LEGISLATIVE COUNCIL

Tuesday 1 November 1994

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

ASSENT TO BILLS

Her Excellency the Governor, by message, intimated her assent to the following Bills:

Criminal Law Consolidation (Felonies and Misdemeanours) Amendment,

Easter (Repeal).

Gaming Machines (Prohibition of Cross Holdings, Profit Sharing, etc.) Amendment,

Mining (Royalties) Amendment,

South Australian Office of Financial Supervision (Register of Financial Interests) Amendment,

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—
- Auditor-General's Department.
- Department for State Services.
- Electricity Trust of South Australia.
- Privacy Committee of South Australia.
- South Australian Freedom of Information Act 1991.

Regulation under the following Act—
- Lottery and Gaming Act 1936—Licence Fees—
  - Minister may waiver rules.

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

Construction Industry Long Service Leave Board—Estimate of Liabilities Report.

Reports, 1993-94—
- Department for Industrial Affairs.
- National Crime Authority.
- South Eastern Water Conservation Drainage Board.

Regulation under the following Act—
- Petroleum (Submerged Lands) Act 1982— Assessment of Registration Fees.

Rules of Court—Juries Act 1927—The Election.

By the Minister for Consumer Affairs (Hon. K.T. Griffin)—

Regulation under the following Act—
- Fair Trading Act 1987—Exemption—Fly Buys.

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

Regulations under the following Acts—
- Environment Protection Act 1993—
  - Variation to Schedule 1.
  - Ozone Protection.
  - General.
- Medical Practitioners Act 1983—Registration Fees.
- Pastoral Land Management and Conservation Act 1989—Access across Pastoral Lease Land.

QUESTION TIME

SCHOOL GRANTS

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about back to school grants.

Leave granted.

The Hon. CAROLYN PICKLES: In a written response to an Estimates Committee question the Minister has said the Ministerial committee established to determine the allocation of back to school grants for the last two years will not be convened to determine this year's distribution of $12 million. This committee included representatives from the South Australian Association of State School Organisations and the Association of School Parent Clubs to guarantee the impartial allocation of funds. These organisations will be concerned to learn their advice is no longer required by the Minister on this matter. The Minister advised he had decided to ask his department to provide him with a review of the back to school program before any final decisions are made in relation to the 1994-95 grants. The Minister also told the Council last week that Paringa Park Primary School will be receiving funds from this source for maintenance and minor works. My questions to the Minister are:

1. What are the terms of reference of the review of the back to school grants scheme and why have this year's grants been delayed?

2. Will the Minister guarantee that school councils will again be able to set priorities for spending grants or will the department be making these decisions?

The Hon. R.I. LUCAS: The grants have not been delayed for this year. If the honourable member casts her mind back some 12 months prior to the last election, she would recall that the local members of Parliament were given cheques by the previous Minister during the period of late October and early November, and visited their local schools prior to the State election handing out the back to school grants to their ever grateful school communities. Therefore, there was no delay in the review that the department conducted on this issue. Local school communities will still be able to list their priorities; however, they will have to be for maintenance and minor works programs. Some schools have been using back to school grant funding moneys for items such as the purchase of computers and a variety of other curriculum initiatives for which the back to school grant scheme was never intended. At the same time, having done that, they came back to the department with essential maintenance and minor works needs for the schools asking, 'Can you please fix this particular problem up at the school?'

The Hon. Carolyn Pickles: How many schools was that?

The Hon. R.I. LUCAS: A number. One of the reasons why the scheme had to be reviewed was to ensure that the $12.5 million, which is part of a significant commitment from the Government towards maintenance and minor works (a $7 million increase this year compared to last), went towards this important area for the department. There will be priority setting by the local schools within guidelines established by the Department for Education and Children's Services to ensure that the money is spent on maintenance and minor works and not on other purposes.

PRAWN FISHERY

The Hon. R.R. ROBERTS: I seek leave to make a brief statement before asking the Attorney-General a question about the Spencer Gulf prawn fisheries annual report.

Leave granted.

The Hon. R.R. ROBERTS: I have received a copy of the Spencer Gulf and West Coast Prawn Fisheries Association report. I refer to the report by the Chairman of the Assoc-

iation, Mr Mick Puglisi. In his report he raises two issues which are causing some concern. He says:

> Following extensive negotiations with DPI, SARDI and the former Minister for Primary Industries in the last six months of the previous Government, a document of agreement was negotiated on how this sector's management committee would function in the mode of integrated management, the financial structure and the interaction between the committee and the Government. The strategy was to commence [in] the 1994-95 financial year. Although the relevant document has been submitted to the current Minister for Primary Industries it is disappointing it has never been acknowledged.
>
> Through the change in Government and now over 12 months later following the document's agreement we are virtually back to square one. This situation is extremely frustrating to us as an organisation who wish to continue carrying out business in the professional manner demonstrated in the past, and now demanded in the current economic and social climate.

He also went on to say:

> During past year industry has witnessed a massive restructure by Government of the former South Australian Department of Fisheries. A review of the old department should have maintained it as one of the best Department of Fisheries in Australia, but regrettably the political agendas were not in tune for that to be the case. It is unfortunate that the politics of the South Australian fishing industry are driven by a minority. . . [who] 'cannot see the wood for the trees.'

He then goes on to raise the major concern as follows:

> Following the radical cuts in staffing and service levels by Government, one major concern industry has is that the enforcement arm has been rendered to a level where it will be almost impossible for Government to carry out its responsibilities. From its drastic reduction of enforcement officers, the Government is attempting to convince the public and the commercial fishing industry sector that they will get a better service with less enforcement officers. To say that they will be more effective by creating a small 'flying squad' based in Adelaide to cover all South Australian coastline and inland waters is nothing less than window dressing. Industry and the recreational sectors have repeatedly voiced concerns at the rife level of fish thieving and poaching, and the disquiet expressed here is being echoed throughout Eyre Peninsula that these people have now been given a wider scope to carry out their activities virtually unimpeded.

A number of other concerns are expressed in the document that will be the subject of further investigations. My questions to the Attorney-General, representing the Minister, are:

1. Is the Minister aware of the agreement between the Spencer Gulf and West Coast Prawn Fishermen's Association?

2. Will the recommendations and agreements be endorsed to allow the association to proceed with its planning?

3. What steps will the Minister take to address the concerns of the association as expressed in the annual report in respect of the policing of the Spencer Gulf prawn fishery and other fisheries?

The Hon. K.T. GRIFFIN: The questions are to me representing the Minister for Primary Industries. Therefore, I will refer them to the Minister and bring back a reply.

ENTERPRISE BARGAINING

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Industrial Relations, a question about enterprise bargaining.

Leave granted.

The Hon. T.G. ROBERTS: A problem has been raised with me by a number of constituents, both in the Upper and Lower South-East, in relation to enterprise bargaining in the private and public sectors. I understand that the responsibility for enterprise bargaining lies with the Minister for Industrial Relations. However, I also understand that there are some cross-over responsibilities between portfolios in relation to Forwood Products. The outcomes would be watched very closely by the Minister for Primary Industries, who would have an interest in the industrial relations questions.

There appears to be a clouding of some of the issues in relation to the restructuring program that is going on at Forwood Products. I understand that the time frame for the agreements or directives that have been given to members in those enterprise agreements runs out today. They must return to a cut in pay of about $60 per week. That is one of the proposals that is being put forward to the unions for consideration. As you and I would understand, Mr President, an amount of $60 out of a fairly lowly paid worker's pay envelope is quite a large cut.

That is one of the problems in the public sector. In the private sector, Tatiara Meats at Bordertown also is having restructuring and enterprise bargaining negotiations at a local level. However, the Tatiara Meat circumstances are different. It is a private sector, not public sector, operation, although I understand that the Minister for Primary Industries would have an interest in the outcome of those negotiations, given that he offered his services to the owners of Tatiara Meats to help them with their industrial relations restructuring program.

There seems to be a common thread between the two directives given to both Forwood Products and Tatiara Meats, and the same with the nature of the return to work agreements: one has a $60 pay cut; the other has a major cut in wages as a provision for return to work. My questions are:

1. What role has Mr Paul Houlihan played in advising the Government on industrial relations models for Forwood Products or any other Government department?

2. Is Mr Houlihan an engaged consultant?

3. If so, what is the cost of his services?

4. What role has Mr Houlihan played in advising Mr Baker as to his dealings with Tatiara Meats?

The Hon. K.T. GRIFFIN: I think the questions probably need to go to the Minister for Primary Industries rather than the Minister for Industrial Affairs. I will ensure that whoever has the specific responsibility for those two issues has an opportunity to respond, and I will bring back a reply.

CONTAINER DEPOSITS

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Environment and Natural Resources, a question about the container deposit scheme.

Leave granted.

The Hon. M.J. ELLIOTT: There has been concern for quite some time that the Government may not continue supporting the container deposit scheme. Recently this place debated the exemption the Minister had granted to Two Dogs Alcoholic Lemonade. During that debate one of the concerns raised was that once an exemption had been granted to Two Dogs—and that was granted on the basis of the existing exemption for cider—other organisations might seek a similar exemption.

Today I received a letter from South Australian Brewing Company Limited, and accompanying it was a letter dated 13 October which that company had sent to the Minister. I will quote two paragraphs from the letter I received, but the same

ideas are contained in the letter that was written to the Minister. The letter states:

> Two of our products—St Tropez and more recently Razorback—compete in this market and are both subject to the container deposit legislation, while currently other directly competitive products are not. SA Brewing is obviously seeking to redress these anomalies and obtain a level playing field. If exemptions are going to continue to apply to these other products we would obviously also seek exemptions for our two products. Why should we be discriminated against? Conversely, if a deposit is going to apply to our products it should equally apply to other like products and we would be pursuing that course of action.

Last Friday I took the opportunity to look in the shelves of bottle shops, and all beverages in that market segment pay a deposit with the exception of Two Dogs and ciders. I note that even in the soft drink market Bundaberg ginger beer manages to send its product all the way from Bundaberg to South Australia and cope quite adequately with the 5¢ deposit scheme.

An honourable member: It sells about three dozen.

The Hon. M.J. ELLIOTT: You know very little about that product. I think you will find that Bundaberg ginger beer sells a great deal. But, that is beside the point. It has managed to do it quite well over some considerable distance. My questions are:

1. What is the Government's commitment to the container deposit legislation?

2. Will the Government as a matter of urgency remove the exemption which currently applies to alcoholic ciders so that all products competing in the same market have exactly the same rules applying to them?

The Hon. DIANA LAIDLAW: I will refer the honourable member's question to the Minister and bring back a reply.

ROLLERBLADES AND SKATEBOARDS

The Hon. M.S. FELEPPA: I seek leave to make a brief explanation before asking the Minister for Transport a question about skating in public.

Leave granted.

The Hon. M.S. FELEPPA: It was reported in the *Sunday Mail* of 16 October this year that a Bill is being considered to make a law for what are to be called 'human-powered vehicles'. According to the report, a committee of road transport, local government and police representatives have thrashed out new laws with the Road Accident Research Unit and in-line skate advocates. If that is the complete list of interests represented on the committee, then pedestrians, the elderly and motorists were not directly represented. These interests are the ones who would be the most affected by allowing skating on public thoroughfares. The issue of allowing skating on public roads, footpaths and other public places poses the following questions. Is it a sport? Is it a mode of exercise? Is it an alternative mode of transport to the use of some other powered vehicle? Is it simply an amusement for the user? In-line skates and skateboards are seen in public mostly as dodging and weaving, going and going, and never arriving, for the amusement of those who use them. Often skating seems to carry with it a sense of competition with others or with oneself, and this multiplies the dangers.

While skating may amuse the user, in my view it poses a real threat to pedestrians and the elderly who have to get out of the way. Skaters are a threat to themselves when they are amongst motorists, as they can appear and disappear in and out of the traffic. Just being there makes skaters a problem for the careful motorist. We can make a comparison with the pushbike. The bicycle may be used as a form of transport from one place to another, going and arriving. They may be used by individuals as a means of exercise, riding a circuit and back. When used this way, the cyclist must comply with the rules of the road. When there is a cycling competition, for instance, it is held either off the road or on the road but under close supervision and with specific permission; therefore, danger to everyone is minimised.

If skating in a public place is to be allowed for the purpose of travelling from one place to another, there is a legitimate reason to be on the road. But it should be recognised and emphasised that, as a means of transport on the road, skating is a form which is most dangerous, as the skater would be the least conspicuous amongst the traffic. Considering the speed at which traffic flows, I believe that using skates would be most ridiculous. If skating is a sport, it should be allowed on a road or in a public place only under strict supervision and with permission. This would minimise risk to all. As an amusement—and that is the usual way skates and skateboards are used—as I said, they should not be allowed in public places but should be off the road in some private place and preferably under supervision. A skating minority should not be allowed to put the large majority of those who use roads and footpaths under the pressure of being physically at risk due to skateboards and in-line skates being used in a public place for the amusement of the skaters. My questions to the Minister are:

1. Will the Minister explain to the Council why the interests of the elderly, pedestrians and motorists were not represented directly on the committee which, according to the report, 'thrashed out the new laws'?

2. Has the committee's report been completed?

3. If so, or when it is completed, will the Minister make it available to members in this place and the public before the Bill is drafted by Parliamentary Counsel?

The Hon. DIANA LAIDLAW: The honourable member would be aware that under current legislation the use of roller blades, skateboards and roller skates on footpaths and public roadways is prohibited. It is quite clear that the road traffic law has not kept pace with these new devices that are available freely and legally on the market. Once they have been purchased by parents, grandparents or even by themselves, people want to use them for a whole variety of purposes such as transport, exercise, sport and amusement, purposes which the honourable member has highlighted and which change according to age.

It remains, however, that these devices are illegal under current legislation. For that reason, the former Government under the then Minister (Hon. Barbara Wiese) set up a working party in January 1993 to investigate this issue. The honourable member agreed that the working party comprise representatives of: the Department of Road Transport (as it was then called); the Local Government Association; the Road Accident Research Unit; the State Bicycle Committee; the South Australian Police Department; and the Department of Recreation and Sport. That working party provided me with its report in about May or June this year. Since then I have had submissions prepared for further consideration by my colleagues. The report and the recommendations have also been considered by various community groups, and I understand that consultation is continuing in that regard and that legislation will be ready quite soon.

I note quickly in passing that some two or three years ago the New South Wales Parliament passed legislation recognis-

ing what it calls 'toy' vehicles rather than human-powered vehicles. So, this matter is not an issue in that State, but it remains an issue in this State because, and I repeat, under current legislation these devices are illegal yet, every day, people of all ages can be seen using roller blades, skateboards or roller skates on footpaths and roadways. So, we cannot turn a blind eye to this issue, we must deal with it, and that is what I am seeking to do. I am happy to provide the honourable member with a copy of the report.

The Hon. R.R. ROBERTS: As a supplementary question in respect of this matter, is the Government looking at the situation where people who ride 'gophers'—

The Hon. M.J. Elliott interjecting:

The Hon. R.R. ROBERTS: There are two or three different brand names. A number of people have made inquiries in respect of whether—

The Hon. Diana Laidlaw: Do you want to ask a new question?

The Hon. R.R. ROBERTS: What is the Government doing regarding helmets and licensing for people who ride what are commonly known as 'gophers'? Is it doing anything?

The Hon. DIANA LAIDLAW: There are provisions under the Road Traffic Act and, I think, even the Motor Vehicles Act for the use of 'gophers' or, at least, wheelchairs on footpaths. I will obtain more details for the honourable member with respect to the type of motorised wheelchair to which he refers.

[Sitting suspended from 2.45 to 3.03 p.m.]

GAMING MACHINES

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a copy of the ministerial statement made by the Treasurer in another place today on the subject of a new gaming authority.

Leave granted.

BUILDING MANAGEMENT DEPARTMENT

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a ministerial statement by the Minister for Industrial Affairs in another place on the subject of Department for Building Management restructure.

Leave granted.

DOCTORS

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister representing the Minister for Health a question about overworked hospital trainee doctors.

Leave granted.

The Hon. BERNICE PFITZNER: According to a newspaper article last Sunday, a Dr Dawson of the University of Adelaide had conducted two studies which showed that, after 16 hours of continuous work, the performance of doctors would resemble that of a person with a blood alcohol level of .05 per cent. He further said that after 24 hours of work reaction times, analytical ability and concentration would be the same as for a person with a blood alcohol level of .1 per cent, which is twice the legal limit. I have worked 36 hours straight as a trainee doctor, so I realise the difficulty of giving a responsible reaction. The studies also showed that training systems that at times require public hospital interns and trainee specialists to work long hours on call were putting both patients and doctors at risk. My questions to the Minister are:

1. Do our public hospitals have intern and trainee specialists working more than 16 hours continuously?

2. If so, will the Minister look into eliminating this practice?

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

TRANSPORT FARES

The Hon. T. CROTHERS: I seek leave to make a brief explanation before asking the Minister for Transport a question about TransAdelaide fare increases and a complaint that I have about fare increases from the disabled.

Leave granted.

The Hon. T. CROTHERS: Recently a letter came across my desk complaining of the unfairness and inequity of the plans of the Minister for Transport to increase TransAdelaide fares next January. The letter came from disabled people at Balyana, who are in receipt of a small pension and who earn $1.50 per hour whilst they train for open employment. As it is a short letter succinctly written, I would like to read its contents into *Hansard*, as follows:

> We at Balyana (a place of residency/employment) are strongly opposed to the increase in public transport fares confirmed by Ms Laidlaw. Most resident employees who use public transport are on the disability pension. Balyana is a training place, to ready people for open employment and assist those individuals residing there with social and independent living skills. The rise, and in some cases the 100 per cent rise, will surely affect our basic cost of living. Hopefully, you may understand, it is difficult enough as it is for us to survive on the pension. Your proposed increase could be the cause of one to two meals lost per week. Could you please look at the fare rise again and on behalf of us raise this issue with the current Government?

This letter is signed by an individual, whose name I do not intend to reveal, for and on behalf of the Balyana employees/residents. My question to the Minister is: will she give a categorical assurance that any change to public transport fares will not disadvantage people with disabilities such as I have described in the foregoing, even though I am sure that they number amongst a legion of South Australians who would likewise be disadvantaged by such proposed massive public transport fare increases?

The Hon. DIANA LAIDLAW: No fare increases have been confirmed. This is, as I have indicated before, an issue that is being addressed at the present time and I will be in a position shortly to advise on this matter. So, no fare increases have been confirmed at any level, whether it be a one, five, 10 per cent increase or decreases, which are also possible in a number of fares. So, the speculation—and it is merely that—in the letter to which the honourable member refers is not soundly based. I also confirm that earlier this year, when there would have been a traditional fare rise in relation to the CPI, that was deferred; so, all people have had some considerable benefit for some time with no fare rises from the current Government.

The Hon. T. CROTHERS: As a supplementary question, are any public transport fares likely to increase in the near future?

The Hon. DIANA LAIDLAW: Some may decrease, some may increase.

SOUTH AUSTRALIAN GOVERNMENT FINANCING AUTHORITY

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister representing the Treasurer a question about the impact of recent interest rate rises on the South Australian Government Financing Authority.

Leave granted.

The Hon. T.G. CAMERON: Bond interest rates last week surged to a three-year high. Ten-year Commonwealth bond yields climbed to close at 10.48 per cent, the highest since 17 September 1991. Intervention by the Reserve Bank failed to stem the strong selling. Bond yields have now risen appreciably over the past 12 months, resulting in paper losses to insurance companies and other financial institutions running into billions of dollars. My questions to the Minister representing the Treasurer are:

1. Has SAFA incurred any paper losses as a result of the recent increases in bond interest rates? If so, can the extent of these losses be tabled in Parliament?

2. Will the Minister provide to the Council details of SAFA's borrowings, where these borrowings have been made, what interests rates it is paying and the term of these loans?

3. If SAFA has overseas borrowings, is it accepting the foreign currency risks itself or has it offset these risks by taking out foreign exchange insurance?

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

WATER RATES

The Hon. ANNE LEVY: I seek leave to make a brief statement before asking the Leader of the Government, representing the Minister for Infrastructure, a question about water rates.

Leave granted.

The Hon. ANNE LEVY: The Audit Commission made a number of recommendations regarding water pricing policy and suggested that prices should be based on the user pays principle. This would mean incorporating an increased access charge and a lower price per litre for water consumed. This raises quite a number of issues about which many constituents have been seeking answers from me as they express their concerns regarding the impact this could have on their budgeting arrangements. First, if there is a lower price per litre for water consumed, there will be the potential of such a system to encourage the waste of water as the sums paid by large consumers will fall. This obviously will encourage a greater use of water by those consumers. I am sure many members recall this Parliament being given the details of the amount of water used by one member of this place in 1991-92 that amounted to 1 862 kilolitres or five tons of filtered water every day of the year.

The Hon. J.F. Stefani: And I'll pay for it!

The Hon. ANNE LEVY: Yes. Such large users will pay much less under the system of an increased access charge and a lower price per litre, and this would encourage the use of even more water. The second problem about which consumers have approached me concerns how a user pays system will apply to all the consumers who do not have individual metres. This will apply to a large percentage of home units where there is one metre for the entire property, and also many housing trust properties which do not have individual metres. Will owners of home units and flats be required to have individual water metres? Will the Minister consider including a scale of penalty rates for large consumers (as applies in Western Australia) so that there will not be a fall in rates for very large consumers of water?

The Hon. R.I. LUCAS: I will be pleased to refer the honourable member's question to the Minister and bring back a reply.

NARACOORTE NORTH KINDERGARTEN

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about early childhood education.

Leave granted.

The Hon. M.J. ELLIOTT: Yesterday I received a copy of a letter which was sent from the Chairperson of the Naracoorte North Kindergarten to the Premier following news that the kindergarten faces a severe reduction in staff in 1995. The letter states:

> Dear Mr Brown,
>
> Our kindergarten is one of a number statewide, affected by a severe reduction in staff for 1995. This is a direct result of your budget: 'This budget is the financial start of a long term program to ensure that the critical 'Early Years of Education' become the prime focus for the Department for Education and Children's Services over the coming years.'
>
> Naracoorte North Kindergarten offers a high number of quality educational programs and services to our families and community. We currently have 72 four year olds enrolled: 31 children attend kindergarten (from the rural sector) by bus and stay all day. Many other parents who use the centre are working parents and parents who need respite. Despite the diversity, all families' needs are met. A reduction in staff will mean programs such as early intervention, special needs, school transition, individual programming and pre-entry will no longer be available. Other services such as the bus program, lunchtime program and occasional care will be reviewed. These reductions will have grave effects on our children and families.
>
> Families in the rural sector will be further isolated and extra pressure placed on staff will affect safety issues under occupational health safety and welfare in the case of an emergency. The availability of services offered to families will not be available and once again parents will need to support the kindergarten more than before.
>
> In this the International Year of the Family and Children's Week, what importance does your Government place on children, families and education. Your 'Prime Focus' and your 'Top Priority' is obviously not Early Childhood. We request urgent action and look forward to your immediate reply.

The letter was signed by the head of the parent body at that kindergarten. In answer to a question on the issue of preschool staff cuts last week by the Hon. Carolyn Pickles, the Minister stated:

> . . . as a commitment to social justice in the truest sense of the word, preschools in socioeconomically disadvantaged areas and small rural centres will be staffed on the basis of 1:10.

This rural preschool faces an increase of staff/student ratio from 1:10 to 1:11 because of these cuts, even though 31 of its students travel a round trip of up to 100 kilometres from outlying areas to attend a full day of kindergarten twice a week. So much for the Government's social justice focus! The Minister spouted promises regarding additional money into early intervention services and early childhood while he silently cut funds, so that rural kindergartens such as Naracoorte North are forced to cut those extra same services. The people in Naracoorte believe it shows a callous disregard for not only early education but the rural sector. Centres such as Naracoorte North cannot be compared to suburban centres. Any extra money which the Government directs to training

in early childhood areas will have difficulty finding its way to country areas.

Staff training and development is inaccessible as it is city based and the Government provides no relief for staff development. As well, the centre is staffed on attendances and not enrolments which ensures that it is penalised when there is non-attendance due to reasons such as temporary closure of the local abattoirs. It is hard to see how South Australia will be able to maintain the best preschool service in the nation with this reduction in staff as it is only natural that staff will not have as much time to spend with children, especially those with special needs. Having fewer staff on the premises could also cause additional occupational health and safety issues in some centres.

Early childhood teachers in smaller centres are also concerned about proposals to change the staff mix, which would see more early childhood workers working with teachers but being required to have the same responsibilities and roles as teachers.

I note that last week the Hon. Carolyn Pickles, by way of interjection, raised what was happening to that ratio and the Minister did not respond to that interjection. However, I will today repeat that interjection by way of a question to the Minister. The Minister said in this Council last week that 30 centres would face an increase in staff numbers but that 60 would face staff cuts because of the budget. My questions are as follows:

1. How can centres such as Naracoorte North be likened to metropolitan centres when staff cut decisions are made? In fact, Naracoorte North's ratio is clearly going up.

2. How can the Minister say that preschool education is better off if only 30 centres face staffing increases while 60 preschools face budget-induced staff cuts?

3. How is the Government able to ensure that it can maintain a high level of preschool education if staff and resources are reduced in this sector?

4. What is happening to the ratio of teachers to child-care workers in preschools and child-parent centres in South Australia?

The Hon. R.I. LUCAS: I am obviously not in a position to comment on the individual circumstances of Naracoorte North Kindergarten. I would be happy to—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: I said I would be happy to check the honourable member's and the kindergarten's claims and bring back a reply in relation to that. Whilst I do not speak in relation to the specific case, I might say that experience shows that when a number of centres, whether they be schools or preschools, indicate the concerns that they might have as to what might occur as a result of a particular Government change, in many cases the reality is somewhat different from the initial concern.

As I said, I hasten to say that I am not indicating that in relation to Naracoorte North Kindergarten at this stage because I am not aware of the specific detail. However, I think we need to be cautious before automatically accepting all that is necessarily claimed to flow from a particular Government budget decision.

In relation to the last question in terms of the staff mix, that information was made quite clear in the budget announcement; there was no secret to that. Everyone was written to, and they have been written to again, indicating that there will be no change in relation to staff mix in child-parent centres.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: You are now talking about the staff mix: the trained and untrained staff ratio, which was the subject of the interjection from the Hon. Carolyn Pickles.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: They are not child-care workers: they are early childhood workers as opposed to teachers. In child-parent centres there will be no change at all. Where the change might occur—but it is a voluntary decision to be taken by preschools—is in the preschools, but it is a decision for them to take. If they do not want to change the staff mix then there will be no change.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: No, the answer is 'No.'

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: I have just explained it you; it cannot get much simpler than that. There will be no change for child-parent centres in the staff mix.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: I am saying it slowly for you. Secondly, in relation to preschools, as we have already indicated to them, the question of the staff mix, that is, the early childhood worker to teacher ratio, will be one of voluntary decision by the preschools. Should they choose not to take up a change in the staff mix then they will not be required to. They will not have the lump of money provided for current staffing reduced to force them into that situation. I do not think that, as Minister, I can put it more simply than that. The conspiracy theorists can rage around in their little mind as to what he really meant by this or that, but I cannot put it more simply than that.

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: Just listen to what I am saying to you in relation to the question. The issue in relation to staff mix is that there are many people—and I am one of them—who believe that the quality of care provided in the four-year old programs in child-parent centres is excellent. I must say, having seen a number of them, that I have no criticism of the quality of care provided to four year olds in these centres. I am unsure whether the Hon. Mr Elliott or the Hon. Ms Pickles are critical of the quality of care provided to four year olds in our child-parent centres.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: I have just said that there will be no change in the mix in child-parent centres.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: The Hon. Elliott shakes his head. I cannot do much more—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Elliott says that Johnny Famechon could not duck around. How much simpler can you get? I repeat: there will be no change in the staff mix for child-parent centres, full stop.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: No, we are talking about the child-parent centres. The Hon. Mr Elliott obviously is confused about child-parent centres and CSO preschools or kindergartens. I cannot be any plainer than that in relation to that particular program. In respect of the details for Naracoorte North Kindergarten, I shall be pleased to have them investigated and bring back a reply.

POLICE AND LESBIAN AND GAY COMMUNITY

In reply to **Hon. ANNE LEVY** (11 October).

The Hon. K.T. GRIFFIN: The conclusions and recommendations of the report 'The Police and You' were based on a well publi-

cised survey of the South Australian homosexual community on interactions between members of that community and the police over a nine year period.

Fifty-seven responses were analysed out of a total of sixty-six received and these formed the basis of the report. Of these, 26 per cent related to incidents which occurred between 1985 and 1989 and 75 per cent to incidents between 1990 and 1993.

The report states that '. . . the majority of respondents who reported contact with police described a positive or neutral interaction with police'. There were only seven respondents seeking contact with police who suggested that police behaviour was homophobic.

Some 43 respondents indicated situations where they were victims of crime about which police should be advised. Six of these involved in a delayed contact with police, 24 contacted the police immediately and 13 did not contact them at all.

The Aboriginal Police Aides system was established within the South Australia Police Department to cater for an ancient and totally separate culture and there are few parallels which can be drawn between the specific needs of the Aborigines and those of the homosexual community.

Domestic Violence sections have been established within the South Australia Police Department to help reduce violence in the community with a specific responsibility towards the reduction of domestic violence and the provision of assistance to affected people.

Duties of members attached to the unit include:

- encouraging involved parties to undertake counselling where appropriate,
- presenting talks to community groups to provide a better understanding of the problem and advising on various relevant issues, and
- facilitating remedial action in cases of continuing domestic violence.

The service provided by these sections is available to all community groups. Certainly, many members of the homosexual community have used the service.

Police have a network of seven victim contact officers strategically placed within metropolitan Adelaide whose duties include:

- undertaking inquiries as appropriate for victims of crime when investigating officers are not available,
- referring victims of crime to appropriate assisting organisations as necessary,
- providing assistance and information to specific 'at risk' groups,
- facilitating the progress of victims through the criminal justice system and police, court and correctional services procedures, and
- advising victims on matters relating to personal security.

The services of victim contact officers are also available to all community groups.

The authors of 'The Police and You' report are aware of the services provided by domestic violence sections and Victims contact officers. The contact detail of the latter network has been recently communicated by means of a publication circulated within the homosexual community.

It is considered that the South Australia Police victim contact officer network in metropolitan Adelaide, together with access to divisional officers in country areas where necessary, adequately caters for the reporting needs of homosexual victims of crime who are concerned about making direct contact with general police.

SHEEP

In reply to **Hon. R.D. LAWSON** (18 October).

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

1. The export of live sheep from South Australia is increasing. Indications are that there will be around 400 000 live sheep exported from Outer Harbor this financial year (1994-95), which is approximately double last financial year (1993-94). Industry sources are confident that a direct trade to Saudi Arabia will recommence soon and that this will favour increased live sheep exports from South Australia and Victoria.

2. This Government will continue to provide animal health, production and other technical services to the live sheep export trade in South Australia. The Government will also use its influence to help keep the costs of shipping from Outer Harbor competitive with other ports. However, it will not be offering subsidies.

In reply to **Hon. T. CROTHERS** (18 October).

The **Hon. K.T. GRIFFIN:** The great majority of the animals processed in the abattoirs at Bordertown have been prime lambs for the export and domestic market. As the live sheep export trade has, to date, been based on castrate adult male sheep, there would be little impact, if any, on the live sheep trade if the abattoirs at Bordertown were to close permanently.

PRAWN FISHERY

In reply to **Hon. M.J. ELLIOTT** (11 October).

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

- In 1987, the Fisheries (Gulf St Vincent Prawn Fishery Rationalisation) Act 1987 was promulgated. The Act provided for six of the 16 boat fleet to be removed from the fishery through a licence surrender/buy-back arrangement. Money was borrowed from the South Australian Government Financing Authority (SAFA) to pay compensation to those leaving the fishery. Repayment of the loan was to be made by way of a surcharge on remaining licence holders.
- Since 1987, licence holders advocated that they were not able to generate sufficient income to service loan repayment obligations. As a result, unpaid interest was capitalised by SAFA to the stage where the $3.4 million increased to roundly $5 million.
- In 1991, a House of Assembly Select Committee conducted an inquiry into the fishery and recommended (amongst other things) that the original capital debt be levied on licence holders, and that the debt be paid off over a 10 year period. As such, the Government undertook responsibility for the $1.6 million capitalised interest.
- Commercial fishing resumed in March 1994. However, a surcharge was not levied on licence holders because at the time the 1993-94 fishery licence fees were determined, the Gulf St Vincent prawn fishery was closed and no fee was prescribed. The Crown Solicitor advised that the Rationalisation Act does not provide for a surcharge to be levied in the absence of a licence fee. As such, licence holders were advised that they could undertake fishing operations without meeting their debt obligations until the matter was determined by Cabinet.
- Notwithstanding the fact that no surcharge was imposed, eight of the ten licence holders elected to voluntarily contribute an amount based on $1 per kilo of marketable prawns they caught during the fishing operations; and the contributions to be used as credit towards their surcharge obligations when the surcharge was next imposed. Voluntary contributions totalled $168 782.50.
- In determining the department's budget for 1994-95, the Government has arranged for Treasury to take over from SAFA management of the debt associated with the Gulf St Vincent prawn fishery. Giving regard to proposals put forward by industry, Treasury has restructured the debt as follows:
  - the original interest rate of around 15 per cent has been revised so that the interest will now be based on the 90 day bank bill rate (currently 6.29 per cent) plus a margin of 0.25 per cent varied on a quarterly basis (this should cut the interest rate by roughly half);
  - the indicative repayment period is 10 years;
  - no surcharge will apply if the fishery is closed for the whole of a licensing year. Clearly the circumstances leading up to the closure would dictate whether any unpaid interest accrued during that period would be capitalised.
- As the commencement of the 1994-95 licensing year was 1 October 1994, the surcharge had to be imposed by that date. If the surcharge was not imposed by then, there would have been a risk that it would not be valid if any licence holder decided to pay the licence fee in full, resulting in a situation as advised by the Crown Solicitor that in the absence of a licence fee, no surcharge could be validly imposed.
- Based on the above, it was decided to impose a surcharge of $50 000 per licence holder for 1994-95. The surcharge was imposed under the provisions of the Fisheries (Gulf St Vincent Prawn Fishery Rationalisation) Act 1987. The catches (and value of catch) made by licence holders during the March-June 1994 fishing period would indicate that $50 000 was reasonable and it represents roughly $2 per kilo of marketable prawns. Also, the fishing period was not a full season as traditionally fishing would be conducted in November-December. It is understood licence holders obtained in the order of $12 to $13 per kilo for their catches at the time. Obviously those licence holders who made

a voluntary contribution will have that amount credited towards their obligation.

- With regard to the Hon. Mr Elliott's statement that the debt could be recovered via licence fees over a period of time, based on actual catches, it is not appropriate to use licence fees imposed under the Fisheries Act 1982 as a debt recovery method. It must be noted that the Rationalisation Act was specifically enacted by Parliament to recover the debt associated with the buy-back scheme whereas licence fees prescribed under the Fisheries Act must be directly relevant to the grant or issue of an entitlement to take a common property resource. Clearly these are two discrete concepts and as such are addressed by two appropriate sets of legislation. Therefore I am not prepared to make regulations to set fees which are linked to the value of the catch, but of course the fishers ability to pay will be sympathetically taken into account.
- Under the circumstances, the statement made by the Minister for Primary Industries' Economics Adviser reflected the Government's decision to impose the surcharge under the provisions of the Rationalisation Act, and as such was not misleading. It should be noted that there is flexibility under the Rationalisation Act for the surcharge, once imposed, to be varied by the Minister. The Government's decision to restructure the debt at an interest rate based on the 90 day bank bill rate, with provision for variation on a quarterly basis, is consistent with the provisions of the Rationalisation Act.

RADIOACTIVE MATERIAL

The Hon. M.S. FELEPPA: I seek leave to make a brief explanation before asking the Leader of the Government in the Council, representing the Premier in another place, a question about storage of nuclear waste.

Leave granted.

The Hon. M.S. FELEPPA: On 9 August I raised the question of Australia's nuclear waste being stored in South Australia. At that time it was reported in the *Advertiser* of 20 July that the Premier distanced himself from any move to store radioactive waste in South Australia and that he would not be giving any commitment until he was absolutely assured that there was some benefit. Just what he meant by that is not clear. It is rather vague enough to have hidden meaning.

It is certain that the nuclear waste will be coming to our State in 120 truck loads. There will be 10 000 drums of waste. I wonder how big the trucks will be and how many trailers will be attached to each truck. There is a strong opposition to the so-called temporary storage from conservationists, unionists and the general public. South Australia does not want to become the dumping ground for Australian nuclear waste. That has been clearly expressed in many quarters by people in South Australia. I would imagine that no member in this Council would dare to put up his or her hand in favour of South Australia's becoming even a temporary dumping ground, knowing that once it is in our State there will be no way that we can constitutionally get it out again. Once it was here we could become a permanent repository for all nuclear waste. It is known by Canberra that we do not want the waste here, and that is shown by the secrecy surrounding the dates and routes of the trucking into our State.

The *Sunday Mail* of 23 October this year reported that the State Government had not had any chance to put a formal case to the Federal Government to stop the storage, nor did the State Government have any constitutional right over Commonwealth land at Woomera. The Premier went on to say, 'We were not asked whether we would agree to the proposal, we were told it would happen.' That is true. 'There is no way our Government will be able to negotiate on the matter,' he said.

How then will the Premier be able to be absolutely sure that there will be a net benefit to which he confusedly referred on 20 July last when interviewed by the *Advertiser*? It seems that there will be no benefit; nor is there any way in which we can stop the nuclear waste coming here. Perhaps there is a way: I put a silly suggestion. Tangential thinking means asking a silly question and perhaps getting a useful answer. The silly question I put is: how can we get a net benefit or stop the transport of nuclear waste through our State, which is under State control, to land in South Australia which is under Commonwealth control?

Road transport regulations are under the control of the State. We could place such a financial burden on the risk of transporting nuclear waste through the State that it would be either a financial benefit to the State or it would be so burdensome on depositing waste in our State that its transport to a place near Woomera would have to be abandoned. I know that the trucks could not be stopped entering the State but, once here, a levy of perhaps $10 000, $20 000 or more a truckload could be imposed for an escort on State roads at a very slow and safe speed. Their coming and routes could be known and the protests could be mounted. The dumping would have to run a financial and protest gauntlet. The alternative perhaps would be a Berlin air lift, which would be too costly for the Government and very dangerous. My questions are:

1. What action is the Government prepared to take to stop the dumping of nuclear waste in South Australia?

2. Does the Government have a secret agreement not to oppose the use of Woomera as a nuclear dump?

3. Will my suggestion be considered as a possible solution to this State's problems?

The Hon. R.I. LUCAS: My colleague the Hon. Diana Laidlaw advises me that the Hon. Terry Roberts has asked a similar question in recent weeks, but nevertheless I will be happy to refer the honourable member's question to the Premier and bring back a reply.

VOCATIONAL EDUCATION, EMPLOYMENT AND TRAINING 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.

Given that this Bill has been debated in another place, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The Government's purpose in introducing this Bill is twofold: to put in legislative form its response to obligations accepted as a participant in the national vocational education and training system; and to establish a mechanism through which public policy in the fields of employment and vocational education and training (VET) can be subject to effective advice and guidance from industry and commerce, including employer and employee organisations.

It does this by establishing a Vocational Education, Employment and Training Board with supporting Councils concerned, in one case, with course accreditation, trainer registration and management of contracts of training, and in the second with the promotion and coordination of the Adult Community Education sector.

The Bill ensures the participation of South Australia in the national system by establishing the Minister for Employment, Training and Further Education as State Training Agency, accountable to the Council of Ministers under the *Australian National Training Authority (ANTA) Act*. It is intended that the usual exercise of the Agency's function in this regard, especially its contribution to the National Strategic Plan for vocational education and training, and the preparation of the annual State Training Profile on which funding from the ANTA pool depends, will be carried out by the VEET Board.

The Board, which will advise the Government generally on employment and training issues, will be constituted so that people with relevant experience and expertise in industry and commerce, including representation from the union movement, will constitute a majority of members. The Board will draw on resources and expertise from the Department for Employment, Training and Further Education but will express its view independently to the Minister and will be required to consult extensively with bodies speaking for industry, such as industry training advisory boards.

The *Tertiary Education* and *Industrial and Commercial Training* Acts will be repealed, and the functions of accreditation and administration of contracts of training currently performed under those Acts will become the responsibility of a new Accreditation and Registration Council (ARC). The Council will replace and build upon the Industrial and Commercial Training Commission and will continue equal representation of employer and employee interests as well as those of training providers and will add expertise in accreditation in higher education.

The Adult Community Education Council will replace a Ministerial Advisory Committee in this area and will strengthen the voice of providers in government decision-making.

The VEET Board will receive advice from the Councils and will have an oversight role in accreditation and registration and adult community education matters. The ARC will, however, determine, (subject to the power of Ministerial direction) matters relating to contracts of training, which frequently involve delegations and authorisations contained in industrial awards.

The introduction of this legislation concludes a period of consultation and review which commenced when the previous Government issued a Green Paper proposing a Vocational Education, Employment and Training Authority for South Australia in December 1992.

This in turn was initiated as a result of two national agreements signed by the Commonwealth, State and Territory Governments earlier in the year—one establishing the ANTA as a joint strategic planning and funding body for training in both the private sector and in TAFE institutions, the second developing a national framework for the recognition of training (NFROT), which would provide access on an equal footing to nationally recognised credentials for training providers whether in TAFE, the private sector, industry or community organisations.

Beyond the need to meet the obligations the State had accepted under these two agreements was an emerging consensus on the need to give industry a more direct and influential voice in training and employment issues.

An extensive process of industry and community consultation provided generally strong support for the proposals. Action to implement the outcome of the consultation process was delayed, however, by the former Government's decision to abolish the Department of Employment and TAFE as part of its departmental amalgamation program. On taking office the present Government re-established a Department for Employment, Training and Further Education and reviewed the Green Paper proposals and the consultation outcomes.

During consultations several industry commentators expressed the view that the VEET Authority should be clearly separated from the TAFE administration.

Because of the Government's commitment to the streamlining of public administration it was not prepared to establish a separate statutory authority for vocational education and training. However, it has taken action to ensure that a significant degree of independence will exist between VET policy and the management of the TAFE sector by nominating the Minister as State Training Agency under the *ANTA Act* and creating an independent VEET Board to function as his adviser and delegate.

The new Act will continue the provisions of the *Tertiary Education Act* which prohibit the award of degrees by non-accredited bodies but which allow organisations to seek accreditation in this area. At this time, only degrees in theology have been accredited outside the university sector and it is the government's intention that accreditation for degrees will not be permitted unless they are demonstrably of a standard equivalent to those of the State universities. Procedures are being established which will invite the universities to play an influential role in these determinations, subject to provisions for equitable treatment of applicants.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for commencement on a day to be fixed by proclamation.

Clause 3: Interpretation

This clause contains the definitions of words and phrases used in the Bill, including the abbreviated names used to refer to the various bodies established by the Bill. Of these, 'VEET Board' is the Vocational Education, Employment and Training Board, 'ARC' is the Accreditation and Registration Council, and 'ACEC' is the Adult Community Education Council. 'ANTA' is the Australian National Training Authority established under the Commonwealth *Australian National Training Authority Act 1992* (or any other body declared by regulation to be its successor). A 'contract of training' is defined as a contract of training under Part 4 of the Bill in respect of training in a trade or other declared vocation. A 'trade' is an occupation declared (by notice in the *Gazette* under this clause) to be a trade. A 'declared vocation' is a trade, or an occupation declared (by notice in the *Gazette* under this clause) to be a declared vocation.

Subclause (2) empowers the Minister, on the recommendation of the Accreditation and Registration Council (ARC), to declare an occupation to be a trade or declared vocation for the purposes of this Bill. The Minister can do so by notice in the *Gazette* and can vary or revoke the declaration by subsequent notice.

Clause 4: Minister to be Agency

This clause provides that the Minister to whom the administration of this Act is committed is the State Training Agency contemplated by the *Australian National Training Authority Act 1992* of the Commonwealth.

Clause 5: Functions of Minister as Agency

This clause provides that, as the State Training Agency, the Minister has a number of functions. In particular, the Minister is to provide the Australian National Training Authority ('ANTA') with advice and information on vocational and adult community education and training needs and the funding implications of those needs. The Minister is to develop, in conjunction with ANTA, a detailed 'State Training Profile'. This is to be based on a 'National Strategic Plan' on training policy determined by a Commonwealth, State and Territory Ministerial Council on advice from ANTA. The Minister has the function of ensuring that the management of the State's system of vocational and adult community education and training is in accordance with the National Strategic Plan and the State Training Profile and is to report annually to ANTA so as to enable an annual integrated report to be compiled for the Ministerial Council. The Minister also has the other functions of a State Training Agency contemplated by a National Statement agreed by the Commonwealth, States and Territories (and set out in a schedule of the Commonwealth Act referred to above), as amended or substituted from time to time, and has any other functions that the Minister considers appropriate.

Under subclause (2) the Minister is required to ensure that the vocational and adult community education and training needs of the State are met in a cost effective and efficient manner.

Clause 6: Delegation by Minister

This clause empowers the Minister to delegate to the VEET Board, ARC, ACEC or any other person or body any of the functions of the Minister as State Training Agency or any other function or matter that the Minister considers appropriate. If the instrument of delegation so provides, a delegated function or matter may be further delegated. A delegation under this clause must be in writing, may be subject to specified conditions, is revocable at will and does not prevent the delegator from acting in a matter.

Clause 7: Establishment of VEET Board

This clause establishes the Vocational Education, Employment and Training Board (VEET Board). The VEET Board is to consist of not less than seven and not more than twelve members. The Chief Executive Officer of the department or administrative unit of the Public Service that is, subject to the Minister, responsible for the administration of this Bill is to be a member of the VEET Board, and the remaining members are to be appointed by the Governor. One member will be appointed as chairperson and one as deputy

chairperson. At least two members must be persons nominated by the Minister (after consultation with the South Australian Employers' Chamber of Commerce and Industry, the Master Builders' Association of South Australia Inc., the Engineering Employers Association, South Australia and other employer associations) to represent the interests of employers. At least two members must be persons nominated by the Minister (after consultation with the United Trades and Labor Council) to represent the interests of employees. At least one member appointed by the Governor must be a woman and at least one a man. The terms and conditions of office, immunities, etc., of the members of the VEET Board are set out in schedule 1 of the Bill.

Clause 8: Ministerial control

This clause provides that, except in relation to the formulation of advice and reports to the Minister, the VEET Board is subject to control and direction by the Minister.

Clause 9: Functions of VEET Board

This clause sets out the functions of the VEET Board. Subclause (1) provides that the VEET Board's general functions are to assist, and advise and report to, the Minister on matters relating to vocational education, employment and training, including adult community education. Subclause (2) provides that the VEET Board's functions include: developing and recommending to the Minister a draft State Training Profile each year; monitoring vocational and adult community education and training in the State and advising the Minister of any departures from the National Strategic Plan or State Training Profile; collecting information in relation to, and encouraging the development of, vocational and adult community education and training; reporting to the Minister each year on vocational and adult community education and training in this State and on expenditure for the purposes of the State Training Profile; advising the Minister on policies and programs to enhance employment opportunities; and assisting in the co-ordination of matters that are within the ambit of ARC's or ACEC's functions. The VEET Board also has the functions of approving guidelines to govern the performance of ARC's functions under Part 3 of the Bill and approving the establishment and terms of reference of any committees set up by ARC or ACEC. It also has the role of monitoring and making recommendations to the Minister on the administration and operation of the Bill and may perform any other function assigned to it by the Minister or under this Bill or any other Act.

The VEET Board is empowered to establish committees and can (with the consent of the Minister) delegate its functions. Any function delegated under this clause can be further delegated if the instrument of delegation so provides. A delegation made under this clause must be in writing, may be subject to specified conditions, is revocable at will and does not prevent the delegator from acting in a matter.

Subclause (6) provides that, in developing a draft State Training Profile, and generally to the extent practicable, the VEET Board must consult with industry and commerce (including industry training advisory bodies), associations and organisations representing employees, and relevant governmental bodies, including ARC and ACEC.

Clause 10: Minister to provide facilities, staff, etc.

This clause requires the Minister to provide the VEET Board with facilities and assistance by staff and consultants as reasonably required for the proper performance of the Board's functions. For that purpose the Minister may, if so requested by the Board, do either or both of the following:

(a) allow the VEET Board to select persons to be engaged as staff members or consultants to assist the Board;

(b) engage staff members or consultants otherwise than as Public Service employees or officers or employees under the *Technical and Further Education Act 1975*.

Clause 11: Report

This clause requires the VEET Board to present to the Minister on or before 31 March each year a report on its operations and on the operations of ARC and ACEC for the preceding calendar year. The Minister is required to cause copies of the report to be laid before each House of Parliament within six sitting days after receiving the report.

Clause 12: Establishment of ARC

This clause establishes the Accreditation and Registration Council (ARC). ARC is to consist of eleven persons appointed by the Minister, being a chairperson, the Chief Executive Officer (or his or her nominee) and a number of persons to represent various interests. Three must be persons appointed (after consultation with the South Australian Employers' Chamber of Commerce and Industry, the Master Builders' Association of South Australia Inc., and the Engineering Employers Association, South Australia, and other employer associations) to represent the interests of employers. Three must be persons appointed (after consultation with the United Trades and Labor Council) to represent the interests of employees. There must also be one person who will, in the opinion of the Minister, represent the interests of private training providers, one who will in the opinion of the Minister provide appropriate expertise in training for para-professional occupations and one who will in the opinion of the Minister provide appropriate expertise in university education. At least one member appointed by the Minister must be a woman and at least one a man. The Minister must also appoint a person employed in the Public Service to be deputy chairperson and that person can attend ARC meetings and, in the absence of the chairperson, must act in the place of the chairperson. The Minister must also appoint persons to act as deputies of other ARC members. The terms and conditions of office, immunities, etc., of the members of ARC are set out in schedule 1 of the Bill.

Clause 13: Ministerial control

This clause provides that, except in relation to the formulation of advice and reports to the Minister, ARC is subject to control and direction by the Minister.

Clause 14: Functions of ARC

This clause sets out the functions of ARC. Those functions include: the accreditation of courses and registration of education and training providers under Part 3 of the Bill; preparing or approving codes of practice for education and training providers; making recommendations to the Minister on what occupations should constitute trades or other declared vocations and performing the functions assigned to ARC under Part 4 of the Bill in relation to trades or other declared vocations; the granting of certificates to persons completing education and training courses; entering reciprocal arrangements with appropriate bodies with respect to the recognition of education and training; assessing the competency of, and granting certificates to, persons who have acquired qualifications otherwise than through courses accredited by ARC; encouraging the development of courses that will qualify for accreditation; encouraging the accreditation of courses, the registration of educational training providers and participation in accredited courses. ARC also has such other functions as are assigned to it by the Minister or under this Bill or any other Act.

ARC is empowered to establish committees (with the approval of the VEET Board) and make use of Government employees or facilities (with the consent of the responsible Minister). It can delegate its functions with the consent of the Minister. Such a delegation must be in writing, may be subject to specified conditions, is revocable at will and does not prevent ARC from acting in any matter.

In performing its functions, ARC is required, to the extent practicable, to consult with industry and commerce (including industry training advisory bodies), associations and organisations representing employees, and relevant governmental bodies.

Clause 15: Report

This clause requires ARC to present an annual report on its operations to the VEET Board in sufficient time to enable the Board to prepare its annual report for the Minister.

Clause 16: Establishment of ACEC

This clause establishes the Adult Community Education Council (ACEC). ACEC is to consist of not more than nine persons appointed by the Minister. Those persons must be persons who, in the opinion of the Minister, are experienced in the administration or provision of adult community education. At least one must be a woman and at least one a man. The Minister must appoint one member to be chairperson and one to be deputy chairperson. The terms and conditions of office, immunities, etc., of members are set out in schedule 1 of the Bill.

Clause 17: Ministerial control

This clause provides that except in relation to the formulation of advice and reports to the Minister, ACEC is subject to control and direction by the Minister.

Clause 18: Functions of ACEC

This clause sets out the functions of ACEC. ACEC is to: promote and encourage the provision of adult community education; advise the Minister on matters relating to government support for adult community education or other matters relevant to adult community education that are referred to it by the Minister or that it believes should be brought to the Minister's attention; and make recommendations to the Minister on the allocation of grants to providers of adult community education. ACEC can also perform any other

functions assigned to it by the Minister or under this Bill or any other Act.

ACEC is empowered to establish committees (with the approval of the VEET Board) and make use of Government employees or facilities (with the consent of the responsible Minister). It can delegate its functions with the consent of the Minister. Such a delegation must be in writing, may be subject to specified conditions, is revocable at will and does not prevent ACEC from acting in a matter.

In performing its functions, ACEC is required, to the extent practicable, to consult with community organisations, local government and other relevant governmental bodies.

Clause 19: Report

This clause requires ACEC to present an annual report on its operations to the VEET Board in sufficient time to enable the Board to prepare its annual report for the Minister.

Clause 20: Accreditation and registration

This clause provides that ARC may, on application or of its own motion, accredit courses (or proposed courses) of vocational education and training or of education and training. It may also register persons as providers of accredited courses (or parts of accredited courses) or as providers of education and training to overseas students.

Clause 21: Conditions

This clause provides that accreditation or registration by ARC is subject to such conditions as are determined from time to time by ARC. These conditions may include: conditions requiring compliance with a code of practice prepared or approved by ARC; conditions as to the contents or on-the-job training component of courses or requiring approval of alterations to courses; conditions as to the suitability of premises at which courses may be provided or as to the qualifications of teachers, trainers and assessors; conditions as to standards and methods of instruction or as to assessment or the granting of certificates; conditions as to the recognition of prior education, training and experience for entry to a course or to satisfy part of the requirements of a course; conditions as to financial safeguards to protect the interests of fee-paying students or as to reporting and the keeping of records.

Clause 22: Determination of applications and conditions

This clause provides that, in determining an application for accreditation or registration and in fixing conditions of accreditation or registration, ARC must apply—

(a) the principles contained in the 1992 agreement between the Commonwealth, States and Territories entitled 'Agreement for a National Framework for the Recognition of Training' (as amended or substituted from time to time) if those principles are applicable to the particular accreditation or registration;

and

(b) any guidelines that the VEET Board has approved in relation to such an accreditation or registration.

ARC must consult with the South Australian universities before determining a matter relating to a course in relation to which a degree is to be conferred.

This clause also provides that ARC can, by notice in the *Gazette*, define the classes of courses that may be accredited by ARC under Part 3 of the Bill. ARC can refuse to entertain an application for accreditation of a course that appears from the application not to fall within any of those classes.

Clause 23: Duration and renewal

This clause provides that, subject to the Bill, accreditation or registration is to be for a maximum period of five years and may be renewed by ARC (on application or of its own motion) for further maximum periods of five years.

Clause 24: Applications

This clause provides that an application for accreditation or registration (or for the renewal of either) must be made in a manner and form determined by ARC and must be accompanied by the fee fixed under the regulations. Applicants are required to provide ARC with such information relevant to the application as ARC may reasonably require.

Clause 25: Review

This clause empowers ARC to review an accreditation or registration under Part 3 of the Bill. Such a review may be conducted at any time and the holder of the accreditation or registration must provide ARC with such information for the purposes of the review as ARC may reasonably require.

Clause 26: Revocation or suspension

This clause gives ARC authority to revoke or suspend accreditation or registration on contravention of, or failure to comply with, the Bill, regulations under the Bill or any condition of the accreditation or registration. The revocation or suspension must be imposed by notice in writing to the holder of the accreditation or registration and may have effect at some future time or for a period specified in the notice. ARC is not permitted to revoke or suspend accreditation or registration unless it first gives the holder of the accreditation or registration 28 days written notice of its intention to do so and takes into account any representations made by the holder within that period.

Clause 27: Appeal to Administrative Appeals Court

This clause enables appeals to be made to the Administrative Appeals Court against any decision of ARC—

(a) refusing an application for the grant or renewal of accreditation or registration;

(b) imposing or varying conditions of accreditation or registration;

or

(c) suspending or revoking accreditation or registration.

Subclause (2) permits the Administrative Appeals Court to be constituted of a Magistrate in exercising its jurisdiction under this Bill.

An appeal must normally be instituted within one month of the making of the decision appealed against, but the Court can dispense with that requirement. ARC must, if required by the person affected by a decision, give written reasons for the decision. Where no written reasons are given initially but are requested by the person affected (within one month of the decision being made), the one month time limit for instituting an appeal does not begin to run until the written reasons are received by the person affected. While an appeal is being determined, the decision appealed against stands unless the Court or ARC makes an interim order suspending the operation of the decision. Unless the Court determines otherwise, an appeal under this clause is to be conducted by way of a fresh hearing of the matter and for that purpose the Court can receive evidence given orally or by affidavit. On hearing the appeal, the Court can affirm, vary or quash the decision appealed against or substitute or add any decision that the Court thinks appropriate. The Court can make an order as to any other matter, including an order for costs, as the case requires.

Clause 28: Register

This clause requires ARC to keep a register of courses accredited, and persons registered, under Part 3 of the Bill and must make the register available for public inspection.

Clause 29: Offences relating to degrees and courses

This clause creates a number of offences. Under subclause (1), a person must not offer or provide a course of education and training in relation to which a degree is to be conferred unless the course is accredited under, and is provided by a person registered under, Part 3 of the Bill. Nor must a person offer or confer a degree except in relation to the successful completion of such a course provided by such a person. The maximum penalty for either offence is a $2 000 fine.

These offences do not apply in relation to a person authorised by ARC to provide such a course or confer such a degree.

Under subclause (3) a person must not offer or provide a course of education or training if that course is of a class required by regulation to be accredited under Part 3 of the Bill and the course is not in fact accredited. Nor must a person offer or confer a degree or other award purporting to recognise achievement in a course of education and training of a class required by regulation to be accredited except in relation to the successful completion of such a course. Under subclause (3)*(b)* a person must not offer or provide an accredited course of education and training of a class prescribed by regulation (or a part of such a course) unless the person is registered under Part 3 of the Bill as a provider of that course (or part of a course). The maximum penalty for an offence against this subclause is a $2 000 fine.

This clause does not apply in relation to a South Australian university or an institution (or institution of a class) prescribed by regulation.

Clause 30: Training under contracts of training

This clause requires an employer who undertakes to train a person in an occupation that has been declared (under clause 3(2)) to be a trade to do so under a contract of training. The maximum penalty for not doing so is a $2 000 fine. This requirement to use a contract of training does not apply in relation to the further training or retraining of a person who has already completed the training required

under a contract of training or who has an equivalent trade or vocational qualification.

This clause also permits an employer to use a contract of training where the employer undertakes to train a person in a declared vocation that is not a trade.

A contract of training is required to be in the form required by ARC for the trade or other declared vocation to which it relates and must contain the conditions required by ARC for that trade or other declared vocation. The form and conditions must be specified by ARC by notice in the *Gazette*.

An employer must, within two weeks after employing a person under a contract of training, provide ARC with a copy of the contract and with the particulars required by ARC by notice in the *Gazette*. The maximum penalty for failing to do so is a $2 000 fine.

Two or more employers may (with ARC's approval) enter into a contract of training with the same trainee.

Clause 31: Minister may enter contracts of training

This clause empowers the Minister to enter contracts of training, assuming the rights and obligations of an employer under the contract. The Minister may only do so, however, on a temporary basis or where it is not reasonably practicable for some other employer to enter into the contract of training.

Clause 32: Termination or suspension of contract of training

This clause provides that the termination or suspension of a contract of training requires the approval of ARC. A party can terminate a contract of training by notice in writing to the other party (or parties) within the period after the commencement of the term of the contract that is specified by ARC by notice in the *Gazette* for the trade or other declared vocation to which the contract relates. Where a contract of training is terminated under this clause, the employer must within seven days of that termination give written notice to ARC of the termination. The maximum penalty for not doing so is a fine of $2 000.

Clause 33: Transfer of contract to new employer

This clause provides that a change in the ownership of a business does not result in the termination of a contract of training entered into by the former owner. Instead, the rights, obligations and liabilities of the former owner under the contract are transferred to the new owner. It also provides that wherever a contract of training is transferred or assigned by one employer to another (whether under this clause on a change of ownership of the business, or otherwise) the employer to whom the contract is transferred or assigned must, within seven days of the transfer or assignment, give written notice to ARC of the transfer or assignment. The maximum penalty for not doing so is a $2 000 fine.

Clause 34: Requirements in relation to employment under contract of training

This clause provides that where a trainee is employed under a contract of training, the employer must ensure that the place of employment of the trainee, the equipment and methods to be used in training and the persons who are to supervise the trainee's work are all as approved by ARC. Any approval given by ARC may be given subject to conditions, but must not be at variance with an order of the Disputes Resolution Committee. ARC may, by notice served on the employer, withdraw its approval if in ARC's opinion the place of employment or the training equipment and methods or the persons who are to supervise are no longer suitable, or if there has been a contravention of a condition of ARC's approval. This clause also requires an employer to ensure that the ratio between the number of persons employed under contracts of training and the number of persons who are to supervise that work does not exceed a ratio fixed by ARC. ARC can fix such a ratio in relation to an individual employer by notice served on the employer, or, in relation to a class of employers, by notice in the *Gazette*. An employer who employs a trainee under a contract of training is guilty of an offence if any requirement of this clause is not complied with. The maximum penalty is a fine of $2 000.

Clause 35: Age not to be disqualification

This clause provides that no person is to be disqualified from entering into a contract of training by reason of his or her age.

Clause 36: Term of contract of training

This clause provides that the term of a contract of training is to be determined by ARC by notice in the *Gazette*.

This clause also provides that ARC may, of its own motion or on the application of the parties to a contract (or proposed contract) of training, determine—

(a) that the whole or part of a period of training that occurred before the date of the contract, or under a previous contract of training, be treated as a period of training served under the contract of training; or

(b) that a period for which the trainee was absent from employment under the contract of training be excluded from consideration in computing the length of the trainee's service under the contract of training,

and a contract of training must be construed (and the term of a contract of training must be computed) in accordance with any such determination of ARC unless the determination conflicts with a determination of the Disputes Resolution Committee, in which case the Committee's determination prevails.

ARC is also empowered by this clause to relieve a trainee of his or her obligations under a contract of training where the trainee has completed at least three-quarters of the term of the contract and ARC is satisfied as to the competence of the trainee. Where ARC does so, the trainee is to be taken to have completed the training required under the contract. It also gives ARC power to increase or reduce the term of a contract of training by written notice to the parties to that contract.

This clause also provides, however, that this clause does not prejudice the extension of the term of a contract of training by the Disputes Resolution Committee.

Clause 37: Contract of training to provide for employment

This clause requires a contract of training to provide for the employment of the trainee who is to be trained under the contract. It also gives ARC power, on the application of the parties to a contract of training, to alter the contract to provide for part-time rather than full-time training or *vice versa*.

Clause 38: Requirement to attend courses

This clause requires a trainee under a contract of training to comply with requirements of ARC imposed by notice in the *Gazette* as to attendance at vocational education and training courses and the hours, and total hours, of attendance at those courses. It also requires a trainee to complete those courses to the satisfaction of ARC and to comply with any other requirements of ARC in relation to his or her training. It is an offence for an employer not to permit a trainee to carry out his or her obligations under this clause. The maximum penalty is a $2 000 fine.

This clause also provides that where a trainee attends a course previously undertaken by the trainee, the time spent re-attending that course need not be counted for the purposes of determining the wages payable to the trainee, but for all other purposes the time spent attending or re-attending any course as required under this Part of the Bill is to be treated as part of the employment of the trainee.

Clause 39: Disputes Resolution Committee

This clause establishes the Disputes Resolution Committee as a committee of ARC. It provides that, where a matter is referred to the Committee under the Bill, the Committee is to consist of—

(a) the chairperson or deputy chairperson of ARC; and

(b) two other members of ARC, one being a member appointed to represent the interests of employers and one being a member appointed to represent the interests of employees,

as determined by the chairperson for the purposes of the hearing and determination of the matter.

The Committee is not subject to control or direction by ARC and ARC has no power to overrule or otherwise interfere with a decision or order of the Committee. However, if ARC, acting at the direction of the Minister, requests the Committee to review its decision or order on any matter, the Committee must do so. On review, the Committee can confirm, vary or revoke the decision or order or substitute a different decision or order.

A decision or order in which two of the three members concur is a decision of the Committee but, apart from that, the Committee can determine its own procedures.

Clause 40: Disputes and discipline

Under this clause, where a dispute arises between the parties to a contract of training or one party is aggrieved by the conduct of another, a party to the contract can refer the matter to the Disputes Resolution Committee. In addition, where ARC suspects on reasonable grounds that a party to a contract of training has breached or failed to comply with a provision of a contract or of this Bill or regulation under this Bill, it can refer the matter to the Committee.

The Disputes Resolution Committee is required to inquire into a matter referred to it under this clause and has authority to make various orders. It can reprimand a party in default; suspend a person from his or her employment under a contract of training for a period not exceeding four weeks; extend the term of, or cancel, a contract of training; require a party to take such action as the Committee be-

lieves he or she is required to take under a contract of training or excuse a person from performing an obligation under such a contract; exclude specified periods from the computation of the period of training that has been served by a trainee; withdraw ARC's approval of the employment of trainees by an employer (in relation to all trainees or a particular trainee) or order an employer not to employ any additional trainees without the Committee's approval; and make consequential orders. A contract of training has to be construed and applied in accordance with any of these orders and the term of a contract has to be calculated in accordance with them as well. Where money is ordered to be paid by one party to another, the sum concerned can be recovered by that other party as a debt.

This clause also provides that where an employer has reasonable grounds to believe that a trainee is guilty of wilful and serious misconduct, the employer can (without first obtaining the approval of ARC) suspend the trainee from employment under the contract. The employer must immediately refer the matter to the Disputes Resolution Committee and confirm the reference in writing within three days. A maximum penalty of $2 000 applies the if employer fails to do so. The Committee is authorised (under subclause (3)*(c)*) to confirm or revoke such a suspension. If it revokes the suspension the Committee can order the employer to pay any wages that would have been payable under the contract for the period of the suspension. A suspension must not operate for more than seven working days unless it is confirmed by the Committee.

The Committee can consult with industry training advisory bodies before exercising its powers under this clause and must give notice to ARC if it cancels a contract. The Committee can at any time vary or revoke an order made by it under this clause.

It is an offence to contravene or fail to comply with an order of the Committee under this clause. The maximum penalty is a $2 000 fine.

Clause 41: Relation to other Acts and awards, etc.

This clause provides that this Bill prevails, to the extent of any inconsistency, over the *Industrial and Employee Relations Act 1994* and any regulation, award or other determination, enterprise agreement or industrial agreement made under that Act or an Act repealed by that Act. However, a provision of an award or other determination, enterprise agreement or industrial agreement made under that Act (or an Act repealed by that Act) requiring employers to employ trainees under contracts of training in preference to junior employees remains in full force despite this clause.

Clause 42: Making and retention of records

Under this clause, an employer who employs persons under a contract of training is required to keep such records as are required by ARC by notice in the *Gazette*, and must retain those records for at least two years after the expiry or determination of the contract of training to which the record relates. The maximum penalty for failure to comply with this clause is a $2 000 fine.

Clause 43: Powers of entry and inspection

This clause empowers a member of ARC, or a person authorised by ARC, to exercise certain powers for the purposes of Parts 3 and 4 of this Bill. The person can enter (at any reasonable time) any place or premises in which education and training is provided; inspect the place or premises or anything in it; question any person involved in education and training; require the production of records or documents that have to be kept under this Act and inspect, examine or copy such records or documents. A person exercising a power under this clause is required to carry an identity card and produce it at the request of any person in relation to whom the power is being exercised.

It is an offence to hinder or obstruct a person exercising a power conferred by this clause or to refuse or fail to answer truthfully a question asked under this clause or (without lawful excuse) to fail to comply with a requirement made under this clause. The maximum penalty is a $2 000 fine. However, a person is not obliged to answer a question or produce a record or document if the answer or the contents of the record or document would tend to incriminate the person or make the person liable to a penalty.

A person authorised by ARC to exercise powers conferred by this clause incurs no liability for anything done honestly in the exercise (or purported exercise) of those powers. The liability attaches instead to the Crown.

Clause 44: Offences by persons exercising powers

This clause makes it an offence for a person exercising a power under clause 43 to use offensive language or (without lawful authority) hinder or obstruct or use or threaten to use force in relation to any other person. The maximum penalty is a $2 000 fine.

Clause 45: Gazette notices may be varied or revoked

This clause empowers ARC to vary or revoke any notice that it has published in the *Gazette* under this Bill by publishing a subsequent notice in the *Gazette*.

Clause 46: Service

This clause provides that a notice or other document required or authorised to be given to or served on a person under this Bill may be given or served personally or by post.

Clause 47: Regulations

This clause empowers the Governor to make such regulations as are necessary for the purposes of the Bill. In particular it authorises the making of regulations fixing fees (or providing for the payment, recovery, waiver or refund of fees) or providing for the Minister or a body established by the Bill to do so, and allows the regulations to impose a penalty (not exceeding a $2 000 fine) for breach of a regulation.

SCHEDULE 1

This schedule sets out a number of matters that are relevant to three of the bodies established by this Bill: the VEET Board, ARC and ACEC.

Clause 1 of schedule 1—Interpretation

This clause is an interpretation provision for the purposes of the schedule. "Statutory body" is defined to mean the VEET Board, ARC or ACEC.

Clause 2 of schedule 1—Terms and conditions of office of appointed members

This clause sets out the terms and conditions of office of members of a statutory body (the VEET Board, ARC or ACEC). They hold office for a term not exceeding two years on conditions determined by the Governor (in the case of the VEET Board) or the Minister (in the case of ARC or ACEC) and specified in the instrument of appointment, and are eligible for re-appointment on the expiration of that term of office. The Governor (in the case of the VEET Board) or the Minister (in the case of ARC or ACEC) can remove an appointed member from office for misconduct, failure or incapacity to satisfactorily carry out the duties of office, or breach of (or non-compliance with) a condition of appointment. Members can also be removed if serious irregularities have occurred in the conduct of the relevant body's affairs or if it has failed to carry out its functions satisfactorily, and its membership should, in the opinion of the Governor (in the case of the VEET Board) or Minister (in the case of ARC or ACEC) be reconstituted for that reason. The office of an appointed member becomes vacant if the member dies, completes a term of office and is not re-appointed, resigns by written notice to the Minister, is convicted of an indictable offence, or is removed from office under this clause. Where the office of an appointed member becomes vacant, a person can be appointed in accordance with this Bill to the vacant office.

Clause 3 of schedule 1—Proceedings

This clause sets out the manner in which a statutory body (the VEET Board, ARC or ACEC) is to conduct its proceedings. A meeting must be chaired by the chairperson or (in his or her absence) by the deputy chairperson or (in the absence of both) by a member chosen to preside by a majority of the members present. A quorum consists of one half of the total number of the body's members (ignoring any fraction resulting from the division) plus one. In the case of ARC the quorum must include the chairperson or deputy chairperson, one or more members appointed to represent employer and employee interests respectively and at least one other member.

A decision carried by a majority of the votes cast by members present at a meeting of the body is a decision of the body. Each member present at a meeting has one vote on a matter arising for decision and, if the votes cast are equal, the presiding member can exercise a casting vote. (A telephone or video conference between members will, for these purposes, be taken to be a meeting of the body at which the participating members are present.)

In addition to decisions made at meetings, a valid decision can also be made by giving notice of a proposed resolution to all members of a body and having a majority of members concur in writing (whether by letter, telex, facsimile or otherwise) with that resolution.

Each body is required to keep accurate minutes of its proceedings and, subject to this Bill, may determine its own procedures.

These rules governing proceedings also apply to committees of each body (other than the Disputes Resolution Committee) subject to any direction to the contrary by the relevant body.

Clause 4 of schedule 1—Disclosure of interest

This clause requires a member of the VEET Board, ARC or ACEC who has a direct or indirect pecuniary interest in a matter under consideration by the relevant body to disclose the nature of that

interest to the relevant body. The member must not take part in any deliberations or decisions of the body in relation to that matter. The maximum penalty for a breach of either of these requirements is two years imprisonment, a fine of $8 000, or both. The same requirements apply to a member of a committee of the VEET Board, ARC or ACEC (except that a member of a committee must disclose his or her interest to the Board, ARC or ACEC, as the case may be, rather than to the committee). It is a defence to a charge of an offence against this clause to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter. A disclosure under this clause has to be recorded in the minutes of the relevant body and reported to the Minister.

Clause 5 of schedule 1—Validity of acts

This clause provides that an act or proceeding of the VEET Board, ARC or ACEC, is not invalid by reason only of a vacancy in the body's membership. The same rule applies in the case of a committee of any of those bodies.

Clause 6 of schedule 1—Immunity

This clause provides that a member of VEET, ARC or ACEC or of a committee of any of those bodies, incurs no liability for anything done honestly in the performance or exercise (or purported performance or exercise) of functions or powers under this Bill. Liability attaches instead to the Crown.

SCHEDULE 2

This schedule repeals certain Acts and deals with transitional matters.

Clause 1 of schedule 2—Repeal

This clause repeals the *Industrial and Commercial Training Act 1981* and the *Tertiary Education Act 1986*.

Clause 2 of schedule 2—Transitional provisions

This clause deals with a number of transitional matters. It provides that a contract of training in force under the *Industrial and Commercial Training Act 1981* immediately before the commencement of Part 4 of this Bill continues in force as a contract of training under Part 4 of this Bill. Similarly, an approval, determination or requirement of the Industrial and Commercial Training Commission in force under that Act immediately before the commencement of Part 4 of this Bill continues in force as an approval, determination or requirement of ARC under Part 4. The same applies to a suspension or order of the Disputes and Disciplinary Committee in force under the *Industrial and Commercial Training Act 1981* immediately before the commencement of Part 4 of this Bill: it continues in force as a suspension or order of the Disputes Resolution Committee under Part 4.

This clause also provides that a reference in an Act or an instrument or document to an "apprentice" is to be read as a reference to a trainee under a contract of training for a trade (with 'apprenticeship' to be construed accordingly) and a reference to the Industrial and Commercial Training Commission is to be read as a reference to ARC.

In addition, this clause provides that, despite the repeal of the *Tertiary Education Act 1986*, the South Australian Institute of Languages (established under that Act) will continue in existence (and for that purpose the provisions of Part IV of the *Tertiary Education Act* will continue in force) until a day fixed by the Governor by proclamation. A proclamation fixing a day for the purposes of this clause can dispose of the assets and liabilities of the Institute.

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

SECOND-HAND VEHICLE DEALERS BILL

In Committee.

(Continued from 27 October. Page 643.)

Clause 25—'Interpretation of this Part.'

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

Page 20, line 6—Leave out this paragraph and insert the following paragraph:

(a) a dealer or former dealer required to be licensed under this Act or a corresponding previous enactment (whether or not currently or previously licensed):.

This essentially is a drafting amendment.

Amendment carried; clause as amended passed.

Clause 26—'Cause for disciplinary action.'

The Hon. ANNE LEVY: I move:

Page 20, line 24—Leave out 'Magistrates Court' and insert 'Tribunal'.

This amendment is consequential on many others.

Amendment carried.

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

Page 20, lines 26 to 34—Leave out paragraphs (g) to (j) and insert the following paragraphs:

(g) the registered premises of the dealer have become unsuitable for the purpose of carrying on business as a dealer; or

(h) events have occurred such that the dealer would not be entitled to be licensed as a dealer if he or she were to apply for a licence.

The inclusion of paragraph (h) is consistent with a drafting amendment which has already been made in this Committee with respect to the Land Agents Bill and Conveyancers Bill disciplinary provisions. The omission of paragraph (g) from the original Bill was an oversight. This provision is necessary to enable disciplinary action to be taken in situations where the registered premises of the dealer have become unsuitable for the purpose of carrying on business as a dealer. It mirrors an existing section of the Act, section 14(10).

It is in the interests of consumers, industry and the general public that a provision of this nature is incorporated into the Bill; otherwise, steps cannot be taken under the current drafting of the Bill to deal with situations where the registered premises have become unsuitable for the purpose of carrying on the business of a dealer.

The Hon. ANNE LEVY: The Opposition is happy to support this amendment.

Amendment carried; clause as amended passed.

Clause 27—'Complaints.'

The Hon. ANNE LEVY: I move:

Page 21, line 6—Leave out 'District Court' and insert 'Tribunal'.

This is consequential.

Amendment carried; clause as amended passed.

Clause 28—'Hearing by court.'

The Hon. ANNE LEVY: I move:

Page 21—

Line 9—Leave out 'District Court' and insert 'Tribunal'.

Line 12—Leave out 'Court' (twice occurring) and insert, in each case, 'Tribunal'.

Line 17—Leave out 'Court' and insert 'Tribunal'.

These amendments are consequential.

Amendments carried; clause as amended passed.

Clause 29—'Disciplinary action.'

The Hon. ANNE LEVY: I move:

Page 21, line 19—Leave out 'District Court' and insert 'Tribunal'.

Amendment carried.

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

Page 21, after line 27—Insert the following paragraphs:

(iii) suspend the registration of premises registered in the name of the dealer until the fulfilment of stipulated conditions or until further order; or

(iv) cancel the registration of premises registered in the name of the dealer:

This is consequential on the amendment I moved in relation to clause 26. It is aimed at providing the court or tribunal, whichever we end up with (as the Bill is currently being framed, the tribunal) the power to make orders if it is satisfied on the balance of probabilities that, on the hearing of a disciplinary action, a registered premises has become unsuitable for the purpose of carrying on a business.

The Hon. ANNE LEVY: I support this amendment.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 21, line 34—Leave out 'District Court' and insert 'Tribunal'.

This is consequential.

Amendment carried; clause as amended passed.

Clause 30—'Contravention of orders.'

The Hon. ANNE LEVY: I move:

Page 22—

Lines 14 and 15—Leave out 'District Court' and insert 'Tribunal'.

Line 20—Leave out 'District Court' and insert 'Tribunal'.

These amendments are consequential.

Amendments carried; clause as amended passed.

Clause 31—'No Waiver of rights.'

The Hon. ANNE LEVY: I move:

Page 23, line 4—Leave out 'A' and insert 'Except as expressly provided by this Act, a'.

This amendment is consequential on an amendment which was moved earlier, whereby the ability to have a cooling off period was inserted into the Bill, by way of clause 18A, which made provision for a waiver of the cooling off period to be possible. This is a consequential amount to clause 31, which provides that there is no waiver of rights. So one needs to put in 'except as expressly provided by the Act', as the new clause 18A does expressly provide for a waiver to be possible in certain circumstances.

The Hon. K.T. GRIFFIN: What the honourable member is suggesting is consistent with the position she has already put in relation to cooling off periods. I hope that we will get a chance to revisit cooling off periods. This is an appropriate point at which I can make a couple of other observations about cooling off periods. Quite obviously, the Motor Trade Association, when it was informed about the amendment which had been carried, was quite concerned about it, and it made some representations to me. In fact, it supplied me with a copy of a letter written by the Hon. Barbara Wiese when she was Minister for Consumer Affairs, back on 6 September 1990, and she wrote that to Mr Flashman as the Executive Director of the Motor Trade Association of South Australia, particularly in relation to a cooling off period. Apparently, Mr Flashman had written to her on 14 August 1990 and as Minister she replied on 6 September. He had been responding to some comments made by Mr Malcolm Penn of the Legal Services Commission.

Even last year Mr Penn had been making some further representations to members and the Hon. Anne Levy as the Minister also replied, referring particularly to the cooling off period and to Mr Penn's responses. As I said, he is a solicitor employed by the South Australian Legal Services Commission. He has had a consistent approach towards cooling off periods, urging Governments to support them. Mr Flashman wrote to the then Minister in August 1990, referring to Mr Penn's statements and saying, among other things, that the MTA:

. . . is heartened and encouraged by your statements that Mr Penn's proposal is not endorsed by yourself or by the State Government.

That was in relation to cooling off periods. In that letter of 14 August 1990, Mr Flashman, in writing to the Minister, said:

. . . permit me to advise you of the action taken by MTA to address the matters which caused Mr Penn his concern.

i) After two radio talkback discussions featuring Mr Penn and myself, it was resolved to invite him to address a joint meeting of MTA's new and used vehicle dealers.

ii) Mr Penn responded only to the second request to attend the meeting and made himself available on 17 July 1990.

iii) Mr Penn outlined the matter as follows:

- three car dealers involved in approximately four to five instances;
- none were or are MTA members;
- intervention by Legal Services has resolved the matters;
- no person has been bankrupted (a claim reportedly from Mr Penn had stated otherwise).

The dealers were most attentive to Mr Penn and shared his concern over the cases he reported. It was pointed out that over 130 000 vehicle transactions occur annually and that the enactment of legislation to curb the operations of three dealers was surely excessive. The dealers asked Mr Penn what action he had initiated under the many State and Federal laws applicable to the dealer's behaviour and were advised that the Office of Fair Trading were investigating the cases.

He then goes on to make some other observations about those cases. The then Minister for Consumer Affairs did refer particularly to that letter, explaining the current law. The fact that Victoria was the only Australian State that had introduced cooling off periods and drawing attention to the fact that:

. . . in South Australia, under the Consumer Transactions Act 1973, a purchaser may rescind a contract for the purchase of a motor vehicle at any time within seven days of taking delivery of the vehicle if the vehicle is not of merchantable quality, that is, not reasonably fit for the purpose for which it is commonly used, having regard to the price paid for the vehicle, the terms and conditions of the contract, the circumstances surrounding the formation of the contract and the apparent condition of the goods.

The Minister went on to say in her letter:

While this may not enable a purchaser of a vehicle to simply change his or her mind and rescind the contract, it certainly provides considerable protection for the person who buys a vehicle that subsequently turns out to be unfit for use as a motor vehicle.

The Department of Public and Consumer Affairs, Office of Fair Trading, has expended considerable time and effort by way of advertising, brochures, educational programs and other public awareness programs in an attempt to educate consumers that there are no cooling off rights in relation to the purchase of goods generally, including both new and second-hand motor vehicles. However, the Office of Fair Trading is continually examining ways and means of alerting the public of the risks of entering into contracts without giving proper consideration to the possible consequences.

As a consequence of the above information it is not proposed at this stage to introduce legislation imposing cooling off rights in relation to the purchase of motor vehicles. However, when the review is undertaken of the Fair Trading Act and the Consumer Transaction Act consideration will be given to the matter.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: I acknowledge that, but of course it was a fairly tentative approach to it, and I felt it would be helpful to have this information available, particularly for the Hon. Sandra Kanck on her return. I have a number of items of correspondence from the then Minister (Hon. Barbara Wiese). In one letter in about the same period (October 1990) she repeats that she could see:

. . . little benefit in legislation imposing a cooling off period for car sales. However, the Office of Fair Trading will continue to monitor the situation and take action in appropriate cases.

In a letter to the Legal Services Commission, again at about the same time, she states:

In the circumstances, I am advised there is no justification at this time to introduce a cooling off period in relation to such transactions. However, the Director, Office of Fair Trading, Mr Glen Weir, is prepared to meet with you should you wish to discuss the matter further.

Again in October 1991 she makes a similar sort of statement, and then the previous Minister (Hon. Anne Levy) makes an observation in correspondence in October 1993, as follows:

I understand that the other States and Territories (except the ACT)—

that is, excluding Victoria—

are not considering the introduction of a cooling off period at this time. I will therefore want to ensure that all industry groups and consumers are given the opportunity, at the appropriate time, to comment on the matter of cooling off periods for the purchase of motor vehicles.

Whilst, as I indicate, there is some tentativeness about some aspects of this, it is important to recognise that the previous Government had no plans to do anything more than review the matter when a particular piece of legislation came up for review. The fact of the matter is that, apart from the discussion in this Chamber, there really has been no pressure, at least on the present Government, to introduce a cooling off period. I would certainly want to debate that issue further when we review the position of the Committee after the matter has been considered in another place.

The Hon. ANNE LEVY: The Attorney has read into *Hansard* some old correspondence which certainly sums up the fact that the previous Government did not intend to examine the matter of a cooling off period until the Act was reviewed. We now have a complete review of the Act, and it is quite obvious that this is the appropriate time to review the matter. The fact that there has been a review with a call for public submissions on the Act is surely compatible with my suggestion last year that all industry groups should have an opportunity to put their views on the matter. Obviously, they have had an opportunity, the Bill has been out for discussion, and the review committee has called for submissions from interested parties on all aspects of the legislation.

I do not see how the Attorney can in any way suggest that there is any lack of consistency. Indeed, the policy we have followed is exactly as has been set out in the correspondence from the two previous Ministers but, as the Attorney says, this matter may well be revisited at a later stage. I put to him that the current amendment is consequential on the inclusion of new clause 18A. Obviously, if new clause 18A were to be amended or removed later, there would have to be further amendment to clause 31, but following the inclusion of new clause 18A, which the Committee voted on last week, I put to him that the amendment that I am moving to clause 31 is consequential.

The Hon. K.T. Griffin: I do not deny that; I just wanted to use it as an opportunity to put a few more things on the record.

The Hon. R.R. ROBERTS: I wish to respond briefly regarding the waiver for second-hand motor vehicles. In his attempt to explain why we do not need a waiver, I believe the Attorney said that he was aware of three or four cases in which there had been some dispute. I do not agree that there are only three or four cases, as I know of two which I am certain did not reach the Attorney's desk. In most instances where these problems occur, people seek advice from the Commissioner, who will say that under the present law they do not have a claim. That claim is, therefore, not proceeded with, so there is no record of it.

In his explanation, the Attorney explained that in 1990 there were some 130 000 transactions. I would have thought that that reinforces the argument that the waiver will be no great impost on those people who carry on their business in a proper and legitimate way. However, in the minority of cases where there is a dispute—some of which have gone unreported and uncontested because of the state of the law as it stands in South Australia at present—I would have thought that there would be no great impost on anybody who was carrying on their business legitimately and that there would only be a problem for motor traders if they were acting improperly. If all 130 000 transactions were above board, they would have gone through, the waiver would not have been accessed and there would not have been a problem, but those people who faced the dilemma of a high pressure salesman or being cajoled into a deal, or it may be that their finances were not available for them to proceed with the contract, would have had the opportunity to seek relief, which is now available with the inclusion of the waiver clause in this Bill. I appreciate the trouble to which the Attorney has gone in his explanation and I thank him because, in my submission, he has reinforced the case for a waiver and has not diminished the argument for taking it away.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 23, line 6—Insert 'otherwise than as expressly provided by this Act' after 'this Act'.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clause 32—'Interference with odometers prohibited.'

The Hon. ANNE LEVY: I move:

Page 23, after line 30—Insert the following subclause:

(6) If a dealer is convicted of an offence of interfering with an odometer on a second-hand vehicle that the dealer has sold to a purchaser, the court may (in addition to imposing a penalty), on the application of the purchaser, make one or more of the following orders:

(a) an order that the contract for sale of the vehicle is void;

(b) an order that the dealer compensate the purchaser for any disadvantage suffered by the purchaser as a result of the purchase of the vehicle;

(c) any other order that the court thinks just in the circumstances.

I hope this amendment will receive serious consideration from the Committee. The Bill before us indicates that it is an offence to interfere with an odometer on a second-hand motor vehicle. Everyone is agreed with that: it is misleading; it is fraudulent; and no-one would countenance that odometers can be interfered with. But the clause before us provides a penalty only for someone who interferes with an odometer and provides no respite for someone who may have bought a second-hand vehicle because the odometer had been interfered with. Someone may purchase a vehicle thinking it has travelled only 50 000 kilometres, say, when in fact it has been 150 000 kilometres and, in consequence, that person has been tricked into purchasing that vehicle. Sometimes, of course, fiddling with an odometer may not make very much difference to the purchaser. If he thinks it has travelled 50 000 kilometres whereas it has, in fact, travelled 55 000 kilometres, no great damage is done to the person who purchases that vehicle.

My amendment provides that, when a dealer is convicted of the offence of fiddling with an odometer, the court may, in addition to imposing a penalty on the dealer who has so fiddled with the odometer, make orders that give some restitution to the purchaser of the vehicle who may have been tricked into buying it. When a dealer is convicted of interfering with an odometer, the court may say that the contract for sale of the vehicle is void because it has been interfered with to such an extent that the purchaser would not have purchased that vehicle had he known the real reading of the odometer; or the court can make an order that the dealer compensate the purchaser for any disadvantage suffered by the purchaser. It

may be that, if the odometer has been wound back only 5 000 kilometres, the court would say that, in the circumstances, instead of paying $5 500 for the vehicle the purchaser should have paid only $5 300, and order that the dealer refund $200 to the purchaser.

The third alternative is any other order that the court thinks just in the circumstances. It is a means of not only applying a penalty to the person who interferes with an odometer—which everyone agrees should be in the Bill—but of providing some justice to the purchaser of a vehicle that has had its odometer interfered with, which may or may not be a really serious matter and which may well have affected the decision by the purchaser as to whether or not that vehicle would have been purchased. As set out in my amendment, the purchaser would be able to explain the situation to the court and the court can, if it wishes, make some sort of restitution to the purchaser of the vehicle.

It is not obligatory that the court do this; the court may decide in the circumstances that no restitution at all should be made to the purchaser. In the extreme case, the court can say that the contract for sale of the vehicle is null and void; and the court can decide anything in between, as seems just to the court in the circumstances.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. One must look at the structure of this Bill, which is similar to that of the present Act, which we are seeking to repeal. It all relates to licensing and to ensuring that those who act improperly are not licensed or, if they are, then their licence is appropriately dealt with, and it provides some criminal penalties for matters such as interference with an odometer. It is not about providing new mechanisms for consumers to recover. It deals with the licensing or registration regime, as the case may be, and the protection of consumers, in so far as that protection can be afforded through the licensing regime. All the other issues relating to dealings between dealer and consumer are matters that are dealt with in the general law, and that is the pattern of the present Act.

What the honourable member is seeking to do is tack onto a clause that deals with criminal sanctions something that deals with civil rights. It is unwise to seek to do that, for a number of reasons, and I will try to explain several of those. First, in a criminal prosecution it is likely to be officers of the Commissioner for Consumer Affairs who prosecute the case. It may be that there is a plea of guilty and that the purchaser is not required to give evidence and may not even be in court. It is essentially the Commissioner producing evidence to establish beyond reasonable doubt that a person has interfered with an odometer, and there are several provisions in clause 32 that are an aid to proving that.

Certain presumptions are provided. As I understand it, clause 32 is in exactly the same form as the comparable clause in the existing Act. It is essentially, as I say, criminal based and not civil based. If the purchaser were to have a right to go along to that same court, then there is a question of who represents the purchaser. It would not in the circumstances of this provision be the Commissioner for Consumer Affairs; it would be the purchaser. So, tacked onto the end of a criminal prosecution the purchaser would then have to make representations to the court about a matter that, whilst pertinent to the offence, nevertheless is different in both form and substance from the issue before the court. The purchaser must make some representations as to why the contract should be declared void or some other order ought to be made.

It may be that the dealer has some basis for opposing that, so one moves off on a different tack in dealing with the civil issues between dealer and purchaser. It may be that the purchaser has sold the vehicle since the prosecution was launched and heard—remembering that clause 32 is dealing with events that have occurred quite some time before the matter finally comes on in court, and it may be that the purchaser does not then have the vehicle in his or her ownership. It may have been sold to a third party. The problem is that, if a court says the contract is void, it avoids the sale to a third party. What the honourable member has in this amendment would enable someone at the court to say, 'Well, there is a third party involved (if the court is made aware of that) and therefore the court will not exercise that discretion.' It may then order compensation and there will have to be an argument and proof of damage to establish a basis for compensation. It may be that the vehicle is subject to finance, and the financier has in good faith made finance available on the security of the vehicle. If the court is to make an order that the contract is void then it avoids the security for the financier. It may be that the court is not even aware that there is finance on the vehicle. Of course, in some forms of finance the vehicle would not even be in the name of the purchaser: it would be in the name of the financier. In those circumstances the purchaser would be the financier and not the person who might be the registered owner of the vehicle.

All those sorts of variations need to be taken into consideration. One has to raise the question: if the vehicle has been sold to a third party or if a financier is involved, what rights do they have to oppose an order that the contract for sale of the vehicle is void? Under this clause they have none. I suggest to members that this amendment, falling within the framework of a clause which deals with offences and prosecutions and burden of proof, is likely to create injustice rather than justice. It is fraught with difficulty and I urge the Committee not to support it.

The Hon. ANNE LEVY: I still argue strongly for the amendment. I am not a legal person and in consequence I see no great damage in having criminal and civil matters dealt with in the same clause of the same Bill. If Parliament feels it is just to do so then Parliament will do so; I am sure the lawyers will cope. Whether they should be in separate clauses seems to me a legal purist approach. Parliament can do as it wishes, and if we feel that it is just that there be this form of compensation to someone who has been tricked by an odometer being wound back then this is the place to do so. This is the appropriate clause which deals with interfering with odometers.

To say that the purchaser would have ordinary recourse to the courts seems to me to be putting an onus on the purchaser who would have to wait until the dealer had been convicted of interfering with the odometer before he could even start proceedings for damages if he felt that damages were appropriate in the circumstances. It seems to me far more efficient that it be dealt with by exactly the same court. The purchaser may well be a witness in the case, anyway.

The Hon. K.T. Griffin: They need not be.

The Hon. ANNE LEVY: They need not be, I agree, but they may well be a witness to the case, and in consequence are already there. In any case it would seem to me far more efficient to have the matter dealt with simultaneously rather than the purchaser having to wait until the first case is concluded before he can even start proceedings for the second case, which may well take considerable time before justice is done. The various exceptions to which the honourable

member referred could, I presume, be inserted as finetuning to the clause. This Bill will obviously go to conference further down the track, and any necessary finetuning regarding finance companies and so on could be inserted at that stage. I think my amendment clearly states a most important principle: someone who is being tricked by having the odometer interfered with should have redress if thought appropriate by the court.

The Hon. M.J. ELLIOTT: I will not enter the debate as to in which court such a determination should be made but indicate support for the concepts contained. If we have a piece of legislation which allows for penalty then this is just an extra penalty. This penalty is effectively a removal of the profits of crime, and I have no problems with the concepts contained. If the Minister wants to look further at questions as to which court it should be occurring before he will have a further opportunity to do that. I indicate support for the clause at this time.

The Hon. K.T. GRIFFIN: I understand where the numbers are and it will be revisited. I do not think that issues of finance and the fact that the vehicle may have been sold by the purchaser are really matters of finetuning: I think they are matters of substance. There is no obligation upon a purchaser to wait until the criminal process has been completed before taking civil action. He can do that separately and before.

The Hon. Anne Levy: But he would have to prove that the odometer had been interfered with.

The Hon. K.T. GRIFFIN: He would have to prove that in the criminal case, anyway.

The Hon. Anne Levy: The purchaser wouldn't; the Crown would.

The Hon. K.T. GRIFFIN: You have to prove it in both instances, anyway.

The Hon. Anne Levy: If there was a criminal conviction with penalty imposed that surely is sufficient in a civil court; you don't have to call all the witnesses.

The Hon. K.T. GRIFFIN: But the honourable member was saying earlier that you would have to wait. You do not have to wait for your civil action: you can take it earlier. In the area of criminal injuries compensation there were representations for years to the previous Government about the desirability of having victims of crime able to make an application to the court concurrently with the conviction being recorded. That has been resisted because of the undue complexity involved and the fact that there are different issues which apply as between criminal conviction on the one hand and a civil action for damages on the other. There are processes available such as the Minor Claims Court. You do not have to have lawyers involved if the claim is less than $5 000. There are all sorts of opportunities for cheap justice which are better dealt with in that way than by tacking it onto the end of this. I recognise where the numbers are at present and will give further consideration to the matter.

Amendment carried; clause as amended passed.

Clause 33 passed.

Clause 34—'Delegations.'

The Hon. ANNE LEVY: I move:

Page 24 line 6—Leave out paragraph (c) and insert:

(c) to any other person under an agreement under this Act between the Commissioner and an organisation representing the interests of persons affected by this Act.

This is a similar amendment to that which I moved to the Land Agents Act, the Valuers Act and the Conveyancers Act, and now we have the Second-hand Vehicle Dealers Bill. The amendment provides that the delegation certainly can be, as is proposed in clause 35, to an organisation that represents the interests of people. In the case of the Land Agents Act it would be the REI, for the Conveyancers Act the Institute of Conveyancers, and so on. In this case, the obvious organisation representing the interests of dealers is the Motor Trades Association.

However, I understand that the Attorney wants to extend it so that it can be, say, an agreement with the RAA, not just the MTA. However, it seems to me that any delegation of his powers and functions that the Commissioner is making should be limited not to any other person chosen at random—remembering that it is not someone in the Public Service but an outside group—but should be to the specific groups to which delegations will be given under clause 35. This is completely analogous to what this Committee has already agreed for the other three pieces of legislation. It may be revisited in a conference, but it seems to me that, for consistency, we should maintain the same amendments in all these Bills which will obviously have a common resolution.

The Hon. K.T. GRIFFIN: I do not agree with the amendment, but I agree that, for the sake of consistency of approach, all the legislation we have been dealing with in relation to occupational licensing or registration ought to be, for the moment at least, consistent. I have already put on the record the reasons why the Government does not support this, but I do not intend to divide on the basis that the matters have previously been supported by the Australian Democrats with the Opposition, and there will be another opportunity to revisit it.

Amendment carried.

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

Page 24, line 7—Insert '(except the power to direct the Commissioner)'.

Subclause (2) of clause 34 relates to the Minister's power of delegation. As I have indicated on previous occasions, it is not the Government's intention to delegate a number of functions. What we seek to do is identify, both for the Commissioner and the Minister, the functions that should not be delegated on the basis that hopefully we will be able to get some consistency of approach which allows delegation of powers but also does not allow delegation of certain matters. For example, in relation to the licensing function or the registration function, which is a function of the Commissioner, one would not expect or want those functions to be delegated beyond the Public Service. So, I am seeking to exclude the power of the Minister to delegate in respect of the power to direct the Commissioner. I would expect that members would applaud that concession.

The Hon. ANNE LEVY: I am happy to support the amendment.

Amendment carried; clause as amended passed.

Clause 35—'Agreement with professional organisation.'

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

Page 24 line 15—Leave out 'dealers' and insert 'persons affected by this Act'.

As the Hon. Anne Levy has foreshadowed with her earlier amendment, I am seeking to allow some scope to make agreements with bodies that represent the interests of groups within the industry, and that includes the RAA. Previously the drafting would have limited that to only organisations representing the interests of dealers. This now extends it to persons affected by this Act. I think that will give the flexibility that is required.

The Hon. ANNE LEVY: I am happy to support the amendment.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 24, lines 30 and 31—Leave out subclause (4) and insert:

(4) An agreement under this section must be laid before each House of Parliament and does not have effect—

(a) until 14 sitting days of each House of Parliament (which need not fall within the same session of Parliament) have elapsed after the agreement is laid before each House; and

(b) if, within those 14 sitting days, a motion for disallowance of the agreement is moved in either House of Parliament—unless and until that motion is defeated or withdrawn or lapses.

This is identical to amendments that this Committee has already accepted for the Land Agents Act, the Valuers Act and the Conveyancers Act, and now we have the Second-hand Vehicle Dealers Bill. By way of explanation to the Hon. Mr Elliott, what is being suggested is that if the Minister makes an agreement to delegate powers to, say, the Motor Trades Association or the REI, and so on, particularly as these agreements may deal with administration or enforcement of the Act, the agreement should be subject to scrutiny by the Parliament.

It should not be at the whim of the Minister that any powers of enforcement are delegated under the Act. Parliament should have the opportunity to scrutinise what is being delegated, particularly where it involves matters of enforcement. The procedure is like that of a regulation. As I say, the Committee has accepted it for land agents, valuers and conveyancers, and I hope for consistency that it will also support it for second-hand vehicle dealers.

The Hon. K.T. GRIFFIN: I oppose the amendment. As this amendment has been moved and carried in previous legislation relating to occupational licensing or registration, I think there needs to be some consistency of approach. Therefore, I will not be dividing. It is a matter that will be revisited, because the proposal is absolutely unworkable. Whilst the Hon. Anne Levy talks about administration and enforcement, with the emphasis on enforcement, I have already indicated that we are giving consideration to identifying more carefully those powers which ought not to be the subject of delegation through the agreement process. It may be that a compromise will be agreed when that process has been concluded. For the moment, I oppose the amendment but I know my opposition will not be successful.

Amendment carried; clause as amended passed.

Clauses 36 and 37 passed.

Clause 38—'Commissioner and proceedings before District Court.'

The Hon. ANNE LEVY: I move:

Page 25, line 17—Leave out 'District Court' and insert 'Tribunal'.

This amendment is consequential. The Attorney-General also has an amendment for the same line, which I am happy to support.

Amendment carried.

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

Page 25, line 17—Insert 'entitled to be joined as' after 'is'.

We passed a similar amendment in the other Bills to ensure that the Commissioner does have a right to be joined or to appear in proceedings. Whilst the Commissioner is entitled to be a party to any proceedings, it is important that it not be mandatory that the Commissioner be a party but has some flexibility. This will make it consistent with the other Bills which have passed.

Amendment carried; clause as amended passed.

Clauses 39 to 43 passed.

Clause 44—'Liability for act or default of officer, employee or agent.'

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

Page 26, line 13—Leave out 'person could not be reasonably expected to have prevented the act or default' and insert 'officer, employee or agent acted outside the scope of his or her actual, usual and ostensible authority'.

This is a drafting amendment which has been made to the other Bills that have already been passed.

Amendment carried; clause as amended passed.

Clauses 45 to 47 passed.

Clause 48—'Evidence.'

The Hon. ANNE LEVY: I move:

Page 27, after line 12—Insert the following paragraph:

(c) that a specified licensed dealer has not lodged a certificate with the Commissioner certifying that the dealer has insurance coverage for a specified period as required under Part 2;.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clauses 49 and 50 passed.

Clause 51—'Regulations.'

The Hon. ANNE LEVY: I move:

Page 28, lines 3 and 4—Leave out these lines.

This amendment is consequential on the amendment which was moved earlier and which put a requirement into the Act rather than leaving it to be done by regulation.

Amendment carried; clause as amended passed.

Schedule.

The ACTING CHAIRMAN (Hon. Caroline Schaefer): The schedule, being a money clause, is in erased type. Standing Order 298 provides that no question shall be put in Committee upon any such clause. The message transmitting the Bill to the House of Assembly is required to indicate that this clause is deemed necessary to the Bill.

Title passed.

Bill read a third time and passed.

CORRECTIONAL SERVICES (PRIVATE MANAGEMENT AGREEMENTS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 20 October. Page 521.)

The Hon. J.C. IRWIN: I support the Bill. This is the first real opportunity I have had to welcome to this place a new colleague, the Hon. Terry Cameron. I know it is a few weeks after his formal induction, but I would like to add a welcome to Terry Cameron to this place, and he will no doubt enjoy the combative nature of some of the debates we have. There will be many occasions when his experience will be useful in trying to find the best solutions to problems that come before us, for the benefit of South Australians generally. That has been my experience here. Whilst there are some areas where we are in conflict, there are many other areas where a person of Terry Cameron's experience will be useful in helping us sort out problems—and this Bill may well be one of those areas.

I start by declaring an interest in the proposition before us, as I visited the United States of America in 1991 to look specifically at its public and private prison systems. I paid all the expenses, but my host for a tour of both the private and the public institutions in America was a director of the

Correctional Corporation of America (CCA). The Correctional Corporation of America is a partner in the Correctional Corporation of Australia, which will undoubtedly be a contender for a contract with this State to manage a prison or prisons if this Bill succeeds.

I was shadow Minister for Emergency and Correctional Services for about three years, and I started that position with no experience whatsoever in those portfolio areas. I had not done a great deal of thinking about them and nor did I have a philosophical position on them. I suspect this is a position in which most of us find ourselves at one time or other in our parliamentary duties. We come in here with certain experiences of life and work, and this experience cannot hope to cover all the matters and Bills on which we will be expected to express a view or cast a vote on.

To be honest, so far as correctional services is concerned, I probably started from what I now consider to be a rather ignorant view that prisoners had it too easy. I thought, 'If they were out of sight, they were out of mind.' I thought that a paramilitary style regime, with the clanking of keys and locking away of people, would be the best way of punishing people who had offended against our society. They were the simple thoughts that I had in my mind about what a prison system should be, a 'them and us mentality' where offenders served their sentence and returned to society. My thinking did not go beyond that point. I suspect that many others do not go beyond that point, either.

It was fortuitous that in late 1990 or early 1991 a select committee was set up by the Legislative Council to look at the penal system in this State. The committee was chaired by the Hon. Ian Gilfillan. The two then Government members were my colleagues the Hon. Ron Roberts and George Weatherill and the two then Opposition members were the Hon. Dr Bob Ritson and myself. I recall that the then Minister for Correctional Services (Frank Blevins) was not very cooperative in setting up that select committee, and there was some difficulty in getting any cooperation at all from the Minister and his department at the outset of this select committee.

In May 1991 the select committee looked at and took evidence from correctional institutions in three States, having looked at our own institutions. We went to Victoria, New South Wales and Queensland. As some members would know, the select committee did not make a final report to the Legislative Council due to the 1993 election, but all members of the select committee regret that we were unable to report, as we had a mass of evidence and would have undoubtedly made some interesting recommendations.

We inspected the private institution of Borallon in Queensland and took evidence from a company running it, the Correctional Corporation of Australia. At that time, Borallon was being managed by Mr Brian Dickson, who was from our own Correctional Services Department in South Australia. When he left, he was managing the Mobilong Prison for the State Correctional Services Department. Of course, the select committee did not get to make any sort of recommendation regarding private prisons, but it is of interest to note now that the then Minister (Frank Blevins) had a submission prepared for Cabinet in mid 1991, indeed as the select committee was inspecting institutions in this and other States, proposing that:

> Expressions of interest be invited from prison sector agencies for the operation of Mobilong Prison and Port Augusta Prison.

As to my comment earlier that the Hon. Frank Blevins was being a bit obstructive in setting up the select committee, it is rather interesting to note that, at the very time that we were trying to set it up, his department was preparing submissions for Cabinet. I do not think they actually got to Cabinet but they certainly were prepared as a Cabinet document, supporting the inviting of expressions of interest at least for operating two of the prisons in South Australia, namely, Mobilong Prison and Port Augusta Prison. Mobilong Prison at Murray Bridge is one of those in South Australia that has been recently built, and it is one that has been designed well enough to be reasonably easily taken over by the private sector. The same applies to Mount Gambier Prison. At that stage in 1991 it was not in operation but it was being built. So, we had the proposition of designing a brand-new correctional institution at Mount Gambier and then also an expression of interest for Mobilong Prison.

I do not intend going into the evidence given to the select committee, as that may be improper, although it was public evidence and, of course, is still available to anyone who would like to go through it. However I will give some brief impressions about that, and I will certainly refer to the Cabinet later. Having made ourselves familiar with the various constructional institutions in this State and having an early impression of the associated management and costs, the select committee arranged a tour of the eastern States in order to get a wider perspective from which to judge the South Australian management system. We wanted to look at systems in New South Wales, Queensland and Victoria and then come back and look at our own to see whether we could suggest improvements, from what we saw on that trip.

I have very clear impressions from that trip which remain with me now. Briefly, they are that the then Labor Government in Victoria was taking great strides to remodel the physical prison building stock. They were building a number of new prisons. They started from a new remand centre in Melbourne to a new prison complex, based on what the select committee was hearing a lot about at the time, that is, a unit management system. I will say more about that later. The unit management system—a lot of which I saw in the United States—on which the private prison system and buildings is based is very simply the building of prison cells in pods, where the line of vision for supervision is such that one duty officer is able to undertake the work of perhaps many other duty officers.

It is not difficult to see the advantages from the point of view of cost reduction and safety if you compare the old Yatala Prison or the old prisons in other States which need many officers to run them with the new private prisons that are specifically designed so that supervision can be done by one person with the aid of such things as television cameras. It would be easy to have such a system based on unit management. This is one area of design in which either the public or private prison system would be able to save many dollars. Of equal importance is the fact that each pod of cells has its own internal management: officers work with prisoners to decide how best to run each pod.

Of course, the guidelines for overall prison management are paramount, but there is flexibility in the system so that the prisoners can work with management and get to know well the prison officers in their pod and make some management and day-to-day running decisions that affect their lifestyle within the constraints of the management of the prison. This prison unit management system has important ramifications for individual prisoners and the overall harmony of the

prison. If harmony is achieved, we must conclude that the very basic level of rehabilitation is also achieved. I cannot emphasise enough how important it is for any prison system or Government managed prison to aim to rehabilitate its inmates.

The recidivism rate in South Australia—that is, the rate at which prisoners re-offend after leaving prison—is about 65 per cent. This revolving door is costing the South Australian taxpayer about $60 000 per year per prisoner. So, 65 per cent of prisoners who leave in one year will return, and that cost of $60 000 on average over the whole prison system in South Australia is a cost to the taxpayers. I put to the Opposition and the Democrats that it is quite unacceptable that recidivism has been allowed to escalate over the years to the point it has now reached, and we must do something about it. We cannot afford this cost. If a prison system cannot substantially improve the outlook on life or work trade practices and prospects of an inmate, it needs to take a hard look at what is going on. This Parliament should demand to know what is going on and not just sit here as individual members and plead ignorance. I have seen too much of that.

In addition to the new prisons we saw in Victoria, it is interesting to note that the present Liberal Government in Victoria is proposing to have built and run by the private sector up to four new institutions. The select committee met with senior officers of the New South Wales Correctional Department of the new Liberal New South Wales Government. The Greiner Government, when it came to office, promised amongst other things truth in sentencing laws and a huge increase in police numbers. One could not help but get the feeling that there was a jackboot mentality, at least amongst the officers we met. We saw only old prisons, such as the Goulburn prison, in the time we spent in New South Wales, but we were briefed on the need for New South Wales to plan a large increase in prison and police numbers due to changes in the law. In fact, tenders had just closed for a new privately run prison of 600 cells at Junee in the mid-west of New South Wales.

In July this year, I visited the new Junee institution, which is the largest prison complex with the largest numbers in the southern hemisphere. I will refer now to some questions and answers regarding the Junee complex, because the matter has been raised during the debate, as follows:

Q: Has the Junee Correctional Centre performed to expectations?

A: Yes, it has. Perhaps the best evidence of this is the result of the recent performance audit on the operation of Junee conducted by the Department of Corrective Services. The Junee Correctional Centre had a report card showing a 96 per cent result. In those areas covered by the 4 per cent in which changes or improvements are required, rectification is already in hand. The report should be seen as a positive result for Junee and augurs well for the future. I think that it is impressive when one considers that these standards have been reached so quickly for such a large organisation.

I remind members that this organisation is only just over one year old. They continue:

Q: How does this compare with other correctional centres in the State?

A: Exact comparisons are not possible because other centres are not subject to the same type of audit [only the private institutions]; however, I am sure that the ACM result would compare favourably with any centre in the country.

Q: What about the levels of violence and incidents, including two deaths at Junee? Are these indications that the situation is out of hand at Junee?

A: Not at all. Indeed, the levels of such occurrences at Junee compare favourably with other similar centres. It would be unrealistic to expect that the largest correctional centre in Australia would remain free of incidents. The challenge facing the management is to minimise these incidents and their effects. In that respect, I feel that the staff at Junee are doing a good job.

Q: There have been a number of reports that Junee is understaffed. Is that true?

A: Junee is not understaffed. There has been a great deal of misinformation on this, no doubt motivated by those who would like to see Junee fail. The facts are that the management always maintains staffing levels well above that required to staff the facility on a daily basis. Like any other large facility, there are occasionally vacancies in key areas that must await recruitment action. However, the centre has never been in a situation where normal daily operation has to be discontinued, as has occurred often in many other correctional centres in the country.

Q: Are you satisfied with the level of training given to staff at Junee?

A: Yes, and I know that ACM and the Department of Corrective Services continue to monitor this aspect of operations at Junee.

Q: What are the major advantages of private correctional centres such as Junee?

A: The operator is bound by contract to deliver a service at a price and to a standard set and audited by the State. Before the arrival of the Junee Correctional Centre, this was difficult if not impossible to achieve [in the Public Service situation]. Moreover, the private operators at Junee have been able to deliver this service whilst maintaining industrial peace. . . and at a price that saves the taxpayer money.

Q: Has the local community accepted the existence of the Junee Correctional Centre?

A: It has been well accepted and for good reason. First, the centre presently employs more than 230 people. Secondly, ACM has a policy of buying locally where possible to sustain its operations and in doing so spends in excess of $1.7 million per year with local suppliers. Thirdly, ACM has a policy of fostering relations with the community through consultation with community representatives and leaders.

When I was at Junee I asked the obvious question: why put a prison way out in the mid-west of New South Wales? It is situated about one hour's drive west from Yass, which of course is west from Canberra. The simple answer to that question was that Junee used to be an important central point for the railway system in New South Wales. When that system was closed down by the State Government some years ago, about 700 people were put out of work. So it was a pretty wise political decision, amongst other things, to site the prison at Junee where at least 300 members of the local community, which suffered so badly with 700 losing work, have now been accepted for work.

When I was there I saw the in-house training taking place, bringing in local people and getting them ready for service in that institution. Getting back to the select committee's visit, we then moved to Queensland where, to say the least, the correctional climate was less harsh. For the sake of the Hon. Ron Roberts, I am not intending to go over and over select committee evidence; I am just trying to give the impression we got when we went from Victoria to the very harsh climate in New South Wales, to the less harsh climate in Queensland—and I do not mean the weather, I mean the correctional institutions climate. I found that the Queensland Government's emphasis was on keeping people out of prison and making extensive use of community service orders. I do not think anyone can make a judgment about the different attitudes of the New South Wales and Queensland Governments as far as corrections are concerned until more time has elapsed. It is not something to do instantly.

One piece of advice I had from a very senior American correctional administrator, around the same time as I visited Queensland, was that one should be very wary about community service orders as a substitute for certain offenders. The experience of this administrator was that these offenders, because of their soft punishment, were more likely to reoffend—remembering that re-offending in South

Australia is at about the 65 per cent level now anyway, with the prison system we have here. In the words of my adviser, it would be very unwise for any Government to assume that fewer prison cells need to be built because of any move by the court to increase community service orders.

I can simply explain that by reiterating that if that community service punishment is seen as a soft option, and if recidivism is still happening at 65 per cent, which is around what it is in the much harsher system, then Governments that are planning on giving more people community service orders are kidding themselves that down the track they do not need to have plans to build more prison cells, because it will all suddenly catch up with them with these community service orders backfiring, where some people may need to have the harsher sentencing of a prison system. Inevitably, there would be a catch-up of offender numbers and, without due planning, would catch the system well short of cells.

The select committee looked at the private prison at Borallon in Queensland. That prison was planned by a National Party Government at the end of its term, with the prison actually commissioned by the new Goss Government. I understand the decision was not an easy one, but I commend the Government on its courage and would like the Opposition here to have the same courage, and to look at the experience in Queensland. In preparing for this address I sighted a document noting the considerable anguish that the Minister and Cabinet in Queensland had when they took over this proposition, and I can understand that.

I would commend the Opposition and the Democrats here if they were to have that courage to do something positive for the correctional system in South Australia. Since the select committee visit to Queensland in 1991 the Goss Government has gone one step further and commissioned the Arthur Gorrie Remand Centre as a private institution. I did not go back through my records but we may have seen that: it was called Wacol; a pretty bleak sort of place, if I remember. In October 1991 the Queensland Correctional Services Commission (QCSC), frustrated at attempts to negotiate a productivity agreement with the prison officers' branch of the State Services Union, likewise sought expressions of interest from companies wishing to be considered as contract manager of its new remand and reception facility at Wacol near Brisbane, now Arthur Gorrie.

Indicative of the ideological angst which the ALP Government felt about this issue was the fact that the decision to privatise, which statutorily rests with the QCSC, was in fact the request of the Minister couched as a recommendation to Cabinet. In announcing the outcome, the Minister said it was the toughest he had ever made. The pill seems to have been sweetened by the fact that the contract price to run the prison was for $10.5 million per annum, over 40 per cent less than the estimated price if it were run as a public prison. The source for that was *Issues and Trends*, Australian Institute of Criminology, May 1992. From my report to Parliament on my study tour to the USA in 1991, I would like to draw out some comments from the conclusion, as follows:

> In five days I was fortunate to see six correctional facilities: two Federal, one State and three private. . . It was always of great interest to spend time with the wardens and others, trying to gain an understanding of the management style and guiding philosophies [of the correctional system in America]. . . One cannot help but be impressed with the wide range of academic achievement and practical corrections experience from wardens and prison officers. This has to augur well for a better prison climate.

The number of tertiary educated warders, senior warders and prison officers throughout the private and the public system, but particularly the private system, in America was very evident to me and, as I said, augurs well for the climate within a prison. There is a team effort to work with prisoners, to try to better their lot for when they come out. It is difficult, I suppose, to find statistics on that, but that was the very clear impression I had. Only time will tell if the style of unit management, which I have talked about before, is the ultimate for many years to come, because the select committee certainly looked at a number of styles of managing prisons.

We were made familiar with what goes on in Scandinavia, which was another issue. Minister Blevins would not let us talk to one of the senior managers from Scandinavia who was in Australia, which was a great pity. The Hon. Mr Gilfillan looked at the prison system in Sweden, I think it was.

The Hon. R.R. Roberts: Hadn't he gone back by that time?

The Hon. J.C. IRWIN: No, he was here for a conference. We tried to get a quick meeting with him, but it was denied. We certainly were made very familiar with the unit system, which I have talked about. It is well entrenched in America and in Australia now, as evidenced by the select committee inspection in South Australia. My report continues:

> The very best results from unit management, both in economic and management terms, can only be achieved if the whole institution is specifically designed and built.

That is why I made the comment earlier about Mobilong prison. The design is not too bad, and it could be reasonably easily changed, if a private operator or, indeed, the public system were to take it on, into a better unit management system than is presently there. I return to my report as follows:

> One is hearing often now a couple of phrases of importance [and this was written three or four years ago]: 'Those found guilty of crimes come to prison as their punishment; they don't come to prison to be punished.' And 'So long as the outer security of an institution is to the maximum standard available, various freedoms within the intuition can be allowed and encouraged.'

They are two phrases that influence me quite markedly in this instance. I am amazed that anyone was able to jump over two fences at Port Augusta yesterday. If those fences are properly constructed with a strip in the middle, which can pick up any movement, and razor wire I am amazed that someone went over the top so easily. I make the point that once you have that razor wire and tight security outside then what you do with many people inside is a different matter because they have already lost their freedom. They are not there to be punished every day; the idea is to try to pick up those who are unfortunate enough to be in prison and improve their lot. Any correctional system must be able to cater for the very worst offenders and those who will not conform to the standards of behaviour expected within the prison system. But every prisoner, no matter what the offence or length of sentence, deserves to start with a chance of progressing to better things and to earn his or her way out of maximum security to something better and so on down through the system.

My experience with the private system is that the entrenched idea that prison life revolves around clanging keys, slamming doors, toughness, etc. is out and the personal contact, humane treatment and emphasis on education and work skills has to be in. This change in style is working and is made easier to achieve by the private sector only employ-

ing those with academic qualifications and top correctional management experience. Those who are familiar with Borellon in Queensland know that that is exactly what has been done there. The Queensland department people who gave evidence to the select committee made this point very clear. There is evidence that, at least in Victoria, newly built prison facilities are staffed only or in the main by local people. There are those in Australia who say that rehabilitation cannot be achieved and that high rates of recidivism can always be expected. I did not hear that argument in America. In both State and privately run institutions the very strong emphasis was on education, work skills and preparing for release.

The process of basic education and work skills, including the work ethic, should be started well before anyone is enticed into criminal activities. Be that as it may, the correctional system has to deal with the problems prisoners bring with them, and the private system, I observed, was doing it better. I have already indicated that the environment is a great deal better in the United States, and that is a very important base from which to work. Drug rehabilitation, literacy, numeracy training, higher education goals and prisoner workshops were all developed to a very high standard. During the select committee tour of the eastern states and in South Australia we often heard that prisoners did not want to do this or that if they did not have to, with the alternative being to stay locked in their cell all day. I do not recall this situation being put to me at all in the United States. In all, but for a few hard cases, everyone took part in one learning experience or another.

It can be seen from various inmate breakdown statistics that drug related offences provide the major percentage of prison inmates. There is a uniform system of drug testing of prisoners on a random, computer picked basis; however, I was advised that drugs in prison in the United States was no great problem. It is a very large problem in South Australia. As one experienced prison officer said to me: if prison officers cannot detect inmates with a behavioural problem induced by drug taking then they do not know what their job is and should be removed. It is a commonly held belief that most drugs coming into prisons are brought in by staff and do not last long once they have been traced. My experience is that some drugs are brought in by contact visits, and that it is (and this is the sad part) in the best interests of the management of the prison to allow drugs into the prisons so that inmates can be doped to the extent where they do not cause problems. If that is the case in South Australia I find it damning.

I find nothing to fear from my experience of private correctional systems now being developed in Federal and State prisons in the United States. The competition is healthy and costs are well down per unit on Government run systems. It is important to note that the economic benefits should not be the only factor considered. The environment with the private institution is difficult to explain, but in my view makes possible a conducive climate for better learning and rehabilitation.

Cost comparisons per prisoner between the public and private sector must be based on all factors involved in the incarceration of a prisoner: apples must be compared with apples. I will do that later. The cost to the community for incarcerating a prisoner in gaol is by no means the only cost. If we start from the point that the community has no cost at all if there are no prisoners, and move through the system to include a high cost of recidivism, the community may understand that there is a great community cost benefit in preventing crime and recidivism. Therefore, it is important that the skill and education programs in prisons are such that there is a minimum return to the prison system. The correctional system is not responsible for failings in the education system, poverty or unemployment. They are very important factors. All those failings finish up as prime reasons for people being in gaol. There is no doubt that, if these areas continue to fail, community costs will increase. Poverty has doubled in Australia since 1982, unemployment is still unacceptably high and the education system is undoubtedly failing in the areas of numeracy and literacy.

So far as per prisoner costs are concerned, I quote the cost analysis from official statistics for 1993-94 (the first full year of Junee) using Junee private prison against the public prisons in New South Wales. The 198 minimum security prisoners at Junee cost 9 per cent more to administer than the public system: a minus against Junee. For 375 medium security prisoners at Junee the cost was 19 per cent more cost-effective than the public system. Borellon in Queensland was 9.5 per cent cheaper for prisoners than the public sector, and the Arthur Gorrie was 22 per cent cheaper. The average saving per prisoner in the United States, according to the U.S. Accounting Office, in 1991 was 18 to 19 per cent by the private sector, which has around 45 institutions. I know that dollar savings are not everything in a true analysis of the correctional system. Any thinking members of this Council or the Parliament must consider a whole range of other issues not covered by this Bill which add to the cost of the community of anti-social behaviour.

I turn to the Hon. Frank Blevins' proposal prepared for the Premier and Cabinet in 1991. This document outlines the reasons for the proposal that expressions of interest be called for the private operation of Mobilong and Port Augusta prisons. The document says:

> 2.1 A daily average of approximately [this is in 1991] 1 000 adult offenders are held in custody and a further 5 000 are supervised under community based programs by the Department of Correctional Services. In 1990-91 the recurrent budget of the Department was $65.5 million.
>
> 2.2 Between 1982-83 and 1989-90 $110 million was spent on capital works for corrections. Largely, this has been to expand accommodation and replace, redevelop and refurbish sub-standard custodial accommodation. This is reflected in the annual cost per prisoner which increased from $23 188 in 1982-83 to $58 911 in 1989-90. Further significant funding is projected by 1994-95 to complete the upgrading of prisoner accommodation and to provide for increased prisoner numbers expected by that time. In addition, prisoner projections indicate that planning for a new, high security prison will need to commence prior to the 1994-95 financial year.
>
> 2.3 Treasury is concerned that costs in corrections will grow disproportionately to the capacity of the State's budget to meet them. Current projections indicate 10 per cent increase in real terms in correctional expenditure in 1993-94 and Treasury has suggested that the Government should take the broad policy view that it cannot accept aggregate expenditure of that level.

The discussion section of the document states:

> 3.1 Privatisation appears to be the only strategy which may achieve substantial savings in the short or medium term. The Department of Correctional Services is required to make budgetary savings of $3.15 million per annum [which was later amended to $6.8 million per annum] within the next three years and $2 million of that is targeted through privatisation initiatives. Staff savings identified as part of award restructuring will be offset by associated costs.
>
> 3.2 Many privatisation options exist within corrections. Examples include contracting the writing of pre-sentence reports on a fee-for-service basis; increased use of casual staff; inviting tenders from the private sector for the use of prison workshops with prison labour and correctional industry officer supervision; and private contracting of

home detention and the community service/order fine option program. However, most correctional expenditure is in the financing, construction and operation of prisons and the provision of services to them. Therefore, the majority of any saving from privatisation initiatives will be in this area.

Point 3.3 talks about private prisons in other States and point 3.4 refers to competition between the private companies looking at contracts. In other words, there are at least two private companies already running prisons in Australia now and that competition is healthy.

In the notes of a meeting held on Friday, 19 March 1993, still under the old Government, there are some updated notes to that proposal. At that time a review committee consisting of representatives of the Department of Premier and Cabinet, Treasury, the public sector reform group and the CEO of Correctional Services noted the following:

· Correctional Services is a 'downstream' component of the justice system and is highly dependent on other parts of the system.

· . . . South Australia has the second highest rate in Australia of people remanded in custody prior to trial. This contributes to a high prison population.

· The impact of community attitudes on correctional administration via the political process was noted. There has been a trend towards longer sentences driven by sentencing appeals and this also has contributed to higher prison populations.

· Possible targets [for privatisation] include catering; perimeter security; external escorts; Sir Samuel Way Building holding cells; dog squad; new prison facilities; prison industries; supervision of offenders in the community; preparation of court reports. Primary targets would be Mount Gambier. . . and Yatala.

· There is strong support for this from management but strong opposition from the union.

· The industrial climate has been a critical feature of the department's operations with a highly militant work force strongly opposed to reform.

That is a point worth considering. The document further states:

· Labour is a major cost driver and productivity is low by world best standards largely because of the industrial climate. Considerable efforts have been made to deal with this, but only with limited success.

I hope that when the Hon. Sandra Kanck comes back from her parliamentary trip she considers these points very strongly put by a Minister in the Labor Government for correctional reform. The document continues:

· Problems were raised and noted in relation to the operation of the GME Act. It was argued that this effectively renders discipline impossible in the face of a workplace culture which is hostile to management.

· Mr Dawes [the CEO of the department] indicated the need for management to be empowered to deal with the problems of the correctional system.

This was in March 1993, just over a year ago. The conclusions of this high level meeting of officials were:

· It was acknowledged that the management is making concerted efforts to deal with the problems in the system but is being hampered by the industrial climate and political sensitivities.

The document then deals with some other steps that should be taken to try to solve some of the problems. Members should bear in mind that we are talking about 1993, which, as I said, is not that long ago. Senior Government advisers, including the Director of the department, were saying that there was strong opposition from the unions, a highly militant work force strongly opposed to reform, productivity was low by world best standards, workplace culture was hostile to management, and managers were being hampered by the industrial climate and political sensitivities.

Quite frankly, with these points in mind and the support for the submission to Cabinet, this is a damning indictment of the former Government for sitting on its hands for so long and letting all this happen. They are not my words: it is the committee saying it. It will also be more damning of us as legislators in 1994 if we likewise do nothing.

I acknowledge that our colleague the Hon. Sandra Kanck is away on parliamentary business. Nevertheless, I need to comment on her second reading speech on behalf of the Democrats on this Bill. I am disappointed and saddened by her contribution, which could have been made only by someone with little or no experience in the area of correctional services and/or rehabilitation. I do not say that unkindly, because exactly the same could have been said of me four or five years ago, when I entered the select committee process without any experience whatsoever. That is why I said that at the beginning: I had to put down that my experience was nil. So, I do not hold it against the honourable member that her experience is nil; I do not know whether or not that is the case.

The honourable member stated in the early part of her contribution that the Democrats oppose the Bill because they believe it morally wrong to make a profit out of incarcerating people. That suggests that the Democrats are totally ignorant of all the immense problems of the present situation in South Australia, including a total lack of education and rehabilitation measures with, as I keep saying, 65 per cent recidivism and per head costs through the year that are way through the roof. One wonders who Ms Kanck thinks is making the immoral profit. It is a really ignorant statement in this day and age.

I urge the Hon. Sandra Kanck and her fellow Democrat to join me and others in the real world and to take that one small step, which could be one large leap, that would have her accept that it is not morally, intellectually or physically wrong for a private firm to make money from the competitive administration of a prison with all of the many facets involved in that prison. Heavens above, members should listen to the advice that I quoted from Frank Blevins as Minister for Correctional Services in a Labor Government.

I am very sorry for the Hon. Ms Kanck if she accepts the position in our prisons right now, even if there has been some positive advance since the Hon. Frank Blevins's proposal and its 1993 update from which I quoted. She should talk to the Hon. Ian Gilfillan, who shared my experience on the select committee. He may not also endorse private management, but the really important thing for her learning experience is to hear from him exactly what are the conditions in our gaols or to look at them herself. How about the education? How about the learning of work skills? How about drug rehabilitation? How about preparing prisoners to re-enter the real world? Where are all these things now? Why are they not being done now? Why do we have 65 per cent recidivism? Why are the costs so high and getting larger? All these things are, or are not, happening now.

If the public system is so good why has it let things get so bad? Has the Hon. Ms Kanck member ever thought about that? If the public system is so good, what exactly does it intend to do to give the taxpayers a better deal for their money?

By 'a better deal', I mean cost-effective incarceration and a real go at helping prisoners rehabilitate for their own and everyone else's benefit. To follow the Western Australian model, which was quoted by Ms Kanck, would depend on getting her friends at Mount Gambier who had to resort to leaking their proposals to the media—and surprise, surprise that they resorted to do that—to contract to manage the new

Mount Gambier prison for $30 000 per prisoner per year. If they can get $30 000 per prisoner per annum now, why were they not able to do that one, two, three, four or five years ago? Perhaps Ms Sandra Kanck can tell me that.

The Hon. Mrs Kanck should be made aware of some of the hidden costs that are allocated by the Government when determining the real cost for the provision of prison services. I will go through a few of these because, as I said earlier, within States or countries you have to compare apples with apples and not have some wishy-washy system where capital is written off in one year and not in another and where departments do not account for costs associated with depreciation or amortisation. Many interstate comparisons exclude the cost associated with debt servicing. That happens in Adelaide with the Entertainment Centre and other centres where everyone says that they had a terrific year and made a profit, but they have not paid back any finance costs. There are the opportunity costs—taxes or rent forgone because of alternative use of land and buildings. Employment benefits, unfunded superannuation pay-outs, external administration overheads and costs associated with centralised agencies are not apportioned across operating agencies.

Some costs associated with legal services are not charged across Government agencies. Public funds are used for inmate plaintiffs and defendants, as well as to defend the Government. There are general liability costs and the Government's self-insurance plan. Private sector firms are inevitably required to seek insurance due to potential large liability claims. I also include property insurance costs. Governments self insure in most instances for fire, theft and so on. Private enterprise cannot do that.

Also, there is the cost of transportation. The Government does not pay the private sector costs for things such as motor vehicles, which are exempt from sales tax and often sold at a profit. The private sector does not enjoy this advantage. Governments do not pay certain taxes. In many instances items are tax exempt. Funds for things such as prisoner medical expenses are allocated from the Health Commission budget, not the prison or corrections budget. Also included are inter-agency costs. When personnel are borrowed from other agencies for routine or emergency services there is often no charge.

These are just some of the areas where there is no accountability for cost to Government. People conveniently say that the private system is no good because of the differences in cost between the private and public sectors, many of which are hidden, but that it is an unfair comparison.

Of course, it can be counterproductive for me to have a whack at the Opposition on this Bill. I urge the Democrats to stay on board for the Committee stage and not attempt to throw out this Bill at the second reading.

I wish to address two other matters. First, I made myself read the publication of the Public Service Association entitled 'How Much do you Know About Private Prisons?'. Having read that, I can say that it does not know anything at all. Much of the so-called information contained therein came from a paper published in the United States in 1988, for God's sake! It makes me wonder whether anyone in the Public Service Association knows anything at all about prisons, let alone private prisons. Why have its members let the situation get so bad in South Australia? I spent some time quoting the Hon. Frank Blevins, a former Minister for Correctional Services, in relation to this. Why have they allowed it to get to this stage without a whimper from the association?

The Hon. Ms Kanck had better ask the Public Service whether there is anything immoral about accepting wages and conditions from a department which is sending the system broke in terms of economics and prisoner treatment. This publication is rubbish—pure and simple. Members of the Public Service Association who paid for this publication and its distribution should be ashamed of it. There is nothing to be gained by my going through it point by point. Its propaganda works if the Public Service members who read it are gullible enough to swallow it. I have read it and marked passages which I could talk about, but I will not bore this Council any longer by referring to it in any detail.

In conclusion, I refer briefly to the remarks of the shadow Minister, the Hon. Terry Roberts. I understand the difficulty that Mr Roberts and his Party have in deciding whether or not to go with this sort of legislation. The first step is always difficult to take. There are fundamental philosophical directions to be resolved: I understand and appreciate that. If I were to try to find a single argument to put to the Hon. Mr Roberts and his Party about the advantages of the private sector and the prisons system it would be the advantage gained by the introduction of competition, just like we have competition in the schools, hospitals and many other areas where there is public and private competition.

The Hon. M.J. Elliott: Can you choose between a public and private prison?

The Hon. J.C. IRWIN: That is a reasonable point. You cannot, but one of the points being brought up against private prisons is that they take only the easy ones. Well, they do not take the easy ones; they take what they get.

The Hon. T.G. Roberts interjecting:

The Hon. J.C. IRWIN: They take what they get within the high security range in this State. Nowhere in Australia do high security go to a private prison, anyway. Medium to low security persons in other States do go to the private system. There is even competition in the private sector where two or more private companies are already running prisons in Australia. The Hon. Mr Blevins made that point himself.

Competition is not just about running down dollar inputs. There is an element of that, certainly, but where there is competition there is thinking and innovation. That is sadly lacking at the moment from any objective view I have had of the system in South Australia and most other States—that thinking and innovation is not there at all, certainly in not large enough lumps. That innovation can be in the workshop, education unit, getting ready for the outside world, etc. We have that awful position where we ask warders, 'Why are those people all sitting around in their cells when people are out working or have the opportunity to work or play?' and they say, 'They do not want to work, so they do not have to work. We cannot make them work. There is no innovation about how to get them to learn to work.'

We must find ways to do it better. Do members realise that up to 25 per cent of our young people are illiterate and/or innumerate at the end of their primary schooling? That is not my figure; it is widely accepted that up to 25 per cent cannot read or write in our system now. Do members realise that the illiteracy and innumeracy translates into the prison system at about 40 per cent plus of inmates? I did not realise that until I had the opportunity to find out. The reasons are obvious, but what do we do about it here in South Australia? Do we identify the prisoners in the Remand Centre who are illiterate or innumerate or on entry to the prison system, say, at Yatala? I do not think we do; we do not, in fact.

Do we try to provide a climate or specialist program where those who cannot read or write are persuaded to try? I do not think we do. We suffer and they suffer because of that. Can we see the advantage for rehabilitation if we can make progress just on that front? Where are the highly trained to tertiary level people in the present correctional system? Someone please tell me how many there are. I doubt whether there are very many. It is not the only factor; I know that. I have made the point that there are very harsh criminals in the system that no academic will necessarily counter. We must have a balance of both.

In the American culture, all administrators would be at least tertiary educated and qualified, and a good percentage of prison officers would also have degrees, as I have said. Also, they would have many years of experience in the correctional services area. Nobody has been able to achieve a cultural climate change in South Australia from within the present system. Many say we need one badly. The only way to achieve this is to introduce the element of competition. Members of the Opposition raised some issues during their contribution in the second reading—some in here and some in the other House—and I will refer to those briefly. The first issue was:

An argument has been developed that the private management Bill and industrial relations are in some way linked.

The information I have on that is:

· This is a completely invalid argument and is an attempt to mask a very important piece of legislation that is designed to vastly improve the competitiveness and quality of service to prisoners.

· Industrial disputation has arisen as a result of action by a small group of prison officers to recent changes made to the existing prison system to remove restrictive work practices and to reduce costs to national public sector levels. Institutions have made some significant improvements through restructuring and staff are to be commended for this, but they still have a considerable way to go.

· The recent report by the Grants Commission cites that the cost per prisoner in South Australia is some 25 per cent more than the other States for the management of prisoners. The debt laden economy in South Australia is not in a position to continue this practice and consequently the Government has undertaken on behalf of the community to reduce costs to at least the national level—

which is exactly the same position as the Hon. Frank Blevins wanted. Another issue was:

An argument has been raised that the Government should negotiate with the unions rather than 'privatise' at this stage.

The response is:

· The unions are being given an opportunity to contribute to the reduction of costs and have a say in the running of an efficient and effective correctional services system, that is, to keep the public sector slice of the prison system. All changes to unit management have been done in consultation both at the local institutional level and at fortnightly meetings with the PSA. Unit management will make a significant difference to the safety of staff and the rehabilitation of prisoners. Restructuring has generally gone very smoothly. For example, at Yatala changes were designed by a committee of some 16 representatives comprising staff, the unions, occupational health and safety management. To say that the Government does not consult with staff and the unions is therefore untrue.

· Furthermore, other Governments have gone down the road towards privatisation in an endeavour to draw the unions to the negotiating table. Privatisation of Mobilong and Port Augusta prisons were earmarked and a submission was prepared for Cabinet—

and I have alluded to that—

Legislation was not enacted and costs continued to stay above national and acceptable levels.

· The mere existence of the Private Management Bill has been the catalyst for a great number of changes that have taken place in the existing prison system. Failure to pass this responsible legislation may see competition for services based on quality and price recede and result to past restrictive work practices, excessive staffing levels and poor service delivery. The Government and the department is not prepared to let this happen.

States like Western Australia started from a totally different point. The Hon. Ms Kanck made the point that in the Western Australian model they did not look at the private system but went to work with their own community. The average cost in Western Australia is $43 000 per prisoner per annum, compared to that of South Australia, which is $56 000. A further issue was:

The notion that private prisons will receive all the 'good' prisoners.

The response to that is:

· Prisons are classified by the department and it will be the intention of the department to transfer prisoners to a prison that is commensurate with the classification of that prison.

· Should a prisoner's behaviour warrant a change in security rating, then that prisoner will be transferred to an institution with a classification commensurate with the new rating.

· It is not an uncommon practice to transfer prisoners from one institution to another for management and safety reasons.

· Prisoners with specific problems, particularly medical, will be stationed in an institution that best services their needs.

Finally, in relation to concerns about rehabilitation, the response is:

· The area of education, training, counselling, post release support, medical etc. are services that all prison operators strive to improve upon. The introduction of the private sector will promote competition in the area. Private contractors will be required to provide details on their proposals in this area during the contract negotiation stage.

· In fact, the private sector will be an impetus to actually raise standards. Performance indicators will be developed and applied to both sectors for comparative purposes.

· Contracts will be evaluated on both their quantitative and qualitative aspects. The Government is about improving standards, not lowering them.

· Profit will not be able to be made by cutting corners by reduced services to prisoners. The legislative and contractual requirements being developed are such that breaches can result in the termination of the contract.

I urge the Opposition and the Democrats to think carefully before they move in any way to knock out the initiatives of the Bill. As I read the Bill, there is no attempt or intent to privatise the whole prison system in South Australia. That is not the idea. There is no reason why we cannot set up a few private prisons in this State as constructive competition to the present system. I see no reason why the Parliament cannot insert a review procedure after, say, a five year operating period. That is not uncommon for these sorts of new initiatives where a review is instigated, after a reasonable period—and it would have to be five years. I feel very strongly, as does the Government, that passing this legislation will be of benefit to the State's taxpayers and, more importantly perhaps, to the people who actually run the prisons, who work in the prisons on a day-to-day basis and those who are being punished by being in prison. I support the Bill.

The Hon. R.D. LAWSON: I also support this Bill. Briefly, as members will be aware, the Bill is divided into a number of divisions dealing with discrete but related issues. Division 1A deals with private management and private undertaking of part of the services of prison operations. This division authorises the Minister to enter into agreements with any person—which, of course, incorporates a corporation—for the management of prisons or for the carrying out of any of the functions of the Department of Correctional Services. The Bill also contains safeguards and protections of public

interest in relation to such contracts. For example, management agreements are required by this Act to contain certain provisions. Clause 9A lists those that are required to be included. The next is Division 1B, which deals with private prisons. These provisions confer special powers on the Chief Executive Officer of the department to retrieve a prisoner from a private prison. Clause 9D provides for the arrangements in the event of emergencies, the appointment of monitors and the power to inspect private prisons.

The other provisions are mainly ancillary and of an evidentiary nature. However, proposed section 86A deals with immunity from liability, which is a matter I will address later. The Hon. Jamie Irwin has already covered in quite some detail and from his own extensive experience the reasons that make the proposal before the Parliament reasonable, sensible and modest. I will not repeat those matters. However, it seems to me, from reading speeches of objectors to the proposal both here and in the other place, they are based upon the proposition that punishment is a core activity of Government and is non-delegable. I certainly agree with the proposition that the allocation or the imposition of punishment for criminal behaviour is a core activity of the State.

But there is nothing in this Act which would seek to delegate that core activity. The State should not and cannot abdicate its central role in conducting a criminal justice system. This statement is not entirely absolute. Justice is usually administered in the name of the State by persons permanently employed by the State, but in England and in this country many judicial officers are private legal practitioners engaged for a fixed term to conduct criminal trials and impose sentences on behalf of the State. Merely to say that a particular function of Government is part of its core responsibilities is not to indicate that only the State can perform those. For example, health, education, police and defence are all core functions of Government, but that does not mean that these activities are the exclusive domain of the Government. As the Hon. Jamie Irwin said in his remarks this evening, all this measure seeks to do is to introduce into our correctional services system an element of competition which hitherto has been sadly lacking. So a distinction is drawn in the speeches of the opponents between the allocation of punishment, which is a State function, and the administration of it, which some people say is a core function but which in my view and that of the Government is not.

I do not wish to repeat much of the material that the previous speaker mentioned, so I will not examine in any detail the particular criticisms that he disposed of. However, I should refer to some of the writings and so-called authorities relied upon by the opponents. A good deal of trouble has been gone to by both the PSA and others to dredge up every possible academic who has opposed the privatisation of prisons. One article relied upon is a paper by Ms Amanda George, which appeared in volume 14, 1989 of the *Alternative Law Journal*. Ms George is a case worker at the West Heidelberg Legal Service. She is cited as an authority by reason of this paper, but an examination of it shows that its author has adopted an ideological opposition to the notion of private prisons and is entirely prepared to take extreme positions in her opposition, positions which are so extreme that they inspire absolutely no confidence in her objectivity. For example, Ms George writes:

> Private prisons will and have tried to impact on Government policy through lobbying just as any business concern does. Reductions in sentences and the promotion of alternatives to prison will clearly affect the potential market of private prisons. They will be in a position, however, to publish lurid descriptions of violence in prisons, reinforcing a perceived need for increased facilities. This will feed the imagination of the media creating an environment of fear in the community. Such tactics will support policies that ensure their beds are full.

The Hon. M.J. Elliott interjecting:

The Hon. R.D. LAWSON: Indeed, military conspiracy theories. Here is an author who says, without any evidence to back up the statement, that private operators will spread fear amongst the community in the interests of increasing prison populations.

The Hon. T.G. Roberts interjecting:

The Hon. R.D. LAWSON: That's irrespective of whether they are private prisons. Ms George states further:

> Because there is no law regulating cross-industry investment, there is the potential for investors in corrections to also have investments in media outlets. This would give them powerful resources to influence public opinion on law and order issues in a way that supports their investments. Cross-investment in media is particularly dangerous given the active and influential role that media takes in law and order issues.

Again, in my view that is an extreme position which, as I said, inspires no confidence in this so-called authority, which is relied upon by the opponents of this measure. Other so-called authorities relied upon are contributions to a conference held in Wellington, New Zealand in 1992 by the Australian Institute of Criminology. The proceedings of that conference were published in a volume entitled 'Private sector and community involvement in the criminal justice system'. A number of the contributors to that conference were relied upon as supporters of the Opposition's position, but many of those commentators spoke from preconceived positions. For example, Mr David Belton, Secretary of the Prison Officers' Association of Australasia, contributed a paper, relied upon by the opponents. He states:

> The Prison Officers' Association of Australasia opposes the privatisation of correction activities and prisons in particular.

He goes on to say:

> It is interesting to note the recent development of private sector involvement in corrections. However, it is appropriate in the first instance to understand that private management of prisons is not a new thing.

He thereafter quotes—

The Hon. T. Crothers interjecting:

The Hon. R.D. LAWSON: Indeed, 'bleak' is the word he uses, but he refers to information about private prisons which operated in the United States from the nineteenth century until the 1930s. The sort of lurid hyperbole quoted by this opponent is as follows:

> The history of private sector involvement in corrections is unbelievably bleak, a well documented tale of inmate abuse and political corruption. In many instances private contractors worked inmates to death, beat or killed them for minor rule infractions and/or failed to provide inmates with the quality and quantity of life's necessities (food, clothing, shelter, etc.) specified in their often meticulously drafted contracts.

The argument in the 1990s about the involvement of private sector corporations in prison management is in our experience far removed entirely from the lurid description given—

The Hon. T.G. Roberts interjecting:

The Hon. R.D. LAWSON: Kindergarten, perhaps. Mr Belton goes on:

> It is clear to prison officers and their unions that the motives of those who advocate deregulation and privatisation go to the maximisation of profits through low wages structure. A low wage structure for prison officers will not advance the efficacy of corrections; it will, in fact, prejudice it.

So the real reason for this resistance is opposition by particular unions to changing work practices in the correctional services area.

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

The Hon. R.D. LAWSON: Before the adjournment I was explaining that some of the opponents of private prisons were members of unions involved in correctional services, and that the objections of those people have been embraced both by the Australian Labor Party and also, it appears, by the Australian Democrats. The fact that we have industrial difficulties in our prisons and have had such difficulties for some years is notorious. It was well recognised by the previous Government and a previous Minister, the Hon. Frank Blevins, sounded a very clear warning to unions involved in correctional services on a number of occasions that they would have to lift their game or the Government of which he was a Minister would examine privatisation. That was a clear threat, and the Hon. Jamie Irwin earlier read from some of the documents that make it clear that the previous Government had recognised the difficulties that were occurring.

I am not one of those people who believe that every time there are industrial difficulties in any organisation it is necessarily the fault of the union. Sometimes it is; sometimes it is no doubt the fault of proprietors and management. Very often it is the fault of all three.

The Hon. T.G. Roberts: Does that mean whenever there is a problem in the private sector we can get some public ownership in and sort it out?

The Hon. R.D. LAWSON: Let us examine every situation according to the merits of the case. If anyone examined the situation of our prison system according to the merits of the case, he would see the existence of a clear opportunity to introduce some privately owned competition into the system. The Hon. Terry Roberts in this Chamber has recognised the industrial difficulties that presently exist within our correctional services system. He said in his second reading contribution that the Minister ought to have pursued negotiations regarding the restructuring, revamping and reconfiguration of work practices and the management of prisons so that some savings could be brought about through negotiations at an enterprise level. He is clearly recognising the existence of undoubted problems.

Our Government has chosen to introduce an element of competition into the system by allowing, in certain circumstances and subject to strict controls, private companies in some aspects of prison management. The opponents of private prisons seem to have steered away from citing the man whom I regard as an expert in the field, that is, Professor Richard Harding, a former Director of the Australian Institute of Criminology and presently Director of Crime Research in the law school of the University of Western Australia. In a paper published by the Australian Institute of Criminology in May 1992 under the title 'Private prisons in Australia', Prof. Harding first identified a number of what have been termed 'hazards' of privatisation.

He identified four of them: first, that occupancy rates and general incarceration policies may be driven by a private sector lobby intent on maximising imprisonment levels and, thus, the opportunity for profitable participation. Secondly, he identified the possibility that administration of punishment within the institutions may spill over into the allocation of punishment. Clearly, as I said before, there is a difference between the allocation of punishment, which is appropriately the function of the State, and administration of punishment, which is not necessarily the exclusive province of the State. The third hazard he identified was that accountability is likely to be inadequate in itself and less effective than within the public prison system.

The fourth hazard was that dual standards may develop, leading to a quality private prison system for prisoners posing no major management problems and an increasingly depressed and run down public prison system for outsiders such as racial minorities, the mentally unstable, violent offenders, drug dependent prisoners, lifers and those suffering from communicable diseases. As Prof. Harding said:

> It will be seen that most of these concerns may be exaggerated in the current Australian context.

If you need evidence of the capacity of those possible hazards to be exaggerated you have only to read the debates of the opponents of this proposal. Prof. Harding continues:

> However, an early case study indicates that, unless privatisation is properly regulated, these hazards may become realities.

So, he clearly identifies the hazards and says that they have to be properly managed. That is precisely what we have sought to do in this Bill.

The Hon. T.G. Roberts: You have no proof that proper management exists in the private sector.

The Hon. R.D. LAWSON: The protections are in the Bill. The honourable member says that we have no proof of performance. But there is evidence that the private institutions that are already being conducted in Australia are being conducted as efficiently, if not more efficiently, and meeting all appropriate criteria. No-one suggests, least of all the Minister and the Government, that private prisons are the panacea for our correctional services system; it is not a panacea. It is merely one tool in the management of a large problem. Prof. Harding concludes:

> Contract management of prisons by private operators seems to be here to stay—a small but growing component of the total system. Its impact has so far been positive, in terms of costs, conditions and prisoner programs. The prison system is becoming less introverted, not only as the stranglehold of uniformed officers over prison regimes starts to be confronted, but also as middle managers and senior administrators respond to competition. Also, the main pitfalls have been avoided, not only in terms of the abstract statutory provisions but also, it seems, in arrangements on the ground.

That was a judgment made in May 1992. This Bill seeks to introduce modest reforms by allowing the Government in certain circumstances and subject to certain protections to introduce an element of competition into a system that has had intractable problems. The Hon. Terry Roberts said in his second reading speech that there are no guarantees that the private sector will be able to run prisons any more efficiently or any more cheaply than could the public sector. Of course, there are no guarantees in this or any other exercise. However, in other places, private sector prisons—and not only private sector prisons but also private sector involvement in prison services—have been effectively delivered. The honourable member continued that he suspected that the current Minister believes:

> . . . that continual punishment needs to be meted out to prisoners, and his way of doing that is to have crowded prisons with continual threats of assaults by prisoners on prison officers and a climate of fear being built up in prisons through poor administration and management. In my contribution I have to separate this private management agreements Bill and the program inherent in it from the industrial relations problems that are being attempted at the moment.

I do not quite know what the honourable member meant by the final sentence. But it is clear in talking of continual threats of assaults by prisoners on prison officers and the like that he too has joined the call of doom and gloom and the bleak future for private prisons when there really is no evidence to support the proposition.

The Hon. T.G. Roberts: It will go on his record while he is a Minister because of the doubling up and three to a cell.

The Hon. R.D. LAWSON: His record as a Minister has been a creditable record given the intractable problems of our prison system. You cannot blame the current Government for the level of prisoners within our system at the moment.

An honourable member interjecting:

The Hon. R.D. LAWSON: You can, but you cannot effectively do it. You have the moral right to argue that the earth is flat but you do not have the scientific right to argue the proposition. It also was suggested by the honourable member in his contribution that private prisons will finish up with all of the easy prisoners and that the public system will finish up with those prisoners who are difficult and expensive to manage. Again, there is no reason why that need be the case. The prison system remains within the control of the Government and the Department for Correctional Services. It will be up to the Government to manage it appropriately. There is nothing in the Bill to suggest that it will be managed so that the private sector will thrive whilst the public sector suffers.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.D. LAWSON: Finally, the Hon. Terry Roberts made the statement that our system in this State is as good as any interstate.

The Hon. A.J. Redford interjecting:

The Hon. R.D. LAWSON: Indeed. Ours is the most expensive system when viewed per cost of prisoner. By that mechanism we are well above the average Australian cost. We ought to have a system which is as good, if not better than, the interstate ones. It is not demonstrably as good as any of those interstate but what this Government seeks to do by this measure is improve our prison system. Let us not be complacent about it even if it is as good as those in the other States. Let us improve it and make it better. Let us get better value for the taxpayers' dollar and let us give better service to the community. Let us do better with the prisoners incarcerated. At the moment the level of education and other programs offered is abysmal. There is ample room for improvement and, as the Hon. James Irwin has observed, in other areas the private prison system has a better record for rehabilitative programs than our system.

The Hon. T. Crothers: Not in the United States.

The Hon. R.D. LAWSON: In the United States there is variable experience. We believe that we can manage it well here. If it is not managed properly no doubt you will remind the Minister of the fact that he is not managing it properly. What the opponents of this system are doing is preventing the Government from making improvements in this area. They are tying the Minister's hands behind his back and improving the position of their friends in the trade union movement who have been quite intractable on this issue for years, notwithstanding the Blevins threats.

The Hon. Sandra Kanck said that she considered it morally wrong to make a profit out of incarcerating people. On that basis it would be morally wrong for a wheelchair manufacturer to make a profit out of the misfortunes of its customers. It would be morally wrong for a doctor to make a profit out of the misfortunes of his patient or for a plumber to profit from my misfortune to have pipes that explode under the house. It would be morally wrong for a restaurateur to profit from one's hunger.

The Hon. A.J. Redford: It would be morally wrong to operate private hospitals.

The Hon. R.D. LAWSON: Indeed. It would be morally wrong for those who set up the Home for Incurables to charge fees for providing a service. It would be morally wrong for those private hospitals presently providing services. It would be morally wrong for someone who runs a hospice because they are profiting from the misfortune of their patients.

Members interjecting:

The Hon. R.D. LAWSON: Indeed. This proposal does not inflict any difficulties on the community. In fact, it provides a benefit to the community. It does not inflict any harm upon those incarcerated in institutions. The Hon. Sandra Kanck also identified the issue which, as I outlined in the opening part of my remarks, is a serious one. She referred to the question of delegating to a private organisation a part in the correctional system. I have said consistently that I do not believe that private organisations ought to play any part in the allocation of punishment within our criminal justice system. The Bill before the Council does not allow any private organisation to allocate punishment in the sense used.

Section 42a of the existing legislation provides that managers of prisons at present can impose small summary penalties for minor breaches of regulations. These are disciplinary infractions and not breaches of the criminal law. So far as I am aware there has never been any objection from members opposite to managers of prisons having the capacity to impose penalties for disciplinary breaches.

The existing legislation contains protection. Where a prisoner is charged with some minor breach of regulations he or she has two options. First, the prisoner will be advised of the breach by notice in writing, given the option to be charged and accept the penalties detailed in the section for which the maximum is a forfeiture of privileges for a maximum of seven days or exclusion from work for up to seven days, or both. The prisoner is told in advance of the proposed penalty and may decide whether or not to seek a full hearing. If the prisoner accepts the penalty no hearing or further action is taken.

Secondly, as another option, the prisoner can elect to be charged. If he or she does elect to be charged a formal hearing with the manager will take place under section 43 of the Correctional Services Act. If the charge is proved beyond reasonable doubt the prisoner is subject to forfeiture to the Crown of up to $25, forfeiture of privileges for a period not exceeding 28 days, or exclusion from work for a period up to 14 days, or a combination of them. A reprimand can also be issued.

The point about this is that the forfeiture is to the Crown. There is no suggestion of any amendment that would make it possible for a private company operating a prison to impose penalties on prisoners or exact penalties and receive the fines. If in a private prison there is a breach of discipline the same system would apply. The only difference would be that the manager of the prison imposing the fine in these circumstances would be employed by the correctional company rather than by the Government of the State. The only difference would be the fact that his salary cheque came from a different source.

There is no suggestion that it will be open to a private correctional company to levy fines against inmates or to

extend by protracted periods the length of time for the purpose of ensuring continued payment of fees to the company.

The Hon. T.G. Roberts: What about providing benefits for rewards at a later date?

The Hon. R.D. LAWSON: Exactly the same system would obtain. Of course, as the honourable member will be aware, the remission system has been abandoned in the interests of truth in sentencing. However, the system with regard to privileges, the removal of privileges, the waiver of privileges and the conferring of benefits will be the same. There is nothing in the Act to suggest that a different regime would apply under a private company in this regard than under the Government system.

First, there is no suggestion that prison managers under a private company will be able to allocate punishment in a way that is inimical to the public interest.

The Hon. T.G. Roberts interjecting:

The Hon. R.D. LAWSON: The honourable member keeps saying 'or provide benefits'. I do not know which particular benefits he has in mind. I am saying that there is absolutely no difference. If he or she is entitled to any benefit under the present system—

The Hon. T.G. Roberts interjecting:

The Hon. R.D. LAWSON: The same regime will apply. The court will impose the sentence, and the prisoner will serve that sentence, presumably in most cases in an institution operated by the Government, and on other occasions, or for part of his sentence, in an institution operated by some other organisation.

The second way in which punishment can be inflicted on a prisoner under the present system occurs where the prisoner objects to a penalty imposed by the manager. There is an appeal to the visiting tribunal, which must comprise either a magistrate or one or two justices of the peace. Again, that system would continue to apply in respect of any privately conducted institution.

There is another form of redress available under the Correctional Services Act. A prisoner may approach a prison inspector, being someone who is appointed in accordance with section 20 of the Act.

An honourable member interjecting:

The Hon. R.D. LAWSON: Yes. A prison inspector must be a retired magistrate, a judicial officer, a legal practitioner or a justice of the peace, and that system will continue. Prisoners have rights to voice concerns to the Ombudsman. They have rights to voice concerns to members of Parliament.

The Hon. A.J. Redford interjecting:

The Hon. R.D. LAWSON: Yes, as the Hon. Angus Redford says, by way of prerogative writ and in certain circumstances to the courts. All these means of redress and remedy will continue to apply for those prisoners who are detained in private institutions.

Finally, or course, we have introduced in the Bill the notion of a monitor or a series of monitors who will monitor the performance of those managing prisons under private prison agreements. That monitoring system is yet another safeguard available to prisoners.

In conclusion on this aspect, I say that the concerns which have been expressed about the possibility of a private company's allocating punishment are concerns which, upon examination, have no basis in fact. Indeed, this measure is being killed by the Opposition and by the Democrats, not on the basis of any of the arguments put either by the Minister or by the proponents of the system but because of some ideological opposition to reform in the prison system.

I should mention a couple of other points made by the Hon. Sandra Kanck. During her contribution on the second reading the honourable member raised the rhetorical question: what is the agenda? Those who go looking for conspiracy theories in relation to this measure are barking up the wrong tree. This is simply a measure designed to improve a system which is already the most expensive in the country and which is not delivering demonstrably better results than other systems.

There is no hidden agenda; this matter has been fully debated. It was widely considered by the previous Government; it is not something that has been dreamt up by this Government. It has been adopted by other Governments in this country, including the Goss Labor Government in Queensland.

An honourable member interjecting:

The Hon. R.D. LAWSON: It does work. The Hon. Sandra Kanck went on to express astonishment at the fact that the prison population was likely to increase by approximately 40 per cent by the year 2000. She claims that that was an astounding statement by the Minister. Well, it is a correct statement based upon the projections that the Government has. It is no part of the policy of this Government to encourage increasing the prison population. We would like to see the prison population declining. However, the fact is that in this State and elsewhere prison populations are increasing.

The Hon. T. Crothers interjecting:

The Hon. R.D. LAWSON: They are increasing. They will not decrease until this country gets out of the economic mire that it is in as a result of policies of another Government elsewhere in this country. So, there is no need for the Hon. Sandra Kanck to express astonishment at a pure statement of fact: our prison population will increase.

Finally, I should mention briefly the section dealing with immunity from liability. It is proposed that section 86A of the principal Act be repealed and another section substituted. This section will provide that an employee of the Correctional Services Department will incur no personal civil liability for any Act or omission done in good faith under his powers under this Act, and a liability that would otherwise lie against the employee of the department lies against the Crown.

The purpose of a provision such as this is not to destroy the right of action of someone who might have a right of action with respect to a negligent performance by the employee of his duties but to alleviate the employee from that liability and ensure that the liability lies directly against his employer. A similar provision is included—

The Hon. T.G. Roberts: What happens if the management makes a mistake: the Crown picks up the bill?

The Hon. R.D. LAWSON: Indeed. The Act goes on to provide, under the proposed amendments, that an employee of a management company—a private correctional company—is entitled to similar immunity from suit, but the action would lie against the employer.

The Hon. T. Crothers: What happens if a person is put in a privately-run institution?

The Hon. R.D. LAWSON: It is the same position as the Government institution.

The Hon. T. Crothers interjecting:

The Hon. R.D. LAWSON: The right to claim inures against the operator of the prison.

The Hon. T. Crothers interjecting:

The Hon. R.D. LAWSON: That is a question of causation.

The Hon. T. Crothers: So it does raise that problem with the privatisation.

The Hon. R.D. LAWSON: That is not a problem which arises by reason of privatisation; that is a problem which arises irrespective of privatisation.

The Hon. T. Crothers interjecting:

The Hon. R.D. LAWSON: Indeed it would. These provisions arise out of a decision in England in 1970 in the *Dorset Yacht Company v. Home Office*. In that case some borstal boys, under the supervision of prison officers, were encamped on an island whilst on some form of exercise. Off that island were moored some yachts. Some of the boys, in an attempt to escape, boarded one of the yachts and, in their haste, inexperience or both, damaged another yacht. The yacht owner sued the Home Office, being the employer of the prison officers. It was clear, on the findings in the case, that the prison officers had been negligent in the way in which they had structured this exercise.

The Home Office, as employer of the prison officers, was held liable to reimburse the owners of the damaged yacht for the damage that they had suffered. That case established the principle that in this situation there is a sufficient relationship of proximity between prison officers on the one hand and those whose property or person might be damaged in consequence of the negligent performance by officers of their duty on the other hand. I strongly support the second reading of this Bill and the measure inherent in it.

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

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE BILL

Bill recommitted.

Clauses 1 and 2 passed.

Clause 3—'Objects.'

The Hon. K.T. GRIFFIN: It may be helpful to the Committee if I outline what I propose to do in relation to a whole series of amendments. When the Bill was last in Committee I think I indicated, if not during Committee then certainly privately, that the advice I had received from officers was that there were inconsistencies within the Bill—the terminology was not consistent and there were matters which could have been better expressed than they were.

I took the view that, because this issue was so controversial, the least we could do was try to tidy up the drafting without adversely affecting the principles so that, when the Bill left the Council, at least it was a coherent piece of legislation which could be the basis for proper debate in the House of Assembly.

Having said that, I had my officers work through the legislation, and the amendments which are now before the Committee are largely as a result of that process—looking for inconsistencies, places where the drafting could be tidied up and areas where there was a lack of coherence. What my amendments largely do is address those issues—not the issues of principle which have already been debated at length in the Committee. From my point of view the only issue of major concern comes on clause 10.

Members will recall that when we were in the Committee stage, considering what was then clause 9, I indicated that I would want to recommit in particular the provisions relating to the review of decisions by the Supreme Court for the purpose of clarifying the power of the Supreme Court. It seems to me that that is the only area within the whole series of amendments that is of a more substantive nature; the others are essentially drafting matters.

I freely admit that in the attempt to make it coherent there may have been some slip-up somewhere, but I would ask members to accept what I am doing in good faith in seeking to clarify the drafting without amending the principles which have already been resolved. There then will, of course, be a major debate at the third reading, and I will be speaking at that point.

When I first came into the Council, Ren DeGaris said at a very early stage that the whole object should be to seek to improve the legislation, even if one does not agree with every aspect of it, so that it will leave—

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: It is not a matter of saving time. The Hon. Carolyn Pickles is being rather flippant about it. I am trying to put on the record a responsible position about the way in which I have approached this Bill. People can argue with me about the principle if they like, but I was saying that it has always been my view that we should attempt to improve the Bill and, if we are still unhappy with the principle for some reason or another, even though it may have been improved, we can take a decision then. I think it is a responsible position to put, and that is what I seek to do with respect to these amendments.

If the Hon. Carolyn Pickles does not like it she does not have to support these amendments. It is a genuine attempt to try to improve the drafting of the Bill without reflecting on the principles, except in relation to clause 10. I move:

Page 1, lines 22 to 25—Leave out paragraph (a) and insert—

(a) to make certain reforms to the law relating to consent to medical treatment—

(i) to allow persons of or over the age of 16 years to decide freely for themselves on an informed basis whether or not to undergo medical treatment; and

(ii) to provide for anticipatory grant or refusal of consent to medical treatment; and

(iii) to provide for the administration of emergency medical treatment in certain circumstances without consent.

The objects of the Act are set out in clause 3. They do not refer to anticipatory directions about medical treatment. This amendment sets out that providing for the making of anticipatory directions about medical treatment is one of the objects of the Act. I should point out to members that there was some debate about the form of what was paragraph (i) in the Bill, because it referred to 16 and there was some uncertainty about how that would apply. Members will note that in paragraph (ii) I have sought to address that issue with respect to anticipatory decisions as the age of 18, which is reflected within the Bill.

The Hon. DIANA LAIDLAW: I support the amendment. In general terms, I would like to commend the Attorney for the approach that he has taken on this matter not only on this amendment but on quite a number of amendments that will be addressed during the recommittal of this Bill. The Bill will be better in terms of consistency and clarity for the work that has been undertaken by the Attorney and his officers. The Parliament should be pleased that that work has been undertaken.

Amendment carried; clause as amended passed.

Clause 4—'Interpretation.'

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

Page 2, after line 9—Insert:

'available'—for availability of medical agent to act under medical power of attorney, see section 9(2).

This amendment inserts a new definition of 'available'. Clause 4(2) sets out when a medical agent is regarded as being available to make decisions about the medical treatment of another. Clause 9 makes provision about when a medical agent is not entitled to exercise a power under a medical power of attorney and when a medical agent will not be regarded as available to make a decision about the medical treatment of the grantor of a medical power of attorney. It is confusing to have these provisions in separate sections, and the way the word 'available' is used in them does not sit well with the words 'reasonably available' in clause 13, subclauses (3) and (4). Accordingly, these provisions have been rearranged, and this definition, which is actually in an amendment to clause 9(2), which I will move later, is needed as a result of this rearrangement. These amendments do not change the substance of the clauses.

The Hon. DIANA LAIDLAW: I support the amendment.

Amendment carried.

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

Page 2, line 32—Leave out 'is not competent to make' and insert 'is incapable of making'.

The definition of 'representative' refers to a person not being competent to make decisions for himself or herself. This needs to be changed to be 'incapable' to be consistent with the other provisions of the Bill which refer to persons being incapable of making decisions for themselves. Members will remember that we had a rather lengthy debate about 'capacity' and 'incapacity' and 'competent' and 'incompetent'. I won it on one occasion but lost it on others. Now I must concede that the majority view was to refer to 'incapable' and that is why this amendment is now before the Committee.

The Hon. DIANA LAIDLAW: I support the amendment. I recall the debate to which the Attorney refers, and I thank him for his work in bringing a consistency to this Bill.

Amendment carried.

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

Page 3, lines 4 to 7—Leave out subclause (2).

This amendment deletes subclause (2). It is consequential on the rearrangement of the provisions relating to the availability of the medical agent to which I referred earlier.

Amendment carried; clause as amended passed.

Clause 5 passed.

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

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

Page 4, line 5—After 'person' insert 'of or'.

This amendment changes the reference to 'over 16 years' to 'of or over the age of 16'. This is to make sure that persons who are actually 16 can consent to medical treatment. I suppose there is some question about it, but it was always our intention, as I understand it, that it should be when you reach 16 you can then consent. Whilst a day over 16 is probably sufficient, I felt that it was important to put the issue beyond doubt.

The Hon. DIANA LAIDLAW: I support the amendment.

Amendment carried; clause as amended passed.

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

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

Page 4, line 9—After 'person' insert 'of or'.

This amendment changes the reference from 'over 18' to 'of or over the age of 18'. This is done for the same reason for changing the references to over 16—again, to ensure that there can be no quarrel about what is actually meant. It is quite clear that, when you turn 18, you ought to be able to make the decisions which are referred to in this and the next clause. That is the reason for the desire to clarify the drafting.

Amendment carried; clause as amended passed.

Clause 8—'Medical power of attorney to be produced.'

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

Page 4, line 31—After 'person' insert 'of or'.

I move this amendment for exactly the same reasons.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 5, after line 27—Insert the following paragraph:

(iii) medical treatment that would result in the grantor regaining the capacity to make decisions about his or her own medical treatment unless the grantor is in the terminal phase of a terminal illness.

When we last discussed this clause, there was concern about the extent to which a medical agent could go in refusing medical treatment. Some members gave examples of a person in a post-operative state who would go on to make a normal recovery, but the agent could, theoretically at least, refuse treatment on the patient's behalf during the post-operative period of incapacity. I think the Hon. Michael Elliott was concerned in this regard, and his concerns were echoed by others. Another example was a person in a diabetic coma who lacked the capacity to make decisions during that period. In those circumstances, and if a patient was not in the terminal phase of a terminal illness, the treating medical practitioner who had some doubts about the medical agent's decision, could apply for a review of the decision. However, that mechanism seems not to be sufficient for some members, and there still seems to be some feeling of unease amongst some members.

Therefore, I have placed an amendment on file (and I notice that the Attorney has a similar amendment on file), following some thought and discussion with palliative care specialists, which I think will achieve three things. First, it addresses the situation of reversible incapacity, such as with a diabetic coma or post-operatively, where appropriate medical care can readily restore a patient's decision making capability. A second instance would be in the sense that it asserts the primacy of the individual's direct autonomy over the surrogacy of an agent. Thirdly, it enables medical agents to have continued authority to represent the wishes of patients who are permanently incapable of making medical decisions because of terminal disease or a persistent vegetative state.

I will give a couple of examples to assist the Committee. I cite the hypothetical case of a person in a diabetic coma, when that is all that is wrong with the person. The medical agent cannot refuse treatment which will get that person out of that state. Another instance would be if a person is in a terminal phase of a terminal illness and in a diabetic coma, then the medical agent can refuse treatment. The third example is of a post-operative situation where a person cannot make a decision and the medical agent cannot refuse treatment which will result in the person regaining the capacity to make decisions. As I have said previously, I find the notion that one's medical agent might act as one's worst enemy quite distasteful, and I think that is the view of the majority of members of this place. However, that seems to have been a feature of thinking during this debate. Therefore, it is my wish in moving this amendment that we overcome

any such uncertainty and, if the Attorney does not have the same amendment on file, he should have, because it is such a sensible amendment and it clarifies the situation, which I know was of concern to him. I suspect that he will support my amendment strongly.

The Hon. K.T. GRIFFIN: I do. I saw that this amendment was on file, and I was happy to support it. It clarifies the position by adding to clause 8(7) a further limitation upon the authority of an agent. When I prepared my amendments on this subclause, I wanted it to go much further than the Minister is now moving. I took the view when I was going through the reprint that I would not seek to revisit a number of the issues of principle but, as the Minister has, I am delighted to indicate my support.

The Hon. M.J. ELLIOTT: I had drafted an identical amendment but not circulated it when last we debated this matter. I did not move it at the time because of other amendments that were on file. I wanted to see how things panned out. It seems to me that this amendment addresses concerns raised by some members, although I feel that the Bill adequately addresses those already, but the important thing is that this amendment does not change the intent of the legislation or undermine it in any way, as other amendments had a tendency to do.

The Hon. BERNICE PFITZNER: I also support this amendment, but I am surprised that it needed to be inserted. It seems to me that some of us still feel that medical agents want to pull out the plug as soon as the grantor is unconscious. When a person is unconscious following a motor vehicle accident, you know that something has happened but, if a person is unconscious on a trolley emerging from an operating theatre or without a single blemish on the body, that is quite different. In that case one would withhold any sort of termination of life sustaining measures. From my point of view, I find it unnecessary, but for those who feel it makes them more secure and comfortable I am happy to support it.

The Hon. ANNE LEVY: I would like to ask a question of the Minister for Transport relating to what a medical agent can do if a medical power of attorney has been given. What would be the situation if the individual concerned had said, 'If I go into a coma I do not want treatment that will bring me out of it' and had made an advance directive to that effect or had put certain conditions in the medical power of attorney? I refer to the Attorney-General's amendment, which states:

> Leave out subclause (8) and insert—
> (8) The powers conferred by a medical power of attorney must be exercised—
> (b) if the grantor of the power has also given an anticipatory direction—consistently with the direction.

The CHAIRMAN: Order! Is the honourable member using that as an example, because we are not debating that?

The Hon. ANNE LEVY: Yes, I am using it as an example of an anticipatory direction which the medical agent is bound to follow which states, 'If I go into a coma, I do not want to be revived.' One should consider the situation of a Jehovah's Witness who objects strongly to receiving a blood transfusion. Lack of blood may result in that person's becoming incapable of making a decision, but they have given an anticipatory direction that under no condition are they to have a blood transfusion. The medical agent has been told, 'Don't let me have a blood transfusion.' Would it be possible under this clause for a transfusion to be given against the wishes of a grantor who does not wish to have a blood transfusion?

The Hon. M.J. Elliott: It is a different clause. This is a medical power of attorney not an advance directive.

The Hon. ANNE LEVY: Yes, but there is also the suggestion that the medical agent must abide by directions written into the medical power of attorney and also by anticipatory directions. If both those directions written by a Jehovah's Witness say, 'I am not to have a blood transfusion ever under any circumstance', would the suggested amendment allow that to be overridden against the wishes of the grantor?

The Hon. M.J. ELLIOTT: I would have thought that clause 7 would apply. An advance directive stands in its own right regardless of whether or not a medical power of attorney has been granted. This particular subclause to which we are referring relates only to medical powers of attorney and what someone else might do solely of their own discretion having been given the power of attorney. It would appear to me that a Jehovah's Witness would make sure that they filled in an advance directive. Therefore, the treatment would be subject to clause 7 and not to clause 8.

The Hon. ANNE LEVY: In response to that, clause 8(7) provides:

> A medical power of attorney—
> (a) authorises the agent, subject to any conditions and directions contained in the power of attorney. . .

If the direction is 'Under no circumstances let me have a blood transfusion', would that mean that the medical agent could be overridden and a blood transfusion given, even though there is a clear direction from the Jehovah's Witness patient that under no circumstances does he want such a thing?

The Hon. M.J. ELLIOTT: The whole point of what is happening in clause 7 is to make sure that the agent does not do more than you ask them to do, or the opposite of what you ask them to do. Probably, to be safe, if you want to give a direction in relation to a particular medical treatment that you do not want, and you want to ensure that treatment is not given to you, you really should do it by way of advance directive. But if you look at clause 8, it is ensuring that you do not give a directive that a certain treatment is or is not given and the person given the medical power of attorney does the opposite. That is what is trying to be avoided in this subclause, so I do not think the problem the honourable member is raising exists in reality.

The problem you would have is if the Jehovah's Witness chose to give their directions to their medical power of attorney only subject to schedule 1. There might be a difficulty in those circumstances, because only section 8 of the then Act would apply. I would strongly advise anybody who has some special request, if you like, an extraordinary request, that they really should entrench it within an advance directive rather than by way of power of attorney.

The Hon. ANNE LEVY: I am not fully happy with this. Quite obviously, if an anticipatory grant or refusal of consent to medical treatment has been written by the Jehovah's Witness, that will stand and no blood transfusion can be supplied, even if death is the result. However, if a Jehovah's Witness does not give an anticipatory grant but appoints a close relative as medical power of attorney and gives directions in that power of attorney under clause 8(7)(a), saying 'I do not want a blood transfusion ever', that Jehovah's Witness would presumably feel that they had made their position very clear and would expect it to be abided by. Yet, it seems to me that the Minister's amendment will mean that that can be overridden in those circumstances, even

though it is perfectly clear that it is against the religion of the person concerned, and they will be revived with a blood transfusion: which is certainly not the case under the existing law.

The Hon. M.J. ELLIOTT: One of the concerns we have always had—and I think the Hon. Anne Levy and I have agreed on this every time we have discussed it—is that, if we make a directive, we want it to stick. To make sure that my directives stick I will ensure that I fill in a schedule 2 form and I suggest that the honourable member do the same. I guarantee that every Jehovah's Witness in the State will do that as well, because they will share the knowledge. In fact, they might decide to fill in both, and I cannot see why you cannot fill in a schedule 1 form and then say 'The directions are as per my advance directive, which is attached', and you would fill in the two. The options are available: you could fill in either.

There is no reason why you cannot fill in both, and I suspect that many people might choose that option. I am saying that there is nothing to stop you from getting the result you want so far as the law allows, and I do not think the law will stop the honourable member from doing what she wants to do, at least as she has described it.

The Hon. A.J. REDFORD: As I understand clause 7, it comes into play only if someone is in the terminal phase of a terminal illness, so, if a Jehovah's Witness gives a direction pursuant to clause 7 not to have a blood transfusion, that direction would be followed only in the event that that person is in the terminal phase of a terminal illness. Therefore, a direction under clause 7 of the nature the honourable member is talking about would not apply unless that Jehovah's Witness was in the terminal phase of a terminal illness. If the Jehovah's Witness wants to give a direction under clause 8, he can do so by his or her medical agent, and that direction binds the agent whether or not that person is in the terminal phase of a terminal illness, with the provisos set out in subclause (7), in particular subclause (7)(b).

The first is the food and water issue; the second is drugs to relieve pain or distress, and then there is this proposed clause. According to this proposed clause, if the grantor of the medical power of attorney is in the terminal phase of a terminal illness, such a direction can be given. But if under this clause he is not in the terminal phase of a terminal illness, no such direction can be given. The net effect as I read this legislation, and I stand to be corrected by either of my two legal colleagues, is that a Jehovah's Witness who wants to refuse a blood transfusion either by way of a direction or by way of a medical power of attorney cannot do so unless that person is in the terminal phase of a terminal illness.

That is my understanding, and I stand to be corrected on the interpretation. I might say that if this clause is not passed I as a lawyer would not understand the law to be any different if subclause (b) contains just subparagraphs (i) and (ii). That is, again, a Jehovah's Witness would not be able, either by his medical agent or by a direction under clause 7, to have a medical transfusion refused unless that person were in the terminal phase of a terminal illness. In the example that the honourable member gives, on my understanding, it makes no difference to that situation.

Members interjecting:

The Hon. DIANA LAIDLAW: That is right. The advice that I have is that if you have issued a medical power of attorney and an anticipatory direction, those requirements are satisfied if you apply clause 8(7), coupled with proposed amendments to clause 8(8), and then that treatment cannot be denied. That is the advice that I have been provided with.

The Hon. ANNE LEVY: It seems to me that we are taking away the rights of Jehovah's Witnesses. Currently, Jehovah's Witnesses, provided that they are adult—it does not apply if they are children—can say 'I do not want a blood transfusion under any circumstances: even if a blood transfusion will restore me to full health and without a blood transfusion I will die'. They prefer not to receive a blood transfusion and to die, and this has happened in this State. But if you are conscious and dying from lack of blood, you may well become unconscious shortly before death; at which time, according to this Bill, there is no way one can stop a medical practitioner giving them a blood transfusion completely against their wishes.

The Hon. K.T. GRIFFIN: With respect, that is not right. The fact is that, if an individual is conscious, makes a decision and gives a direction to the medical practitioner by saying 'I do not want a blood transfusion', this provision does not override that. All it says is that if you grant a medical power of attorney then your medical power of attorney cannot override that. But the medical power of attorney, if you were unconscious at the time, cannot then give a direction that you cannot have a blood transfusion.

The Hon. R.D. Lawson: It is unnecessary because you have already given the direction.

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

The Hon. M.J. Elliott interjecting:

The Hon. A.J. REDFORD: I will respond to what the Hon. Michael Elliott said. The way this legislation is drafted, and as I understand the existing law before this legislation came up, is that a person who is a Jehovah's Witness has every right to say, as any member of this Chamber has, 'I refuse to have this treatment or any other treatment.' What this legislation seeks to address is what happens to someone if they are not in a position to give a direction, if they do not have the capacity for whatever reason to give a direction. In the circumstance the Hon. Anne Levy has outlined, if the Jehovah's Witness has not given a specific individual direction, that is, 'I shall not have a blood transfusion', then the only option that the medical practitioner has under this legislation is either through the medical direction or through the medical power of attorney. They cannot refuse, through either of those two means, a blood transfusion in either of those two cases unless they are in a terminal phase of a terminal illness. As I understand the position, that is the same as the current law. In other words, there is no power under the current law for someone to refuse medical treatment through any direction. I may be wrong on that because it is a while since I looked at that legislation.

The Hon. Anne Levy: Jehovah's Witnesses have died by refusing blood transfusions.

The Hon. A.J. REDFORD: The Hon. Anne Levy is absolutely right. They have died because they have refused medical treatment. Nobody on their behalf has refused medical treatment and they have not been able to refuse medical treatment by writing a note to the doctor or to anybody saying, 'If this happens I do not want a blood transfusion.' So far as the Jehovah's Witnesses' position is concerned, when the Jehovah's Witness becomes unconscious this legislation does not change the existing law.

The Hon. R.D. Lawson interjecting:

The Hon. A.J. REDFORD: It may facilitate other provisions, as the Hon. Robert Lawson interjects. It facilitates other provisions in the event they are in the terminal phase

of a terminal illness. This legislation does not change anything unless the Jehovah's Witness is in a terminal phase of a terminal illness. In that situation that Jehovah's Witness can give a direction by other means, either through an agent or directive, provided they are in a terminal phase of a terminal illness. If they are not in the terminal phase of a terminal illness they can give a direction personally. If they do not have the capacity to give it personally then at the end of the day the doctor may be forced to give them a medical transfusion notwithstanding the fact that they might have given a direction either by the note or by the medical power of attorney. That may well be a good or a bad thing. Before we get too excited about the end result of the legislation as we see it, one of the points that might be raised in arguing the issue is that under the current law a Jehovah's Witness can choose to make his or her decision, as and when a position arises, if they are conscious. Who is to know what their decision might be if they are unconscious. They may well have seen the light and decided to not have a transfusion in certain circumstances if they had the capacity do it. I am not saying that that is the correct position for this legislation to stand, but it is a way to rationalise this legislation as it stands before us at this moment. I hope that helps.

The Hon. M.J. ELLIOTT: I think we need to focus on what this legislation was seeking to achieve from the start and I think the Hon. Angus Redford touched on it. We are looking at the situation of people in a terminal phase of a terminal illness no longer capable to make a decision on their behalf at the time because they are unconscious.

The Hon. R.R. Roberts: Do you mean the terminal phase of a terminal illness under this clause?

The Hon. M.J. ELLIOTT: Yes, it is being inserted in the amendment going in right now. That is what the Bill was about, anyway. This Bill is about people in the terminal phase of a terminal illness and whether or not they can have treatment denied whether it is by way of anticipatory grant or by way of a person acting as their agent. This makes it quite clear that you can. It also makes it clear that the agent cannot deny medical treatment at any time. If you are unconscious it is not sufficient. You have to be incapable of making the decision yourself at the time and be in the terminal phase of a terminal illness. That was always the intention. You could have a young person or an otherwise healthy person involved in an accident and temporarily incapacitated but as long as they receive appropriate treatment they will recover. Nobody should be able to deny treatment in those circumstances.

This is distinct from a person in the example raised last time who has perhaps suffered a severe stroke or heart problems, has become unconscious and is suffering pneumonia and they start aggressively treating the pneumonia. They are already in the terminal phase of a terminal illness. Those are the sorts of things I thought we were trying to allow the anticipatory grants to tackle. I understood that the Hon. Anne Levy was in the same position. I do not think this amendment is stopping any of that from happening. It may stop the Jehovah's Witness example but that is almost the exceptional circumstance and it is not taking away any right that they already have. In its absence they would have had the right by way of anticipatory grant to deny a blood transfusion at any time. I am not entering the debate as to whether that is a good or bad thing. In terms of what the legislation aimed to give I do not think it is taking any of that away.

The Hon. BERNICE PFITZNER: I think the Hon. Anne Levy has a point here because what the legislation aims to possibly do is not what is written in the legislation. Under clause 8, 'Appointment of agent to consent to medical treatment', when you appoint the agent the agent must fill in this form prescribed by schedule 1 which provides:

> I authorise my medical agent to make decisions about my medical treatment if I become unable to do so for myself. . . I require my agent to observe the following conditions:

Here you can set out any conditions to which the power is subject and any directions to the agent. The agent can be directed by the grantor to not give any transfusion. It is only if you fill in schedule two (clause 7) that it protects the person and the person then must be in the terminal phase of a terminal illness or a persistent vegetative state.

So, there is a loophole here. If one wants to be doubly sure one should put under Division 2 in relation to medical powers that the medical power of attorney must be in the form prescribed by schedule 1 and schedule 2.

The Hon. DIANA LAIDLAW: That is why I spoke earlier to clarify this. That is why I will be moving clause 8(8) in a moment. That distinguishes between the two schedules, the medical power of attorney and the direction: that in these circumstances if both have been completed the direction will prevail. However, I indicated earlier that my amendment to clause 7(7) must be read in conjunction with clause 7(8), and the honourable member has highlighted the very problem that we are seeking to address.

The Hon. A.J. REDFORD: If you have a situation where a person can give a direction about their medical treatment that would ultimately lead to their death and they are not in a terminal phase of a terminal illness then you run a very grave risk of all sorts of dangerous things happening. In effect, I can imagine events in that situation, particularly along the lines of what my colleague the Hon. Bernice Pfitzner says, that would clearly fall within the parameters of euthanasia. If that is what some members intend, then I would have no hesitation in voting against the third reading of this Bill.

I would see that as a great tragedy when one looks at what this Bill is providing and the advantages that it is giving. The fact of the matter is that this is not a Bill about euthanasia; it has never been stated to be such. I am disappointed to hear what the Hon. Bernice Pfitzner just said in relation to what she believes this legislation is about.

I have a question for the Minister for Transport. I refer the Minister to proposed subclause (3) and, in particular, the words 'unless the grantor is in the terminal phase of a terminal illness'. Why is it necessary to have those words in the clause? I ask that question on the basis of perhaps not having as great an understanding of the practice of medicine as others in this Chamber might have. It seems to me that if a person is in a coma of some description—I think the Minister suggested that someone might go into a diabetic coma—that person can, through some medical procedure, be taken out of that medical coma and in that position be able to give their own direction in person as to how they ought to be treated whilst they are in a terminal phase of a terminal illness.

Why is it necessary to say to the medical profession in that situation that it does not have to take them out of that diabetic coma? There may be arguments of which I am not aware. I just do not see any reason why a person in that diabetic coma cannot be taken out of their coma and have the doctors say, 'We are going to withdraw this treatment,' or 'Do you want us to withdraw this treatment because you are in a terminal phase of a terminal illnesses?' Notwithstanding the fact that

there is a medical power of attorney, why take away from them the right to make their own decision? There may well be good medical reasons to do so; it is just that I have not heard any.

The Hon. ANNE LEVY: I appreciate that this Bill is dealing with people in the terminal phase of a terminal illness. My concern is that in—

The Hon. K.T. Griffin: Not always.

The Hon. ANNE LEVY: No, but it largely deals with this. My concern has been that in providing for what is appropriate in that situation we do not remove rights that people currently have, unintentionally perhaps. However, to me it is important that we do not remove those rights.

The current situation is that someone who is a Jehovah's Witness can tell their doctor, 'I do not want a blood transfusion under any circumstances, ever.' They may then end up in hospital haemorrhaging severely after childbirth, as occurred in one case a few years ago. The doctors in attendance said, 'You need a blood transfusion,' to which the patient replied, 'I do not want one. You are not to give me one.' The patient then become unconscious through lack of blood. However, her wishes were respected and she was not given a blood transfusion. The result was that she died.

The Hon. K.T. Griffin: This does not change that.

The Hon. ANNE LEVY: I suppose my concern is that we are removing that power, because obviously such a person is not in the terminal phase of a terminal illness. It was the small matter of a blood transfusion and she would have recovered completely. However, it seems to me that if someone gives such a direction that they are not to have a blood transfusion, and then they become unconscious as a result of lack of blood, at that time their wishes can be ignored and overridden.

The Hon. K.T. Griffin: That is not correct. That is not what the Bill provides. This does not change that.

The Hon. ANNE LEVY: In what clause of the Bill would that be made clear? It is not the anticipatory grant, because that applies only in the terminal phase of a terminal illness. It will not apply to the medical agent, because that can be overridden. Where in the legislation before us can one be sure that people who give such a direction can have their direction upheld, even though they become unconscious?

The Hon. K.T. GRIFFIN: The Hon. Anne Levy is correct that clause 7 does not help. It relates only to those who are in the terminal phase of a terminal illness or in a persistent vegetative state and are incapable of making decisions about medical treatment. The honourable member should put that to one side, because that is an additional right given to people who care to make an anticipatory grant.

Clause 8 is a new provision also, because in law there is no recognition of a medical power of attorney at the present time. However, clause 8 sets out a code under which an agent may operate under a medical power of attorney. That does not override what is currently the position because this adds to the law. What will continue to exist is the right of the patient to say, 'I do not want that medical treatment.'

The Hon. Anne Levy: And they become unconscious.

The Hon. K.T. GRIFFIN: If they become unconscious there are two situations. If they have not got a medical power of attorney, what has changed? Nothing. If they have a medical power of attorney, this Bill simply states that the medical power of attorney cannot make a decision to do certain things. However, if the Jehovah's Witness has already made the decision, that stands. This just adds in this area to what is already available.

If the honourable member looks carefully at clause 8(7) she will see that it provides that a medical power of attorney authorises the agent to do certain things. It does not authorise the agent to refuse, including medical treatment that would result in the grantor regaining the capacity to make decisions about his or her own medical treatment unless the grantor is in the terminal phase a terminal illness.

I, too, have some difficulties about those last few words, but I have lost that battle. As was expressed by the Hon. Robert Lucas the last occasion we debated this, if one looks at the definition there is so much uncertainty about 'the terminal phase of a terminal illness' that, personally, I think it is unwise to have it in this paragraph. However, I am going along with it because I think that is what was generally decided by the Committee. I am not seeking to reargue the principle. The situation to which the Hon. Anne Levy refers is not changed by the application of this Bill.

The Hon. Anne Levy: I agree that it is not changed by clauses 7 and 8, but is it being changed unintentionally by any other clause?

The Hon. K.T. GRIFFIN: I do not believe it is.

The Hon. BERNICE PFITZNER: I think clause 6 covers the Hon. Ms Levy's concern. It provides:

> A person over 16 years of age may make decisions about his or her own medical treatment as validly and effectively as an adult.

If he or she has made the decision not to have a transfusion, that is it. It is only if he or she cannot make that decision and that decision is unknown that the medical power of attorney will take over. Can the Minister say what happens if the power of attorney fills in only schedule 1, which sets out any conditions to which the power is subject—there they might say that they would like to have the injection to end their life, and so on—and does not fill in schedule 2, which provides that the grantor must be in the terminal phase of a terminal illness or in a persistent vegetative state. If only schedule 1 and not schedule 2 is filled out, is it possible that the grantor may be able to fill in any of the conditions for the direction of the agent?

The Hon. DIANA LAIDLAW: I answer, first, the question from the Hon. Angus Redford about why we include the words 'in the terminal phase of a terminal illness'. I explained this at length when moving the amendment, but I will explain it again in more simple terms. Clause 8(7) provides:

> A medical power of attorney—
> (b) does not authorise the agent to refuse—

Therefore, the agent cannot refuse medical treatment that would result in the grantor regaining the capacity to make decisions about his or her own medical treatment. So you cannot refuse treatment, for instance, for insulin for a person in a diabetic coma unless they are in the terminal phase of a terminal illness.

It is a qualifying clause that we see as important so that if you are essentially dying you should not necessarily have to have all this insulin to keep you alive for a diabetic coma. It is qualified that if you were not in a terminal phase of terminal illness you could have this insulin to help you with your diabetic coma, but not in the final stages of life. In such a situation it could not be refused. I think that helps clarify the situation.

In relation to the question asked by the Hon. Bernice Pfitzner, in filling out schedule 1 you cannot ask for more than the body of the Bill provides, anyway.

The Hon. K.T. Griffin interjecting:

The Hon. DIANA LAIDLAW: You could ask for more, but lawfully a medical practitioner and others could not respond.

The Hon. BERNICE PFITZNER: Under clause 8, if the grantor appoints a medical power of attorney, fills in schedule 1 and signs, 'I require my agent to observe the following conditions and directions in exercising, or in relation to the exercise of, the powers conferred by this power of attorney', and sets up conditions not to relieve him or her with insulin should he or she be in a state of comacy', but does not fill in schedule 2, can the grantor give the medical agent that power? Can that power be acted upon if schedule 2 is not filled in, because that schedule says 'I am in a terminal phase of a terminal illness'? Is that possible?

The Hon. DIANA LAIDLAW: No. I have been told, 'No.'

The Hon. BERNICE PFITZNER: Very well.

The Hon. M.S. FELEPPA: I move:

Page 5, line 26—Leave out 'natural' twice occurring.

The word 'natural' concerns me and many people in the community. Last week when the Attorney-General was debating one of his amendments which would have taken care of this word and that amendment was lost, I pointed out that I had no other course than to reintroduce it. Mr Chairman, you might recall that last week I said that the word 'natural' should be taken to mean 'as provided by nature' so that food should be taken by the mouth and swallowed. That, in my view, is the natural way. I believe that by removing the word 'natural' twice occurring the clause would be read with a wide application but without taking extraordinary measures which could still be refused. I do not think this is a very big amendment. I am sorry that I had not tabled it. I ask the Minister to consider the deletion of these words.

The Hon. DIANA LAIDLAW: I vigorously oppose this amendment. It is not a small amendment in terms of this Bill: it is fundamental to the Bill. We had this debate at great length last week when the same amendment was moved by the Hon. Trevor Griffin and defeated. In terms of the recommittal of this Bill and the clarifying amendments that have been moved, I understood that we were not introducing matters of substance or going over the issues that had been debated and voted on last time. If you want to change the suggested rules, it will be open slather for everybody, and that would be unfortunate in terms of the goodwill and progress that we have made so far. Has the Hon. Mario Feleppa moved this amendment?

The Hon. M.S. Feleppa: Yes, I did.

The Hon. DIANA LAIDLAW: If it has been moved, I must vigorously oppose it. At the time I indicated that all the people involved with palliative care and the hospice movement believe that the inclusion of the word 'natural' is fundamental to the Bill. They have argued to me that if these words are deleted we may as well see the Bill fail. I do not know that that is actually the purpose of the Hon. Mr Feleppa's amendment, yet essentially that would be the consequence, in the experience of those who work and practise on a daily basis in this field. Last time this Bill was before the Committee, I advised that what this clause seeks to do is set a baseline below which an agent should not be permitted to make decisions. The select committee itself decided on the evidence before it that the threshold was to be the natural provision or natural administration of food and water and the administration of drugs to relieve pain and distress. Nasogastric feeding is regarded by many as intrusive and it is also very definitely an intrusive treatment if it is not what the patient wants. I do not know whether members want me to go through all the arguments about situations where food and drink is withdrawn but, if the honourable insists on moving this amendment, I may well have to do so.

The Hon. M.J. ELLIOTT: This issue was debated at considerable length previously. The Hon. Diana Laidlaw's further amendment addresses questions of feeding other than the natural provision of food and water. If you strike out the word 'natural', you would have a provision which would require that under all circumstances you could never deny nasogastric feeding. That would be the effect. It would then say 'does not authorise the agent to refuse provision or administration of food and water'. If you take out the word 'natural' that says that you can never ever deny food or water.

The Hon. Caroline Schaefer interjecting:

The Hon. M.J. ELLIOTT: No; that's not there. There is no 'terminal phase', 'accepts' or anything else. You simply cannot do it. If you take out the words 'natural', you cannot refuse to give food or water under any circumstances. The way it is now structured the intention is that you can never deny food or water provided naturally. You can deny food and water provided by drip or nasogastric tubes or whatever else, if the patient is in the terminal stage of a terminal illness, and that is the only time that you would ever be able to deny that. So it is only a very narrowly prescribed set of circumstances in which you can deny other forms of feeding other than the natural provision of food and water. The taking away of those words really does undermine probably one of the most significant areas where this Bill would have an impact, that is, a person who has become unconscious, they are in the terminal phase of a terminal illness, and the only thing that is keeping them alive at that stage are tubes and various other things which they do not want inserted into them.

That would be the effect if that would 'natural' were struck out. I cannot believe that that is the intention. I certainly hope it is not, because that is what it would do. It is not necessary, because the Hon. Ms Laidlaw's new subclause provides for the provision of food and water under all other circumstances—not just natural provision—except for when a person is in the terminal phase of a terminal illness and is no longer themselves capable of giving further direction. They have done it by advance directive or, in this case, they have done it by power of attorney.

The Hon. K.T. GRIFFIN: I do not want to revisit this matter in any great detail. All members would know that I had great concerns with subclause (7) and sought to move amendments which would accommodate the position of the natural administration of food and water and, on the other hand, nasogastric feeding and artificial means, and endeavoured to set a regime which would, as in this provision, never allow the agent to refuse the natural provision or natural administration of food and water. I think I used the description 'taken by mouth'. However, in some circumstances it may be possible for the agent to refuse artificial means of administration of food and water, and that was lost. I can understand that, in the context of the Bill, which has now got through Committee and which we are now revisiting generally in a drafting context, the deletion of the word 'natural' in those two places would not really achieve the object that I would like to see it achieve, because I would acknowledge that in certain circumstances artificial feeding may be withheld, circumstances which I attempted to provide for in the amendment which I moved but which was not successful. I have sympathy with the Hon. Mr Feleppa's

amendment. My natural inclination is to support it, but the difficulty I have is that I do not think that addresses all the issues which should have been addressed and which were addressed in my amendment.

The Hon. J.C. IRWIN: By way of clarification, what is the position for the natural provision or natural administration of food and water if there is no anticipatory grant or medical power of attorney? What power does the doctor have to not administer in accordance with professional standards or medical practice as in protection for medical practitioners under clause 16? In other words, if there is no consent at all and no power of attorney, can a doctor refuse to use a nasogastric tube or the feeding of water as part of proper medical professional standards?

The Hon. DIANA LAIDLAW: I do not have medical assistance here at present but, as I understand it from earlier discussions I had with people, Dr Ashby and others in the palliative care field, most people who are in the terminal phase of a terminal illness are ten or 20 times more ill than we would generally ever be and actually do not feel like it. They would probably wet the patient's lips and keep them comfortable. I do not want to get personal, but I remember my grandmother, and whatever we did nothing really helped her situation, whether it was one of us helping her or the doctor. I understand that 'natural provision' would not preclude one from wetting the lips or generally making people comfortable, but generally they would reject and possibly bring up whatever you gave them naturally. That was the advice I was given earlier by Dr Ashby. The Hon. Mr Lawson may have further comment.

The Hon. R.D. LAWSON: The only comment I would make in those circumstances is that, if the proper standard of medical care dictated that treatment such as the administration of food be provided and notwithstanding that that was the accepted standard of medical care in those circumstances a doctor declined to use that treatment, he or she would expose him or herself to an action in negligence if the patient's health deteriorated and they did not recover or, indeed, to the possibility of criminal prosecution if the patient died.

The Hon. BERNICE PFITZNER: In response to the Hon. Mr Irwin's query, the natural provision would be either to give water by a cup or iceblocks. If a person is unconscious they are usually not able to swallow. Therefore, medical practice would not dictate that water be poured into the mouth. The only medical practice that would be used would be to give blocks of ice in the mouth. It would be bad medical practice to pour water into the mouth because it could result in the patient getting pneumonia.

The Hon. Mr Feleppa's amendment negatived; the Hon. Diana Laidlaw's amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 5, lines 28 to 31—Leave out subclause (8) and insert—

(8) 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 what the agent genuinely believes to be the best interests of the grantor.

This amendment picks up a desirable point in an amendment which the Attorney-General moved previously. I made reference to this issue at that time, as did the Attorney-General, but it became confused in a whole range of other words about 'genuine belief'. Those words seemed to be the focus of members' attention at the time, and the Attorney's amendment was defeated. It appears desirable to revisit one point of the Attorney's amendment, which is before us at present, and to acknowledge that a person may have both appointed a medical agent and given an anticipatory decision. In these circumstances, I believe it is desirable for the legislation to indicate that the medical agent must exercise his or her powers consistently with the anticipatory decision. My amendment seeks to achieve that purpose.

The Hon. K.T. GRIFFIN: I support the amendment. As the Minister says, I have the same amendment on file. It does not go as far as I would like, because I wanted to bring some objective standard to bear, but as a matter of commonsense one needs to ensure consistency between the directions which are in a medical power of attorney and upon which an agent may act and also in an anticipatory direction. This will at least go part of the way toward resolving that difficulty, although as I said it does not satisfy my position for a more objective standard to be brought to bear in the exercise of responsibilities.

Amendment carried; clause as amended passed.

Clause 9—'Medical power of attorney to be produced.'

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

Page 6—Leave out the clause and substitute new clause as follows:

Exercise of powers under medical power of attorney

9. (1) A medical agent is only entitled to act under a medical power of attorney if—

(a) the agent produces a copy of the medical power of attorney for inspection by the medical practitioner responsible for the treatment of the grantor of the powers; and

(b) the medical agent is not disqualified from acting under the medical power of attorney[1]; and

(c) the medical agent is of full legal capacity.

(2) A medical agent will only be regarded as available to act under a medical power of attorney if—

(a) the medical practitioner responsible for the treatment of the grantor of the medical power of attorney is aware of the appointment; and

(b) the medical agent is entitled to act under the medical power of attorney; and

(c) it is reasonably practicable in the circumstances for the medical practitioner responsible for the grantor's treatment to obtain a decision from the medical agent.

[1]See section 8(5) which disqualifies certain medical agents from acting.

The proposed new clause incorporates what was provided in clause 4(2) and sets out when a medical agent is entitled to exercise a power under a medical power of attorney and will be regarded as available to act under a medical power of attorney.

The Hon. DIANA LAIDLAW: I support the amendment. I acknowledge that when we discussed clause 4(2) and the Attorney opposed that provision he said that later he would move amendments to consolidate clause 4(2) and clause 9. Essentially, this represents a consolidation of various provisions in the Bill.

Existing clause struck out; new clause inserted.

Clause 10—'Review of medical agent's decision.'

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

Page 6, lines 12 and 13—Leave out 'a person (the 'patient') for whom a decision is made by a medical agent' and insert 'the grantor of a medical power of attorney'.

This amendment deals with the only substantive issue that I flagged when we were last in Committee. I propose to move a number of amendments to clause 10 to enhance coherence of the clause and essentially bring it into line with what the

Committee has already accepted. Having done that, I intend ultimately to seek to achieve the insertion of a new clause 10, which I think was circulated separately yesterday. I will address that issue at the time, but the new clause which I will seek to insert later will broaden the jurisdiction of the Supreme Court and indicate a number of ways in which I think the provision can be enhanced. I will leave that debate until we have dealt with the drafting type amendments to clause 10. We will do what we have already been doing as we have led up to this, and that is to deal with what are essentially matters of drafting or style. So as to this first amendment, this clause refers to a person for whom a decision is made by a medical agent as 'the patient'. In the remainder of the Bill, such a person is referred to as 'the grantor' of the medical power of attorney. This amendment merely makes this provision consistent with other provisions in the Bill.

The Hon. DIANA LAIDLAW: I support the amendment.

Amendment carried.

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

Page 6, line 15—Leave out 'the', insert 'a'.

This is a drafting amendment.

The Hon. DIANA LAIDLAW: I support the amendment.

Amendment carried.

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

Page 6, lines 16 and 17—Leave out 'and give advice and directions about the exercise of the powers conferred by the medical power of attorney'.

The powers the court can exercise on the review of an agent's decision are set out in subclauses (1) and (5). It is preferable that they be together in the one subclause. I will move an amendment to insert the words that are deleted by this amendment into subclause (5) so that there is a better level of coherence within the provision rather than dispersing of the powers.

Amendment carried.

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

Page 6, line 19—Leave out 'patient' and insert 'grantor'.

This subclause provides that the purpose of a review by the Supreme Court is to ensure, as far as possible, that a medical agent's decision is in accord with what the grantor would have wished if he or she had been able to express his or her wishes.

This does not take account of the fact that the person may have expressed his or her wishes either in an anticipatory grant or in a medical power of attorney or otherwise. This amendment will make it clear that the review is to determine whether the agent's decision is in accord with the wishes that the grantor has actually expressed.

Amendment carried.

The Hon. R.I. LUCAS: I seek your guidance, Mr Chairman. I indicated when we debated this Bill during the previous Committee stage that one issue I was still personally unhappy with was the whole issue of the terminal phase of a terminal illness and its flow-through effect on clause 10(2). In my reconsideration of this I have not been able to come up with a better version of 'terminal phase of a terminal illness' and I therefore want at some stage to test the view of the Committee on recommittal in relation to clause 10(2), the power of the court to review decisions. I note that the next amendment to be moved by the Attorney is to leave out subclauses (3) and (4). Would it be your wish to have this discussion now or do you want to do it after we have gone through the package of amendments the Attorney is moving to clause 10?

The CHAIRMAN: Is your desire just to debate it or do you wish to move an amendment?

The Hon. R.I. Lucas: I want to move to oppose the subclause.

The CHAIRMAN: Then it should be debated now.

The Hon. R.I. LUCAS: As I indicated, this is an issue that I have personally wrestled with on all the occasions on which we have debated the Bill. I have heard all the explanations from learned legal counsel and otherwise, and I am still unhappy with the combination of 'terminal phase of a terminal illness' and this provision. I will briefly summarise my argument without going through everything I said before, but I want to refer to something the Hon. Bernice Pfitzner said during the last debate, which throws new light on this issue. My concern is that 'terminal phase of a terminal illness' means something to most of us but, when one looks at the definition in the Bill, which is the important issue, I believe it is much more than we understand it to be: that is, the last dying gasp, just about to die. It is much, much more.

No-one will change my view—although I accept that others might have differing views—that circumstances such as persons who go into a coma and who, after 60 or 70 days under current circumstances come out of the coma and lead productive lives, are not covered by that provision of 'terminal phase of a terminal illness', when one looks at that provision. I also note that, on a range of other conditions that I have tried to canvass on previous occasions, the Hon. Dr Pfitzner has quoted Dr Ashby and a number of other eminent persons who have been used in defence of the legislation, in effect, indicating a range of conditions that they believe are covered by the legislation, on my understanding of what the Hon. Doctor Pfitzner has said.

The Hon. Dr Pfitzner last week quoted into *Hansard* some advance directives that Dr Michael Ashby and others had drafted, outlining what Dr Ashby and others considered to be clearly matters to be covered by this Bill, for persons in a terminal phase of a terminal illness. Dr Ashby was talking about dementia, and I quote Dr Pfitzner quoting Dr Ashby with respect to dementia as follows:

Progressive impairment of brain function, with variable features and time course. Common features include loss of interest in life, personality change and recent memory loss with anti-social and disinhibited behaviour and depression. Sleep disturbance and wandering—

so, we are not talking about someone who is comatose or tied to a bed—

loss of bowel and bladder control. . . often occurs. Increasing confusion and complete social disintegration lead to the person becoming bedridden, and eventually death occurs. The commonest cause of dementia over 60 years is Alzheimer's disease.

Further on the Hon. Dr Pfitzner quotes a Canadian group, who I presume are Canadian medical people, and the honourable member can correct me if that is wrong. Again, in relation to an advance directive, they have talked about not only multiple sclerosis and severe head injury but also Alzheimer's disease. I must say that the sorts of things that Dr Ashby has drafted in that advance directive—loss of interest in life, personality change, recent memory loss and a range of other things, and then leading on to other conditions—express one of the concerns that I have that what everyone here is saying is their version of 'terminal phase of a terminal illness' will in due course be interpreted by Dr Ashby (and perhaps a variety of other people, perhaps even the Supreme Court, when one looks at this definition of

'terminal phase of a terminal illness') as being much broader than we intended.

The argument that the Hon. Mike Elliott and some legal colleagues have used is that when one reads clause 10(2), for example, we are talking not just about the terminal phase of a terminal illness but that the effect of treatment would be merely to prolong life in a moribund state without any real prospect of recovery. Earlier, when the Minister for Transport was asked the definition of 'moribund state', the definition that her advisers offered was someone who was in a deathlike or dying state. In my judgment, when one reads clause 10(2), the argument from some people is that clause 10(2)(b) limits and restricts clause 10(2)(a). I am not convinced that it does limit, and in the passage of time, when we talk about the terminal phase of a terminal illness, I believe we are talking about quite an extensive period in which we are saying under clause 10(2) that the court cannot review a decision by a medical agent to discontinue treatment during the whole period.

Some argue that you then add paragraph (b) to it, which says that the effect of the treatment would be merely to prolong life in a moribund state. If 'moribund state' is a dying state, people like Dr Ashby and others will argue, and we have already heard evidence from a number of members, that those persons comatose for 60 or 70 days are told by their doctors that they are in a dying state, in a moribund state and, therefore, in the case of the comatose patient, clause 10(2)(a) and clause 10(2)(b) are exactly the same. Medical advice will say to you that that person in a comatose state for over 40 or 50 days is in a terminal phase of a terminal illness in accordance with the definition. That person is also in a moribund state, and we have had other members (one in particular) who stated that the legal advice was that there was no real prospect of recovery for that particular person.

I have read of other cases as well where doctors have said, 'Well, there is no real prospect of recovery; they are clearly in a moribund state.' During that whole long period when so many things can happen what we are saying in 10(2) is that there is no Supreme Court jurisdiction during that period at all, during, in my judgment, potentially the most vital time when there may well be heated argument. I will not go over all the debate but I outlined a range of circumstances where people who might have an interest and who might have known someone for a lot longer than the person who now has the medical power of attorney, like a parent, may want to put a view to the Supreme Court. If the Supreme Court says 'No' then that is fine and they have made their judgment. That is the decision of this Parliament so far—to have the Supreme Court make the decision. What we are trying to say in 10(2) is that the Supreme Court is not even in the ball game. No-one, even if they want to challenge something, is able to take to the Supreme Court a particular point of view on this for what could be a quite extended period. I think that is fundamentally wrong.

In the stage that we have reached at the moment, where we are now saying that the Supreme Court, as a result of the views of this Committee, is to have a say in these issues and determine important issues then it ought to be able to determine conflicts or issues during the most critical stage which may well extend over weeks or months as well. When one talks about the example of the comatose patient, or in Doctor Ashby's case about someone who is progressively heading down the path of terminal phase of a terminal illness (if moribund state is to be defined as a dying state), then the medical evidence that I have taken in the past week indicates that no-one is arguing that you are not in a dying state when you are in the range of conditions that Doctor Ashby is arguing in his advance directive when he says these circumstances are covered by this Bill in these circumstances. To those members of the Committee who have supported the Supreme Court having some say at all—and I accept that some members do not want to have it at all so I am not talking to those members—I say that I think we ought to reconsider this issue and oppose 10(2).

The Hon. BERNICE PFITZNER: I agree with the Hon. Mr Lucas to a certain extent in the draft of the advance directive as put forward by Doctor Ashby *et al* and Doctor Molloy and his Canadian associates. I felt that his advance directives were too subjective and too wide. That was the purpose of trying to move the amendment for schedule 2.

The Hon. R.I. Lucas: But you lost that amendment.

The Hon. BERNICE PFITZNER: I know. I wanted to leave that out and insert a simple advance directive saying 'I am not to be subjected to life sustaining measures if the effect of so doing would be merely to prolong life in a moribund state without any real prospect of recovery.'

I refer to the term moribund state in 10(2)(b). To a medical person a moribund state is not a dying state: it is a state that will certainly lead to death. If a person is moribund then death is imminent and it is not a dying state. So 10(2)(b) is quite clear as to what moribund is. It means that death is imminent. I felt that 10(2)(a) could be limited a little bit more than Dr Ashby *et al* and the Canadians were saying. To a certain extent the Hon. Mr Lucas is correct but I feel that that provision is covered by 10(2)(b).

The Hon. DIANA LAIDLAW: I oppose the amendment. We partly discussed this at some length during the earlier Committee stages of the Bill. I remind the honourable member that when the select committee first looked at this Bill there was a recommendation that there be no review at all. When the Bill was last before this place last year we provided some rights of review to the guardianship board.

The Hon. M.J. Elliott: Under certain circumstances.

The Hon. DIANA LAIDLAW: Yes. When the Bill was here within the past month we limited those rights of appeal. We made them more restrictive but we made them to the Supreme Court. The Hon. Mr Lucas is now seeking to extend those rights of appeal or review and I think it is unfortunate. It is a bit like a last gasp by the honourable member when we are more concerned about the last gasp of the patient. There has been a toing-and-froing by members about whether there should be appeal. I do not personally believe there should be any right of appeal. However, I have accepted that the majority of members want a limited right of appeal. I think it is regrettable to bring in this situation now because when the Bill was last here the Hon. Mr Lucas did not move this amendment and is bringing it up now. I do not deny him the right to do so. I think it is regrettable because the honourable member had an opportunity earlier when we were debating matters of great substance. The honourable member, rather than bringing it here now without an amendment, should have advised that he was opposing it so that we did not have to debate it on the run. It was an issue that was debated at great length last year, and the Hon. Mr Lucas did not win his way at that time.

I recall the Hon. Barbara Wiese saying that the terminology here came about as part of the evolutionary process of hearing evidence from relevant parties who have some interest in these matters. It came from information supplied by medical practitioners, heads of churches and people who

were concerned about how to determine imminent death as opposed to the terminal phase of an illness. There is no short answer as to why we have these definitions compared to others, except that the members of the select committee specifically did not want to use the term 'imminent death' because it is difficult to define and tends to imply a very short period prior to death, although the Hon. Bernice Pfitzner has indicated that 'moribund' in her view is again that very short period.

The Hon. Barbara Wiese went on last time to say that that is not what the members of the select committee were trying to achieve. The aim of this legislation is to try to provide dignity and some sense of autonomy for people who are dying and that means a longer period than a couple of hours before death. Generally, when one is sitting next to a person who one loves in this circumstance, it often goes on for a few hours longer than one would wish for their sake or your own.

The Hon. R.R. Roberts: Hours?

The Hon. DIANA LAIDLAW: It can go on for hours and it could go on for longer.

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: That is right. It can be an agony for all parties involved. That is what we must remember all the time when we have this Bill before us: we are trying to look at this issue of dignity in dying—some sense of autonomy for people who are dying. I remind members that it is not a requirement—we are not making it compulsory—that there be medical agents or directives.

It is a situation where a person with full powers and legal rights has indicated that they want to be treated in this or that way by the medical practitioner, or their medical agent, when they are dying. It is as blunt as that. To think now that we are suggesting that there should be further court involvement rather misses the point of this whole exercise.

The Hon. CAROLINE SCHAEFER: This is probably one of the clauses that concerns me most. I had intended to speak against it in the third reading. I certainly accept the Hon. Rob Lucas's amendment, and on several occasions he indicated that he would move an amendment on this issue at this stage. I will read to the Committee the interpretation in this Bill. It provides that:

> 'Terminal illness' means an illness or condition that is likely to result in death;

That could be heart disease, it could be multiple sclerosis, it could be a child born with spina bifida, or it could be muscular dystrophy. They are all terminal illnesses that will go on for years and years. The Bill also defines 'terminal phase' and it states, in part:

> . . . no real prospect of recovery or remission of symptoms on either a permanent or temporary basis.

One could then be talking about someone in the very early stages of, say, leukaemia who has gone into remission and who may remain in remission for a number of years.

An honourable member interjecting:

The Hon. CAROLINE SCHAEFER: I'm sorry, but that is exactly how 'terminal phase' is defined on page 3 of this Bill. So, we are not talking about necessarily—

The Hon. Anne Levy interjecting:

The Hon. CAROLINE SCHAEFER: Well, no, but it provides:

> . . . the effect of the treatment would be merely to prolong life [okay; it would be] in a moribund state. . .

Sooner or later these people are going to be in a moribund state if you prolong their life because eventually they will die.

The Hon. Anne Levy interjecting:

The CHAIRMAN: Order! The honourable member can have her say in a minute.

The Hon. CAROLINE SCHAEFER: Yes, but they may be temporarily unable to make that decision. Division 2 specifically refers to the care of people who are dying. This part of the Bill refers to medical power of attorney, which, as I understand it, comes into effect when someone is incapable of making the decisions for themselves, either temporarily or permanently.

We may have someone who happens to have multiple sclerosis, who is knocked over on the road and who is unconscious. In my opinion, they fit the definition of a patient who is in the terminal phase of a terminal illness. I support this amendment absolutely.

The Hon. M.J. ELLIOTT: The point has to be made that the only time that there cannot be an appeal to the court is when there is a patient in the terminal phase of a terminal illness, is in a moribund state and is without any real prospect of recovery. All those things have to occur. I do not know how many members read Saturday's *Advertiser*, but this is probably an opportunity to put on the record what was said by the Hon. Gordon Bruce, who was the President of this place less than 12 months ago when we were last debating this legislation. He is quite unequivocal about how he feels in relation to this matter. The article states:

> Retired politician Gordon Bruce wants to die with dignity. Diagnosed in March with motor neurone disease, he has already has told his doctors he doesn't want holes cut in his throat to help him breath or be kept permanently on a life-support machine.

The story goes on, but I think that it is quite plain from the article that Gordon Bruce does not want someone going to the Supreme Court when he is in the final stages of this disease lodging some appeal so that they can continue further a treatment when there is no prospect—

The Hon. Anne Levy interjecting:

The Hon. M.J. ELLIOTT: He has a terminal illness and, although he is not yet in the terminal phase, he is close to it. When he becomes moribund and there is no prospect of recovery he does not want someone going to the Supreme Court trying to lodge some sort of appeal. I do not believe that in his family that will happen.

However, this is the sort of feeling that people are expressing. This is a real case; it is not hypothetical in any sense. There is no doubt whatsoever what he wants, and I believe it is an incredible mischief that we should undermine a person's clear and stated wishes as set out in a power of attorney. They have given directions; they have done all that.

There has been a great deal of give in this legislation. First, it was, 'Let's allow appeals, under some circumstances, to the Guardianship Board.' It was then extended to the Supreme Court, and now it will be appeal under any circumstances whatsoever. I believe that undermines the very fundamentals of this legislation. We have to think about what it means to real people and their wishes about what they want.

The Hon. R.D. LAWSON: The sad case just mentioned by the Hon. Michael Elliott is, of course, occurring without the benefit of this legislation at all. The position now is that Mr Bruce's wishes will be honoured. His treating doctors or his family have the right to apply to the Supreme Court in relation to his treatment if that situation should arise.

For example, if they were to give a direction to his medical practitioner who is uncertain about whether he should comply with that direction he could apply to the court and obtain a declaration from the court—as has been done in

many cases—as to the appropriate treatment. The court would apply the common law rules, which are that there is no obligation upon medical practitioners to maintain life-sustaining treatment in certain circumstances, much the same as the circumstances specified in this Bill. So I do not think that the point made by the Hon. Michael Elliott really advances this debate at all.

When the Minister for Transport was speaking in relation to this amendment, she tended to deplore the fact that there was ever introduced into this legislation any right of review by the Supreme Court. It should be understood that, irrespective of any provision in this legislation, the court has the jurisdiction and will continue to have the jurisdiction to give directions.

The Hon. Diana Laidlaw interjecting:

The Hon. R.D. LAWSON: No, because it always has the citizen's rights at heart.

The Hon. Anne Levy interjecting:

The Hon. R.D. LAWSON: If you want to exercise the jurisdiction. No-one has to apply to the court. As the Hon. Angus Redford said, there has to be a client, and there has to be a doctor who is in difficulty or doubt and who wants some direction or protection from the court. There has to be someone with an interest in the matter who will make the application. Of course, not many people make applications. They are a rare occurrence. This legislation stands alongside the common law and it provides specifically a narrow right, which is merely to apply to review the decision of a medical agent. The persons who can take that application are the medical practitioner and someone else with a sufficient interest in the matter.

The court is not an appeal jurisdiction. It is a jurisdiction to review a decision already made or to give advice and directions if advice and directions are sought. It is not an appeal. If the doctor makes a decision to go ahead with the treatment and the medical agent has given the direction, it may be that the circumstances are so plain that no-one is in any difficulty or doubt. The medical power of attorney or the anticipatory direction is perfectly clear in its intent and there will be no occasion at all for anyone to go to the court. There will not be an occasion in most cases for anyone to go to the court. But in certain circumstances people may want to go to the court and avail themselves of that opportunity. That is what the subclause does.

The effect of the Hon. Rob Lucas's amendment would be that the court would have a general jurisdiction under this provision to review the decision of the medical agent basically in any circumstances. The present protection, if we call it that, in the Act is that the court does not have the power under the existing provision to review a decision already made by the medical agent to discontinue treatment in these circumstances. It seems that the choice is pretty clear. If members believe that the court ought not be able to second guess a decision made by a medical agent in circumstances where the patient is in this terminal phase of a terminal illness and the effect of treatment would merely be to prolong life in a moribund state without any real prospect of recovery, they should not support the removal of this provision, because it does, as it were, reinforce the decision of the medical agent.

Once again, notwithstanding the fact that the court cannot review the decision, I can envisage circumstances where, if the medical practitioner is in difficulty or doubt about acting on the decision, he or she will have the right to make an application to the court for advice and directions.

The Hon. DIANA LAIDLAW: Can the Hon. Mr Lawson clarify his position? When he last moved amendments to this clause he changed 'Guardianship Board' to 'court'. Does he oppose now what he did not oppose before? Is he still supporting that the court may not review a decision?

The Hon. R.D. LAWSON: I am not suggesting any amendment.

The Hon. DIANA LAIDLAW: You are supporting what is in the Bill now?

The Hon. R.D. LAWSON: I am supporting the existence of the right of the Supreme Court to review the decision. It is perfectly simple. If the court has the general jurisdiction over these matters at common law, it is anomalous to appoint some other body, namely, the Guardianship Board, to have this limited right. The board is not involved in this discussion this evening at all.

The Hon. DIANA LAIDLAW: Last time the Hon. Mr Lawson's principal amendments were to this clause. Clause 10(2) used to read:

> The Guardianship Board may not review. . .

The honourable member's amendment, which passed, provided:

> The court may not review . . .

Is the honourable member changing his mind? Does the Hon. Mr Lawson not want subclause (2) at all? Is he opposing the Hon. Mr Lucas's amendment? Some members believe that he is supporting Mr Lucas's amendment and others say that he is not. I want to clarify the position.

The Hon. R.D. LAWSON: The choice is clear. I will make my choice.

The Hon. DIANA LAIDLAW: You have confused everyone in the Chamber.

Members interjecting:

The Hon. K.T. GRIFFIN: I have made no secret of the fact previously and during the course of this stage of the Committee that I want to see the clause change quite significantly. When the matter was last before us in Committee I supported the Hon. Robert Lawson's amendments, but flagged that as we got towards the end of it I would want to move a replacement clause that I thought would address the issue more adequately.

The fact is that subclause (2) as it presently exists provides that the court may still be involved because there may be an argument about whether a person is in a terminal phase of a terminal illness at the point at which this applies or that the person is in a moribund state or has no real prospect of recovery. The court will review the case.

In circumstances where there is dispute, say, within a family, or there is some other objection to the way in which the medical agent has exercised his or her powers, an argument being that it is done as a matter of self interest rather than in the interests of the patient, ultimately the court may still become involved. The court may then determine that a patient is in the terminal phase of a terminal illness, so criterion (a) is met. But it might then go on to say that life is not in a moribund state. So, it will still have jurisdiction, whatever we finally determine. I must support the Hon. Robert Lucas but I will still ultimately move my proposed new clause, which gives the general jurisdiction. The fact of the matter is that we are not making a law for the Hon. Anne Levy or the Hon. Diana Laidlaw or anybody else; we are making it for the community at large.

The Hon. Anne Levy: That includes me.

The Hon. K.T. GRIFFIN: It includes you, but not everyone wants to act as you want to act; not every one of the agents who are appointed will act as honourably as you believe your agent will act.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: That is a matter for you. You can do an anticipatory direction or whatever you like. The fact of the matter is that if at some point there is a dispute, whether it be between the agent and the medical practitioner or the agent and the family or over some question about the propriety of the agent's decision or whether it is a matter of self interest or the best interests of the patient, someone must have the jurisdiction to determine the dispute. In my view that should be the Supreme Court.

The Hon. CAROLYN PICKLES: I oppose the amendment moved by the Hon. Mr Lucas. Sometimes I wonder whether we forget that we are actually talking about human beings here.

Members interjecting:

The Hon. CAROLYN PICKLES: Maybe it is; it is a distinct problem when people forget the process that you go through when you are dying.

The Hon. K.T. Griffin: This is not just about dying. The whole Bill is about—

The Hon. CAROLYN PICKLES: It is also about care and the medical agent. All I can say is, 'Spare me from loads of lawyers.' When I go anywhere near a doctor, I will have tattooed on my body what I want to have done to me.

The Hon. R.R. Roberts: Where?

The Hon. CAROLYN PICKLES: Absolutely everywhere. Quite frankly, I do not trust any of you; I do not trust what you are trying to do in this legislation. I think it is appalling that you are introducing this amendment at this time, and I urge members to oppose it most vigorously.

The Committee divided on the amendment:

AYES (7)

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

NOES (10)

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

PAIRS

Irwin, J. C.	Wiese, B. J.
Stefani, J.F.	Kanck, S.M.

Majority of 3 for the Noes.

Amendment thus negatived.

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

Page 6, lines 22 to 29—Leave out subclauses (3) and (4) and insert:

(3) The purpose of the review is—

(a) to ensure that the medical agent's decision is in accordance with lawful conditions and directions contained in the medical power of attorney and, if the grantor of the power has also given an anticipatory direction, is consistent with that direction; and

(b) to ensure as far as possible that the medical agent's decision is in accordance with what the grantor would have wished if the grantor had been able to express his or her wishes.

(4) A decision of a medical agent that is not contrary to lawful conditions and directions given by the grantor will, in the absence of proof to the contrary, be presumed to be in accordance with what the grantor would have wished if the grantor had been able to express his or her wishes but this presumption does not apply if—

(a) the grantor is not in the terminal phase of a terminal illness; and

(b) the effect of the medical agent's decision would be to expose the grantor to risk of death or exacerbate the risk of death.

I thought that I had moved this amendment earlier, but apparently I had not. I spoke to it. The subclause provides that the purpose of a review by the Supreme Court is to ensure, as far as possible, that the medical agent's decision is in accord with what the grantor would have wished, if he or she had been able to express his or her wishes. This does not take account of the fact that the person may have expressed his or her wishes either in an anticipatory grant or in a medical power of attorney or otherwise. This amendment will make it clear that the review is to determine whether the agent's decision is in accord with the wishes that the grantor has actually expressed.

The Hon. DIANA LAIDLAW: I support the amendment.

Amendment carried.

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

Page 6, lines 30 and 31—Leave out subclause (5) and insert—

(5) The Court may—

(a) confirm, cancel, vary or reverse the decision of the medical agent; and

(b) give advice and directions that may be necessary or desirable in the circumstances of the case.

This amendment is consequential on the removal of the words in subclause (1), 'and give advice and directions about the exercise of the powers conferred by the medical power of attorney.' It puts those words into subclause (5).

Amendment carried.

The Hon. K.T. GRIFFIN: Mr Chairman, we have now reached the end of the process to which I was referring in my opening remarks in relation to clause 10. I suspect that the signal sent by that last division is that I shall not be successful in achieving what I wish to do. We ought to face the fact that the Supreme Court has jurisdiction in any event, as the Hon. Robert Lawson indicated, and that that jurisdiction will be exercised in circumstances where there is a dispute, disagreement or some other issue which perhaps needs clarification.

As I pointed out earlier, we are making this legislation not for those circumstances where the medical agent acts in accordance with the directions and wishes of the grantor of the power of attorney; we are making this legislation to apply for some years, I suspect, in a variety of circumstances, which may include circumstances where there is no dispute and everything is straightforward. However, nothing is always straightforward in life or in society. There will always be occasions when the unusual will emerge. In those circumstances, whatever mechanism we build into this legislation, there must be a means by which the uncertainty, the disagreement, the dispute, whatever we want to call it or however it occurs, can be resolved. It may be about whether or not the patient is in the terminal phase of a terminal illness or it may be a question whether the treatment would merely prolong life in a moribund state without any real prospect of recovery.

Ultimately, while that may be largely a medical decision, it has to be made in accordance with the law. The problem that people do not seem to realise is that, however much they do not want lawyers or the courts involved in decisions that they have taken, there is no such thing as a perfect society and there is no way of avoiding disputes in some circumstances. The basis of this is to address issues which arise across society for quite a long period. I do not think there is

any doubt that the mechanism which has to be put in place is a review by an independent body, and the Committee has already accepted that that should be the Supreme Court.

Some limitations are sought to be imposed by existing clause 10, but it is my view that those limitations are not particularly significant and do not ultimately avoid the involvement of the court. In circumstances where there is a real dispute—and there have been a number of those in Australia, the United States, the United Kingdom and other countries, bitter disputes between divorced or separated parents, brother and sister, brother and parents or sister and parents, a whole range of family disputes—they go to the Supreme Court. It is my view that, rather than confuse the issue with all the attempts at limiting authority, we should move towards my new clause 10 which allows the court to give advice and directions, to vary or revoke the medical power of attorney in certain circumstances, appoint other persons to exercise powers where there might be some doubt as to who has the appropriate authority, and so on. I have indicated that in exercising the power the court must act as expeditiously as possible. I have no doubt that it would do that even without this provision, but it must also act without regard to technicalities and legal forms, and it is not bound by the rules of evidence. I think that gives a significant degree of flexibility which others might otherwise have regarded as being likely to involve a somewhat tangled web. So my preference is to substitute existing clause 10 as amended with new clause 10 of which I have given notice.

The Hon. DIANA LAIDLAW: I oppose this amendment. We have been debating for some time now whether or not the court should be able to review a decision. The Attorney puts his amendment in terms of flexibility. I would use the term 'broadening the right of the court'. Essentially, my concern is with clause 10(1)(c), which provides:

> The court may appoint a person to exercise the powers conferred by the medical power of attorney in substitute of the current medical agent.

So, if a person appoints a medical agent the court may substitute the grantor's preferred choice for medical agent. At the risk of being repetitive, I must restate my position on this amendment. Clause 10 provides for a review of a medical agent's decision in certain circumstances. Members will recall that the select committee rejected the notion of any form of review or appeal of a medical agent's decision. The committee believed that just as a decision in relation to treatment which one makes when one has full capacity is not subject to review or appeal neither should a decision of one's agent be subject to review. However, after further consideration and receipt of submissions, a limited form of review has ultimately been accepted and incorporated in the Bill before this place. As members will recall, the jurisdiction to carry out the review as it stood in the clause we considered a couple of weeks ago was vested in the Guardianship Board. We have now accepted and reinforced tonight the amendment moved by the Hon. Robert Lawson to place jurisdiction in the Supreme Court. The Attorney-General now proposes an amendment, as he has on previous occasions when it has been defeated, to give the Supreme Court even wider scope. This goes to the very heart of the select committee's recommendations regarding patient autonomy.

There is no question that the whole basis of the Bill is to assign rights to patients and agents on their behalf acting in accordance with their instructions. To vest the Supreme Court with jurisdiction would not only set aside the whole basis of the appointment—in other words, to revoke the appointment, and I repeat that if we accepted this amendment we would be providing the Supreme Court with the power to revoke the appointment—but also mean the appointment of some other person, whom the patient may not even know, as their medical agent to make these decisions of life and death over the patient. It would set aside any other part of the attorney's charter, including specific directions by the patient. This goes to the very heart of the Bill. All the matters that the patient or grantor believed to be sacrosanct when they made a person their medical agent would be vulnerable to the court.

It would not invoke the test of the individual patient as to what a patient's wishes may be. The reality is that, no matter how much we may dislike the choice of individual patients, if they are conscious they have the right to make that choice. Even if the honourable member does not agree with that, or if you or I do not agree, it makes no difference; patients have the right to ensure that their decision is enforced. Once they fall unconscious, the person nominated to make those decisions on their behalf can suddenly find themselves in the Supreme Court, unbeknown to them, because they are not conscious, deprived of the opportunity to make the medical decisions that may be the subject of the moment. The patient's life will not be on hold while the court considers these matters. In fact, the patient may find that their whole choice of an attorney is set aside, that their directions are set aside, that the Supreme Court imposes tests or conditions that they have never contemplated and that their medical circumstances are determined by the court.

In my view, this amendment is totally contrary to the Bill, the essence of what we are debating and what we are seeking to provide for a dying person. Had they not appointed an agent and had they been conscious, they would have had the freedom to do all this for themselves. The very concept makes a mockery of the idea that people have autonomy in their medical decision making processes. I remind the Committee that a medical agent acts only through the medium of a medical practitioner. They cannot deliver treatment themselves. They cannot practise medicine themselves. They must act through the medium of a medical practitioner. There are many inherent practical day-to-day safeguards in this whole process.

Indeed, the assumption must certainly be made that a patient will appoint someone in whom they have trust and faith. The fact is that I doubt many patients would want the Supreme Court to be determining their medical treatment rather than the person they appointed to act as their agent especially for this purpose. I vigorously oppose this amendment, which I believe is contrary to everything we are seeking to achieve in this Bill. It is contrary to the essence of the Bill.

The Hon. K.T. GRIFFIN: I want to make one comment about what the Minister has said.

The CHAIRMAN: Order! We have been sitting here for nearly three hours. I think the clerks should have a short break. I will suspend the sitting if it is to go much longer.

The Hon. K.T. GRIFFIN: I just want to make one observation on what the Minister has said. I have not previously moved this. I have not previously put this to the vote. I have not lost it or won it. I indicated when we were last in Committee that I had concerns about clause 10 and indicated what I was going to propose to do on a recommittal. It is as simple as that. The issue we are now debating has not been won or lost by me or put by me in the past.

The Hon. Diana Laidlaw: You proposed an amendment, as you did on a previous occasion: you might not have moved it.

The Hon. K.T. GRIFFIN: I have not won or lost it. I did not even move this.

The Hon. Diana Laidlaw: That is what I am saying. You proposed it.

The Hon. K.T. GRIFFIN: Yes, I indicated in Committee that, when it was recommitted, I would be seeking to do this. That is right. So, the issue has not been resolved from my point of view. I just want to put that on the record and make quite clear that it is not something which has been put and lost or won.

The Committee divided on the clause as amended:

AYES (9)

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

NOES (8)

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

PAIRS

Wiese, B. J.	Irwin, J. C.
Kanck, S.M.	Stefani, J.F.

Majority of 1 for the Ayes.

Clause as amended thus passed.

[Sitting suspended from 10.51 to 11.09 p.m.]

Clauses 11 and 12 passed.

Clause 13—'Emergency medical treatment.'

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

Page 7, line 20—Leave out 'a' (second occurring).

There is an 'a' between 'administer' and 'medical' that needs to be deleted.

Amendment carried.

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

Page 7, line 22—Leave out 'is not competent to consent' and insert 'is incapable of consenting'.

This amendment changes another 'not competent' to 'incapable'. I have lost the battle on this.

Amendment carried.

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

Page 7, line 27—Leave out 'if an adult' and insert 'if of or over 16 years of age'.

This clause refers to 'the patient if an adult'. There is no longer a definition of 'adult' in the Bill and the amendment reflects this by referring to the patient 'if of or over the age of 16'.

Amendment carried.

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

Page 8, line 1—Leave out 'reasonably'.

This is consequential to the changes made to clauses 4 and 9.

Amendment carried.

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

Page 8, lines 4 and 5—Leave out subclause (4) and insert—

(4) If no such medical agent is available and a guardian of the patient is available, the medical treatment may not be administered without the guardian's consent.

This is similar to the previous amendment.

Amendment carried.

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

Page 8, line 6—Leave out 'reasonably'.

This is similar to the last amendment.

Amendment carried.

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

Page 8, lines 9 and 10—Leave out 'essential to the child's health and well-being' and insert 'in the best interests of the child's health and well-being'.

Clause 12(b)(1) refers to treatment being in the best interests of the child's health and well-being. In this subclause the reference is to the child's health and well-being. This amendment makes the references consistent.

Amendment carried; clause as amended passed.

Clauses 14 and 15 passed.

Clause 16—'Protection for medical practitioners, etc.'

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

Page 9, lines 15 and 16—Leave out 'of a person empowered to consent to medical treatment on the patient's behalf' and insert 'the patient's representative'.

Clause 4 was amended to include a definition of 'representative' to describe those persons who could make decisions about medical treatment on behalf of persons who are incapable of making decisions for themselves. The reference in clause 16(a) was not changed from 'a person empowered to consent to medical treatment on the patient's behalf' to 'representative'.

Amendment carried; clause as amended passed.

Clause 17—'The care of people who are dying.'

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

Page 9, lines 27 and 28—Leave out 'of a person empowered to consent to medical treatment on the patient's behalf' and insert 'the patient's representative'.

This again changes the reference to 'a person empowered to consent to medical treatment on the patient's behalf' to 'representative'.

Amendment carried.

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

Page 10, line 6—After 'without any real prospect of recovery' insert 'or in a persistent vegetative state'.

This clause provides that the medical practitioner is under no duty to use or to continue to use life sustaining measures in treating the patient if the effect of doing so would be merely to prolong life in a moribund state without any real prospect of recovery. This amendment adds that the medical practitioner is under no such duty if the effect would be to prolong the patient's life in a persistent vegetative state. This was part of an amendment that I moved earlier to this provision, but the amendment was lost for other reasons. As I explained then, it can be argued that there is a difference between a moribund state and a persistent vegetative state.

The *Oxford English Dictionary* defines moribund as 'at the point of death'. 'Persistent vegetative state' is the phrase used in the cases and literature to describe those patients with irreversible brain damage who, on recovery from a deep coma, pass into a state of seeming wakefulness and reflex responsiveness but do not return to a cogitative sapient state. Some patients in a persistent vegetative state can live for a considerable time after artificial feeding and life support systems have been withdrawn. Some patients in a persistent vegetative state have a swallowing reflex and do not need to be artificially fed. Thus, it could be argued that a person in a persistent vegetative state is not necessarily moribund and

a doctor who withdraws life sustaining measures would not receive the protection of clause 17(2). We have already acknowledged the distinction between a terminal phase of a terminal illness and persistent vegetative state in clause 7 and the second schedule.

Amendment carried; clause as amended passed.

Clauses 18 and 19 passed.

Schedules 1 and 2 passed.

Schedule 3.

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

Clause 4, page 15, line 8—After 'if the patient' insert '(being of or over 18 years of age)'.

Among other amendments, schedule 3 deals with amendments to the Mental Health Act and in paragraph (e) of clause 4 of that schedule there is a reference to where the patient is incapable of giving effective consent and is of or over 16 years of age. It should read 'being of or over 18 years of age' to maintain consistency with the rest of the Bill.

Amendment carried; schedule as amended passed.

Title passed.

The Hon. DIANA LAIDLAW (Minister of Transport): I move:

That this Bill be now a read third time.

The Hon. K.T. GRIFFIN (Attorney-General): I indicated throughout the consideration of this Bill that I had concerns with the way in which it has finally come out of the Committee for the second time. If the amendments which I had moved during the Committee on the first occasion had been passed I would have been quite prepared to support the third reading. Now there are a number of issues which have been dealt with in the Bill but which do not, in my view, accurately reflect a proper basis for providing for consent to medical treatment and palliative care. I do not want to take a lot of the time of the Council in dealing with the arguments. They have been fairly well explored during the careful consideration of this Bill by all members, but I do want to identify them quickly.

One relates to clause 8 which deals with the appointment of a medical power of attorney, and there is the contentious provision in subclause (7) in respect of the decisions which an agent is not authorised to take. I am concerned that the limitations in relation to the ability to refuse the provision or administration of food and water are not sufficiently in line with what I proposed; that is, there would be no opportunity to refuse the natural provision or natural administration of food and water and no opportunity to refuse the artificial administration of food and water unless it became significantly intrusive and burdensome.

This clause now opens up a much wider range of authority for the agent than I believe is proper in the circumstances. I have concerns about clause 10. I do not think the power of review is adequately expressed, but we have debated that at length. I have a very strong view that, whilst the penal provisions referred to in clause 11 are appropriate, there should have been a provision which focused upon the responsibility of an agent to act in accordance with directions and the wishes of the patient, and that a measure of objectivity was brought to bear on the assessment of the extent to which the agent did act within the authority granted.

I have concern about clause 16, which provides the protection for medical practitioners. I do not believe that the medical practitioner should have protection in circumstances where a decision is taken to do something or not to do something in order to preserve or improve the quality of life, which is a fairly nebulous, ill defined concept. That clause ought to contain at least some measure of objectivity, and I express some concern also about the professional standards of medical practice where some element of reasonableness should have been introduced. I do not think it is good enough for a medical practitioner to gain protection from civil or legal action unless the paramount concern of acting in the patient's interests has been one of the criteria.

In respect of clause 17(1), again, there should have been some measure of, if not objectivity then an assessment, the medical practitioner's acting in the best interests of the patient. There is also the problem of what is the terminal phase of a terminal illness and, again, that has been debated at length tonight. The only other major area of concern relates to minors, where I have concern about clause 12. I would much prefer to ensure that at some point there was a requirement at least to consult with parents, even though an independent decision might ultimately be taken by a child in conjunction with the medical practitioner.

Those matters have all been more than adequately debated during the lengthy consideration of the Bill. They are matters about which I do have concern. There are aspects of the Bill with which I agree, but I exercise my right to vote against the third reading on the basis that I do not believe that this either adequately protects the interests of the patient or adequately reflects what I should think are appropriate community standards.

The Hon. CAROLINE SCHAEFER: When I came to this place one of the earliest debates to which I contributed involved this Bill. I approached it very seriously: I read all the previous debates and the recommendations of the select committee; I sought professional advice; and I was always assured that this was not a euthanasia Bill.

I acknowledge the need in law to protect those who care for the dying and, therefore, I had intended to support the third reading of this Bill. However, I can no longer do so because of what I see as the intent of the Bill as it now stands. I may be wrong as I am not a lawyer, but neither will those who seek to interpret this Bill be lawyers. I believe that this is the thin end of the wedge. This Bill is the combination of two previous Acts, both of which appear to be perfectly adequate. So, really we have dealt with only two new areas, and they relate to the ability to appoint a medical attorney and also to the care of the dying. Yet this entire Bill has been based around the assumption that it deals merely with the care of the dying: it deals in fact with all medical treatment.

In my opinion this Bill does not support life: in fact, it almost supports death on demand. I have already said on a number of occasions that I support people's right to be allowed to die in comparative comfort, and for that reason I have always supported clause 17. However, I have strong reservations about a number of parts of the Bill as they now stand, one of which is the definition of 'life sustaining measures', where actual acts are set out, even though we have acknowledged that technology is advancing so quickly that we cannot possibly assume what might be termed as normal medical treatment within the next six months or two years. I do not say lightly, 'God help us if we have to revisit this Bill.'

I have already outlined my concerns about the definitions of 'terminal illness' and 'terminal phase': 'terminal phase of a terminal illness' under this Bill can refer to someone who is in dementia, who has heart disease, muscular dystrophy or

even cancer in remission. As I said previously, I support the right for someone to die in comparative comfort, but I cannot support someone being caused to die, and that is what this Bill now allows. My gravest reservations are still with the clause in the Bill that deals with the agent being allowed and not allowed to refuse provision of food and water, and what they may or may not refuse in that case; they can authorise that there be no saline drip and no cardiac resuscitation, whether the person concerned is temporarily or permanently incapable; and, as the Bill now reads, they can also be a beneficiary of the will at the same time.

There is very little mentioned in this Bill as to the best interests of the patient. As I see it, this is a euthanasia clause—either voluntarily or involuntarily. It is the fundamental duty of the Parliament to protect the innocent. Without this protection we build anarchy into the very fibre of legislation, and it is with deep regret that I cannot support the third reading.

The Hon. M.J. ELLIOTT: I rise to support the third reading. I do not agree with the interpretation of the Hon. Caroline Schaefer: this is not a 'right-to-die' Bill, and it is not about voluntary euthanasia. I put on the record that I would support such legislation, but this legislation is not such. In fact, I have supported amendments to this Bill which may be seen as being contrary to the right to die, because I wanted to ensure a far more basic right. There is no secret about this: while we are talking about consent to medical treatment generally, clause 6 covers most cases. A person over 16 years of age can make decisions about his or her own medical treatment. The rest of the legislation is about what happens in the circumstances when a person is not able at the time to give consent.

There are two ways in which they can grant consent when they are not at the time competent or capable of doing so. One is by way of an advance directive, and it is quite plain that that advance directive has effect only in relation to terminal illnesses and persistent vegetative states where people are incapable of making their own decisions. On the other hand, one can grant a medical power of attorney, which can have application at any time that one is not capable of granting consent. However, there are enormous safeguards in place in relation to how that power of attorney is applied. The debate that we had in this Parliament last year and again this year—I think we have spent five full sitting days debating this issue—has been all about putting—

The Hon. Diana Laidlaw: And that's only in Committee.

The Hon. M.J. ELLIOTT: Well, in the Committee stage. So we have had five days in Committee and the debate has been all about ensuring that the safeguards are there while preserving the essential elements of the legislation; that is, that decisions can be made when you yourself are not capable of doing so, but that, as far as practicable, those decisions reflect the decision you would have made if you could have done so.

It is, at the end of the day, still your decision. You have two ways of doing it: first, by an advance directive or, secondly, by appointing someone whom you trust and to whom, if you wish, you can give very clear guidelines. So, this is about granting your wishes.

Despite the fact that it is about granting your wishes, enormous safeguards have been put in place in terms of being able to go to the Supreme Court, and so on. We have spent an enormous amount of time ensuring that those safeguards are there. I believe that through this process the legislation maintained its basic integrity and intent, although I must say that it has been threatened on a couple of occasions. Changes of just a couple of words could have totally undermined its impact.

We have talked about all sorts of hypothetical cases. I must say that having the example of a former member who was here when we first debated this issue has, to my mind, added some extra impact to this. It is not hypothetical; it is about real people and their wishes.

We must be extremely cautious when we wish to intervene on someone else's behalf. It has been quite amazing how some people have tried to intervene to stop an agent acting in a particular way when, in fact, this Bill is all about empowering an agent to act on someone else's behalf. We are in many ways saying that, if we are not very careful about the way in which we put these safeguards in place, we know what is better for the patient than the person whom the patient appointed.

We have been trying to strike a very delicate balance. I think we have succeeded, but it has not been easy. The debate, although protracted, has been worthwhile. Although some reservations have been expressed, I believe that they have been unfounded—although some may not agree. I also believe that those issues have been sensitively handled. I rather suspect that we might end up dealing with this legislation again. Given that we have spent five days debating it, I am not sure how long 47 members in the Assembly will spend on it. It is quite a frightening prospect.

The Hon. Anne Levy: They have the gag down there.

The Hon. M.J. ELLIOTT: Yes, they do have the gag. I support the third reading. As I said, I think that, at the end of the day, we have been largely successful in producing a coherent piece of legislation that achieves the basic goals that it set out to achieve when we first started.

The Hon. M.S. FELEPPA: I will be very brief. I wish to indicate from the outset that I intend to support the third reading of this Bill, and I hope that I am not disappointing some colleagues on the Government side in so doing. I have been guided in my decision by consulting a number of people in our community. It has been their wish that this Parliament ultimately should make a brave decision to pass this legislation for the benefit of the people in those drastic life circumstances.

As I said, I have been guided by the people in our community. I have been strongly supported also by views expressed to me and likewise many colleagues in this Council by the Lutheran Church in a letter circulated to all members, I imagine. I wish to place on record the first paragraph of the letter written on behalf of the Lutheran Church and signed by Dr Robert Pollnitz, as follows:

> Having heard that this Bill has been reintroduced into the Upper House in its latest draft No. 8, dated 14 October 1993 with amendments, I take the liberty of writing to you to express three small concerns with this draft of the Bill.

The letter then continues by pointing out the three areas of concern, but generally the Lutherans support the Bill's passage.

The Archbishop of Adelaide for the Catholic Church, the Reverend Leonard Faulkner, in his letter says:

> I strongly support the Bill in its present form and I urge you to consider two further improvements that would bring the proposed legislation into full agreement with the recommendations of the House of Assembly Select Committee into the Law and Practice Relating to Death and Dying.

As I said, these two church groups have assisted me in making my decision. I supported almost every amendment, particularly those by the Attorney-General, because I consider that his amendments represented an improvement to the Bill. I am therefore satisfied that the Council generally has dealt with consideration of the Bill responsibly, and that responsibility will now lie with the House of Assembly, where the Government has the majority, and I shall be interested to see how it acts on behalf of the community.

The Hon. BERNICE PFITZNER: I support the third reading. Although the debate has been long and arduous, it has been productive because it is a difficult Bill, involving as it does life and death. Although I support the third reading, I do not support all the provisions of the Bill. In particular, I find it illogical in dealing with age that a 16 year old can decide to switch off or pull the plug but not be able to write an advance direction for the same. Also, I regret that the words 'extraordinary measures' have been replaced by 'life sustaining measures'. As to the original words, I was not successful in getting it across that it would be a more comfortable term for my colleagues, general practitioners, to stop extraordinary measures and be rather uncomfortable in stopping life sustaining measures. I do not believe there will be any increased legal challenges as the definition remains the same. It is more a matter of sensitivity.

Also, I am gravely concerned in relation to schedule 2 and the matter of the advance directive, because there are two options. It can either be put very simply to stop life sustaining measures if there is a persistent vegetative state rather than the other wider and more subjective option which includes all manner of terminal phases of terminal illness.

I believe that, even though there is a choice, some of the grantors might be intimidated or coerced by experts, lawyers or medical practitioners to opt for a more detailed and to my mind a more subjective kind of wish that is more difficult to interpret. I was away during the debate on 'incompetent' versus 'incapable'. I am encouraged and pleased that we have used the word 'incapable', because to my medical mind it covers a wider range, which includes not only mental ability but also physical ability, whereas 'incompetent' covers only mental ability. To me it is about the ability to speak and communicate the grantor's wishes. Further, in the area of medical treatment for children, I regret that we have not used the word 'must' but 'may'. Again I identify the problem I have always had in family planning clinics and the problems experienced by my medical practitioner colleagues who found it very difficult to accept that we did not have the legal power behind us to insist that parents be informed. I think we have lost an opportunity to show here that we value parents and guardians being involved and informed.

This whole Bill promotes and makes paramount the wishes of the patient or the grantor. Surely we cannot prolong life when the result would be suffering, despair and hopelessness. I am glad that those medical practitioners who are immediately responsible for the care of these very ill people are now legally protected to continue an activity that they have performed with excellence and without trouble for a long time. I ask colleagues in this Council to review their thoughts clearly, without prejudice and with compassion before they vote against this Bill. It should be remembered that the legislation will give all of us the right to make our own decisions, either directly or in advance, or even to choose an agent to do this for us. I cannot see the difficulty when the final aim and intent is not death but relief from a lifetime of suffering. I support the third reading.

The Hon. T. CROTHERS: I rise to indicate to the Chamber that I support the third reading. I do so for a number of reasons which I will briefly proceed to enumerate. Those of us who were listening to the Hon. Mike Elliott will recall that he referred to a former colleague of ours in this Council. I know that it is not generally the done thing, but those of us who read the *Advertiser* recently could not help but be moved by his plight. He is suffering from an incurable disease and, if I can remember correctly, when last we discussed the Bill he was fairly conservative in his approach to the Bill. It just goes to show—and it is certainly an object lesson for me—that one really does not know just what one's thinking will be unless one is confronted with that type of situation. As I said, those of us who read that article and who can remember the debate in the last Parliament on this issue could not fail to be moved by the humble manner in which our former colleague dealt with his own illness.

There are a number of other reasons why I will support the third reading but, principally, the two major Parties in this Chamber—and I cannot speak for the Democrats, because I do not know their position—determined that the matter would be an issue of conscience. The Bill has been kicked around a fair bit. It has been amended, and I did not like some of the amendments. It has been recommitted. It has been five days in gestation in this Chamber which, even for this Chamber, where much verbiage and care is always given to the Bills that come before it, must be some sort of record. I suppose one could look that up. So, it goes to show me and some other members present just what care and attention has been given to the Bill, bearing in mind that it is its second time in this place.

As I said, both major Parties—and I cannot speak for the Democrats; I assume that they took the same approach—made the matter an issue of conscience. I am not about to thwart that determination by not voting for the third reading, so I will ensure that my colleagues in another place—all 47 of them—have precisely the same right over a matter as publicly as important as this that I and my other 21 colleagues in this place had when we deliberated upon the Bill. That tactic would perhaps prevent the Bill from reaching members in another place, but it would be a tactic that would demean us and the import of this Bill to quite a number of people in this State. I do not believe that it is a euthanasia Bill, although sometimes I have wondered about that. It simply serves to give people the opportunity, when they are confronted with life and death—particularly death—to exercise with some dignity their right to choose what they do. In addition to that, it also allows people in advance to lay down certain conditions with respect to what they would do should they be confronted with a position in relation to their own life.

We do something similar now when we stipulate in our will that, upon death, our organs are to be utilised by those people who have greater longevity than the donor of the organs. I understand that in some cases those organs are taken just before death. I have said that in my view it would be an act of moral cowardice if we were not to allow the Bill to go to the other place for decision making. We all know—every last one of us here—that there are cases where doctors, because of their humane approach to some of their patients, exercise an illegal right by assisting an oncoming death by ensuring that it occurs as quickly and as painlessly as possible. I do not believe anyone here is a moral coward with

respect to the decision they will ultimately make relative to this third reading.

This is an age in which medical technology has come on by leaps and bounds. So much so, my own doctor tells me that he has difficulty in following the different new technical events, prescriptions, drugs and medicines. Who is to know where this Bill might finish up relative to its use or non-use? I do not know; I cannot say. However, it is important for me to vote for the third reading in order not to deny the right of access for consideration of the Bill on a conscience vote to those 47 other members of this State Parliament in another place. I commend the third reading to members. I do not propose to take my bat and ball and go home because I have not agreed with some of the provisions which have been amended. I commend the Bill and seek the support of members in so doing and again ask that it be passed so that it can be considered by the other 47 of the 69 members of the South Australian Parliament.

The Hon. R.R. ROBERTS: I take this opportunity to indicate that I shall support third reading of this Bill. I have taken this decision after a great deal of thought. Many issues with which I did not agree have been discussed in this Chamber during the past few days. I started with some basic principles, which I have expounded a number of times, with respect to the age of consent to medical treatment and the age that I felt was appropriate for powers of attorney and for declarations.

I have argued for the rights of parents as well as of children, and I still harbour concern about the medical treatment of children. When we first considered the Bill we unanimously agreed that if a parent or guardian of a child was available to decide whether medical treatment should be administered to the child, the medical practitioner, before administering such medical treatment, must seek the consent of the parent or guardian. When the clause was recommitted, it was a disappointment to me, given my commitment to the rights of parents in decision making, that almost at the death knock the clause was withdrawn. In my view, that has effectively lowered the age of consent to medical treatment, because it takes away a parent's right to declare someone under 16 to be a child and subject to parental guidance.

That provision has concerned me right the way through. However, somewhat like the Hon. Trevor Crothers, one cannot always rely on every clause to go through in the form that one would like on a conscience vote. This measure has been vigorously scrutinised by this Chamber. All members have had the opportunity to put their point of view. Some would argue that we would have to cut that out because it takes a long time, but at the end of the day we can revert to the faith of members whom I have mentioned in the past—the Hon. Dr Ritson, the Hon. John Burdett, and, indeed the Hon. Gordon Bruce. I do not propose to mention Gordon's plight in an emotional way, but it has always been a strong conviction of those aforementioned people that the process in the Legislative Council, for all its quaintness and tedious methodology at times, for one reason or another, seems to come up with a decision with which we can all agree.

Like the Hon. Mr Crothers, I am prepared to dispatch this Bill to the Lower House. I am not all that confident that it will come back in a form that is too different from that in which it went down, because I point out to members that when it came from the Lower House it was in a vastly different form from this, and it went through the Lower House with very little debate. I hope that the deliberations by the Legislative Council will be taken into consideration when it goes to the Lower House and that the concerns that have been expressed by people of a similar mind to me in relation to some of these clauses will be taken into consideration by our colleagues in the Lower House.

It is my earnest wish that they look at some of the issues, add their deliberations to them and send the Bill back, as I fully expect it to come back to this place, in a form which will come down, again, to a conscience vote rather than along strict party political lines. I have made the same observation regarding other conscience Bills. In particular, members will remember the gaming machines legislation where I took the view—and it has always been my view—that if it passes the Parliament on a conscience vote it is a true reflection of the whole of the House. Therefore, at this stage I support the third reading of this Bill to allow it to pass and go to our colleagues in another place.

The Hon. J.C. IRWIN: I oppose the third reading, a stance I have maintained from day one of the first debate on this Bill in the last Parliament. Tonight, I have agreed to pair with the Hon. Barbara Wiese, who is absent due to illness, so I will not be in the Chamber to vote on a division if one is called. I understand that the Hon. Julian Stefani will also pair with the Hon. Sandra Kanck. I wish to state briefly that Whips are in a difficult position working on the pairing arrangements in a conscience vote such as this. It is a difficult position for some of us who have a moral obligation to vote and to be seen to vote in the Chamber. I hope it is understood by everyone who observes this debate that I will not be in the Chamber for the vote. It is a very difficult position, particularly in respect of conscience votes.

I have always said that I would take part in the Committee stages of the Bill, and I have voted regularly on the amendments. To be perfectly fair, the amendments have somewhat improved the legislation, as I see it. The lengthy debate on this Bill during Committee highlights two things to me, and I am sure to anyone who plods their way through the *Hansard*. I refer, first, to the deep moral divisions that have emerged regarding certain issues that have come through the legislation and, secondly, to the detailed consideration of finer points of law in an endeavour to ensure that the intentions of the Bill are easily followed and understood by ordinary people and the courts. This long debate reinforces to me how difficult it is to codify every aspect of a piece of legislation of this nature. The words of the Hon. Dr Bob Ritson come back to reinforce that whenever I think of this point, as he made that point clearly himself.

I will go back briefly to my first second reading speech on this Bill during the last Parliament to reiterate one point, and that is the Dutch experience, which was recently exemplified by a photograph and article in the *Advertiser* last week which I found to be quite appalling. In 1991, one in 50 Dutch deaths were caused by euthanasia; one in 90 were by assisted suicide or killing without request—that is not called euthanasia in Holland; one in 11 were by an overdose given or treatment stopped—this is not called euthanasia in Holland but normal medical treatment; and one in six occurred where the doctor had the intention of killing the patient.

That made me think about the Hippocratic Oath, of which I have little understanding. I asked the Parliamentary Library today to obtain some information for me on that, and I thank the Flinders University for coming up with its version: medical graduates are not required to take the Hippocratic Oath or the Declaration of Helsinki/Declaration of Geneva

as a prerequisite for either the award of a degree or registration. I am not sure whether the number of graduating doctors who take that oath is recorded. The very early version goes back to Hippocrates, who lived in the years 460 to 370 BC. The *Oxford Companion in Medicine*, volume 11 (and I cannot see a date), states:

> I will prescribe a regime for the good of my patients according to my ability and my judgment, and never do harm to anyone. To please no-one will I prescribe a deadly drug, nor give advice which may cause his death.

I will not quote any more of that fairly lengthy passage. The declaration of professional dedication, which is part of the ceremony at Flinders University, states:

> I will use treatment to help the sick according to my ability and my judgment, but never with a view to injury or wrongdoing. Neither will I administer a poison to anyone when asked to do so, nor will I suggest such a course. Into whatsoever houses I enter to help the sick, I will abstain from all intentional wrongdoing and harm, especially from acts of seduction.

Again, I need not go into that, but it makes me wonder what the Hippocratic oath means. An awful lot of water has gone under the bridge since 370 BC and perhaps for modern times that oath should be upgraded.

By the measures in this Bill, we will be moving to voluntary direct killing. The Netherlands has already moved past that to non-voluntary direct killing. I have always been wary of the progression, and I mentioned that seriously in my second reading contribution on the last Bill. What interested me in the debate over the past few days is that we seem to be preoccupied with the directive and the power of attorney, assuming that people will have a directive or power of attorney. I think the Hon. Mr Elliott has said that probably not many people will. Some of the young people about whom we talk and who may be suffering from a terminal illness may have the foresight to give the advance directive or power of attorney.

Very few people made use of the provisions in the Natural Death Act. I do not know anyone who made use of them. I have no idea from statistics whether anyone did. I said previously that both my parents had signed, but both their certificates were sitting in a filing cabinet when they died. I did not know they had done that. I do not know who did, and I do not know whether that was used at all. I conclude that very few will make use of these provisions in this new legislation.

With that in mind, as this Bill leaves this place, what have we given the doctors, where there is no advance directive or no living will by anyone? I have to conclude that we have moved to the Dutch position where one in six deaths occur where the doctor had the intention of killing the patient by overdose or by starvation and dehydration. To me, that is crystal clear. For those reasons, I find it very difficult to support the third reading.

The Hon. A.J. REDFORD: I will be brief, but I support the third reading of this Bill. I am conscious of the fact that this legislation probably leaves more questions unanswered than it answers. I am certain, as the youngest member of this place, that no doubt in the not too distant future we will be revisiting some of the issues we have discussed in this debate. In fact, when one really looks at the scope and the extent of this legislation, one sees that there are many issues which we have not confronted and dealt with and certainly which we will be forced to confront in the future. I must say I was not involved in the initial debate in the last Parliament and in some respects much of the agenda was already set before I came into this place but, on balance, I believe that one should support this Bill and allow our Lower House colleagues to look at it, in the knowledge that many other issues will come before this Parliament and being conscious of the fact that it is not for any politician who seeks the support of the people to be elected to this place to shirk their responsibility in looking at some of the harder issues that arise.

The questions that arise under this legislation have been dealt with by politicians seriously for the first time in a very long time. These issues of life and death and of medical treatment at the end of one's life are exceedingly important to the general public and the people at large. The question for the future is: who are these questions to be left to? Are they to be left to the doctors and medical practitioners who practise in this area? Are they to be left to the courts, the lawyers and the people associated with the people who are confronted with death and dying? Are they to be left solely in the hands of the patients themselves? Are they generally to be decided on matters of principle by the community and, at the end of the day, can Parliaments of Australia and Parliaments of this State continue to avoid some of the great issues that confront the medical profession and people who are in these positions?

It is my view that we cannot continue to avoid those issues and, when one looks at the extraordinary advances that have been made over the years in medical science, one has to go back and re-examine some of the existing basic ethical procedures and principles. I was interested to read in Saturday's *Australian* an article entitled 'The Last Mystery', which previewed a book by Mr Peter Singer on the topic of death and dying. It referred to a case of a Miss Marshall who died while she was pregnant: she was declared brain dead. One of the ethical dilemmas that confronted the medical practitioners at the time was whether or not she should be kept alive. A medical journalist at the time reported:

> ...the doctors involved in the case 'admit to feeling as if they are being swept along by the rush of medical progress. There were times in my conversations with them when they almost seemed to be pleading for someone to slow them down, or at least for an ethical rudder to steer them through the rapids'.

I suggest that at some stage in the future the ethical rudder is going to be the Parliaments of this country. A number of issues are not addressed in this legislation, such as the question, 'What is death?' In those articles the question is posed whether brain dead is sufficient to determine life or death. For example, when someone is born without a brain, is there any obligation in relation to that body in terms of any treatment? There is the question when does life begin. What is the status of an egg? With human embryo transplants, is that egg, when it is outside the human body, human life? These sorts of issues need to be looked at and I am certain that they will be revisited by Parliaments in Australia in the future.

The Hon. R.D. LAWSON: I also support the third reading of this Bill. In my view, this is but a modest step forward to bring the statutory law of this State basically into line with the position that prevails under the general law in any event, or which prevailed under the pre-existing law. I will very briefly run through the clauses to indicate the modesty of this proposal. Clause 6, which originally did not appear in this Bill, provides that any person over the age of 16 years may make decisions about his or her own medical treatment. This was the position under the previous Consent

to Medical and Dental Procedures Act of 1985. Clause 7 introduces into our law a very beneficial provision, in my view. It provides that a person who is an adult may, while of sound mind, give an anticipatory direction about the medical treatment that person wants or does not want if at some time in the future he or she is suffering the terminal phase of a terminal illness.

This is a beneficial provision and should be considered alongside and in addition to the common law right of every adult to give a direction with immediate effect. In this Bill we have not sought to codify all the law on the subject; we have simply facilitated something that previously did not exist. Likewise in clause 8 of the Bill, we have allowed a person who so wishes, and who is over the age of 18, to give a medical power of attorney. This is a novel and beneficial provision. It is merely a facilitative one; there is no obligation to give such a power of attorney and it is likely, as several speakers have said, that not many members of the community will avail themselves of it, but it is available to those who wish to use it.

In subclause (7) of this provision we have inserted provisions that govern the exercise of medical powers of attorney and provide safeguards. In subclause (8) we have provided that the powers conferred by a medical power of attorney must be exercised in accordance with the lawful directions of the patient in what the agent genuinely believes to be the best interests of the grantor. After debate in Committee we rejected—in my view wisely—the imposition of an objective standard. This is a provision, as is clause 7, which reinforces the sovereignty of individuals.

In clause 10 of the Bill we have included provisions not originally recommended by the select committee, which give the Supreme Court the opportunity in certain circumstances to review the decision of medical agents and to give advice and directions to the medical practitioners concerned, if they seek them, or to anybody else who has a proper interest in the exercise of these powers. This provision is, in my view, a beneficial one. We have retained in the Bill clause 10(2), which limits the right of the court to review a decision in those circumstances where a medical agent has made a decision to discontinue a treatment, where the effect of treatment would merely be to prolong life in a moribund state without any real prospect of recovery. That seems to me to be a beneficial provision.

In clause 12 of the Bill we have restored the position which applied in relation to the medical treatment of children as it applies presently and as it has applied without apparent difficulty since the enactment of the Consent to Medical and Dental Procedures Act in 1985. Clause 13 contains beneficial provisions relating to emergency medical treatment but does not alter the law in any significant way. Likewise, clauses 15 and 16 do not alter the common law but merely restate the common law. Clause 17, which deals with the care of people who are dying and which has been the subject of considerable discussion in Committee and elsewhere, is again merely a reflection of the common law position, and in particular clause 17(2) is merely a reflection of what the House of Lords decided in the Anthony Bland case.

Finally, there is the saving provision (clause 18) which was originally inserted on the motion of the Hon. Caroline Schaefer and which in my view is a beneficial provision which specifically provides that the Act does not authorise the administration of medical treatment for the purpose of causing death, and it does not authorise a person to assist the suicide of another. That clause makes it perfectly clear that this is not a euthanasia measure.

The Hon. Jamie Irwin spoke about the difficulty of codifying the law and the difficulty we have experienced in getting the Bill to this stage. The general law and medical practice move on. If the legislature itself does not move and seek to either change or influence the way in which medical and legal practice carries on, the legislature itself becomes irrelevant to the whole process. The courts will make and have made in the past decisions which do make new law and create new precedents. That law will go on being developed. Unless we pass laws of this kind we as legislators make ourselves irrelevant to the process. I support the third reading.

The Council divided on the third reading:

AYES (14)

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

NOES (2)

Griffin, K. T. (teller)	Schaefer, C. V.

PAIRS

Wiese, B. J.	Irwin, J. C.
Kanck S. M.	Stefani J. F.

Majority of 12 for the Ayes.

Third reading thus carried.

Bill passed.

FINANCIAL INSTITUTIONS DUTY (EXEMPT ACCOUNTS) AMENDMENT BILL

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

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

That this Bill be now read a second time.

As this Bill has already been dealt with in another place, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The Government announced in the 1994-95 Financial Statement that it would continue the Local Government Disaster Fund and continue to finance it through a 0.005 percent levy on financial institutions duty. When the levy was introduced in 1990 it had an expected five-year life to October, 1995.

The Fund has achieved its objective of assisting the Local Government community meeting costs arising from natural disasters and following discussions with the Local Government Association it is proposed to continue with the levy on financial institutions duty with the revenue received to be paid into the Local Government Disaster Fund.

The *Financial Institutions Duty Act* currently provides for a concessional rate of duty for short-term money market transactions and the provision of certain classes of exempt accounts into which non-dutiable receipts may be deposited.

The Act also provides that persons who have such exempt accounts must at the end of each financial year provide the Commissioner with a certificate confirming that all amounts deposited into the account were legitimate exempt receipts and in cases where that has not occurred pay the relevant duty to the Commissioner.

Deficiencies have been identified in these provisions in that the relevant section currently takes no account of the $1 200 maximum duty ceiling per receipt which can grossly disadvantage business with a large turnover. Conversely, the section does not currently contain any mechanism which allows the Commissioner to issue an

assessment or recover outstanding duty should the taxpayer not meet their obligations.

Amendments to these provisions will provide a more equitable approach to administering the Act and will ensure that the Commissioner has sufficient power to raise an assessment and recover outstanding duty.

The opportunity is also being taken to make a number of statute revision amendments.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 3—Interpretation

This clause amends the definitions of "the prescribed percentage" and "the relevant amount" so that these amounts will not decrease on 1 October 1995 but will remain at the current levels.

Clause 4: Amendment of s. 31—Special bank accounts of non-bank financial institutions

This clause changes the obsolete reference to the "Stock Exchange of Adelaide Limited" to a reference to the "Australian Stock Exchange Limited".

Clause 5: Substitution of s. 37

This clause substitutes a new section 37 which provides for the lodgement of annual returns by exempt account holders. Under new section 37 duty is payable on amounts paid into an exempt account in contravention of the Act at a rate equivalent to the rate of duty payable under section 29. In these circumstances the person lodging the return will also be liable to pay an additional amount, by way of penalty, which is equal to the amount of duty payable. The Commissioner may, however, remit the whole or any part of the additional amount payable.

Failure to comply with the section is an offence and carries a maximum penalty of $10 000.

Clause 6: Amendment of s. 43—Assessments of duty

This clause substitutes a new subsection (2) which does not differ substantively from the current provision but is expressed in terms which are more consistent with the rest of the section.

Clause 7: Amendment of s. 55—Offences

This clause provides a defence to the offence of paying money, or causing or permitting money to be paid, into an exempt account in contravention of the Act where duty and penalty duty has been paid under section 37.

Clause 8: Statute revision amendments

This clause allows for the schedule which makes various statute revision amendments of a non-substantive nature to the Act.

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

ADJOURNMENT

At 12.24 a.m. the Council adjourned until Wednesday 2 November at 2.15 p.m.