experiences with friends or relatives who suffer seriously from diabetic related illness where people can go into a coma very quickly. A conventional treatment is insulin and with the treatment and other related treatments there is no problem: there is virtually a 100 per cent prospect of recovery and for the person to continue with their life.

That is a conventional treatment for that illness which, in most people's views, would not be seen as significantly intrusive or burdensome. The proposition suggested by my colleague is to remove that so that the medical agent, if the person goes into a coma, can refuse the administration by anyone else of insulin to that person. This Bill is not meant to be about that. This Bill is meant to be about the care of the dying: the terminal phase of a terminal illness. Why on earth are members in this Chamber being asked to support provisions which in effect mean that people in certain circumstances can have treatment refused by a medical agent when there is virtually a 100 per cent chance of recovery—whether you are diabetic or whatever (and the Attorney-General has put other examples).

This provision reveals one of the significant concerns that people have about the legislation. There was a lot of debate when this Bill was last in the Chamber, and on this occasion, as to what the Bill does and seeks to do, both overtly and covertly, explicitly or implicitly, and what the varying provisions of the Bill entail. This provision and package of provisions reveal that the Bill talks about much more than care of the dying. It talks about a whole range of other circumstances where people have every expectation that they can come to a full recovery after a certain period where they are incapable of making a decision; however, if they had given an open-ended authorisation to a medical agent then that medical agent could refuse that treatment, in a whole variety of circumstances.

In a majority of cases there may well be no problem. We have all been around long enough to know of the circumstances that can eventuate where such a provision as this could in effect lead to a whole range of circumstances occurring which most members in this Chamber would not support. I urge members, now that the Attorney-General has so explicitly outlined the potential concerns of this clause, to at least at this stage support the Attorney-General's amendment and not support the removal of subparagraph (iii). On recommittal, any finetuning amendments that need to be looked at in relation to the Attorney-General's amendment can be put. I think the safest course is to support the Attorney-General's amendment at this stage and then, if need be on recommittal, we can tidy up the Attorney-General's amendment.

The Hon. M.J. ELLIOTT: I indicate that I will be moving a further amendment to this clause because I think that what the Hon. Mr Lucas is arguing in relation to the way he thinks it will currently be applied is not what everybody intends by this legislation. I have a draft in front of me but I might change it slightly. I will indicate what my thinking is at this stage so that people understand.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: I think it is worth debating all the issues concurrently.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: On recommittal I will oppose your amendment because I have other problems with it. On recommittal I am willing to move these amendments to pick up the core of the Attorney's complaints. This Bill is not only about the care for the dying but is about respect for the wishes of the dying as well. It is about both those things. As we seek to protect and care for the dying we also are seeking to respect their wishes. We must be very careful that whatever we come up with achieves both those goals. If it is a person's wish that when they are dying they do not want particular treatments used on them which will not add to their value of life in any sense, they should be given a chance to refuse that via their agent. That can be tackled by the clause providing:

> . . . does not authorise the agent to refuse the natural provision or natural administration of food and water—

so, in no circumstances can you ever refuse food and water: that is the first point—

> or the administration of drugs to relieve pain or distress.

That is simply about care. Those two things are the first absolutes. One cannot refuse natural provision of food or water or administration of drugs to relieve pain or distress.

The Hon. K.T. Griffin: What do you mean by 'natural'?

The Hon. M.J. ELLIOTT: In the sense that the understanding we have had in our debates so far was about the fact that food and water is delivered to the mouth and they are capable of ingesting it or not. I will go a step further. So, whether they are dying or not, when they are not capable of making their own decision because they are temporarily unable to do so, never ever will those things be refused to them, under any circumstances: dying or not. However, as to the capacity to refuse the artificial administration of nutrition and hydration, and perhaps also medical treatment which is part of the conventional treatment of an illness and which is not significantly intrusive or burdensome, those two are meant to apply when a person is in fact dying, either in the terminal phase of a terminal illness or in a persistent vegetative state. My preference, and I am thinking this through on the run, is a clause that provides:

> . . . does not authorise the agent to refuse the natural provision or natural administration of food and water or the administration of drugs to relieve pain or distress—

at that point I am saying under any circumstances—

> or the refusal of the artificial administration of nutrition or hydration, or medical treatment that is part of the conventional treatment of an illness and is not significantly intrusive or burdensome, unless the grantor is in the terminal phase of a terminal illness or in a persistent vegetative state.

I think that achieves the aims that this clause always had and they are probably achieved because of its interaction with clauses 9 and 16, because let us not forget that there are criminal sanctions in relation to a general practitioner. The effect of that would always have been that way, but by moving something in this form it seems to address the issues raised by the Hon. Mr Griffin, the Hon. Mr Lucas and the Hon. Mr Feleppa. At the end of the day I think it achieves what the heart of this Bill is about. I may not have realised that there are other consequences in relation to what I am moving, but in general terms an amendment along those lines will achieve what almost everybody here is saying that they want.

The Hon. A.J. REDFORD: With some trepidation and with all due respect to the Attorney, I disagree with some of his comments in relation to the effect of subclause (6)(b). If the Attorney's amendment is successful then it is my view that the appointment of an agent would achieve absolutely nothing.

I will deal with (b) which, as currently stated, does not authorise the agent to refuse the provision of food or water with or without assistance by the mouth. What concerns me is someone who is in a permanent coma state or what is on the face of it a permanent coma state. It seems to me that the agent is powerless to do anything in that situation. As I understand it, there is no real definition of 'death' outside the common law. I do not think the Natural Death Act has a definition of 'death', and I think the generally accepted definition of 'death' at common law is where all brain activity ceases. If I am wrong in that, I am sure I will be corrected.

That can also be the subject of some argument, and it seems to me that, if you delete the term 'natural' from subclause (1), which is effectively what the Attorney seeks to do, we bring an agent back to where that agent cannot do very much at all. Perhaps I have misunderstood what the Attorney says, but this clause and the clause in relation to the appointment of agents has much more to do than the care of the dying and death; it can also apply in relation to a whole range of other treatments in a whole range of other circumstances and, quite clearly, the drafter of clause 7 had that in mind by deliberately omitting the reference to a terminal phase of a terminal illness.

I invite members to consider the effect of clause 16 of this Bill. As I understand it, what the drafter is seeking to do is to give a reasonably broad power to an agent. That is the first point. The second point is that the drafter is seeking to preserve the sanctity of human life in two ways: first, in specifically stating that there cannot be assistance in relation to suicide as set out in clause 17; and, secondly, in not in any way interfering with the criminal law or the civil law other than in the area of the care of a patient in the terminal phase of a terminal illness. So, if an agent sought to do something in relation to the care of a patient who was not in the terminal phase of a terminal illness, that person, whether it be a doctor or an agent, would not have the protection of clause 16, and it seems to me that a person in that situation would without doubt incur a civil or criminal liability.

If I go back to what the Attorney-General says about someone adopting a euthanasia stance when there is no terminal phase of a terminal illness, they will run the real risk, as they do today, of criminal and civil sanctions. I cannot see how the amendment proposed by the Minister for Transport in any way impinges upon the ultimate criminal and civil liability of people in this situation. To say that it authorises someone to hasten another person's death when they are not in a terminal phase of a terminal illness draws a very long bow. As a lawyer, I would find it very difficult to say to an agent that in any way, shape or form does this clause as proposed by the Minister for Transport authorise some form of euthanasia—and I use the word 'euthanasia' advisedly—unless that person is in a terminal phase of a terminal illness. If someone did that, they would not have the protection of clause 16, whether they be a doctor or an agent. I wonder whether or not the Attorney's suggestion in that regard is correct.

I agree with what the Hon. Mr Elliott says in relation to the amendment, although I hope that the amendment is drafted in such a way that it does not impinge upon the ability of someone to grant the agent power in a non-terminal phase of a terminal illness. I will cite a simple example. If I become mentally affected as a consequence of some road trauma, I may want to give my agent a direction that I be sterilised. I see the Hon. Mr Crothers getting excited at that prospect. But one could envisage many situations where you are not in the terminal phase of a terminal illness but where you want to give a medical direction. One would hope that any amendments the Hon. Mr Elliott puts will cover that area.

The Hon. K.T. Griffin: In what circumstances would you give a direction that you wanted to be sterilised?

The Hon. A.J. REDFORD: One example is if I became mentally retarded as a result of an accident. I see that the Hon. Ron Roberts is wondering what circumstance could possibly make me more retarded than I currently am! There may be a situation in which I am so physically ill that I do not want the capacity to bring children into this world. Those are but one or two examples, and I am sure the same would apply to members of the opposite sex. I am not sure that the problems that the Attorney alludes to are there, because I think the sanctions of the criminal and civil law are not excluded by that clause. What does concern me is if the Attorney's amendments are carried, and I may be wrong on this because I was looking at the wrong clause earlier, it may be—

Members interjecting:

The Hon. A.J. REDFORD: I think there will be occasions on which an agent should be entitled, where someone is in a coma that will go on forever, to withdraw the provision of administration of food and water. As the Minister for Transport says, the withdrawal of food and water is a very natural thing in the dying process.

The Hon. CAROLINE SCHAEFER: As the Hon. Mr Lucas said, this is revisiting that which was said previously in many cases. I am attracted at this stage to what the Hon. Mr Elliott has forecast he will move. I do not know, until I see it, whether that will be the case. Currently I will support the Attorney-General. I am adamantly opposed to the amendment moved by the Minister for Transport for the simple reason that this provision of the Bill deals not simply with those in a terminal phase of a terminal illness but with anyone who is permanently or temporarily incapable of making the decision for themselves. In that case, one can envisage numerous circumstances where it would be immoral and illegal, in the broadest sense, to refuse medical treatment that is part of conventional treatment. I do not need to give further examples, but there is nothing wrong with spelling out that that is not what this Bill is meant to achieve.

The Hon. K.T. GRIFFIN: It seems that the Hon. Mr Elliott is proposing amendments that are very much in line with mine. I will be interested to see the amendments when they come off the printer because he is seeking to achieve, it seems to me, almost identical objectives to those that I am seeking to achieve.

Members interjecting:

The Hon. K.T. GRIFFIN: What the Hon. Mr Elliott explained may come out differently in the drafting process, but what he was explaining that he was seeking to do was in line with what I am trying to achieve.

The Hon. Diana Laidlaw: You want clause 6(3)(b) and he doesn't.

The Hon. K.T. GRIFFIN: He does want it—he said he wanted it. He has a provision to do it.

The Hon. Diana Laidlaw: But he doesn't want it in that form.

The Hon. K.T. GRIFFIN: There may be some modification to it; we will see.

The Hon. Diana Laidlaw: And that's fundamental.

The Hon. K.T. GRIFFIN: It is fundamental to my position.

The Hon. Diana Laidlaw: And mine.

The Hon. K.T. GRIFFIN: We will see how the Hon. Mr Elliott decides that his drafting should come out eventually. I will not revisit the debate, except to say that I am seeking, in the circumstances of a medical power of attorney (which covers not only the circumstances of dying but also those of partial incapacity), to prevent the agent from being able to make certain decisions which, if made, may cause death but which, if not made, would potentially facilitate the recovery. That is the concern I have. It is consistent with the concern which the Hon. Mr Elliott has expressed.

The Hon. A.J. Redford: If someone is in a long-term stable coma, you cannot turn the switch off.

The Hon. K.T. GRIFFIN: If it is a persistent vegetative state, as the Hon. Mr Elliott was talking about, you can make a decision. I have talked about the terminal phase of a terminal illness; that is correct. If it is a persistent vegetative state, it may be appropriate for the attorney to make some decisions. However, we are moving in the same direction; it is as simple as that. I suggest that honourable members support my amendment. I know we will revisit it, but at least we are moving in part in the direction in which I want to move and in which the Hon. Mr Elliott seems to be wanting to move as well.

The Hon. M.J. ELLIOTT: In responding to the Attorney-General previously, I said that I saw that the key argument he was putting was a legitimate one, but in fact his amendments are doing a number of other things beyond that which I proposed. He mentions the terminal phase of a terminal illness only in relation to nutrition or hydration. It is not uncommon for a hospitalised person who is dying and in the late stages of a disease, who is going through a great deal of suffering and who may be unconscious then to come down with pneumonia or some other thing which ultimately will accelerate their death. As the Attorney's amendment now stands, there would continue to be in my view some relatively aggressive treatment of a sort that some people would not want.

If I was in the terminal phase of a terminal illness and was in a persistent vegetative state, I would be most concerned if I got pneumonia and was being treated for it. As far as there may be some subliminal consciousness, I would like to believe that I was getting some form of pain relief, and this legislation makes plain that that must occur. However, to be involved in anything which could still be considered to be aggressive treatment—and I do think the whole question of being not significantly intrusive or burdensome leaves a lot open to question—is a worry. They say that giving a person antibiotics is not significantly intrusive or burdensome. I am sorry, but in my view in some circumstances it is, and I would certainly hope that my agent would take that view as well.

The Hon. K.T. Griffin: That's not precluded.

The Hon. M.J. ELLIOTT: I am sorry, but I think it is in the way you have currently drafted it. This Bill is about two things: care for the dying and respect for the wishes of the dying.

The Hon. K.T. Griffin: This clause is not just about that.

The Hon. M.J. ELLIOTT: This clause is fairly central to the way the whole legislation will function. It is probably the most important clause in the whole Bill, and if we do not get this clause right the intent of the whole legislation will be undermined. Although other clauses tackle them, in acknowledging the concerns some people have raised about the fact that treatment may be denied to people who may recover, we must ensure that there is a protection for that circumstance. That is why I am saying that we may need, for the sake of clarification, to prescribe under what circumstances food, water and medical treatment may be denied. That may be necessary, but the amendment as the Attorney-General has moved it goes a step beyond that and denies the wishes of people being granted by way of their agent and, as such, undermines the whole intent of the legislation, intentionally or not.

The Hon. R.I. LUCAS: I sense some coming together of a number of elements. As I understood it, whilst there are some differences, the consistency between the Hon. Mr Elliott's position now and that earlier outlined by the Attorney-General is that the package of amendments would have the consistent elements of agents not being able to refuse the natural provision of food and water and not being able to refuse the artificial administration of nutrition or hydration in some circumstances. There is a difference in the explanations of the Hons. Mr Griffin and Mr Elliott. There is certainly consistency in the agent not being able to refuse the administration of drugs to relieve pain and distress as well

as on the agent's not being able to refuse medical treatment as part of the conventional treatment of an illness which is not significantly intrusive or burdensome in certain circumstances. The Hon. Mr Elliott sought to add on a few words at the end of that amendment to limit it to the terminal phase of a terminal illness.

However, the consistency was that the conventional treatment of an illness that was not significantly intrusive or burdensome would be an element of the package with some additional words that the Hon. Mr Elliott was talking about. As the honourable member has identified in relation to the artificial administration of nutrition and hydration, there might have been equally a difference. As I understood Hon. Mr Griffin, he is trying to limit that to 'terminal phase'. The Hon. Mr Elliott's approach, at least in the way he explained his amendment earlier—he may well rethink that as he drafts it—was slightly different. However, the essential elements of that package seem to be fairly consistent. I support the Attorney's amendments now, but I am prepared to listen to the Hon. Mr Elliott's slight variations on recommittal.

The Hon. M.J. ELLIOTT: I must stress that although those variations might appear to be slight on the surface the legislation will be fundamentally different in the way it works. I cannot accept the Attorney's amendments, not because I disagree with the intent of what he says he is trying actually to achieve but because of what will actually occur because of them. They will undermine the whole intent and purpose of the legislation, even though superficially they might sound almost the same. I am addressing the problems that he raised, but I argue that the result will be different.

The Committee divided on the Hon. K.T. Griffin's amendment:

AYES (11)

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

NOES (9)

Cameron, T. G.	Davis, L. H.
Feleppa, M. S.	Griffin, K. T. (teller)
Irwin, J. C.	Lucas, R. I.
Roberts, R. R.	Schaefer, C. V.
Stefani, J. F.	

Majority of 2 for the Ayes.

Amendment thus carried.

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

AYES (11)

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

NOES (8)

Cameron, T. G.	Davis, L. H.
Feleppa, M. S.	Griffin, K .T. (teller)
Lucas, R. I.	Roberts, R. R.
Schaefer, C. V.	Stefani, J. F.

PAIRS

Pfitzner, B. S. L.	Irwin, J. C.

Majority of 3 for the Ayes.

Amendment thus carried.

Progress reported; Committee to sit again.

[*Sitting suspended from 6.5 to 7.45 p.m.*]

SECOND-HAND VEHICLE DEALERS BILL

Adjourned debate on second reading.

(Continued from 18 October. Page 455.)

The Hon. SANDRA KANCK: The Democrats support the second reading of this Bill, although we have concerns about several aspects of it and reserve the option to introduce amendments in Committee, subject to how well the Attorney-General addresses our concerns. Our biggest concern is that greater inroads seem to be being made in advancing the interests of lawyers and insurance companies than those of consumers and second-hand motor vehicles. The replacement of the second-hand motor vehicles compensation fund with a privately run warrantee insurance scheme raises some questions. It seems that the introduction of compulsory professional indemnity insurance is a common theme through much legislation we have been asked to consider in this place lately, and it would certainly be a boon for private insurance companies.

Like the Hon. Anne Levy, who has raised many questions about this proposed indemnity insurance, I would like some more detailed information about the proposal. In particular, I would like to see some evidence of how warrantee indemnity insurance has operated in second-hand motor vehicle industries elsewhere. I personally do not see how private insurers could provide as good coverage at a lower cost. Queensland, Victoria and New South Wales have schemes similar to our second-hand motor vehicles compensation fund, known as fidelity funds and, though Western Australia has no similar consumer protection mechanism specifically for car buyers, there is a strong rumour that there will be a fidelity fund scheme similar to those in New South Wales, Victoria, Queensland and currently in South Australia, introduced in Western Australia.

The reason given by the Attorney-General for the intention to replace membership of the second-hand vehicles compensation fund with warrantee indemnity insurance was, 'Why should the bad boys' faults be paid for by the honest Johns?' The Attorney-General discussed the case of Medindie Car Sales and the special levy that was collected from other car dealers to cover the damage bill to consumers as a result of Medindie Car Sales' failure. But will not the honest Johns pay for the bad boys' faults with warrantee indemnity insurance? Surely that is the whole idea of insurance—averaging and spreading the risk.

The exclusion from eligibility for a licence of people who have been convicted of an offence of dishonesty—those suspended from carrying on an occupation, bankrupts or those subject to an undischarged section 10 agreement under the Bankruptcy Act—should substantially lessen the likelihood of a Medindie Car Sales type disaster. From a consumer's point of view, the compensation fund works very well and it seems, if the Government is keen to put the interests of consumers first, the fund should be maintained. Interestingly, though, the Government is removing the sufficient knowledge and experience qualification for license applicants. I would like to know the Attorney-General's reasons for this apparent relaxation, given that he is tightening the criteria in other areas. I am interested also to know the

Attorney-General's reasons for transferring the jurisdiction for adjudicating disputes arising from second-hand car sales from the Commercial Tribunal to the Administrative Appeals Division of the District Court. What benefit would there be to consumers or small car dealerships from more formal court procedures?

I am disturbed by the move to extend the exemption of the dealer's duty to repair second-hand vehicles to vehicles priced between $3 001 and $6 000. Although this applies only to the first 3 000 kilometres or two months after sale, this certainly does not appear to be in the interests of the consumer. For a $6 000 purchase, should not a consumer be able to expect more than 3 000 kilometres or two months worth of utility from a vehicle? Should not the repair bill for a major defect in a vehicle at the time of sale which takes more than two months to surface be paid by a dealer? I also do not see how the proposed decrease in the vehicle age criteria from 15 years to 10 years within which dealers owe the same duty to repair vehicles could possibly be in the interests of the consumer.

I am curious to know of any instances of motorcycle dealers going bankrupt and leaving their customers in the lurch and whether it is really warranted to bring motorcycle dealers under the gamut of the Act, given that motorcycles are a lower cost item than cars. It would not surprise me if the extra financial burden on motorcycle dealers as a result of having to pay indemnity insurance was to the detriment of the interests of motorcycle buyers. I am also confused by the Government's intention to delegate certain powers to the industry's peak body, the Motor Trade Association, while at the same time it is apparently removing some responsibility for its members by scrapping the industry indemnity fund in exchange for individual professional indemnity insurance.

Despite these concerns, I believe there are a number of positive features in the Bill. The Democrats support the extension of disciplinary action against dealers who, although not necessarily acting illegally, behave contrary to the Act, but this does not make it necessary to transfer the adjudication of these matters from the Commercial Tribunal to the District Court. We support the lowering of the threshold on car sales before someone is deemed to be a dealer from six to four cars a year and welcome the Government's intention to remove an individual's power to waive certain rights conferred upon him or her allowable under the old Act. I would also like to take this opportunity to ask the Attorney-General whether in his opinion there are possibilities to enhance environmental protection under this Act. South Australia has one of the oldest car stocks in the country, and I am concerned about the question of their environmental friendliness. I would like to know whether the review team which drafted this Bill examined options for making our car stock more environmentally friendly. We support the second reading.

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their contribution to the Bill. I will deal with one or two issues raised by the Hon. Sandra Kanck, and the others may be picked up during the course of my reply. If I overlook anything in my reply, I will be happy to pick it up in Committee. The Hon. Sandra Kanck suggested that there may be some potential to enhance the environmental friendliness of motor vehicles by a different approach to, I suspect, older vehicles under this Bill. I do not think that the legislative review team considered that issue, but I will be able to confirm that in Committee, and I will seek some advice in that respect. To some extent, it may be argued that the reduction in the period of warranty from 15 years to 10 years and the introduction of the kilometrage beyond which warranties will not apply might be regarded as environmentally friendly, because, although it may mean a reduced price, it will also provide less incentive for people to buy and deal in these sorts of motor vehicles. That might be just a peripheral consequence of the reduction in the warranty period.

Both the Hon. Sandra Kanck and the Hon. Anne Levy raised issues about the Commercial Tribunal. In the Land Agents Bill, I have already addressed the question of the abolition of the Commercial Tribunal. I repeat what I said then: there is no intention of the Government to remove the Commercial Tribunal by stealth. I have been talking about this possibility since early this year. As I said in the course of the reply in the Land Agents Bill, there is a problem that if we abolish the Commercial Tribunal in up-front legislation now it will still have to be continued on until we manage to amend all the other legislation which is dependent upon the existence of the Commercial Tribunal. The Government took the view that, in the context of the review program, it was preferable to look at each case on its merits and determine where the jurisdiction ought to lie with the knowledge that we would be moving ultimately to abolish the Commercial Tribunal than to do it the other way around. That is an issue that members will be able to address in the course of the Committee consideration of this Bill.

Access for consumers to the Commercial Tribunal under the present Second-hand Motor Vehicles Act is extremely limited. The tribunal can only hear claims arising from failure to honour warranty commitments to repair the vehicle and claims against the indemnity fund when the dealer is dead, disappeared or insolvent. There is no general right to go to the tribunal for disputes over breach of contract, and the Commissioner for Consumer Affairs has in the past referred many consumers to the general court system when attempts to negotiate a settlement have failed. Only consumers can bring such matters to the tribunal. Car dealers, small and large, must commence all matters in the general court system. The proposals under this Bill offer a much better system for consumers and car dealers than that under the existing laws for two reasons.

First, all warranty matters will be heard in the Magistrates Court regardless of cost. The Magistrates Court is just as inexpensive and informal as the Commercial Tribunal so consumers will lose nothing there. Secondly, the Bill puts in place formal compulsory conciliation requirements as a prerequisite to going to court which also will help consumers and car dealers obtain a mutually attractive settlement without the stress of going to court. In the financial year 1993-94 there were 66 hearing in the Commercial Tribunal concerning second-hand motor vehicles. Of these, five were disciplinary matters, 22 were licensing matters and 39 were civil matters, meaning that they dealt with warranty and related claims. The Chairperson of the tribunal heard an additional six matters sitting as judge alone. The Commissioner for Consumer Affairs, by contrast, handled 674 matters dealing with the purchase of second-hand motor vehicles.

I turn now to the question of warranty provisions. The Hon. Anne Levy raised the issue of the Government's intention to lower the age of a vehicle eligible for warranty from 15 to 10 years. The Hon. Sandra Kanck also has done that today. The Bill proposes to amend the existing warranty provisions by excluding vehicles which are over 10 years old

or have travelled more than 200 000 kilometres. I know that the RAA has been making representations on the issue. There have been consultations by the Government with the RAA and it chose to make some public comment in the *Advertiser* this morning, which is its right to do. As I say, there were some consultations with the RAA. The RAA does not agree with everything the Government is doing and nor for that matter does the Motor Trade Association. In some respects the Bill is a compromise of views but also represents some of the Government's own views about the way in which this industry ought to be dealt with.

It is the Government's intention, following consultations, to move an amendment to reduce the provision of 200 000 kilometres to 160 000 kilometres. The amendment proposed by the Government will bring the provisions of the Bill relating to the vehicles which are covered by warranty more closely in line with legislation currently in place in New South Wales and the Northern Territory. In these States, vehicles are not covered by warranty if they are more than 10 years old and have travelled more than 160 000 kilometres. I understand that a number of other States are also considering amending their legislation in a similar manner.

When a vehicle is subject to warranty, an additional cost is passed on to the consumer to cover the warranty. The Government's proposal will mean that there will be a cost saving to consumers on the purchase price of vehicles which fall outside the 10 year/160 000 kilometre range, and the possibility of a consumer buying a newer vehicle than might have been possible on their budget should warranty provisions have applied to the vehicle that they were considering buying. Apart from this Act, there are no other statutory warranties that explicitly cover secondhand goods. Provisions relating to merchantable quality always take into account the age of the item. Motor vehicles depreciate as they get older and become more expensive to repair. Therefore, consumers who purchase older vehicles cannot expect to acquire them in the same condition as a person who acquires a new vehicle.

As to the honourable member's invitation for the provision of information from Government as to the number of cars which are in the 10 to 15 year old age bracket and which are sold in South Australia each year, my officers have made some inquiries and so far they have not been able to ascertain this information, certainly within the areas they have so far checked.

The Hon. Anne Levy: Motor Registration gives the age of the vehicle.

The Hon. K.T. GRIFFIN: I have indicated the information so far; it may be that some further inquiries will elicit that information. Inquiries from other sources such as the Motor Trade Association have also proved to be fruitless. I am not aware of whether or not the officers have actually checked with Motor Registration. My understanding is that they have and that the information is not available, or not readily available, anyway. I will continue to have the inquiries made and elaborate on that further in the Committee consideration of the Bill.

I turn now to the requirements for insurance. In terms of the extent of the insurance cover, the MTA is currently conducting negotiations with a major insurer on the terms and extent of insurance cover. It is intended that the insurance policy would mirror the existing provisions of the Secondhand Motor Vehicle Compensation Fund. Using the equivalent scheme operating in the building industry, this would mean that a claim could be made on the insurance in the event that the licensee dies, disappears or becomes insolvent. Of the 58 times the fund was drawn on in the 1993-94 financial year, at least 52 of the claims were as a result of insolvency or disappearance of the dealer. It is also intended that there would be no excess provisions in the policy, and the premium would be set on the basis of the claims history. Consequently, consumers would not be liable for any excess and the policy would cover all aspects of a dealer default.

In relation to the question of dealers being subrogated to the insurance company, it is intended that this will not be the case and any ruling of a conciliation conference would be accepted without question. Further, it is understood that the insurer would not seek to be represented at conciliation conferences except in extenuating circumstances where the dealer is dead, has disappeared or is insolvent. The MTA is also investigating the issue of the term of the policy using the builders insurance scheme as an example. This scheme provides for a five year term. As can be seen from the scope of negotiations that the MTA has been conducting with the insurance industry to date, a very favourable extent of coverage should result. I will need to examine the fine details of the proposed policy when it becomes available, and I give an assurance that this will be assessed against the current scope of the fund.

Reference is made to whether protection is provided under the Fair Trading Act in relation to the sale of secondhand vehicles by secondhand motor vehicle dealers. In reality, the correct reference should be the Consumer Transactions Act and not the Fair Trading Act. Under the Consumer Transactions Act, every item purchased or procured within a certain monetary limit must be fit for its purpose. The warranty provisions under the Secondhand Vehicle Dealers Act apply in addition to these provisions and to common law which means that consumers will continue to have additional safeguards.

In relation to liens on a car that has gone for repairs, a repairer has always had the ability to impose a lien on a repaired vehicle for unpaid work, and it is not proposed to change from that position. Such problems are, in fact, rare. The most common problem experienced by a consumer has simply been a refusal by the dealer to acknowledge his or her responsibilities to repair the vehicle at all. It is pleasing to have support for the removal of the requirement on the part of a dealer to register repair premises. It is also pleasing to have support for the amendment to the deeming provision contained in section 35 of the Bill, which shifts the onus to people who sell over four cars a year (instead of the present six) to prove that they are not dealers.

I turn now to the avoidance of contracts under sections 17 and 32. Under section 17 of the Bill a failure by the dealer to provide a contract which is in writing and which is signed by both parties will mean that the contract is unenforceable under subsection (2). Where the other details required by section 17 (such as description, registration, price and place of repair) are absent on the written document, the dealer commits an offence but the contract is still enforceable. Nothing in the Bill, however, takes away from a consumer the right to sue the dealer for any monetary loss arising from breach of contract or misleading or deceptive conduct, or any other valid reason. It is simply that complete failure to write down the contract at all will automatically make the contract unenforceable whereas, for the other matters, the consumer will need to prove that some monetary loss has been sustained by the failure.

It would be extremely draconian and unfair to dealers if they lost the right to enforce the contract because, for example, they failed to write down the registration number of the vehicle on the contract when this information would have been provided in schedule notices attached to the vehicle under section 16. The provisions of section 32 exactly mirror those in the existing Act and have, as far as I am aware, often been relied upon for a successful prosecution. The focus of the provision is on the criminality of the activity, which might have taken place many months before the purchase of the vehicle. It is important to bear in mind that owners of vehicles have been prosecuted for winding back odometers before selling to dealers, so dealers as well as consumers have fallen victim to this crime.

Once again, nothing in the section detracts from the consumer's right to prove that he or she has suffered loss as a result of the activity and to claim damages for it. Theoretically, those damages could amount to the whole cost paid for the car or to only a small sum, depending on the extent to which the odometer has been wound back, and the other attributes of the vehicle. The issue of the power of delegation of enforcement provisions was something that I discussed at length in the context of the Land Agents Bill. I reiterate the comments I made in earlier debate on this Bill to the effect that it is the Government's view that the word 'enforcement' should remain in the Bill so as not to limit the scope of the provision.

As I said on 11 October, it is not the Government's intention to allow anyone other than the Government to exercise disciplinary power, to conduct disciplinary hearings or to deal with suspensions, fines and so on. To remove the word 'enforcement', however, may limit the provision to such an extent that Government would effectively be prevented from delegating tasks that may have an aspect of enforcement about them, for example, the audit of trust accounts under the Land Agents Bill. I also indicate that it is certainly not the Government's intention to delegate either the registration or licensing functions. I indicated on 11 October and again reiterate that I am prepared to consider this matter further and, if there are more specific provisions which the honourable member feels should not be delegated, I would be prepared to give careful consideration to those.

I turn now to the question of cooling off. The Hon. Anne Levy raised the issue of a cooling off period for cars. I advise that the legislative review team considered the issue of cooling off as part of its review of the Secondhand Motor Vehicles Act, particularly as it applied to vehicles in Victoria. A cooling off period for motor vehicles was rejected by the team on the basis that practical difficulties were associated with its use. For example, when a person signs a contract for a car and a cooling off period applied, it is unlikely that the dealer would allow them to take the car with them during the cooling off period. A person is in effect prevented from having the use of the car for this period unless they waive their cooling off rights. It becomes even more complicated if a trade-in is involved, that is, what happens with a trade-in car during the cooling off period? Should that, for example, also be held by the dealer on the basis that it has been traded in on a vehicle, and it has been traded in at a particular time in a certain condition? So, interesting questions arise there.

A recent review of the Victorian Motor Traders Act 1986 revealed that, even though a cooling off period has existed for some time, many consumers are unaware of their cooling off rights, and others believe they are legally obliged to waive their rights prior to taking delivery or they will not be given access to finance. Further, while it is stated that the three day cooling off period is reasonable, suggestions have been made by sections of industry to reduce the cooling off period to one day, although there is no general agreement on this. This demonstrates that the introduction of such a provision is fraught with difficulty, and there is no guarantee that consumer protection is enhanced.

The Hon. Anne Levy raised a question in relation to the prohibition of consignment selling and asked whether clause 16 prohibits the consignment selling of vehicles. Clause 16 provides for the notices to be displayed on vehicles offered or exposed for sale by dealers. I understand that the context in which the honourable member raised the question was in relation to the possible use of consignment as a back-door method of avoiding the warranty provisions under the Bill. With the greatest respect to the honourable member, I do not think that clause 16 is the relevant clause to look at in this regard; rather, it is necessary to look at clause 23(3).

This is the provision which sets out the situations in which the warranty provisions do not apply. As one will see in paragraph (b), to come within the exemption the sale by auction must be on behalf of a person who is not a dealer. In all other respects a dealer must provide a warranty on any cars he or she exposes for sale. With respect to clause 44, which deals with the liability of employees, officers, etc., it is the Government's intention to move an amendment to this provision in keeping with the amendments moved by the Government during the recent debate in connection with the package of real estate Bills.

It was pleasing to have the Opposition support for the removal of the warranty waiver provisions contained in the current Act. In relation to the honourable member's request for information as to how many waivers have been granted in the past 12 months, and on what basis these waivers have been granted, I provide the following information: during the 1993-94 financial year, the Adelaide Office of Consumer and Business Affairs received 2 202 applications for certificates, certifying that an authorised officer had explained the effect of waiver of the right of warranty under the Act; for the period 1 July to 18 October 1994, the Adelaide Office of Consumer and Business Affairs received a total of 710 applications for certificates.

I do not have available to me precise details of the breakdown of these figures in relation to the basis upon which these applications were made, but I do understand that in an estimated 50 per cent of cases the right of waiver was used as a perceived bargaining tool to negotiate the purchase of a car. I said at the commencement of my reply that there have been some discussions with the RAA in relation to this Bill. The RAA has made some submissions and it is likely that there may be several amendments which arise from those consultations, particularly in relation to the delegation.

The delegation power relates to organisations representing the interests of dealers, and the RAA has specifically asked, 'Well, why exclude a body such as the RAA from participating in the delegations which might be negotiated?' I agree with the proposition, and so there will be an amendment at least with respect to that.

The Hon. Sandra Kanck has raised the question of the transfer from the Commercial Tribunal to the Administrative Appeals Division of the District Court, and I have adequately addressed that issue. If the honourable member desires to pursue that in Committee, I am prepared to take it further.

I have no figures on how many motorcycle dealers may have gone bankrupt. She suggested that it may be a financial

burden to the purchasers of motorcycles or even the motorcycle dealers if they must meet warranty obligations, but that has not been the response that we have received to the proposal that motorcycles ought to be caught by the warranty provisions, albeit at a lower level. One can hardly expect the warranty to continue for 10 years or for 160 000 or 200 000 kilometres because of the nature of the machine. An amendment will deal with that issue.

I have dealt with the issue of delegation to peak bodies. I note that the Hon. Sandra Kanck is not prepared to support the reduction in the period of warranty from a 15 year old car back to a 10 year old car at maximum. That is probably all that she has raised.

I put one other matter on record now to enable members to give consideration to it. It is by way of analogy rather than an indication of exactly what might happen with respect to insurance replacing the fund. I will in my reply explain more intensively than I have done how the industry-based insurance process works in the building industry.

Indemnity insurance provisions under the Builders Licensing Act 1986 is required in relation to domestic building work that is performed by a builder where that work costs $5 000 or more and where it requires approval under the Development Act. The insurance policy covers a person entitled to statutory warranty for uncompleted or faulty building work. The coverage on faulty workmanship lasts for a five year period from completion of the work. A claim can be made on the insurance in the event of the builder's dying, disappearing or becoming insolvent, although, as I understand it, that is not the only basis upon which a claim can be made.

The maximum claim that can be made on a policy is $50 000 and, in the case of the building industry, an excess of $250 is paid by the insured, and that applies to each claim. The housing indemnity insurance is provided by the Master Builders Association of SA Inc. and the Housing Industry Association, which act as agents of private insurance companies. Both associations cover part of the risk under the terms of their agency.

The success of this insurance scheme has seen the cost of insurance policies remain stable since the introduction of the scheme on 1 October 1985, obviously with the concurrence of a previous Labor Government. The cost of individual indemnity insurance policies in South Australia is the cheapest of any offered in Australia.

Local government, under the provisions of the Development Act 1993, must ensure that a policy of insurance exists prior to granting building approval to a builder. The monitoring role of local government is vital in ensuring that home owners are protected by indemnity insurance cover. It is possible, under the second-hand vehicles insurance provisions, to consider the appointment of an independent body to be responsible for the undertaking of a monitoring role to ensure that second-hand dealers are complying with the insurance requirements.

There are a number of possibilities with that, but they are issues which need to be explored. So, if members have further questions with respect to insurance, I would certainly be happy to deal with them in Committee. If there are matters that I have not answered adequately, again I will endeavour to have further answers by the time we get to the Committee stage, which I would like to think will be before the end of the week so that at least we can resolve a number of issues on the Bill and get it to the House of Assembly at the earliest opportunity.

Bill read a second time.

CONSUMER CREDIT (CREDIT PROVIDERS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 October. Page 392.)

The Hon. ANNE LEVY: The Opposition supports the second reading of this Bill, although I am sure that it will come as no surprise to the Attorney-General that it has a few queries about and objections to parts of it. At the outset, I reiterate my objection to the replacement of the Commercial Tribunal by the District Court as set out in the Bill. I will not go again into all the reasons why the Opposition objects to this; I am sure that they will be thrashed out, and that a solution will be found which will apply to all the consumer legislation with which we have been dealing, such as that related to real estate, second-hand motor vehicles, and so on.

I do ask: why is the Attorney-General bringing in this Bill at this time? Apart from the removal of further jurisdiction from the Commercial Tribunal, to which I have alluded before, the main purpose of the Bill is to remove the licensing provision for credit providers. They will no longer have to be licensed, although disciplinary action against them will still be possible if they behave in an improper manner. The disciplinary procedures virtually have not changed from those applying in the existing legislation except, as I say, for the fact of the matter being referred to the court instead of the Commercial Tribunal.

We all know that uniform credit legislation is being introduced throughout Australia which has been agreed between all the States and which I think has passed the Queensland Parliament. So, it is now just a question of all the other States following on from Queensland with the idea that the legislation will become operative on 1 September 1995.

Part of that uniform credit legislation is that credit providers will no longer have to be licensed anywhere in Australia. So, really, all this Bill is doing is removing the necessity for some credit providers to pay a licence fee for 12 months, inasmuch as by 1 September next year they will no longer have to be licensed anywhere in Australia. I just wonder why there is the rush to implement this small portion of the uniform credit Act at this time when we know it will become operative in September next year. What is the rush to do it just 12 months ahead?

I suspect that the reason is further to empty the Commercial Tribunal of any jurisdiction or activity and so to hasten its demise when it remains just an empty shell with nothing to do. My previously stated objections to this have not in any way changed. Certainly, it will come as no surprise to the Attorney that I intend moving a series of amendments during the Committee stage to ensure that the Commercial Tribunal does retain its speciality and all its other advantages under this Act as under the previous legislation and the other legislation with which we have been dealing.

Clause 6 of this Bill amends many sections of the existing Act. In particular, I refer to section 31. That section deals with the penalties that can be applied to a credit provider against whom disciplinary action is found to be justified. There is a number of possible penalties set out that mirror exactly those that can be applied by the Commercial Tribunal to licensed credit providers at this time. However, in addition, under the heading 'Disciplinary Action', reference is made to the penalties that can be applied. An additional subclause (3) provides:

Before making an order in relation to a credit provider under this section, the District Court must consider the effect that the order would have upon the prudential standing of the credit provider.

That phraseology is not present in the current Act, even though the penalties that can be applied are virtually unaltered. I think the maximum fine has been raised from $5 000 to $8 000, which seems not unreasonable considering how long the $5 000 has been the maximum penalty. But consideration of the prudential standing of the credit provider does not occur in the current legislation. I understand that there is something similar in the uniform credit Act. I have a concern about this subclause, and I would be grateful if the Attorney could give some consideration to it. It may well be that because of that provision the penalty applied to a credit provider will be considerably reduced. Be it the court or the tribunal, it will feel that disciplinary action is necessary and completely justified and may wish to impose a penalty such as that the credit provider cannot undertake the occupation of being a credit provider, say, for a period of three months. But with subclause (3), the defence counsel may argue that if a three-month penalty was imposed this could have an effect on the prudential standing and argue that the penalty should be a good deal less. My concern is that having that provision there may well mean that penalties have to be reduced by the judge in a particular case and a lesser penalty imposed than he or she would wish to impose.

It may well be that some similar clause will be part of the uniform credit Act, but it would seem to me that it might be better to leave it until the uniform credit Act comes in, as it will have lots of other pluses and minuses, rather than just bring in that provision at this time when we are amending our existing Consumer Credit (Credit Providers) Act. We will doubtless be dealing with the uniform credit Act in a few months' time now that it has passed in Queensland. I would welcome comment from the Attorney as to whether it might be better to leave that provision until the uniform credit Act comes in, when it will apply generally and not just to this particular piece of legislation.

As I say, we support the second reading; we will certainly be moving amendments in Committee; and we query the rush for having this legislation at this time at all, rather than wait less than 12 months before the uniform credit legislation for the whole country becomes operative.

The Hon. SANDRA KANCK: The Democrats have mixed feelings about this Bill and what it proposes to do. As the Hon. Ms Levy has mentioned, the removal of the licensing system for credit providers one year ahead of time, especially since the benchmark Queensland legislation has only come into operation in September of this year, seems very hasty. Even though South Australia is party to a uniform agreement with the other Australian States and Territories, I believe there is merit in allowing time for the Queensland legislation to operate long enough for South Australia to make an informed assessment of its merits. Indeed, upon consideration of such an assessment all States may agree to adopt a different uniform agreement. Having expressed concern over the intention to scrap the licensing of credit providers, we support the extension of the consumer protection measures in the current Act to cover all credit providers.

The removal of jurisdiction from the Commercial Tribunal to the District Court is obviously not something that would form part of the uniform agreement with the other States and Territories, which is held up by the Attorney-General as motivation for this Bill. As I said in my speeches on the four real estate Bills and the second-hand vehicle dealers' Bill, I see no reason to have the District Court deal with the matters currently dealt with by the Commercial Tribunal. I support the second reading.

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

MOTOR VEHICLES (CONDITIONAL REGISTRATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 October. Page 424.)

The Hon. BARBARA WIESE: The Opposition supports this Bill. Essentially, it allows for a conditional registration scheme to apply for left-hand drive vehicles and is aimed primarily at what are termed classic vehicles, which are usually driven by people who are members of appropriate clubs. As it is outlined in the Bill, the measure builds on the historic vehicles scheme which was introduced by the previous Government, whereby owners of historic or classic cars manufactured prior to 1960 enjoy certain privileges such as exemption from stamp duty and, as I understand it, are not required to convert those vehicles to operate as right-hand drive vehicles.

All vehicles that are manufactured after 1974 must be converted to right-hand drive vehicles under the Australian design rules. Essentially, the measure outlined in the Bill will simplify the procedure which currently exists whereby owners of such vehicles pay an annual fee to instead have a system which allows for one conditional licence, which is in line with recommendations that have been brought forward in Austroads reports and which are being progressively implemented following recommendations being made to the Ministerial Council for Road Transport by the National Road Transport Commission.

The situation in Australia with respect to vehicles such as the ones that are covered by this legislation around Australia is mixed, to say the very least. Different licensing or registration systems apply in almost every State of Australia. Just to give members some idea of the diversity that exists under these schemes, in New South Wales, for example, clubs authorise and issue plates to such owners. The vehicles may be used only for specified events, and third party insurance must be purchased separately. In Victoria, vehicles must belong to a recognised club and use is for club events or preparation for club events. VicRoads, the Victorian road authority, issues permits and plates on application. An annual fee applies, and that includes third party insurance.

In Queensland, registration is provided for by ongoing access under a restricted registration scheme. In Tasmania, permits are provided for periods only up to seven days and apply for limited uses only. In South Australia, currently an owner must belong to a recognised club. The Motor Registration Division of the Department of Transport registers and issues plates, and an annual fee applies, and that includes third party insurance. So, a different scheme seems to apply in every State of Australia, and in this area, as with many other areas of motor registration and issues which cover vehicles generally, there is currently a move afoot to introduce uniformity across Australia.

Austroads, the organisation which has been commissioned by Transport Ministers to review the existing rules and bring down principles and recommendations that should apply in

the future, has determined a set of basic principles for the development of business rules which will apply in these areas. It says that, as far as possible, all vehicles on the road should be registered and identified rather than being operated on permit or exempted from registration. It believes that all vehicles operated on the road, whether registered or not, should meet the same standards of performance with regard to asset protection, impact on the environment, safety, and their interaction with other road users; that any conditions on the use of a vehicle should be imposed only to compensate for its inability to meet performance standards and to ensure that its operation is within the constraints of its own capabilities; that one set of conditions should apply Australia-wide; and that, as far as possible, manufacturers or distributors should be responsible for determining performance constraints, and that these should be identified on the vehicle.

They are, essentially, the guiding principles for the proposed new arrangements, and the proposed business rules that emanate from those guiding principles provide for three types of registration. They provide, first, for short-term unregistered vehicle permits; secondly, for numberplates registered to a responsible operator rather than a vehicle and allow operation of a vehicle by the operator subject to conditions gazetted as applying to that class of vehicle—for example, operators of trade plates would be included in that category; thirdly, for conditional registration for vehicles which do not meet the performance requirements of the Australian Design Rules, but which are registered subject to operational conditions—so-called club vehicles would fit into this category.

The idea is that conditions would be coded uniformly, and once applied to a vehicle retained on the vehicle's database record and listed on both the registration certificate and label in coded form. The police are supportive of these measures because they believe that it will facilitate enforcement activities, and they will also provide vehicle owners and users with instant access to the conditions under which the vehicle may be used. As I understand it, it is the intention that with the introduction of these conditional permits applying to classic vehicles we will see the beginning of a conditional registration scheme in line with Austroads reports, which suggest that all vehicles of any type that must use the road, no matter how limited their use of the road, should be subject to some form of registration.

It is therefore intended that the measure before us should form the beginning of a conditional registration scheme that would apply to some of these other vehicles which currently must be registered by way of individual permits covering individual occasions where they may wish to use the road, or by way of annual permits or whatever the case may be. The sort of vehicles that would fall into these categories include farm machinery, cranes, fork-lifts and vehicles of that sort that need only limited access to the road network but which, nevertheless, ought to be covered by third party insurance, which is one of the concerns that exists here and in other places. Should one of these vehicles, no matter how infrequently they use the roads, be involved in an accident, third party insurance should apply. If this conditional licence scheme is extended to cover farm machinery of various sorts, I am sure it will lead to a vast reduction in representations by people in the farming community to the Minister for Transport, if my experience in the position is any indication.

There seems to be a high level of dissatisfaction with the conditions that have applied over time, although from time to time modifications have been made to the conditions which apply and which have been of benefit to farmers. The extension of the conditional registration scheme, as it applies here with classic vehicles, would probably work extremely well for farm vehicles as well, and it would allay some of the concerns expressed over the years by people in the farming community.

The Opposition supports the measure and supports in principle the extension of such a conditional registration scheme to other forms of vehicles that use our roads, because we agree with the principle that there should be a way of recording on some sort of database all those vehicles which must have access to the roads at some time or another and have a scheme which ensures that all vehicles using our roads are subject to third party insurance. I support the Bill.

The Hon. SANDRA KANCK secured the adjournment of the debate.

ROAD TRAFFIC (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 October. Page 425.)

The Hon. BARBARA WIESE: The Opposition supports the second reading of the Bill. Essentially, the Bill covers two areas. First, it provides for hook right turns to apply at certain intersections. This is primarily to assist TransAdelaide bus services which, in certain locations in the metropolitan area, are required to undertake hook right turns in order to negotiate traffic. Secondly, it provides for the introduction of shared zones which essentially allow pedestrians and motor vehicles to share a particular zone as stipulated by the legislation.

With respect to hook turns, the Opposition certainly supports the intention of the Bill. Just recently I received representations from the Public Transport Union about one of the intersections covered by this legislation—the North Terrace-King William Street intersection—because the Public Transport Union has been concerned that, with the changing police arrangements whereby an officer will no longer be on point duty at particular times of the day, the task of negotiating a right hand turn for bus operators is made more difficult. The concern of the union was to ensure that, should there be a vehicle accident caused by this right hand turn negotiation, there may be some question as to who is responsible under public liability policies, etc. The union is concerned to protect its members in these situations.

I am very pleased that this legislation has been introduced. For one thing, it saved me the job of having to chase up why an arrangement has not been made already. There are three other intersections where such turns are also deemed to be desirable, and I am sure that the fears of the Public Transport Union will now be allayed with the introduction of this legislation which clarifies that this is a legal manoeuvre at these locations.

The Opposition is less supportive of the provision in respect of shared zones. I certainly have some reservations about the idea of shared zones which allow vehicles and pedestrians to share a similar zone, particularly where it might be applied in what otherwise would be considered a mall area. Psychologically, it seems to me that pedestrians using a mall feel that they have priority and they may be less careful in looking for vehicles in that sort of situation. I understand that there is only one location in South Australia

where a shared zone has been introduced thus far, and that is the Salisbury mall. It has now been in operation for more than a year, I think, and I can recall that some time last year I received representations from individuals, quite spontaneously, when I attended a function in the Salisbury area. The representations were from ordinary citizens who were not happy with the arrangement as it applied in Salisbury. They felt that it was a very dangerous situation for pedestrians who were confronted by vehicles at various times and sometimes quite unexpectedly.

I have made further inquiries in the past few days to see whether the situation has now been resolved or whether people's concerns are allayed now that the new system has been in place for a period of time, because very often people object to new procedures just because they are new and unusual.

I am informed that complaints about the situation at Salisbury still come to local members' offices from time to time, and that is of some concern to me. As far as I have been able to ascertain, fortunately no accidents have occurred in the Salisbury mall area since the new system was introduced. However, in view of the concerns locally about that situation, and the concerns that I understand have been expressed by the South Australian Health Commission about the introduction of shared zones, which have led to the Minister's agreeing that it will be involved in the implementation of these schemes, we would want the Government to hasten slowly, as it were, with the introduction of such measures.

At this stage we do not oppose the measure but simply register our concerns that these shared zones should be watched carefully and introduced only where they have the best chance of working. My inquiries of officers within the department have indicated that thus far there has been only one other request for the introduction of a shared zone, and that is for the Osborne residential development, which is part of the MFP project. Although I have not seen the plans for the proposal in the Osborne area, it seems to me that the situation there might be rather different from the Salisbury example, because I envisage that there the zone will be largely used by vehicles with some pedestrian use, rather than the reverse, which applies in Salisbury, where you have a mall that is largely a pedestrian area.

If the priority is reversed, the psychological effect for pedestrians using the zone is also changed in that the dissatisfaction in such an area will be lower. However, we do not have very much experience to go by in South Australia, although I understand that shared zones have been in operation in Sydney for some two or three years. I have not had the opportunity to check with the New South Wales authorities as to how well those shared zones have operated in that State, but I understand that officers in the South Australian Department of Transport have not been made aware of any serious problems that have emerged with them. At this point the Opposition would simply like to register its concerns about the introduction of these zones.

I note that there is a regulation-making power in section 176 of the Act which provides that the Government may make regulations with respect to these shared zones along with various other measures. I would like to ask the Minister whether she would undertake to ensure that, at least until we have had the opportunity to assess the success of these shared zones in practice, any future requests for shared zones would be implemented by way of regulation, so that members of Parliament could know how much of this activity is taking place and have an opportunity to assess the individual measures as they come into effect. With those reservations and with that request, I indicate that the Opposition supports the second reading.

The Hon. SANDRA KANCK secured the adjournment of the debate.

STATE LOTTERIES (SCRATCH TICKETS) AMENDMENT BILL

Second reading.

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

That this Bill be now read a second time.

The amendments in this Bill seek to place beyond doubt the meaning of particular wording on scratch tickets and to provide a more reasonable appeal mechanism for those who purchase Lottery Commission products and who wish to challenge commission decisions to disallow claims. It is proposed to apply the amendment relating to the wording on the ticket retrospectively to ensure that the intent of the current legislation is applied to any tickets purchased prior to the amendment Act receiving assent which might ultimately be the subject of a disputed claim before the court.

The Lotteries Commission introduced 'Instant Money' tickets for sale on 4 December 1978. At that time, it was the accepted standard within the lottery industry for instructions to players on tickets to commence with the word 'Match', for example, 'Match three numbers, symbols or amounts and win.' The commission followed this convention until September 1990, when the word 'identical' was introduced to avoid any ambiguity in the instructions to players.

Arising from a successful legal challenge in New South Wales concerning the wording of a scratchie ticket, retrospective legislation was introduced in South Australia in November 1993 to provide further clarity to the wording on the tickets to avoid a similar outcome to that which had occurred in New South Wales. However, on 15 November 1993 the Crown Solicitor received a summons and statement of claim on behalf of the commission in which the plaintiff claimed to be holding a winning ticket in the 'Big Dreams' instant money game. The wording on the ticket was as follows:

> Scratch both panels. Match three identical amounts within either game panel and that's what you win.

The plaintiff claimed that the wording 'within either game panel' meant that the identical amounts can be selected from both panels rather than one panel or the other which was the clear intent of the wording used. This intent was further emphasised by additional wording on the face of the ticket 'two chances to win'. The plaintiff's claim related to an amount of $250 000. The Supreme Court has subsequently disallowed the claim and found in favour of the commission.

Prior to the issue being considered by the court, the commission had received 24 written claims similar to that which was the subject of legal proceedings. The amount involved totalled in excess of $6 million.

Notwithstanding the recent decision of the court in the commission's favour, it is considered prudent to seek to place beyond doubt that the meaning of the wording 'within either game panel' is 'within a game panel'.

Currently, a claimant dissatisfied with a decision of the commission can challenge the decision in the Supreme Court. This can be time consuming and costly. In the interests of fairness to claimants who consider that the commission has

erred in its disallowance of their claim, the proposal to allow appeals to be considered in the Administrative Appeals Court will provide more reasonable appeal processes to those currently available.

Arising from amendments proposed in another place, the Bill also contains a provision to prevent the sale of all Lottery Commission products to persons under the age of 18 years. I might note at this stage, certainly on behalf of Liberal members in this Chamber, that the issue of age of consent for scratchie tickets will be one upon which Liberal members, anyway, will have a conscience vote, and, from my own knowledge, differing views may well be expressed in relation to that provision.

This provision will place commission products on a par with other forms of legalised gambling in terms of their availability to the general public and seeks to address community concerns regarding access to these products by minors. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides that the amendments relating to the interpretation of scratch tickets with two game panels are back-dated to the commencement of the principal Act. The new provision relating to appeals from certain Commission decisions will come into operation on assent.

Clause 3: Amendment of s. 17A—Instant lottery tickets

This clause makes it clear that an instant lottery ticket that has more than one game panel is not a winning ticket if the only way the required number of matching symbols can be obtained is by matching symbols from more than one panel. Two further examples of winning and non-winning tickets are added to the provision that deals with interpreting certain instant lotteries. The examples inserted are examples of tickets that have two game panels. They show that, to win a prize, three identical amounts have to appear within a panel.

Clause 4: Insertion of s. 17B

This clause prohibits the selling of any of the Lottery Commission's products to minors (*i.e.* persons under 18 years of age). The penalty for the seller is a maximum fine of $200; the penalty for the minor is a maximum fine of $50. If another person (adult) purchases a lottery ticket for a minor at the minor's request, both parties are guilty of an offence with the same level of penalties applying.

Clause 5: Insertion of s. 18AA

This clause gives a right of appeal to the Administrative Appeals Court (a division of the District Court) to holders of lottery tickets who are dissatisfied with a decision by the Commission that a particular ticket is not a winning one. Such an appeal must be lodged within a month of the decision being made, or published.

The Hon. M.S. FELEPPA secured the adjournment of the debate.

LAND TAX (SCALE ADJUSTMENT) AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from 12 October. Page 411.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): This Bill has already been passed in another place and the member for Playford has made his remarks on behalf of the Opposition, so I do not intend to take up the time of the Council in long debate. It will be my practice, when a Bill has been passed in the other place, to try to expedite its passage through this place if there is no opposition in Committee.

The Opposition does not support this measure. It is a new tax. The Government has said that it is not increasing or creating a new tax, but anyone who will have to pay this tax for the first time will argue that it certainly is a new tax for them. We believe it is an impost on small business in particular. The Government trumpets its support for small business, yet introduces a penalty in this legislation. About 27 000 businesses that already pay land tax will be set for an increase of about $100. The Treasurer in his response to the member for Playford agreed that this will hit more small businesses. We do not support this land tax legislation, but as it is a budget Bill we will follow the normal custom of allowing its passage through this Chamber. We protest most strongly and wish to place on record our opposition to the principle of this legislation.

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

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE BILL

In Committee (resumed on motion).

(Continued from page 557.)

Clause 7—'Appointment of agent to consent to medical treatment.'

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

Page 5, lines 20 and 21—Leave out subclause (7) and insert—

(7) The powers conferred by a medical power of attorney must be exercised—

(a) in accordance with lawful conditions and directions contained in the medical power of attorney; and

(b) if the grantor of the power has also given an anticipatory direction—consistently with the direction; and

subject to those requirements, in the best interests of the grantor.

I explained this amendment partially when I was moving the amendment to clause 4 to insert a definition of 'anticipatory direction'. Proposed new subclause (7) paragraphs (a) and (b) will ensure that a medical agent must act not only in accordance with any directions in the medical power of attorney but also consistently with any directions given in an anticipatory direction. However, the amendment is more far reaching than this, for it also requires the agent, subject to the express directions he or she has received, to act in the best interests of the patient. This raises one of the most fundamental issues to be considered in this Bill.

On the one hand there are those who argue that, once a person has chosen a person to act as his or her medical attorney, the attorney should be able to act as he or she considers fit, even if it means denying a person the most usual of treatment which, if given, will result in the person fully recovering. On the other hand, there are those—of whom I am one—who argue that the Bill fails to recognise that an incompetent person is non-autonomous. The ethical principle of respect for persons incorporates two aspects: first, that individual persons should be treated as autonomous agents; and, secondly, that persons with diminished autonomy are entitled to protection by others.

While a person in exercising his or her right to self-determination may make irrational decisions, an agent should not be able to make irrational decisions but only rational decisions which could be taken on the person's behalf in his or her best interests. To put it another way, a disability or incapacity must be regarded as a condition mandating greater protection of the person. The best interest standard is the traditional standard used by courts for appointing guardians

who must act in a way that will most effectively promote their ward's interests and physical and emotional welfare. The standard is objective, and the best interests of the patient will be determined by such objective criteria as relief from suffering, the degree of bodily invasions required by the procedure, the chances of preservation or restoration of functioning life, as well as the quality and extent of sustained life. I believe that this is the standard we should incorporate in this Bill.

The Hon. DIANA LAIDLAW: On behalf of the Hon. Bernice Pfitzner I move:

> Page 5, lines 20 and 21—Leave out subclause (7) and insert:
> (7) The powers conferred by a medical power of attorney must be exercised in accordance with any lawful conditions and directions contained in the medical power of attorney and, subject to those conditions and directions, in what the agent genuinely believes to be the best interests of the grantor.

As indicated earlier, the Attorney-General and the Hon. Dr Pfitzner both have amendments to this clause, and both seek to clarify what is in the Bill at present in terms of the powers conferred on a medical power of attorney and the way that they must be exercised.

I prefer the Hon. Dr Pfitzner's amendment, principally because of the words incorporated towards the end, those words being 'in what the agent generally believes to be the best interests of the grantor', and I note the Attorney's amendment contains a similar sentiment but confines the requirements to 'consideration of the best interests of the grantor', and does not look at it in terms of what the agent genuinely believes to be in the best interests of the grantor.

I have also been provided with notes indicating that I supported the earlier amendment of the Attorney-General to include 'anticipatory direction' in the definition so as to enable further consideration of his amendment to these lines now before us. There are good parts in the Attorney's amendment and I have noted those.

The Hon. M.J. Elliott interjecting:

The Hon. DIANA LAIDLAW: No, that is uncharitable. A person may appoint a medical agent to make a range of decisions about the grantor's medical treatment when that person is incapable. The medical agent can be given specific directions or the appointment can be general. A person may also make an advance directive. The advance directive comes into play in relation to the terminal phase of the terminal illness or persistent vegetative state and the patient is incapable of making a decision. The amendment to 'direction' in subclause (7)(b) clarifies that if a person has both made an advance directive and appointed a medical agent the medical agent must exercise power consistently with other directions in an advance directive. That may be implicit: both amendments make it clearer and in that respect we see both amendments to be useful, but the Hon. Bernice Pfitzner's amendment is preferable.

The Hon. M.J. ELLIOTT: I support the Minister for Transport's amendment. In subclause (6) we have sought to give fairly clear directions that are meant to offer protections and it appears that what the Attorney is doing, if anything, is starting to create some uncertainty and to start again to take the power away from the person who is wanting to grant the power to make decisions to someone else, subject to certain directions. The Attorney-General is seeking to insert 'in the best interests of the grantor', which would be determined clearly by a court. That starts allowing an interference with a process by which we are trying, as far as possible, to reflect the wishes of the grantor. We are talking no longer about reflecting the wishes of the grantor but about these vague best interests which are going to be interpreted not by the grantor or the person made the agent, and not even according to their directions, but according to the possible interpretation of the court. Again, that conflicts with the aims of the legislation. I do not believe that it is offering a protection; it is undermining the intent of the legislation.

The Hon. K.T. GRIFFIN: That is not correct. It depends how one interprets the intention of the legislation. It becomes an untenable position if there is no objective criterion upon which to determine whether or not the exercise of the power by the medical attorney is proper. It may be that it is in accordance with the wishes of the grantor of the power, although it may be such a general power that it is difficult to determine. Ultimately there has to be some objective test which puts into context the decision made by the medical agent.

The Hon. M.J. Elliott: Clause 9 is the place to do that.

The Hon. K.T. GRIFFIN: It is not. Clause 9 operates only, whether it involves the Guardianship Board or the Supreme Court, in accordance with the provisions of the Act. If there is no objective criterion by which to determine whether or not the powers have been exercised properly, there is nothing on which the Supreme Court or the Guardianship Board can exercise judgment. That is the problem as I see it and it is one of the defects of clause 9. There is no standard by which it can determine whether or not it is proper to endorse or otherwise the exercise of the power.

The Hon. R.D. LAWSON: I am not unduly perturbed by the provision in subclause (7). I feel that the Attorney's amendment, in seeking to impose objective criteria, is unduly restrictive. It is true that no standard is imposed by the Act, but the general standard of the law is that the donee of any power of appointment must exercise that power *bona fide* for the purpose for which it was granted and in accordance with the terms of the power itself. That provision would be implied in any clause such as this: namely, that the donee, the person to whom the power is granted, must exercise it *bona fide* in accordance with the power and for the purpose for which it was granted. The general law does not impose objective criteria.

It seems to me that the Attorney's amendment smacks of paternalism in suggesting that some standard be fixed—a standard against which the courts could judge any particular exercise of the power. If subclause (7) is to be amended, I would prefer the amendment now standing in the name of the Minister for Transport, because that at least sets a subjective standard: namely, the standard of the agent's genuine belief as to the best interests of the grantor. That also serves an educative function. Let us imagine that we are advising somebody who wants to give a medical power of attorney. Not surprisingly, the question asked will be, 'What can my attorney do?' This subclause would enable the adviser—be it medical, legal or simply a friend—to go to the Act and say, 'You must realise that, if you give your agent this power of attorney, that agent will have to act in accordance with your power but in what he or she genuinely believes to be your best interests at that time. If you are prepared to allow an agent to take on that responsibility, sign the power of attorney. If you are not prepared to do it or if you have any reservations about it, don't sign the power of attorney.' I would imagine that that is the sort of standard advice which would be given, and it does give a clear choice to the person contemplating granting the power of attorney, namely, whether you are prepared to entrust this agent with the power

to make decisions on the subjective criteria, namely, what he or she genuinely believes to be in your interests at that time.

The Hon. K.T. GRIFFIN: With respect to the Hon. Mr Lawson, the analogy is inappropriate. Powers of attorney deal with property, apart from this context where we describe the living will as a medical power of attorney. The fact is that there are many examples in the law where the objective standard is used, and I referred to one of those in relation to the appointment of guardians. The courts use as the traditional standard the best interests standard; that is, the guardian must act in a way that will most effectively promote the ward's interests and physical and emotional welfare. It is an objective standard and cannot be equated to a power of attorney which deals only with property interests. Property is quite different from the life or death of a human being. One can give a number of other examples where there is an objective standard, for example, where there is a settlement to a damages claim for injuries sustained by an infant. That is always approved by the courts. The parties and guardians might think it is all well and good as a settlement, but it goes to the courts for approval. I am not suggesting that this decision will go to the courts for approval, but the fact is that, in the circumstances relating to the minor or the infant, the courts look at what is in the best interests of the child.

There are other examples in the law; for example, in the present Children's Protection Act and the old Children and Young Offenders legislation, the interests of the child are always paramount. They certainly are not determined in a subjective sense; they are determined objectively. So, there are plenty of examples in the law where the objective standard is used. I would very strongly urge members to consider that this is an instance where it is a matter of life or death and that in those circumstances it cannot only be the subjective assessment of the agent as to whether or not the best interests of the grantor of the power might best be served.

The Hon. ANNE LEVY: I certainly support the amendment moved by the Minister for Transport, and I think the Hon. Robert Lawson has explained the legalities behind this very clearly. As a non-lawyer I would certainly be reassured that the agent will do what he or she genuinely believes to be in my best interests if I am appointing a medical agent. If I did not feel that the person would act in my best interests I would not want to appoint them. I could leave it to a court to decide, which to me is completely contrary to the whole spirit of the legislation before us. The spirit of the legislation is that people can make their own decisions, that when they are not capable of making their own decisions they can appoint someone else who can make decisions on their behalf and that they will appoint someone who will make decisions similar to those that they would make if they were capable of doing so. It seems to me that the more objective language in the Attorney-General's—

The Hon. Diana Laidlaw: It might suit the lawyers but not necessarily—

The Hon. ANNE LEVY: It will not be reassuring to any individual. It suggests that there are some best interests which are determined externally to the person concerned which, as the Hon. Robert Lawson says, is paternalism gone mad. It is removing the autonomy of the person to make decisions regarding themselves. I do not think it is in the best interests of the grantor in some circumstances; there will be genuinely different opinions as to what is in the person's best interests. What we are saying is that when the person is competent they will make these decisions for themselves. When they are not competent they want someone to make them in their best interests. They will appoint someone who they feel has the same view of what is in their best interests.

In consequence, I strongly support the amendment moved by the Minister for Transport and feel that the amendment moved by the Attorney-General is trying to bring in some outside test, and it strikes me as quite fallacious to believe that there is some objective outside best interests that may run completely counter to the wishes of the person concerned. To me that is a complete contradiction that I do not want to entertain.

The Hon. A.J. REDFORD: I support the amendment moved by the Attorney-General as opposed to what I would describe as the 'Jehovah's Witness amendment' of the Minister for Transport. The key difference between the two amendments is the question of whether or not there is some objectivity. The problem I have with the Minister for Transport's amendment can probably be best described by giving a few examples.

Let us look at a situation where I appoint Fred to be my medical agent and Fred decides at some stage, after I appoint him, that he would like to become a Jehovah's Witness, and in the course of that makes a decision pursuant to a medical power of attorney to deny me a blood transfusion. Under the amendment proposed by the Minister for Transport, if Fred is challenged he can always say that he genuinely believed, because of his religion, that that was in my best interests.

Quite frankly, unlike the Hon. Anne Levy, there have been occasions in my life—and I must apologise that I do not have the honourable member's vision—when I have trusted people, thinking that they would behave in a certain way and they have behaved differently or have had a different viewpoint somewhere down the track from what I originally anticipated.

I have no doubt that on many of those occasions those people have believed that they were acting in the best interests of whatever they were doing. Quite frankly, it is the best interests of the grantor that should be focused upon, the best interests of the person who signs the document, not the genuine belief of the person who is given the authority. That is a secondary consideration. It is the person who signs the document, who gives the grant, who is the important person in this whole equation. This does not relate to the agent or his genuine belief. We have referred today to the issue of female genital mutilation. You may get a situation where the agent genuinely believes that some process consistent with that would be in the best interests of the grantor, and provided there is a genuine belief under—

The Hon. Carolyn Pickles: It is illegal.

The Hon. A.J. REDFORD: Not yet it's not.

The Hon. Carolyn Pickles: Yes, it is.

The Hon. A.J. REDFORD: Well, it depends on at what age it happens, and certainly with this situation, given the result of previous votes, it can only apply to adults.

The Hon. Carolyn Pickles interjecting:

The Hon. A.J. REDFORD: That is exactly the problem. The honourable the Leader says, 'If they're stupid enough to want that to happen.' That, in fact, is what the Minister for Transport's amendment seeks to impose—so long as there is a genuine belief. It is not even an honest and genuine belief, it is just a genuine belief. We have all sorts of people out there in fairyland, all sorts of obscure little groups out there. I have no doubt that in our democratic society they have every justification to join those groups and I have no doubt that they have genuine beliefs in those groups, but at the end

of the day what can be wrong with looking at it objectively and at what is in the best interests of the person who signs the document, because that is what the focus of this legislation is about. It is not about the agent or the direction; the focus is on the person who gives it. I would be urging all members to support the amendment proposed by the Attorney.

The Hon. T. CROTHERS: I have risen to speak because I heard the last contributor refer to the Minister of Transport's amendment as the Jehovah's Witness amendment. I think his contribution could best be described as that of the contribution of Lot's wife, because he really is drawing an awfully long bow. I know very well a number of Jehovah's Witnesses. They are most temperate people, despite the propaganda that is put around about them, a people who are highly motivated. Let me tell this Chamber, if there is a position that they have been involved in prior to their conversion to the Jehovah's Witness faith, then they will most assuredly, if they have been so convinced as to become converted and converts, as quickly as possible ensure that whatever instructions they had given prior to their conversion—I suppose it sounds like Paul on the road to Tarsus, struck blind for a period of time—

The Hon. Anne Levy: Wasn't it Damascus?

The Hon. T. CROTHERS: It was Damascus, that's right. In listening to the Hon. Angus Redford's speech, I was even thinking of the money lenders being thrown out of the temple, I must confess. However, having said what I have said, and in all seriousness now, it really is drawing a long bow if one has to delve down into one's bag of tricks and say, in support of a reason why the Minister for Transport's amendment should not be supported and the Attorney-General's amendment should be, that the only analogy that can be drawn is by implying that it is a Jehovah's Witness amendment. In other words, the potential that somehow or other one's medical wishes might change because of conversion to a certain religion is there and that the Attorney's amendment covers that and the Minister for Transport's does not. What utter folly.

Those who know the Jehovah's Witnesses—and I do know them and know them very well—would absolutely understand that they are the one people we can be sure of who will ensure that their wishes are carried out in respect to any guardian that they have appointed. Let me just remind the Chamber of this one salient fact about the reputation of Jehovah's Witnesses. The Jehovah's Witnesses were the only people whom the Nazi commanders of the death troops and the death camps—and they were prisoners there, too, they were prisoners of religion—would permit to shave them. That is the type of people they are. It ill behoves the Hon. Angus Redford to use them in his futile effort to try to discredit the Minister for Transport's amendment. I am supporting it; I believe it is essential, and I ask other members to think about it, to think about some of the magnificent contributions that have been made by those who support the Minister's amendment and some of the sallying forth contributions that have been made by those who would seek to have the Attorney's amendment gain some numeracy over the Minister's. I ask members to support the Minister's amendment.

The CHAIRMAN: I remind members that it is going to be a long night. I do not know whether we need to go into the detail of what other people's arguments are about. I suspect that if we keep to the point we will get the evening over more quickly.

The Hon. M.J. ELLIOTT: I would have thought that examining other people's arguments was precisely what we should be doing. When I indicated support for the Minister for Transport's amendment in preference to the Attorney's amendment, I did so only because I thought it was likely that only two options were being exercised. Frankly, I did not see a great need to move from original subclause (7). A number of other protections are in place which tackle the concerns that have been raised so far. Not only do we have protections within subclause (6) of the same clause but clause 9 itself allows the Guardianship Board to make decisions, except where the patient is in the terminal phase of a terminal illness or in a moribund state with no prospect of recovery. In other cases, the Guardianship Board—or it might end up being the Supreme Court, one of the two—will be in a position to make sure that the medical agent's decision does not expose the patient to risk of death or to exacerbate the risk of death.

So where an attempt may be made to deny a blood transfusion, clause 9(4)(b) would expressly stop the denial of a blood transfusion where a person was not in a terminal phase of a terminal illness or in a persistent vegetative state. I would also note that, if a doctor carried out the wishes of the agent, under my reading of clause 15 the medical practitioner would incur a criminal liability. It is not very productive to look at a subclause in isolation without looking at what other protections are in place. What this amendment is doing, and what the Attorney-General's amendment is doing in particular, is undermining the whole Act, seeking to provide a protection which is already offered in a number of other places within the legislation.

The Hon. ANNE LEVY: I am alarmed by some of the comments just made by the Hon. Mr Elliott. Our existing law is such that, if a Jehovah's Witness wishes to refuse a blood transfusion, they have every right to refuse a blood transfusion, even if they die from it.

The Hon. M.J. Elliott: For a Jehovah's Witness.

The Hon. ANNE LEVY: Yes.

The Hon. M.J. Elliott: Yes, but they can't do that in relation to somebody else.

The Hon. ANNE LEVY: No. If a Jehovah's Witness wishes to refuse a blood transfusion, while they are competent they can proceed to do so, and they can say that they do not under any circumstances wish to receive a blood transfusion, and there are Jehovah's Witness people who have died as a result of this.

The Hon. K.T. Griffin interjecting:

The Hon. ANNE LEVY: Yes, but it would seem to me that the Attorney-General's amendment would allow someone else to step in and say, 'Hey, it's not in the best interests of that person to refuse a blood transfusion,' even though the person is a Jehovah's Witness and has indicated that they do not wish to have a blood transfusion. But we are going to have some big brother step in and say, 'You must have a blood transfusion, whether you want it or not.' That to me is a denial of the individual's religious freedom. If they would die rather than have a blood transfusion, that is their wish and our current law permits that. Our current law does not allow parents who are Jehovah's Witnesses to refuse blood transfusions for their children. Our current law provides that adults can make such decisions for themselves—they can and do—but that they cannot make such decisions on behalf of their children. It is permissible for doctors to step in—

The Hon. R.I. Lucas: How do you define 'children'?

The Hon. ANNE LEVY: Anyone under the age of 18. It is permissible for a doctor to step in and override the wishes of parents if the doctor feels that a blood transfusion is the

only way to save a child's life, but that does not apply to adults. I do not want to be part of any objective test which, in effect, will override the religious freedom of people.

The Hon. A.J. REDFORD: The Hon. Anne Levy seems to misunderstand completely the effect of this clause. I will take her through it so that she does understand. It provides that the powers conferred by a medical power of attorney must be exercised in accordance with a different way (not in the best interests), and subject to those requirements must act in the best interests of the grantor. So, if I am a Jehovah's Witness and I give a specific written direction that I am not to have a blood transfusion, my agent must follow that—I do not have a problem with that—and, in the context of the Attorney's amendment, the agent would be obliged to follow that. However, if it is silent or if the agent has changed his or her mind or his or her beliefs subsequent to the granting of the agency and if there is no specific direction, the agent has extraordinarily wide powers. All the Attorney is seeking to insert is that that agent in that situation must act in the best interests of the grantor as opposed to the Hon. Bernice Pfitzner's amendment which provides that all the agent must have is a genuine belief. There are literally thousands of people out there who have genuine beliefs.

The Hon. Anne Levy: But I do not appoint them as my agent.

The Hon. A.J. REDFORD: That is absolutely right and, under the Hon. Bernice Pfitzner's amendment, the honourable member cannot possibly challenge it, because they say, 'There is no direction; I genuinely believe it is in the best interests of the person, you can't challenge it; I am acting specifically in accordance with subclause (7).' It may not be in the objective best interests of the individual, and that individual may never have contemplated that their agent would act in that way. It is all right to give these people a huge power and responsibility, but there must be some checks and balances. I suggest that an objective test is more appropriate than leaving it entirely to the subjective decision and viewpoint of an agent.

The Hon. M.J. Elliott: What about clause 9?

The Hon. A.J. REDFORD: I will come to clause 9 in a moment. Neither amendment has any effect on a written lawful direction in a medical power of attorney. So, if I am a Jehovah's Witness and if I do not want someone to make me have a blood transfusion when I do not want one, it will not do that, because I state in my direction that I do not want a blood transfusion and my agent is duty bound under the Attorney-General's amendment to follow that direction.

I will now deal with the Hon. Michael Elliott's interjection when he said, 'What about clause 9?' Previously, the honourable member quoted from clause 9 as it exists in the Bill before the Parliament. I suggest to him that there was considerable discussion—nearly a week ago—about certain amendments, as to whether we should change from the Guardianship Board to the Supreme Court. A number of us debated that clause at the same time as we debated clause 9. I am probably giving an early indication but I will support the Attorney's amendment in relation to clause 9, so I argue it in that context.

The Hon. R.D. LAWSON: It seems to me that one of the difficulties with the Attorney's amendment is that if, for example, I as a Jehovah's Witness wish to give a medical power of attorney in general terms (as one would imagine most of these powers would be given) to another member of my faith, I would expect that person to exercise the power in accordance with what he or she genuinely believes to be in my best interest. In appointing a Jehovah's Witness presumably I would be aware of whatever reservations they have about certain types of treatment. If some objective standard is to be superimposed over the whole scheme, my wish in having my agent, the Jehovah's Witness, make decisions for me would likely be overridden by some busybody going to court and saying, 'Well, I do not happen to agree with prohibitions against blood transfusions.'

The Hon. A.J. Redford: Isn't that a lesser mischief than the mischief you create where someone will have something done to them that they never contemplated, which can happen under the Minister for Transport's amendment.

The Hon. R.D. LAWSON: Entirely unenvisaged situations can occur under this whole regime. The question of Jehovah's Witnesses and refusal to allow blood transfusions is a subject of a whole body of case law which would remain unaffected by this legislation in most cases.

The Hon. K.T. GRIFFIN: The Hon. Angus Redford's explanation is one that I would agree with, but I will make two specific points. First, in relation to my amendment, what the Hon. Michael Elliott and others do not seem to have picked up, apart from this question of the objective test, is that it seeks to ensure consistency where there is medical power of attorney and where there also may be an anticipatory direction. It is fairly important to ensure that there is consistency of approach otherwise it will be an impossible provision to administer. I acknowledged that and I made the point specifically that the more far reaching amendment which I am proposing is to introduce the objective test concept. Without wanting to labour the point, the fact of the matter is that this law is to be made for all people for a long time.

I recognise, from the Hon. Anne Levy's interjection on a previous amendment, that, if your attorney has changed, there will be the opportunity for you as grantor of the power to make a change in your power of attorney. Of course, there are many circumstances in which that does not happen, and in some instances it cannot happen. It may be that a person does not get around to it, forgets about it or does not know—particularly if the agent has perhaps been overseas or away for a year or so. It is quite possible that the grantor of the power may not be prompted to make a change because of his or her own illness which is becoming of greater concern. It may be that without the knowledge of the grantor the agent has himself or herself developed some illness. It may be some form of Alzheimer's disease or other mental condition which suggests that they are not then able to make a proper decision based on the authority granted to them. All those unknown factors can arise. I am seeking to try to deal with those where you have an agent who is not acting in what might be regarded as the best interests of the grantor.

That agent may have a mental impairment and genuinely believe that what he or she is doing is in the best interests of the grantor, but in fact, when one looks at it, one sees that it is quite bizarre. Unless there is some basis for a review of that, in those what may be remote situations, it seems to me that we are introducing into the law and into this area in particular a much wider range of authority with much less protection against abuse or misapplication than presently exists in the law.

The Hon. DIANA LAIDLAW: Having heard all the arguments and having earlier moved this amendment on behalf of the Hon. Bernice Pfitzner, I am even more convinced than I was before that it is impossible to object to the sentiments expressed in the Hon. Bernice Pfitzner's amend-

ment in terms of acting in the best interests of the grantor. I also indicate that it is widely understood in this welfare/social area of judgment what is involved in terms of the best interests of an individual. Members would recognise that, in terms of child welfare law in particular, and the mandatory reporting of child abuse and all other areas of child welfare, the best interests of the individual are well understood. It is not a new concept. The fact that a person actually acts because they genuinely believe they are doing it in the best interests of the grantor only reinforces the importance of this concept.

Subclause (7) negatived.

The Committee divided on the Hon. K.T. Griffin's new subclause (7):

AYES (8)

Cameron T.G.	Davis, L. H.
Griffin, K .T. (teller)	Irwin, J. C.
Lucas, R. I.	Redford, A. J.
Roberts, R.R.	Schaefer, C. V.

NOES (10)

Crothers, T.	Elliott, M. J.
Kanck, S. M.	Laidlaw, D.V. (teller)
Lawson, R.D.	Levy, J. A. W.
Pickles, C. A.	Roberts, T. G.
Weatherill, G.	Wiese, B. J.

PAIRS

Stefani, J.F.	Pfitzner, B.S.L.

Majority of 2 for the Noes.

The Hon. K.T. Griffin's new subclause (7) thus negatived; the Hon. Bernice Pfitzner's new subclause (7) inserted.

The Hon. K.T. GRIFFIN: I know this clause is to be recommitted in some respects, but I think that it is presently in an unacceptable form. Whilst I indicate opposition to it, I do not intend to divide, but I will divide on the next occasion we run through this Bill in Committee, because I think it is a particularly dangerous provision in the light of the fact that there are no safeguards against abuse.

Clause as amended passed.

Clause 8 passed.

Clause 9—'Review of medical agent's decision.'

The Hon. DIANA LAIDLAW: I am wondering whether the Hon. Robert Lawson should move his amendment first. I am in a bit of a dilemma, because my amendment presumes that the Guardianship Board continues to be the source for a review of a medical agent's decision, yet when we argued this issue for the first time a week ago I did not win the argument in terms of the Guardianship Board: the Supreme Court is now the nominated body to review a medical agent's decision. In those circumstances, I will move my amendment in an amended form, not that that is my preference but to take account of the reality of the vote in this place. Is that acceptable to the Hon. Mr Lawson?

The Hon. R.D. Lawson: Yes.

The Hon. DIANA LAIDLAW: I move:

Page 6, lines 2 to 6—Leave out subclause (1) and insert—

(1) The Supreme Court may, on application by the medical practitioner responsible for the treatment of a person (the 'patient') for whom a decision is made by a medical agent, review the decision of a medical agent.

In this instance, I am restricting the people who can seek a review of a medical agent's decision. At present the Bill provides that a medical practitioner may do so, as can a person with a close personal relationship to the patient or the patient's family. We have heard over the past few days various views by members in this place who are most concerned about any potential to review any decision or any preference of the patient or the grantor. I am interested in confining this review procedure to a medical practitioner and not to include a person with a close personal relationship to the patient or the patient's family on the basis that we should respect the grantor's wish.

Essentially, anyone could claim a close personal relationship to a patient. We get into a shambles when the grantor has specified one person in whom they have confidence. Any one of 40 members of one's family could claim a close personal relationship, and that would, in my view, totally defeat the whole essence of this Bill, when a patient has put his or her trust and confidence in one person. A few moments ago we were talking about objective and subjective judgment. Nothing could be quite as messy as what is provided in the Bill at present in terms of this close personal relationship.

Subjective judgments can be made in relation to determining whether one even qualifies to have a close personal relationship to the patient when we are talking of a time when the patient is about to die. The last thing we would want is squabbling over these issues when the dignity of the patient and the patient's wishes are in essence what this Bill is all about.

The Hon. R.D. LAWSON: I support the amendment. However, some of the language used in the Attorney's proposed new clause 9 is more appropriate and, in particular, I do not support the entire deletion of paragraph (b), which would limit to the medical practitioner the right to apply to the court for a review of a decision by a medical agent. Instead of deleting paragraph (b), I would prefer the insertion of the wording used in the Attorney's proposed new clause, that is, 'any person who has in the opinion of the court a proper interest in the exercise of powers conferred by a medical power of attorney'. It seems to be that that would be a more appropriate solution rather than the words used at the moment and certainly a preferable solution to that proposed by the Minister for Transport, namely, the deletion of this category of persons altogether.

Moreover, in addition to giving the court the power to review the decision of a medical agent, I would support the inclusion of a power of the court to give advice and directions about the exercise of the powers conferred by the medical power of attorney. That is taking the words of the Attorney-General's proposed new clause 9(1)(a). I do not support the Minister's amendment, although I do support the deletion of the Guardianship Board and the substitution of the Supreme Court. That is an argument we previously had when we deleted from the Bill the definition of 'Guardianship Board'.

The Hon. R.I. LUCAS: If my understanding of this is correct, I oppose it as well. My understanding, now that the appeal will be to the Supreme Court (previously the Guardianship Board), is that it may be that someone else is near and dear to a person in the terminal phase of a terminal illness—a mother or father or a current spouse as opposed to a previous spouse—and may hold, for a variety of reasons (because of oversight or accident) a previous power of attorney. There are a whole variety of real world situations. The response from the Hon. Anne Levy and others will be that they can change it. I accept that they can, but in the real world that does not always occur and there will be circumstances, as I have outlined, where others will genuinely have an interest in what decision is to be taken in relation to a particular person.

As I understand the amendment being moved by the Minister, in those circumstances the parents of an 18 year old

son or daughter who might have appointed somebody else as a medical agent may well not have any right to appeal against what they see as being contrary to the son or daughter's wishes, in their view from 18, 20 or 30 years of living with that person, as opposed to somebody who might have had only six months with that person. They may be able to argue to somebody, in this case the Supreme Court, that that is not what they would have wanted, that they have some other indication—written, verbal or otherwise—that would indicate what their wishes might be in these circumstances.

In the circumstances of this amendment, I do not see that they will have the opportunity at all to appeal and to at least have their point of view heard by some third party.

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: They can go to the medical practitioner; that is a response, yes. However, if the medical practitioner does not agree and they still disagree, we are providing an appeal body—in this case the Supreme Court—and we are saying that the mother, father, current spouse, companion or partner in life is not able to, in effect, put a point of view to and have it heard by this third party. I would not want to support a situation where people should not have the ability to put a point of view. In the end, if they lose the argument they can at least say they have been heard. If this is the effect of it, certainly I would be opposing it.

The Hon. ANNE LEVY: I indicate that the only part of the Attorney-General's amendment which I approve of is when it says that this clause will be opposed. I am opposed to the whole of clause 9. I think it is outrageous that, if I have made a decision, anyone should review it. I can leave anticipatory declarations and I can appoint a medical agent to act in my best interests, and the thought that someone, be it a distant third cousin or the medical practitioner, can go off to the Supreme Court and that that court might have the power to make an order stripping away the medical power of attorney and appointing someone else as my medical power of attorney against my wishes is absolutely outrageous.

If I have appointed my son to be my medical power of attorney, I consider it absolutely outrageous if then the court decides, for reasons best known to it, that it does not want him to be my medical power of attorney and that it wants the Hon. Trevor Griffin to be my medical power of attorney. These decisions are going to be made not by someone in whom I have a great deal of trust and whom I know very well indeed, but by perhaps Derek Bollen, perhaps Robin Millhouse or perhaps any one of our Supreme Court judges, whose views on a number of matters I disagree with very strongly and whose views on other types of matters are completely unknown to me. I certainly do not want to entrust them with these decisions. There is somehow a belief that when someone becomes a judge they become God; that they are all powerful, all wise and know exactly what is best for everyone in all circumstances.

The Hon. Diana Laidlaw: In life and in death.

The Hon. ANNE LEVY: In life and in death. This to me is totally objectionable. Judges, like anyone else, are fallible; they have their own quirks, their own tastes, their own prejudices, their own biases and their own views—some of which I may or may not agree with. I certainly do not want this legislation giving any one of those judges the power to take away the medical power of attorney from the person to whom I have given it and to give it to someone else. It is just outrageous and a complete denial of an individual's personal autonomy. It strikes me as the greatest paternalism that anyone can imagine.

The Hon. M.J. ELLIOTT: I see this clause as being fairly crucial in the legislation as it is the place where a significant part of the protection lies. When I opposed the Attorney's amendment to clause 7(7) I commented that clause 9 should be offering the significant protections. It offers a protection consistent with my understanding of what the legislation seeks to achieve. It gives the opportunity for appeal, and it looks as if the appeal may now be to the Supreme Court due to an earlier amendment. It gives grounds for appeal, but fairly narrow ones. For instance, the Supreme Court would not be able to intervene if you were in the terminal phase of a terminal illness and the effect of the treatment would be to prolong life in a moribund state. They cannot intervene in relation to an agent's decision then but, if one is not in a terminal phase of a terminal illness and the court is of the opinion that the medical agent's decision would expose the grantor to death or exacerbate the risk of death, then the court can intervene.

I would argue that that is the place where, if there is going to be an abuse anywhere, the abuse can occur and that is the point where the protection needs to lie. As to the general structure of the clause as it stands, I am happy with it but, consistent with saying that that is the place where the greatest protection should be found, I do not agree with the Minister for Transport's amendment. This is an area where members of the family may intervene. At this stage I do not have a view about the Hon. Mr Lawson's amendment on file—

The Hon. R.D. Lawson: I'm not going ahead with that.

The Hon. M.J. ELLIOTT: Then I will not persist with that point. Here is a point where the family can really intervene. A member of the family who has not been made an agent can intervene and say, 'The appointed agent is making a decision that is putting my loved one at risk and they are not in the terminal phase of a terminal illness. I object to that.' That gives the protection that should be offered in the legislation. It is a right and proper provision that does not undermine the general intent of the legislation. On the other hand, the Hon. Mr Griffin's amendments on file go a lot further and start disempowering the person who is trying to grant their personal power to someone else to act on their behalf. It starts imposing someone else's opinion, as the Hon. Anne Levy says, that is, the opinion of the court. If you want the court to be your agent, you can appoint it as your agent. The court should be involved only in the circumstances for which the clause currently provides. I will not be supporting the Hon. Diana Laidlaw's amendment, and I will be strongly opposing the Attorney's amendments on file.

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

Page 6—Insert new clause as follows:

'Supervisory jurisdiction of the Supreme Court.'

9. (1) The Supreme Court may, on application by a medical agent, or any other person who has in the opinion of the court a proper interest in the exercise of powers conferred by a medical power of attorney, exercise any one or more of the following powers:

(a) the court may give advice and directions about the exercise of the powers conferred by the medical power of attorney;

(b) the court may vary or revoke the medical power of attorney;

(c) the court may appoint a person to exercise the powers conferred by the medical power of attorney in substitution for the current medical agent;

(d) the court may make any declaratory or other order that may be appropriate in the circumstances of the case.

(2) The court may make an order under this section on terms and conditions the court considers appropriate.

I do not accept the assertions made by the Hon. Anne Levy, and that should be obvious from the tenor of the debate.

The Hon. Diana Laidlaw interjecting:

The Hon. K.T. GRIFFIN: I felt that by interjection I had already put that on the record. If it is not there by interjection, I said that I would not accept an invitation to be her medical agent.

I do not accept that every person is an island: each person lives within a community. Although the Hon. Anne Levy wishes to make this legislation for what appear to be her purposes or the purposes of persons of her own views, the fact is that the legislation is made for a long time to cover the whole community. People may or may not accept the opportunity that is presented by the Bill to make an anticipatory grant or to execute a medical power of attorney. That is a choice for them. However, for those who do, they need the protection of the law.

The Hon. Anne Levy criticised the Supreme Court, and she is entitled to do so, but I do not share the view that there ought not to be a body like the court exercising some supervisory jurisdiction. In our democratic society there is no other body which exercises supervisory responsibility in relation to the rights of citizens and determines whether or not those rights have been infringed or upheld. In our society it is the independent courts system which ultimately has that responsibility, and that is what I want to insert in this Bill.

It is all very well to talk about the Guardianship Board, but under this Bill the Guardianship Board has very limited authority. Towards the end, one cannot appeal from a decision of the Guardianship Board. There is nothing more likely to make it unaccountable than if its decisions are in no way subject to review. If the Committee ultimately accepts the Guardianship Board, it has to be the subject of some supervisory jurisdiction, perhaps exercised by the Supreme Court. If the Guardianship Board is not accepted, the Supreme Court will exercise its own jurisdiction to ensure that the rights of the citizen are protected. That is what this is all about. This is not paternalistic, because we all know from our personal experiences, professional practice or otherwise that circumstances change. What might be right and agreed one day may not be the next. Families fall out, friends fall out, and it can be over the most trivial things, and then there can be the most vicious war between those involved. In those circumstances there must be a mechanism by which the rights of the citizen are protected, and protected in the context of community activity.

On another clause we talked about what a citizen can or cannot do in respect of consent. The criminal law is quite clear. A person cannot consent to have serious injury inflicted upon himself or herself. The criminal law does not allow a person who assaults another to get away with the assault on the basis that consent has been given by the victim. It is contrary to public policy, and anarchy would rule if that were not to be the situation. The fact is that some standards must be maintained and protections must be built into the law, which governs relationships between citizens and groups of citizens and defines rights and privileges as well as responsibilities. In those circumstances I do not believe what is presently in clause 9, even with the amendment that the Hon. Robert Lawson may ultimately move to substitute the Supreme Court for the Guardianship Board, provides proper protection for the citizen in the circumstances that something goes wrong. That is what we are talking about; we are not talking about making a law that will override a person's wishes in all cases; it is when something goes wrong.

Like the Hon. Robert Lucas and others who have expressed this view, I cannot accept that there should be any limitation on the rights of any person with a proper interest to have a matter reviewed by the court. A number of examples have been given. There may be a member of the family; there may be a spouse and a putative spouse; there may be a putative spouse and a child—a whole range of various situations where, in my view, to ensure that the rights of the citizen are properly protected, a person with a proper interest must be able to have a matter reviewed by the court.

The Hon. M.J. Elliott: The current clause allows those people, the putative spouses—

The Hon. K.T. GRIFFIN: It does not; clause 9 is very limited.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: It does, but the review is very limited.

The Hon. T. Crothers: How do you define a proper interest? I am somewhat taken by your argument, but how many people would have access to act as the trigger for involving the Supreme Court, for example?

The Hon. K.T. GRIFFIN: I cannot give you an indication as to how many.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: That may be a problem, but that is not unknown to the law. It happens with inheritance, with guardianship and probably in a number of other areas that I cannot immediately call to mind. There is a general provision in the law that will allow a person with what we describe as a proper interest, which is fairly well developed in case law, to make an application to the court. There are things like *habeas corpus*—'deliver up the body' of a person who has been wrongfully detained. There is a role range of areas; where a person is seen by the court to have an interest which needs to be recognised and at least explored then the court will give access. It will not give it willy-nilly, but at least it will give it in circumstances where the court sees that as a matter of justice and equity there needs to be access. That is really as far as I can take that in terms of principle. I know that my amendment is very broad, but in my view it is necessary to ensure that all possible variations and factual circumstances are covered.

The Hon. T.G. ROBERTS: The Attorney speaks of the rights of citizens. One of the reasons that we have been so long on this whole Bill is that it is balancing the rights of the person who is in receipt of medical treatment to die with dignity against the rights of others who may decide to intervene.

The Hon. K.T. Griffin: Some of these provisions are not only limited to that.

The Hon. T.G. ROBERTS: Many of the provisions causing conflict amongst individuals within this Committee relate to balancing those judgments. Clause 9 offers the protection in that one of the determinants is to be the treating medical practitioner. In this debate we have tended to overlook the role that the treating medical practitioner plays in the final determination of advice given to all parties in relation to death and dying. Those people associated with patients in the final stages of nursing and treatment may not necessarily be the family. Those people who have a close interest in the last days of someone who is dying may not be closely associated with the family. Many people grow away from their family and their last days are spent amongst strangers without any medical agent at all. It is basically the medical practitioners who make the decision about how

people die—whether or not they die with dignity or whether they die in pain. Most doctors will the try to alleviate those problems. However, in the case of clause 9, I do not think it is unduly restrictive in any way to involve a member of a person's family, if that is the case indicated by a letter or by nominating a medical agent. The medical practitioner can make some sort of judgment during those times. We tend to get a bit bogged down in some matters that, in many cases, will not occur in reality. There will always be the exception.

I do not take the point made by the Hon. Ms Levy in this case where dogmatically one individual should have the right forever, under all circumstances, to make that decision on behalf of another individual. As plenty of people have pointed out in this debate, circumstances change, people change, attitudes change and the circumstance in which the patient finds himself or herself changes the attitude of those who have taken on the role of medical agent. Even visiting people in those circumstances tends to change people's views and ideas. Some people may want to relinquish the role of medical agent; they may not want the responsibility after a certain stage. All of those issues need to be taken into account.

It would be good if it were quite straightforward, where someone has a medical agent and the person who would like to die with dignity maintains that relationship with the medical agent for the whole of that process so that their final days were made easier. However, unfortunately that is not the case: there are circumstances that mitigate against that. I would be prepared to put more faith in the medical profession than perhaps many people in relation to the contributions made. I would not want to complicate the arrangements unnecessarily by bringing in too many other people to become involved in making those decisions between the patient and the medical practitioners. However, unfortunately I think we have got to that stage. I think it should be kept reasonably simple, but with the overriding principles that there are other people who can intervene at a particular time to ensure that there are no complications in those final days before death.

The Hon. CAROLINE SCHAEFER: I think we all acknowledge that we are talking about a very few people. For a start, I imagine that very few people will appoint a medical agent. There will be even fewer situations where there will be any either desire or need for appeal. But I do believe that one of the basic tenets of democracy is the right of broad appeal for anyone and by anyone who considers themselves to be wronged. Frankly, it appals me to think that someone who has a close, personal relationship with a person who is, in this case, dying or temporarily incapable, is denied the right to appeal. As the Hon. Robert Lucas said, that appears to me to be basically wrong. It appears to me that it is too late once these people are dead to say, 'Well, I believe that that was a wrong decision.' They must have the right of appeal while that person is still alive. To me, it just smacks of absolute immorality to deny those close to the person who is dying the right to appeal.

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

Page 6—

Line 2—Leave out 'Guardianship Board' and insert 'Supreme Court'.

Line 5—Leave out subparagraph (b) and insert new subparagraph (b) as follows:

(b) any person who has in the opinion of the court a proper interest in the exercise of powers conferred by the medical power of attorney.

Line 6—After 'agent' insert 'and give advice and directions about the exercise of the powers conferred by the medical power of attorney'.

I will very briefly run through the arguments why the Supreme Court rather than the Guardianship Board ought to have this jurisdiction. First, as the Attorney has said, there is no appeal from the Guardianship Board and that is inappropriate. But, more importantly, it seems to me, even if we left clause 9 in, conferring certain powers on the Guardianship Board, namely, the right to review the decision of medical agent, the Supreme Court would retain its inherent jurisdiction to give advice and direction on an application of anybody concerned in a matter in relation to the interests of a third party. The court has an inherent jurisdiction to make appropriate declarations in such cases.

So, if the court already has jurisdiction to entertain applications in relation to these matters, it ought to be the appropriate place to go for all matters relating to medical powers of attorney. There should be no difference in the expense of going to the Guardianship Board or to the Supreme Court, nor any difference in the delay. Indeed, the Supreme Court is probably less bound by procedural difficulties than the Guardianship Board. It is a court that is open 24 hours a day. There is access to it. Judges sit at all times of the day and night to hear urgent applications, and there is always a judge available to hear matters such as this.

It does seem to me that there will be occasions when people involved in medical powers of attorney will require assistance. These are documents that will be printed and, presumably, available over the counter at stationery shops and the like, and people will write manuscript directions as to the way in which their treatment is to be handled. We find that with holograph wills, which are drawn all the time. Very often the situation that has arisen is one that is clearly not envisaged by the person who writes the directions. The medical practitioner faced with a direction will wonder, 'Well, can I do what I propose doing in this case under this piece of paper? Does it authorise me to embark upon this treatment? It is clear that the person who wrote out the document did not have in mind this particular situation when he or she wrote it out, but I am in difficulty as to whether or not I will in fact receive the protection of this Act if I go ahead and perform the treatment.'

It may well be that the person filling out the medical power of attorney stipulates that certain drugs are not to be administered. Those drugs may go out of fashion, there may be other drugs or by different names, different derivatives, but which really are, in effect, the same drug. The medical practitioner is concerned, 'If I administer this particular drug, am I acting in accordance with the power of attorney and the directions given in it?' In those cases, the medical practitioner ought to have the opportunity to go to some independent body, namely the court, to say, 'This is the situation. This is the medical power of attorney. Can I do what I propose doing?' and the court will give a direction one way or the other. This provision is for the assistance of the medical profession. Just as the Hon. Terry Roberts said he had faith in the medical profession so, too, do I. But it is necessary to give assistance to the medical profession in relation to these matters. My amendments seek to achieve that.

The Minister for Transport would limit to the medical practitioner the class of persons entitled to make such applications. I would expand it, as I have in my proposed paragraph (b), to include 'in addition to the medical profession any person who has in the opinion of the court a proper

interest in the exercise of the power conferred in the medical power of attorney'. That does give a discretion to the court. It is not merely a member of a family, any busybody, or some ancient aunt who has not been on the scene for 30 years and who has some religious objection to some form of treatment or some other person who simply wishes to make an application for the purpose of harassing those who are involved—any person who has a proper interest in the exercise of the power should have that right to go to court.

My last amendment seeks to widen the power of the court not only to review the decision of a medical agent but also to give advice and directions about the exercise of the powers conferred by the power of attorney, because there may well be cases where not only is the doctor in some doubt about what the power of attorney means but also the person who holds the power of attorney may wonder, 'Am I authorised to tell the doctor to administer or not administer morphine in this situation?' It could be that, from the terms of the power of attorney, the patient did not want to have, for example, morphine or some other specified drug. It seems to me that my amendments will address some of the issues that the Hon. Anne Levy was talking about.

The Hon. R.I. LUCAS: One aspect of the Hon. Rob Lawson's amendment that concerns me is that of proper interest. Does a charity or an organisation that was the beneficiary of the will of a person who might be about to die have a proper interest in the exercise of powers conferred by the medical power of attorney?

The Hon. R.D. LAWSON: In my view, certainly not. I have taken that language from the Attorney-General's proposed clause 9. The interest of the person making the application must be an interest in the exercise of the powers rather than an interest in the result of their exercise or an interest in the estate of the person.

The Hon. R.I. Lucas: The exercise of power may be whether or not they collect.

The Hon. R.D. LAWSON: That sort of pecuniary interest is not encompassed by proper interest.

The Hon. R.I. LUCAS: I am not suggesting that there is anything improper in an organisation being a beneficiary of a person's will. Presently, there is a case where beneficiaries of wills—and I am not sure whether they are charities or whatever—are expressing views about a whole variety of things. I am not suggesting that it is an improper interest, but I would have thought that they had a proper interest in the exercise of powers and they might want to put a view one way or the other in relation to the exercise of powers conferred by the medical power of attorney. It may well be that, after three years of being kept on a life support system, the Salvation Army, or someone else who is a potential beneficiary, may well argue, together with others, that it has a proper interest in the exercise of these powers and that certain action should be taken.

The Hon. R.D. LAWSON: It is certainly my view—and I understand that it is also the Attorney's view from the gestures that he has made—that I do not regard a proper interest as a pecuniary interest in the estate of a patient. There might be a case where, for example, a hospital in which a patient is kept has a proper interest.

An honourable member interjecting:

The Hon. R.D. LAWSON: Well, a patient may well have been admitted as an emergency, someone whose family is unknown, and the hospital has been maintaining and keeping him for months. That person remains in a coma, and a direction is found, and the hospital may well wish to make an application. In fact, applications in a lot of the English cases are made by hospital authorities.

The Hon. R.I. Lucas: They might need the bed.

The Hon. R.D. LAWSON: Indeed, they might need the bed.

The Hon. M.J. ELLIOTT: I remind members who were involved in this debate last year that this clause was not part of the original legislation. It was put in to resolve the differences that occurred in this Council about whether there would be any review at all of a medical agent's decision. Clause 9 was the result of a compromise reached in this Council to resolve two extreme differences. With the possible exception of the argument that we have already had about the Guardianship Board versus the Supreme Court—I prefer the Guardianship Board—clause 9 represents the position we reached last time after listening to arguments to the effect that, at one extreme, if a person appoints an agent, that agent has the right to carry that appointment through and should not be interfered with, to, at the other, that you must include all sorts of protections. This clause attempts to strike a balance between providing protection and interfering as little as possible with the legitimate wishes of the grantor of the medical power of attorney. It concerns me further that, having reached what was a compromise last time, we now have members pulling us in different directions.

The Hon. R.I. Lucas: Some of them weren't here.

The Hon. M.J. ELLIOTT: No, but for the sake of those members who were not here, I think it is worth noting that when the initial Bill emerged from the select committee this clause did not exist. I supported the insertion of clause 9 into the legislation because I thought it was important that some review be available, but in fairly narrow circumstances, which ensured protection for a patient in the non-terminal phase of a terminal illness and where there might be some question as to whether the medical agent's decision was putting that patient at risk of premature death.

As we have already voted on the question of the Supreme Court, at least until the Bill is recommitted I am prepared to accept the insertion of 'Supreme Court' instead of 'Guardianship Board', but otherwise I do not think that we should depart further from clause 9, which was arrived at after a great deal of argument—it was probably one of the clauses on which we spent a great deal of time last year. I have not been convinced by the arguments put forward so far because they are not very different from what we heard a year ago.

The Hon. K.T. GRIFFIN: It is all very well to suggest that this was a compromise. I think it might have been a compromise sufficient to get majority support. The fact of the matter is that not everyone agreed with the specific provisions, particularly that in subclause (7) which provides:

(7) No appeal lies from the decision of the Guardianship Board under this section.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: That is fine. It is only a compromise to the extent that a majority finally went along with this. The fact of the matter, as the Hon. Robert Lucas said, is that there are three new members in the Chamber and it is an important issue in the context of the debate we have had. Whilst it is appropriate to be reminded of that position, that does not suggest that it is the appropriate solution to the issue. I intend to persist with my amendment. If my amendment is not carried I will support the Hon. Robert Lawson's amendments, because I think they are a significant improve-

ment on what is in the Bill. Certainly, I will not support the Hon. Diana Laidlaw's amendment.

The CHAIRMAN: The question is that all words in clause 9 down to but excluding 'Guardianship Board' in line 2 stand as printed.

The Committee divided on the question:

While the division was being held:

The CHAIRMAN: Because there is only one 'No', the division cannot proceed.

Question carried.

The CHAIRMAN: The question is that 'Guardianship Board' in line 2 stand as printed.

The Hon. M.J. ELLIOTT: There seems to be a problem with that. One of the options I thought was to be offered was that 'Supreme Court' would replace 'Guardianship Board', because of a previous vote, but members may not want the rest of the amendment of the Hon. Mr Lawson. I for one certainly do not.

The CHAIRMAN: That was the Hon. Diana Laidlaw's amendment. We have had the test case for it; it was lost on the voices, so now we are proceeding to take out those words 'Guardianship Board' so that we can insert 'Supreme Court'.

The Hon. R.D. Lawson's amendments carried.

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

Page 6, lines 7, 20 and 23—Leave out 'Guardianship Board' and insert 'Court'.

Amendment carried.

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

Page 6, line 25—Leave out subclause (7).

The Hon. DIANA LAIDLAW: I do not believe there should be an appeal from the Guardianship Board or, as it is now suggested, the Supreme Court. I have argued all along that there should be restricted rights in this regard. To then say that there should be appeal rights, I would argue that this process is going on and on without indicating who will appeal—whether it is a close family relative or a person with a proper interest. This whole thing is getting out of control and I oppose the amendment.

Amendment carried.

The Hon. K.T. GRIFFIN: At some stage I would still want to have a decision made on my clause 9, but I presume that that now comes when we recommit the whole Bill and I put everybody on notice that I will want to persist with my new clause 9, which is, in a more general sense, conferring power on the Supreme Court without the present limitations. We will deal with that at the recommittal.

The CHAIRMAN: You can do that now when I call for clause 9 as amended to stand part of the Bill.

The Hon. K.T. GRIFFIN: I do not think I can, because that removes the whole of clause 9. I want to put the new clause in but you will not then let me put a new clause 9 in.

The CHAIRMAN: When I put the clause as amended, you can oppose it, delete it and insert your whole new clause. You can definitely oppose the existing clause.

The Hon. R.I. LUCAS: I flagged earlier that I wanted to offer some comments in relation to clause 9 (2), as this provision has long troubled me and indeed troubled some members when last we debated the legislation. I made some comment about the Hon. Mr Elliott's earlier contributions and I have been able to dig them up. When we last discussed this notion of terminal phase of a terminal illness, the Hon. Mr Elliott's views were as follows:

> I also indicate that I do not believe that this definition of 'terminal phase' is adequate. I think that in itself it might create some difficulties later.

There are a number of references, but later he said:

> I had already made quite plain that the definition of 'terminal phase' is not a good description of terminal phase. But I do not also believe that inserting the words 'death is imminent' solves the problem.

That was said in the context of an amendment that the Hon. Caroline Schaefer had moved to try to provide greater clarity to what was meant by 'terminal phase of a terminal illness'. The view of some members was, for reasons I will explain in a moment, that it was way too broad, and the Hon. Caroline Schaefer was seeking to make it more definitive. The Hon. Mr Elliott said that he did not believe the current definition in the Bill was adequate and that he had difficulties with it, but he nevertheless did not think that the amendment being moved by the Hon. Caroline Schaefer was quite right.

In the discussions that then ensued, there was some canvassing of the prospect of trying to find some compromise position. The problem I have with clause 9 (2) is that, in effect, now with the Supreme Court but previously with the Guardianship Board, we are saying that through the terminal phase of a terminal illness there is no appeal at all to any particular body. In interpreting it, we have to look at what 'terminal phase of a terminal illness' is. The definition is as follows:

> 'Terminal phase' of a 'terminal illness' means the phase of the illness reached when there is no real prospect of recovery or remission of symptoms (on either a permanent or temporary basis).

We canvassed a range of options during the last debate on this particular issue, and some of those options included, for example, the situation where a person might go into a coma for quite some period but might then come out of that coma and lead a full and productive life. Clause 9(2)(b) provides:

> The effect of the treatment would be merely to prolong life in a moribund state without any real prospect of recovery.

Someone asked earlier what 'moribund' meant, and the Minister for Transport, probably based on advice, replied that it was 'someone being in a dying state' or 'death like' which, in my judgment, does not seem to be much different from 'a terminal phase of a terminal illness'; it probably says it in another way, but basically it refers to a situation where there is no real prospect of recovery or remission of symptoms.

In that circumstance a person goes into a coma, for example, and someone wants to take action which will, in effect, remove life support systems—in the previous debate we have talked about who that might be; it may well be the current partner in life or spouse as opposed to the previous spouse, who may well still have the medical power of attorney, or it may well be that the parents have a particularly strong point of view. I am referring to this period of coma for a person and to the position, during that period, of those persons with that 'proper interest', as we are now seeking to define it. In effect, if a decision is to be taken to remove the life support system and end the life of that particular person, and a parent or the current spouse very strongly—on the basis of having known that person for 30 years as opposed to the current person, who might have known the person for six or 12 months—argues that this is not what they would have wanted, that there have been a number of cases where people have come out of a coma after two or three months, or whatever it is, and lived a full and productive life afterwards, and they oppose the notion that this medical agent will authorise the removal of the life support system, that person

will not have the chance even to take the case to the Supreme Court.

In this circumstance and with this current construction, even with the Supreme Court being there, those persons with a proper interest will not have the chance to even take the case to the Supreme Court. What was intended by a majority of members in this Chamber to allow that to occur, in this stage of a terminal phase of a terminal illness, will not be allowed to occur.

The Hon. Anne Levy: Being in a coma is not being in a terminal phase of a terminal illness. If you are in a coma and have cancer, the chances of leaving hospital two months later and leading a productive life are zilch.

The Hon. R.I. LUCAS: The terminal phase is reached when there is no real prospect of recovery of remission of symptoms. Some members have given examples and others are well aware of examples where medical practitioners and others have given advice about persons in a coma that there is no real prospect of recovery.

The Hon. Anne Levy: That is not a terminal illness.

The Hon. R.I. LUCAS: Look at the definition.

The Hon. K.T. Griffin: A terminal illness is an illness or condition that is likely—

The Hon. R.I. LUCAS:—to result in a death. Look at the definition.

Members interjecting:

The Hon. R.I. LUCAS: Exactly. The argument last time dealt with someone with Alzheimer's or a whole variety of conditions. I referred last time to a number of conditions, say, which an infant is born with and everyone knows that there are no cases of anyone living beyond 15 or 20. Generally sufferers die between 10 and 15 and people know from the first day that it is all downhill, that there is no prospect of recovery and that child is in a terminal phase of a terminal illness. The next test would be whether or not those conditions would be a dying state, as members might argue. Some might argue that that was so, because everyone knows that the person is dying quickly as opposed to someone living to 70 or 75, when a person with this disease will not last beyond the age of 10 or 15 or whatever, and that takes account of the second part of the definition. I raised a number of examples where one could argue that in certain circumstances, because of the way we have constructed the definition of 'terminal phase of a terminal illness', such conditions would potentially come within it. I suspect the more realistic example involves someone in a coma and people having to make a difficult judgment whether or not to remove life support systems as opposed to someone—

The Hon. Anne Levy: That is not a terminal illness, just being in a coma.

The Hon. R.I. LUCAS: It is within the definition of the Bill, which is my point. I raised it before and I said I would raise it again in the context of this clause. In doing so, I revisited the debate we had on this issue when members like the Hon. Caroline Schaefer, the Hon. Mike Elliott, myself and a number of other members expressed concern about it. I accepted that the Hon. Mr Elliott did not like the Hon. Caroline Schaefer's amendment that death is imminent. He believed it left it to too small a period right at the end. Nevertheless, he had the view, as I did, that the terminal phase of a terminal illness was not a good definition because, for the reasons we have been discussing, it was too long a period, and he indicated as I did a preparedness to look for something in between. I have had initial discussions with Parliamentary Counsel and, rather than saying 'death is imminent', we have tried to indicate that it was not imminent but that one was near death. It was the next step back, however we can define that.

At this stage I do not have an amendment for this provision, but I wanted to raise it before the recommittal, which will be either tomorrow or Thursday, as I still see this as a significant flaw in the legislation. Members who think that in certain circumstances people will have the opportunity to go to the Supreme Court, as it will be now, to put a point of view and challenge a decision will find, with the legislation as constructed, that they will not have that opportunity in many of those circumstances. I flag that and indicate that, over the next few hours before we finally recommit, I shall still be looking for a compromise between the two positions. If other members have a view, thought or idea, I would welcome that discussion.

The Hon. M.J. ELLIOTT: The Hon. Mr Lucas has quoted what I said in relation to the terminal phase of a terminal illness in subclause (2). If it stood alone, the problem that I raised would have been a problem, but we are talking about a patient in the terminal phase of a terminal illness and the fact that the treatment would merely prolong life in a moribund state. It is not one or the other: the two must occur together. Subclause (2)(b) offers the additional protection that I would have felt that subclause (2)(a) alone did not offer. If we simply said that one could not seek a review because a person was in the terminal phase of a terminal illness, that may be a long time before death and the person is not in a moribund state. Therefore, we could say that the decision could easily be against the interests of the patient. I believe that when paragraphs (a) and (b) are taken together, the circumstances are different. The Hon. Mr Lucas talked about a compromise between the two positions. In fact, that subclause was first derived because we tried to find a middle ground between those who wanted no review at all and those who opposed the concept of the whole legislation.

The Committee divided on clause 9 as amended:

AYES (14)

Cameron, T. G.	Crothers, T.
Davis, L.H.	Elliott, M. J.
Griffin, K .T. (teller)	Irwin, J. C.
Lawson, R. D.	Lucas, R. I.
Redford, A. J.	Roberts, R. R.
Roberts, T. G.	Schaefer, C. V.
Stefani, J. F.	Weatherill, G.

NOES (5)

Kanck, S. M.	Laidlaw, D. V.
Levy, J. A. W. (teller)	Pickles, C. A.
Wiese, B. J.	

Majority of 9 for the Ayes.

Clause 9 as amended thus passed.

Progress reported; Committee to sit again.

MOTOR VEHICLES (LEARNERS' PERMITS AND PROBATIONARY LICENCES) AMENDMENT BILL

Returned from the House of Assembly without amendment.

ADJOURNMENT

At 11.38 p.m. the Council adjourned until Wednesday 26 October at 2.15 p.m.