HOUSE OF ASSEMBLY

Thursday 18 February 1993

The SPEAKER (Hon. N.T. Peterson) took the Chair at 10.30 a.m. and read prayers.

INDUSTRIAL RELATIONS ADVISORY COUNCIL (REMOVAL OF SUNSET CLAUSE) AMENDMENT BILL

The Hon. R.J. GREGORY (Minister of Labour Relations and Occupational Health and Safety) obtained leave and introduced a Bill for an Act to amend the Industrial Relations Advisory Council Act 1983. Read a first time.

The Hon. R.J. GREGORY: I move:

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

The aim of this Bill is to remove the sunset clause from the *Industrial Relations Advisory Council Act* 1983. When the Industrial Relations Advisory Council was established the parties agreed that a 'sunset' clause should be included so that the effectiveness of the Council could be reviewed on a three yearly basis.

All parties involved in the industrial relations arena now agree that the Council is a useful forum and that there is no need to continue with the 'sunset' clause.

The Government believes that the Advisory Council has had a positive influence on our industrial relations system and has contributed to the State's excellent record of industrial harmony as evidenced by the fact that this State has recently recorded the lowest number of days ever lost through industrial disputes.

The removal of the 'sunset' clause will make the Advisory Council a permanent part of this State's consultative process in industrial matters, and reflect this Government's commitment to industrial partnership.

Clause 1: Short Title. This clause is formal.

Clause 2: Repeal of s. 13. This clause repeals the sunset clause of the Act.

Mr INGERSON secured the adjournment of the debate.

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE BILL

Bill recommitted.

Clause 1—'Short title.'

Mr S.G. EVANS: I opposed this title in principle but I did not speak on the second reading. However, I do not believe that the title is correct. Although it implies consent to medical treatment and palliative care, the Bill really provides power for consent not to have such treatment. I therefore think the title is misleading: although it is intended to make the measure sound as soft and as nice as it can be, it could be regarded as providing just the opposite to that and for a person, through an agent, giving consent not to have medical treatment or palliative care.

The Hon. M.J. EVANS: I think that the honourable member misunderstands the nature of the title in some ways. The Bill is about consent. Of course, consent is also the refusal of consent, but it is a Bill about consent. I really do not see that one would normally put into the title of a Bill such as this that it is a Bill about the refusal of consent when in the vast majority of cases people do consent to the treatment and, in fact, seek the treatment. So, the Bill is about the consent to treatment. Whether a person exercises their obvious rights to refuse that treatment and to refuse consent, or whether they use their right to accept the treatment and therefore consent to it, it is still about consent.

The Hon. JENNIFER CASHMORE: In response to the member for Davenport, I point out that in so far as the title 'consent to medical treatment' describes a critical clause in this Bill, namely clause 5, as far as I recollect the title of the Bill, and the clause to which it specifically refers, is identical to the title of the Bill and the clause to which it specifically refers, which is being repealed and reinstated. I would be interested to know whether the member for Davenport opposed the description of consent to medical treatment when that Bill was passed in 1983.

The word 'consent', as the Minister said, implies not only that one can agree but that one can disagree or refuse to agree; that is implicit in the definition of the word 'consent' and therefore I believe it is an accurate title for the Bill. The palliative care aspects of the title are embodied in other clauses—the reforming clauses of the Bill. When I use the word 'reform', I use it in the sense of a change for the better. The word 'reform' has been somewhat debated politically because it is often used to describe any change. But the purpose of this Bill and its intent in respect of enabling the practice of palliative care for those who are dying, that is, the relief of pain and symptom control, is in my opinion a change for the better, and therefore I would speak positively in support of the title of the Bill.

Mr S.G. EVANS: I thank both the Minister and my colleague the member for Coles for their comments. The member for Coles helped me a little by saying that the title refers specifically, in some degree, to clause 5, which talks about the age of consent being 16 years.

The honourable member also said it was a reform for the better. That is always an interpretation for the individual, and I do not think it is a reform for the better in the long term. I will come to that later when we debate the clauses; I do not want to expand that argument now. I point out that that is a matter of personal interpretation and, as an elected member of the House, I do not believe that is the case. I still make the point that the Bill does not really, in its title, emphasise that it makes a significant change, that change being that a person can refuse treatment through an agent. That is a significant change and, in my view, it is not a reform for the better.

Mr ATKINSON: I want to endorse the remarks of the member for Davenport. Whether a Bill brings about a reform or a change is very much in the eye of the

beholder. As it happens, I believe this Bill brings about reform, and I think it would be churlish not to support it, however it emerges from the Committee stage, although I will be moving a number of amendments.

At this stage I want to ask a question about procedure, if that is in order. My question is: will we have a chance to discuss the amendments that have been incorporated in the original Bill to create Bill No. 103?

The CHAIRMAN: As I understand it, they are incorporated in the Bill. We will be going through Bill No. 103 clause by clause, thus members will have the opportunity to debate those changes.

Clause passed.

Clause 2 passed.

Clause 3—'Objects.'

Mr ATKINSON: I move:

Page 1, line 18—Insert paragraph as follows:

(d) to preserve the prohibition on assisted suicide in section 13a of the Criminal Law Consolidation Act.

With this amendment, I seek to preserve the current law of homicide. In its report, the select committee stated that it did not intend to supersede or amend the law of homicide. To put it another way, the committee rejected legalising active voluntary euthanasia. The report states:

The committee does not agree with the proposition that the law should be changed to provide the option of medical assistance in dying. We disagree with the Voluntary Euthanasia Society's claim in support of its case. The fact that some patients and doctors may resort to illegal or otherwise undesirable or ineffectual means of ending life is not in itself sufficient justification for legislating to provide medical assistance in dying. If commission of illegal acts was seen to be the basis for change in law, much if not all statutory law would be seen to be futile. The committee rejects the notion that there is no moral distinction between letting someone die and bringing about that person's death.

The concept of intent has always been crucial to the law as, for example, in the legal distinction between murder, manslaughter and accidental death. Whether a death is categorised as being a result of murder, manslaughter or accident is determined solely by the finding of the intent of the alleged perpetrator. In all three cases, a human being dies. In each case, society's response is different, thus society has placed significant moral and legal weight on intention. The committee believes distinctions based on intent should be maintained in the law.

I have moved this amendment to put the matter beyond doubt. The committee of which I was a member states that it is its intention to preserve the law of homicide. Therefore I seek to insert paragraph (d) explicitly to preserve the prohibition on assisted suicide in section 13a of the Criminal Law Consolidation Act. I think this is a case of, 'Don't accept what they say; watch what they do.' The committee says that it is its intention to preserve the law of homicide. Well, let us do that and do it explicitly.

During earlier debate, the member for Coles said that she would oppose this amendment because she felt that such a preservation clause was repetitious and a crude instrument. It seems to me that this preservation clause is indeed blunt and clear, and that is one of its virtues. It does explicitly what all parties to this debate in Parliament say they want to do, that is, preserve the law against assisted suicide. I think that the criticism of the member for Coles is more an aesthetic one than a substantial one. I do not see any harm resulting from this amendment.

It is well known to anyone who studies the law that an Act of Parliament, once passed, supersedes or prevails over previous laws to the extent of the inconsistency. The member for Coles says that the Bill before us is not intended to change the law of homicide but, when the matter comes to court, the court will not be interested in Parliament's intention. Indeed courts are barred from taking into account parliamentary debates when interpreting statutes. If this Bill has, by its words, as interpreted by a court, the effect of superseding in any way the law of homicide, it will supersede that law. We can put this matter entirely beyond doubt by passing this preservation clause.

The Hon. M.J. EVANS: There is no doubt; there is no inconsistency—the flaw in the argument of my colleague the member for Spence is simply that. The reality is that we do not preserve or restate all the other laws of the State when we enact other provisions in this Parliament. We could do that endlessly. There is simply no doubt that this Bill does not provide a right for anyone, including the medical profession, to participate in a criminal conspiracy for assisted suicide. It does not provide any mechanism for the taking of life legally in a deliberately murderous way. Such things are not permitted by this Bill, and there is no doubt that we need to resolve in that context. The honourable member's amendment only addresses the prohibition on assisted suicide. It does not, despite what he indicated during his remarks, seek to preserve the law against homicide, for example; it picks up only assisted suicide.

While the honourable member could easily amend that provision again to increase the breadth of it, therein lies the problem. If we seek to preserve one law, why should we not preserve all other laws that might impact on this provision? While I agree that issues related to the prohibition on assisted suicide or homicide are certainly of interest and concern when discussing a topic such as this, there are no provisions in this Bill that would specifically allow a legal right to participate in assisted suicide because, quite clearly, the intent of the parties is totally different from the mechanisms that are discussed in the Bill. There is no question that any provision in the Bill will override the provisions of the Criminal Law Consolidation Act, because that is not part of their terminology.

If we begin to preserve and restate existing provisions of the law, we will have to follow that through exceptionally carefully to make sure that we have covered all those points. That is not a technique which this Parliament has previously adopted and it is one which I think would lead to endless litigation in the courts. It would lead to endless doubt, which is something that the honourable member is seeking to remove. In fact, it would create and strengthen doubt where none really exists now. It would certainly not assist the community to understand, improve and reform the law on death and dying, as the committee has sought to do.

It was not the committee's intention to preserve the law against assisted suicide; it was the committee's intention not to upset the law against assisted

suicide—and it has not done that. The committee never intended to rigorously go through and preserve all the laws which the law of this State preserves anyway, and I think that is the fundamental distinction that we must make in assessing the validity of this amendment. I urge the Committee to reject the amendment on that basis.

The Hon. JENNIFER CASHMORE: I oppose the amendment. As I indicated in my second reading speech, I have a philosophical and a legislative objection to it. Therefore, I oppose the amendment on two grounds, and I will deal with the legislative objection first, notwithstanding the fact that I believe the Minister has successfully demolished any arguments in support of a change that would, in fact, as far as I can ascertain, be unprecedented in the legislative history of this Parliament by restating the provisions of one Act in another.

If one looks at the Criminal Law Consolidation Act, one can see that it covers a vast range of criminal acts. Most, if not all, of the criminal acts that are prohibited in the Criminal Law Consolidation Act have some relationship to some other law. For example, section 245 of the Criminal Law Consolidation Act deals with offences relating to jurors. There is nothing in the Juries Act which repeats those offences, nor is there any reason why there should be anything in the Juries Act to repeat those offences, notwithstanding their relevance to the Juries Act.

Section 143—and I am just selecting at random—of the Criminal Law Consolidation Act deals with stealing or dredging for oysters in oyster fisheries. One might suppose that that is relevant to the Fisheries Act, but it is not repeated in the Fisheries Act—and for a very good reason: because the criminal law has no place in Acts outside the Criminal Law Consolidation Act. That is a principle that most legislators, certainly the majority of the lawyers and I believe the majority of judges, would endorse. So much for my objections on the grounds of sound practice in terms of the statutes.

My other objection is a philosophical one. Having served on the committee, the member for Spence would know that the sincere efforts of the committee were directed towards ensuring that the law was supportive, positive and instructive in respect of consent to medical treatment and care of the dying. That is why, in my second reading speech, I said that I believed that to incorporate the criminal law in this Act would be a crude instrument which would not in any way enhance objections—indeed, our complete opposition—to any possibility of this Bill's being used as an instrument for voluntary euthanasia. We must ensure that the Bill is used for the purposes for which we want it to be used, namely, as an instructive, supportive piece of legislation which protects doctors who are practising palliative care in accordance with certain very rigid and comprehensive criteria and which protects patients in order to ensure that, if they are dying, they do not have pain relief and symptom control withheld from them.

At the moment the fear by some doctors, which is traditional and historical, notwithstanding advances in medicine, is inhibiting the practice of palliative care. If medical practitioners were to study this Bill—and they are fully aware of the prohibition against assisted suicide—one of the first things they would note is that it acts as a deterrent, indeed an impediment in my view, to the proper practice of palliative care. So, it is impossible at this stage to debate clauses that are further ahead in the Bill but, certainly, when we come to clauses 10, 11 and 12, we will see that the protection which the member for Spence seeks and the protection which I, as a member of the committee, firmly believe should be enshrined in this Bill is in fact enshrined in this Bill, and I am able to oppose this amendment with a very clear conscience, knowing that the intent of the amendment is already enshrined in the Bill and that the force of the law as it stands in the Criminal Law Consolidation Act is in no way diminished by anything in this Bill. I oppose the amendment.

Mr ATKINSON: The question whether anything in this Bill diminishes the prohibition on assisted suicide in the Criminal Law Consolidation Act is one for a court to decide when a matter is before it. If we want to put that beyond doubt, we will pass this amendment. Scattered throughout our statue law, not just in South Australia but in other jurisdictions that follow the British model, there are statutes containing savings clauses, statutes which say that the statute in question is not intended to affect or override previous legislation. It happens often. I am happy to take the member for Coles to the Parliamentary Library where we can go through the statute books and be able to find any number of such clauses.

People who in good faith fear this Bill as introducing active voluntary euthanasia could be easily reassured by the passage of this amendment. It does not seem worth disappointing and frightening those people by defeating this quite harmless measure. On the evidence of the member for Elizabeth and the member for Coles, this amendment provides explicitly what they believe the Bill already achieves, so I have yet to hear from them what real harm this amendment will do, apart from denting the fully justified pride in ownership of this Bill of the members for Coles and Elizabeth.

Mr MEIER: Having listened to the arguments, I support the member for Spence. I think members need to recognise that this is a contentious Bill. It has been under discussion now through the select committee and through the draft Bill for a long time. Many people have expressed concerns in relation to what it contains. In listening to the member for Coles say that the intent of this amendment is already enshrined in this Bill, I feel that it makes sense that we should put under the objects with which we are dealing the suggested amendment by the member for Spence. If the intent of the amendment is already enshrined in the Bill, why not put it forward as one of the objects? That is basically what the member for Spence is seeking to do. Certainly, I do not want to see the legislative program upset in relation to how Bills are drafted and that we cannot be reincorporating things from one Act into another. It would become very messy, but it needs to be recognised that this is simply putting beyond doubt what the proponents of this Bill have been advocating. I believe that this amendment should be passed.

Mr BECKER: I support the amendment of the member for Spence and the comments of the member for Goyder. I have heard nothing in rebuttal to indicate why this amendment should be defeated. As far as I am concerned, it preserves the very essence of what we want, if we have to tolerate this legislation. It is quite

clear that I see no reason for it at all but, if we have to tolerate it, I suppose I will be like the churches and compromise very reluctantly. We are led to believe that the churches totally support the legislation, but I am informed that that is not totally unqualified, and that the worst of whatever there is will be accepted. I support the member for Spence and the member for Goyder.

The Hon. M.J. EVANS: I will not recanvass the arguments put so capably by others, like the member for Coles. One of the serious problems this creates is that, by commencing to preserve things, you then do raise doubts about those things that you have not preserved. There are many other things that one could conceivably preserve or restate that we are not doing in this suggested amendment.

The question of doubt is much more likely in my view to arise in the community over things which have not been preserved. Given that we went to the trouble to preserve one thing, why did we not touch others, and what does it mean that we did not touch others?

If we follow the normal process and simply state the law as we want it to be, and allow the Criminal Law Consolidation Act to do its own very effective work, the community is then entitled to ask, 'Why did we go to the trouble to preserve section 13a of the Criminal Law Consolidation Act when we did not preserve all sorts of other issues that may arise at some point, unpredictable by us now, in a future debate on this?' It is much sounder to allow the work of the law to exist as it stands in this Bill and to allow the Criminal Law Consolidation Act to continue as it always will in this context without any interference from this Bill and, where a crime is committed, allow it to be dealt with under the Criminal Law Consolidation Act as it surely will be.

By preserving items here we will inevitably raise serious doubts in the community subsequently about those areas we did not preserve when, in fact, as the member for Coles has said, the whole intention of this Bill is to make a clear statement of the law relating to consent to medical treatment and palliative care, to set people's minds at rest when, in fact, they are at a most vulnerable time and to provide legal guidance to the medical profession at a time when they need it most. By raising the doubts, as this expression does, we would do a strong disservice to the community that we are hoping to serve.

Mr ATKINSON: This preservation clause does not raise any doubts at all. In fact, it lays doubts to rest. I say this with a heavy heart, but it seems to me that the resistance to this preservation clause by the members for Coles and Elizabeth can only mean one thing concerning this Bill. What they are really saying is that under this Bill it is going to be okay—it is a legitimate interpretation—to assist in suicide in certain circumstances. That is what their resistance to this clause signifies. I say that with a heavy heart because I know that that was not their intention on the select committee. It was not any of our intentions to achieve that.

The Hon. JENNIFER CASHMORE: I cannot let pass the allegations made by the member for Spence, as I consider them to be a serious misrepresentation of my position, and also deeply offensive in so far as the member for Spence is saying that the member for Coles claims that she is opposed to assisted suicide yet she is insisting on legislating for just that eventuality. In saying that, the member for Spence is saying, in effect, either that the member for Coles (let me think of a term not too offensive) is muddleheaded in that she does not know what she is doing or that she has evil intent in that she knows what she is doing and is deliberately trying to deceive the Parliament and the people.

I take the deepest and strongest exception to what the member for Spence has just said and, whilst this debate must stick to the issues rather than to anyone's personal opinion, most members will recognise that what the member for Spence has just said was not just, nor was it fair, and I hope that he will see fit at some stage in the debate to retract it. In noting the report on the Bill he has already quoted my own drafting of arguments against assisted suicide. I do not feel I need to say any more.

The Hon. D.J. HOPGOOD: Without wanting to lengthen the debate on this matter, although maybe it should be lengthened because it is the most important principle with which we will be dealing while you, Sir, are in the Chair, if people want to ascribe motives in this debate, they will have to put the member for Baudin in the net as well. My approach to this matter is exactly the same as that of the member for Coles and the Minister on the front bench—

The Hon. B. C. Eastick interjecting:

The Hon. D.J. HOPGOOD: —and the member for Light, and I thank the member for Light for his support in this matter. I am sure the member for Light and the other members to whom I have referred would be with me in indicating that the committee looked specifically at this matter. We looked not only at the principles which underlie it but also at the wording of the recommendations which we put before the Parliament and which now have largely found their way into the document that we are discussing.

I do not think we were in any way at fault in the time and the energy that we put into considering this very point and I thought that the committee emerged in a fairly unanimous situation, as agreeing to the appropriateness of that to which we had arrived, and indeed the appropriateness of the wording of the Bill as incorporating our desires as a select committee. I can understand the motivation of the member for Spence. I urge members of the Committee nonetheless to reject his amendment.

Mrs KOTZ: I wish to add my opposition to the amendment proposed by the member for Spence. I was quite interested in hearing the member for Spence's contentions as opposed to the reasons why he wanted to present this particular clause on the preservation of an existing piece of legislation, and I was prepared to accept the arguments as perhaps somewhat naive, but he definitely had the right to present those arguments. Having listened to certain comments that the member for Spence has recently made, I can only consider that there seems to be some form of malicious endeavour, also, in the previous presentations of the member for Spence. As a member of that select committee who came to the same conclusions which we considered were unanimous, I also take offence at and object to the presentation by him.

In looking at the amendment presented by the member for Spence, I cannot agree in any form whatsoever with the contentions made by him. There is no area within

this new Bill presently being discussed that looks at repealing any part or section, which in this instance is section 13a, of an existing piece of legislation, under the Criminal Law Consolidation Act. It is quite clear that that existing piece of legislation will remain intact.

I take notice of the explanation of the Minister at the table in as much as, if in fact we are to preserve some form of insurance in any piece of legislation that will be debated and passed in this place, we will end up with a most unwieldy piece of legislation that will be totally unworkable. I also consider that accepting anything along the lines that only enshrines existing legislation in other pieces of legislation means that we will set a precedent. Thus, for every piece of legislation we now debate, because of the misunderstandings of legislators within this Chamber about existing pieces of legislation, we will in fact be dealing in future with precedents set. So, we will have to look at enshrining, preserving and taking out insurances that will in some way supposedly define individual pieces of legislation.

I think one of the pertinent realisations that legislators do come to is the fact that if we attempt to define every item, word, principle and philosophy we end up asking further questions, and causing more doubts in the minds of people. This is exactly what will happen if we accept this particular amendment presented by the member for Spence. My main objection is that there is no intent at all within this Bill to agree to any form of assisted suicide, and I am quite sure that the mere fact that existing provision remains in section 13A of the Criminal Law Consolidation Act is proof of that.

Mr BLACKER: I understand that the amendment being debated, as first circulated, was to add an additional subclause to clause 3(d). We now have a somewhat softened provision which takes out that particular reference to the Criminal Law Consolidation Act and merely adds to paragraph (c), 'while preserving the prohibition against assisted suicide'. Are we addressing both those amendments, the first one of which is much more positive a directive, whereas the reference to the Criminal Law Consolidation Act, which has now created much of the debate, would be removed by the second amendment that has been circulated? Whilst some objection might be taken to the first amendment, the second one might be much more acceptable to most people, because it is just a summary of the objective rather than a direction by this House that a certain Act of Parliament should be considered in conjunction with this measure.

The CHAIRMAN: I do not like the way this is being done; I do not like amendments being changed over at the last minute. However, I am informed that the intent of the amendment in front of members is exactly the same as the previous amendment. The honourable member has indicated to me on two occasions, and that is why I wanted to have it in the *Hansard,* that he has actually withdrawn the first set of amendments. If the member for Flinders is unhappy with the wording of the present set of amendments, he may move, as an amendment to this amendment, that the original wording remain.

The Hon. M.J. EVANS: Further to that, I think members should note the footnote on the latest version, mark II: 'see section 13a of the Criminal Law Consolidation Act'. So, while in actual fact the two parts have been separated, the second part will still appear in the footnote and forms part of the amendment which may or may not then be carried.

I think that the member for Flinders' point really would not change it either way, because the original drafting had that in the body of the language, whereas in this case the same wording still appears but it appears as a footnote. But, the impact, as the Chairman has indicated, would be the same either way and the words are the same virtually: it is just they have been separated by a few inches of paper—

The Committee divided on the amendment:

Ayes (6)—M.J. Atkinson (teller), H. Becker, P.D. Blacker, S.G. Evans, P. Holloway, E.J. Meier.

Noes (37)—H. Allison, M.H. Armitage, L.M.F. Arnold, P.B. Arnold, D.S. Baker, S.J. Baker, J.C. Bannon, F.T. Blevins, M_K. Brindal, D.C. Brown, J.L. Cashmore, G.J. Crafter, M.R. De Laine, B.C. Eastick, M.J. Evans (teller), R.J Gregory, K.C. Hamilton, T.H. Hemmings, V.S. Heron, D.J. Hopgood, C.F. Hutchison, G.A. Ingerson, J.H.C. Klunder, D.C. Kotz, S.M. Lenehan, I.P. Lewis, C.D.T. McKee, W.A. Matthew, M.K. Mayes, J.W. Olsen, J.K.G. Oswald, N.T. Peterson, J.A. Quirke, M.D. Rann, J.P. Trainer, I.H. Venning, D.C. Wotton.

Majority of 31 for the Noes.

Amendment thus negatived.

Mr S.G. EVANS: This clause provides:

The objects of this Act are—

(c) to allow for the provision of palliative care, in accordance with proper standards—

and 'proper' is always a matter of interpretation—

to the dying—

and that is happening to all of us: we are all dying, some at a much more rapid rate than others—

and to protect the dying from medical treatment that is intrusive, burdensome and futile.

In whose judgment? We rely upon medical practitioners to tell us that it is impossible, that you are going to die, yet we all know of people having been told that there is no hope—and if members want examples I will tell them outside this Chamber—and of doctors advising the family that there is no hope, yet the person has lived. In one case I know the person in question is still living, 10 years later. So, what is a futile situation?

I cannot be confident that money and human nature will not cause an injustice—in other words, bad judgment by a doctor or doctors—to occur. One of my colleagues walking past suggests that that does not occur, but we know it does—perhaps more often than we hear about. Doctors are human and will make errors. So we have that category—but then there is the money problem. Recently in my electorate a person asked me whether I thought they could make a claim on an estate which involved a huge amount of money that had been left to an aunt for her life interest. This person, because they were in trouble financially, wanted to find a way of getting some of that money before the aunt died and wanted to test it in a court because they were so desperate.

We know that in our society people kill for money, and we know that that happens quite often not only for large amounts but also for small amounts. In this Bill we are saying that somebody can suggest that the patient's situation is futile; the patient at the time may not be able to understand what is happening; so the doctors must not, if an agent agrees, intrude with medicine, or they can refuse to intrude with medicine.

I find that objectionable. If the patient was able to make a conscious decision and say, 'Yes, take my life', that would be a form of suicide—and we would be talking about assisted suicide. I would prefer that situation to the one we are considering here. Recently in America a man who was condemned to death said, 'I do not want a reprieve; if you let me out I will do the same thing again'—in other words, he admitted that he was sick in mind and asked that his life be taken. Is the next step in this situation to say to prisoners, if they are incarcerated for the term of their natural life or if they believe they have an 'illness', that they should be able to sign a declaration and their life can be taken? I think that that is the next stage.

Clause 3 (b) provides for medical powers of attorney under which those who desire to do so may appoint agents to make decisions about medical treatment where they are unable to make such decisions for themselves. The clause refers to 'agents' and not 'agent', but later on we will debate that point, because agents cannot make the decision—only one agent can.

I find it objectionable for us to say that an individual who can be appointed as an agent will always be of the same mind as the patient. We all know of cases where people have made a will appointing an executor whom they thought they could trust to carry out the terms of the will, and the executor has not been as trustworthy as the deceased believed. The executor's circumstances may have changed—they may have run short of money and got into trouble—so they played around, investing the money that they were entrusted to handle according to the will. At times people have even forged wills. We know of that; it has been recorded. We know that occurs in that area in respect of money and property, but in this instance we are playing around with people's lives. We are saying that the person who is appointed as an agent by someone before they reach a stage where they are unable to make a conscious decision for themselves will always be faithful to and deserve the trust of the person who is dying, even though the agent has no financial interest—and I believe that is covered quite clearly in the Bill. Of course, other people could talk to the agent and influence them for whatever reason, whether it be money or something else.

Sometimes in this society people have insurance policies, which terminate at a certain age, such as 65, and the person may be critically ill at 64 years and six months or some other age before they reach 65. If those who are likely to receive a benefit (even indirectly) have some connections with an agent and the doctor or doctors and big money is involved, it is possible that some unscrupulous people in our society will exploit that situation. It gives me no thrill to read that, when we are discussing the dying (and I made the point that we are all dying, although none of us know how quickly it will occur; not even those who are critically ill), it is a futile situation. Nowadays it works reasonably well: there is some suffering, and there is also suffering for those who fight on and who are not in a futile situation as the Bill tends to imply. I am not happy with the clause. I will not divide on it, but I know that people who read *Hansard* will know how I feel about it, regardless of their views.

The Hon. M.J. EVANS: This is an objects clause, as the member for Davenport indicates, and therefore it simply sets out certain principles which the committee and I as Minister felt were appropriate to have incorporated in this Bill. It is a misunderstanding to view this Bill in some way as almost a compulsory measure, that we will protect people from something which we regard as futile, even if they do not and, regardless of their wishes, we the Parliament will take these things away from them when they would have wanted to keep them. That is simply not the case. This Bill is about giving people the right to make their own decisions; it is about giving them autonomy; it is about giving them the option to do, at this critical point in their life, what they wish with respect to their medical treatment.

If they do not want to have treatment that they regard as futile, if they do not want treatment that they regard as burdensome, this Bill provides mechanisms by which they may stop that treatment. However, it does not say that they should stop that treatment or even that it is desirable to stop it; it simply provides a mechanism. It also provides and strengthens mechanisms by which they can insist on that treatment and, if they want to make arrangements through the appointment of an agent and instructions to that agent to ensure that every last heroic measure is taken, that every last miracle drug, or every last tube is inserted, and every last resuscitation is performed, those kinds of instructions can also be given to the agent and the agent, on behalf of the patient, can also insist on those treatments. Therefore, this Bill is equally useful to those people.

The Bill creates a scenario in which the patient, either acting personally or through their agent, can ensure that the treatment they want or do not want, as the case may be, is undertaken or not undertaken; that is the critical part. This Bill is not about denying people rights and their opportunities for life; it is about ensuring that their wishes at a critical time in their life are respected faithfully by those who would seek to attend them and serve them.

If an agent should form some criminal intention, should form some part of a criminal conspiracy to murder someone, that is itself, as we have indicated previously, an offence against the Criminal Law Consolidation Act. Just as a person can murder their aunt to secure an inheritance, so it is possible that, if they should become trusted by the aunt and appointed as her agent, as the member indicated in a possible scenario, they could seek to misuse that power, just as they could misuse a gun or other weapon and be on the wrong side of the criminal law, and any attempt—

The Hon. Jennifer Cashmore interjecting:

The Hon. M.J. EVANS: Yes, and of this Bill in this case in terms of their inheritance obviously, because the Bill subsequently, as the member for Coles correctly observes, removes their inheritance and provides a 10-year penalty. Of course, anybody who forms a

criminal intention—and we go on to talk about intention later in the Bill—immediately falls foul of the criminal law if they carry that out in the way in which they exercise their powers. So those protections are built into this mechanism.

The most serious concern I have about what the member for Davenport said is the implication that this Bill is about withdrawing treatment and about stopping people from getting treatment they might want, when in fact it is about allowing them to make those decisions for themselves and to choose whether or not they want that treatment and to allow them to appoint people as agents who will ensure that their wishes are carried out at a critical time when they might not be able to carry them out themselves. It is fine if the patient is fully conscious and able to make their instructions and wishes known, and of course the Bill then provides the power for them to act.

This point is critical. Why should an unconscious person be denied their rights when their wishes are clearly known to a loved and trusted member of the family whom they have designated for that purpose? Why should they lose their rights just because they have lost the power of speech at a critical moment or lost some other faculty which permits them to communicate their wishes? I think that is very important. The committee wanted to preserve a person's right to insist on or refuse treatment at a critical time when they may not be in a position to advance that for themselves with the diligence that may otherwise be necessary. I think one should read this objects clause in the context of the whole Bill and with an understanding of the intention of the remainder of the Bill and what that provides, but in the very clear light also of the Criminal Law Consolidation Act and the other prohibitions against murder, assisted suicide and so on which that Act so correctly sets out.

Mr S.G. EVANS: I thank the Minister for his response. It may be that I am not using the correct language to get over what I am saying, and I accept that as my problem at times. What I am saying is that we are bringing another party into the decision making: an agent, and that agent opens up the door for more skulduggery, even though it is against the law. We do not catch everybody who breaks the law—we know that and the Minister knows it. This opens up the door.

The Minister raised another point about a person's being able to demand that he or she gets extra treatment or that, on that person's behalf, an agent demands it. If we have to put that in the law, it will amaze me. We are saying that, as a profession, doctors do not attempt to carry out that action, to use every possible means to save a person's life. I know that the objects can be interpreted that way but I do not believe that is the main purpose of the measure and the Minister has introduced a red herring by referring to that. He is trying to soften the blow because we know that that is there already. That surprises me.

In recent times, a member of my family died after being ill for nine years. For seven of those years, that person did not recognise anyone. The family hoped for all those years that someone would find a cure for the disease, but that did not occur. People are still working on a cure and, who knows, a cure for Alzheimer's disease may be found tomorrow. I have no doubt that some of the medical practitioners were of the view for some time that the cause to save that person was a futile one, possibly for the last three years. If that person had signed a certificate to give an agent the opportunity to make a decision with the medical practitioners, they might have saved them from suffering, but I do not think the person suffered because there was no pain, save for the period when the patient was *non compos* which is my way of putting it. However, there was a feeling of hope.

I understand what the Minister is saying but I do not agree that they are just objects. Attempts will be made to put the objects into practice and I believe that the intent of the objects is to be the practice. If not, they would not be in the Bill. I have serious doubts about the whole situation and I hope that I have explained why I have those doubts.

Mr BRINDAL: I should like to follow the first statement of the member for Davenport with respect to the objects of the Bill. I support the Minister in his desire that, when people are conscious, they should be able to express a will. I am sure that the Minister has listened carefully to the second reading speeches. What worries me and other members of the House is whether it is necessary to give this matter in the form of the power of attorney to a third person. If a patient is rational enough to produce a power of attorney in any form, whether it be a medical power of attorney or any power of attorney, that person is rational enough to express his or her will in writing in a simple legal document.

In the case that the Minister described of a person who is unconscious but whose will should still be taken into account, surely a simple legal statement of that person's intent would be sufficient. It worries me that this Bill gives to people who often care most about the patient a responsibility and a very heavy burden. That person may have loved the patient for many years and is faced not only with the tragedy of the patient's impending death but with the responsibility of acting as an agent for that person. I can think of a personal instance where someone I cared for was dying. I knew what that person's will was and I knew what the patient wanted to have done. However, as all of us are selfish, I did not want to lose that person. We care for these people and we would be deeply upset and distressed.

What worries me about this is not that the patient should not have a right but that we are not giving the patient a right: we are transferring an obligation to a third person—and it is the most important obligation one can give any person, an obligation about the life and death of someone they care about. For that reason—and I hope I am making it clear—in my second reading speech I explained why I cannot see why the committee thinks that this medical power of attorney is a wonderful panacea. I cannot see why a rational person cannot make a rational decision and a declaration of their intent, relieving people of a burden that I do not think anyone should bear.

The Minister might say that doctors bear much of that responsibility anyway. They do, but they are doctors, and that is part of, in a sense, the burden of their profession, but having power over the death of someone is not something that any of us, as non-medical people,

would accept willingly or happily without adding a great deal of burden to our conscience in the future. So, I ask the Minister why he will not consider a simple legal instrument rather than a medical power of attorney.

The Hon. M.J. EVANS: I appreciate what the honourable member is saying, and I understand and sympathise with his analysis. Indeed, it does put people in a very difficult situation, but I point out to the honourable member that several matters must be considered. First, the committee recommends, and this Bill incorporates, allowance for people to make specific directions in the appointment document of the power of attorney about their personal preferences. So, if a person is of a mind such as the honourable member indicated and wishes to set out specific directions which would have to be complied with by the attorney and which, in effect, represent the kind of directive to which the honourable member referred, this Bill provides the mechanism for that person to incorporate those instructions as a directive within the appointing document of the attorney.

The Bill then picks up the difficulties that the committee perceived with a simple written statement without an agency provision attached. Simple written directions are all very well but, given that they are made at a time in advance—and sometimes well in advance—they do not take into account a number of things. For instance, they do not take into account the rapidly changing world of medical technology, which can make available treatments that were not even contemplated and which can make things that are now trivial quite burdensome, or things that are now burdensome relatively easy to accept.

Because most of us do not have contact with hi-tech medicine until the point at which we die—that is, in many cases, our first contact with serious intrusive medicine, as ordinary procedures in GPs surgeries and the like are relatively low key these days—we do not have the understanding of what that is about. We can make those directions well in advance but, by having them attached to an agency, we have the opportunity of contemporary analysis of what is happening, contemporary advice from doctors and contemporary understanding of the world of medical technology in which we find ourselves, but more importantly we have the opportunity for the agent to move through life with the patient and to share the patient's life experiences and understandings over time so that at the critical point we are much more confident that the agent is expressing the contemporary wishes of the patient rather than those of five years before.

It is also the case that we never really know what the critical decision is going to be. We do not know what the critical treatment is which we are receiving and which is relevant to the decision at the time. When people prepare their advance directive, they do not know what illness will be the relevant illness finally; they do not know what condition they will have at the time.

Mr S. G. Evans interjecting:

The Hon. M.J. EVANS: Of course, the agent is appointed on the basis that that is a person whose opinions one shares. That is the whole purpose.

Mr S. G. Evans interjecting:

The Hon. M.J. EVANS: They do change, the member for Davenport is quite correct. That is the point I was making to the member for Hayward; the agent is a person who moves through life with one. If the views of people change, it is most likely that those views will be known to the agent. They will not be expressed through a document that was prepared a while before, if that is the only thing to rely on, and they will not necessarily be known to the current medical advisers, because in all likelihood people will find themselves in a major hospital or with a specialist doctor whom they have met only a short while before.

Indeed, the medical practitioner attending at the time may well not be known to the person particularly well. Therefore, it is quite critical that, if the patient's wish—and, of course, this is not compulsory; this is not obligatory in any way whatsoever—is to appoint the agent and to give some written direction, they are quite able to do that. The committee felt—and I certainly did—that the agency principle incorporating written directions within it allows us, in a sense, to have the best of both those worlds. The patients can be quite specific in their directions but also know that they will interpreted in an ongoing and living way by a person whom they appointed at their discretion and in whom they trust.

Mr BRINDAL: We get to the real nub of the debate. In essence, and with the greatest deference to the Minister, it is my opinion from reading much of this Bill that perhaps the committee was a bit overawed by medical technology. While I accept what the Minister has said, one thing never changes—and I do not think it has changed since time began—and that is death. Death is as simple now as it was at the beginning of time. This Bill is not about the hi-tech road to death but about when someone reaches a point in their life at which life is no longer sustainable other than by intrusive medicine and about what decision they will make. It does not matter how technologically advanced medicine becomes, the question still remains the same. There is still a point at which intrusive medicine must be used. It may well be that, because of the nature of the intrusive medicine, there may be a lot of variables, but at that point there is a simple decision, and it is the same now as it was 500 years ago, namely: do you want intrusive medicine to artificially sustain your life? I would rather say that, rather than being a—

The Hon. H. Allison: Could we do away with transplants?

Mr BRINDAL: The member for Mount Gambier asked whether that means that we would do away with transplants, and I think the Minister would agree that that is not the point at issue, because transplants are not intrusive medicine: they are not medicine solely to sustain life. If I am wrong in what I am saying, I hope that the Minister will tell me, because it will make it easier for me to feel that I can vote for this Bill in its present form. Do I understand by that—and I hope I do—that, if as an individual I wish to make a legal document rather than to appoint an agent, that is an option open to me, or must I have an agent who must act on my wishes?

Why compel someone to have an agent if it is their wish to make a simple instruction? It seems to me contrary to most of the principles on which we work in

this place that we would force someone to have an agent. Surely, if it is my wish not to put that burden on another person and to take that decision for myself, that is my right to autonomy as a patient. I do not think the Minister really has the right to demand that I have an agent because, as the Minister knows, I have no dependent family at present, so who do I have as an agent? Perhaps I could ask the Minister.

The Hon. M.J. EVANS: The honourable member raises a difficult point, and nothing about that kind of legislation is straightforward and simple. But while he may be of the view that the committee was overawed by the complexity of medical technology, I would suggest to him that that was not really the case.

The issue, though, is somewhat more complicated than I believe he realises. The committee spent considerable time researching the issues, speaking with people both in the medical profession and outside it, and also examining the topic for ourselves. Unfortunately, death is not quite as simple as he may have portrayed it in reducing it to one clear-cut decision, because it is not one clear-cut decision. People simply do not die in the street in an instant reaction and there are no further issues to be decided. In some cases, that is true, but we are attempting to provide across the board here, and that is the problem. There is a range of issues that will arise at the time. We cannot understand now in every individual case what that will be; the patient concerned does not know that, and nor do their families. These things are not that simple.

There will be medical procedures which are acceptable to some people but which others would regard as burdensome. There are procedures which people at certain times in their life or with certain conditions might regard as futile and burdensome but which others might not. That is the problem. It is not a question that treatment X is always burdensome and futile. It varies with the patient and the circumstances again and again. It also changes with medical technology, because that is changing very dramatically and very quickly. Twenty years ago we did not perform any hip replacement operations. Now we perform hundreds of thousands in Australia every year. That is an example of the way in which over but two decades massive changes have occurred in medical technology which make a substantial difference to people's lives.

The availability of technology, like hip replacement operations, gives people mobility and the opportunity to move and participate in life to a much fuller extent than they could previously without that technology. Those kinds of issues substantially change the way people view the treatment they are receiving. That is one of the reasons why the committee opted for the agent model.

I accept that there are other models, but the committee felt that it was essential to have the appropriate safeguards of contemporary decision-making built into the system. We perceived some of the dangers of this: of people making decisions in advance, not knowing the conditions and the circumstances that would face them. Those decisions would be set out in writing, and would be unalterable, because the person would be now unconscious and the doctor would be faced with the task of not being able to discuss these with someone appointed by the patient for the purpose, and he would not have the opportunity to talk about the way in which the decision was to be implemented.

Mr Brindal interjecting:

The Hon. M.J. EVANS: The appointment of an agent is not compulsory. Through this mechanism, Parliament is not saying that everyone will want to appoint an agent; nor is it saying necessarily that everyone will have a suitable agent whom they can appoint. There is the facility for an enduring power of attorney, for example, and not every person may wish to take advantage of that. Not everyone may have a suitable person to appoint—I understand that-and people will make their own life decision about whom they will choose to appoint. I suggest, in the event that an individual felt it was important to them, that they would seek out someone and make that facility available to themselves by discussion and negotiation. I imagine that that would be available to almost anyone, and I am sure that the honourable member would have friends and associates at that time in his life who would be suitable for the task.

This Bill does not make that mandatory. It is a facility that we make available for people who are willing and able to use it. We feel that it does provide that contemporary decision making process which is essential in this. However, we do not prevent the issuing of instructions to that attorney to ensure that you make clear your wishes on a particular matter. You might be totally opposed to blood transfusions, for religious reasons, for example, and you might wish to say that in the express document, or you might have a particular fear of some specific medical treatment which you could also prescribe; or you might have a wish to have some particular treatment attempted and therefore set that out as something that you wanted tried at that time.

I agree that we cannot cope with every available contingency in terms of what people might want to do, but I am pretty certain that most people could find an avenue for this to work for them if they wanted to and, of course, that is the point: it is up to individuals if they want to take advantage of this facility.

The Hon. B.C. EASTICK: I would like to pick up two points. To suggest that the committee was overawed is a misconception. Humbled, yes: humbled in the reality of what is really happening in life in those areas directly associated with death and medical technology.

The second point is that my colleague the member for Hayward appeared to be arguing that is was compulsory. The Minister has clearly pointed out that it is not compulsory, and I would go one step further because the provision is also made that the person who has accepted in writing—and that is important if one looks at the schedule—the responsibility of being an agent or a joint agent in sequence has that perfect right to withdraw from that responsibility at a later stage if they so wish.

There is no compulsion at any of these points. It is a matter of discussion between the individuals and acceptance of a challenge and the right to move away from that challenge if circumstances change and that person, who has been delegated as the authority, no longer has the wish or the capability to undertake it. I just want to dispel completely this belief that seemed to come through in the argument of my colleague that everything is compulsory. It is not.

The Hon. JENNIFER CASHMORE: I would like to supplement what the Minister and the member for Light have said in attempting to reassure the member for Hayward. The member for Hayward has certainly raised an excellent point, namely, that not everyone is fortunate enough to have someone with whom he or she is on close and intimate terms and who, as the Minister said, can travel through life with a person who may want to ensure that some kind of instruction is given to medical practitioners to express the wishes of the patient.

The question then becomes: what provision is made for those who do not feel that they have someone close whom they can appoint but who nevertheless wants to ensure that a direction is given? The member for Hayward seemed to think that the only way that can be done would be if either an alternative provision were made for a direction or an additional provision were made for a direction.

Either we do away with agents and just have written directions or we have both agents and provision for written directions. I suggest that the written directions that the member for Hayward, or anyone in his position, may seek to set out can still be set out in the form of the schedule. It simply means that the directions are given to someone.

It can be argued that there are people in this world who have literally no-one whom they can trust or are not in a relationship where that person would be willing to act on their behalf. In that case the law cannot help those people and we have to acknowledge that.

This law is not an all encompassing law that will solve every problem. It is only an attempt to meet the needs of people who have expressed the wish for a kind of autonomy to be expressed through the appointment of an agent. No-one on the committee claims that this is the answer to everything. It is not. It is an attempt to find answers for those people who have asked questions and expressed wishes. I would say that the directive that people who have no close relationships might seek to leave can be given to any responsible person other than those excluded specifically under this Bill because they are either in a patient/doctor relationship or some administrative relationship. That to me is the answer to the member for Hayward's questions. Written directions of the kind he seeks can be provided as easily under this Bill as he would wish. It is simply that they need to be given to some responsible person who can then pass them on to the medical practitioner.

Mr BECKER: The Minister changed this clause from that in the original Bill. I would like the Minister to explain to the Committee why he made the change because we have had no explanation. We have been sitting here all this time dealing with amendments and interpretations of clauses. I would have thought the first thing the Minister would do would be to say that the clause of the old Bill has been amended to allow persons over the age of 16 years to decide freely for themselves, on an informed basis, whether or not to undergo medical treatment. That was not included in the original objects of the Bill which referred to making certain reforms to the law relating to consent to medical treatment, and providing for the administration of emergency medical treatment in certain circumstances without consent. In addition, why, in paragraph (c), was the reference to 'medical procedures' in the old Bill changed to 'medical treatment'?

The Hon. M.J. EVANS: I think that one could make far too much of this issue of the old and new Bill. This whole procedure, as the member knows, was simply undertaken to ensure that the Committee had before it the best draft that the promoters of the Bill felt was able to be presented. The member for Coles could well testify that there must have been 50 drafts of this Bill in varying stages before the select committee and so on.

As we looked at it we could always see improvements that could be made and over a period of time the committee received public advice and advice from experts in the field that suggested changes we might make, and indeed even as recently as the other day, when meeting with the heads of churches, one or two other improvements were suggested which we felt appropriate to put before the Committee and incorporate in this version.

So I do not think there is anything particularly sinister to speak of in relation to that. The mechanism which we have adopted is one that has been used in this place previously and simply ensures that the Committee has before it the very best draft of the Bill available, and I would certainly encourage members to give their best attention to the draft, which is on top of the file, and which has been available for a day or so. That certainly indicates the best version of that Bill that we can provide.

The reason for all these changes between the draft that was tabled here for public comment so that we could get suggestions for improvement to the Bill, as I indicated last November, has been to modify and reform the Bill and to make it the most acceptable and effective draft that we can put forward. I certainly felt, in amending the objects clause, that those extra words which had been suggested by representations from outside of the Parliament, were an appropriate addition to help people to understand exactly what was meant by the terms of the Bill. I think those extra words 'to allow persons over the age of 16 years to decide freely for themselves, on an informed basis, whether or not to undergo medical treatment' in fact does add to an understanding of the Bill when you read the words before it. For example, it emphasises the point I was making earlier about whether or not to undergo medical treatment, to decide freely for themselves. Those kinds of expressions emphasise the autonomy of the patient, and the Bill intends to give this decision making process to the patient to decide freely for themselves on an informed basis whether or not to undergo the treatment.

Those are very critical things which are embodied in the Bill but which obviously it is desirable to re-emphasise in the objects clause. While we had an objects clause, which met some of those criteria, the suggestion we received to incorporate these additional words does certainly, and correctly, emphasise points which the Committee will agree were very pertinent to the Bill itself. That is why they were inserted.

The Hon. JENNIFER CASHMORE: I think the member for Hanson has made a good point in so far as it is very reasonable that the Committee be advised at the outset of the reason for the alteration from what one can conveniently call the old Bill and the new Bill in terms of

the space of two days. I do not know that I can add much to what the Minister has said other than to agree with it. However, the select committee at all times was extremely anxious that this Bill be worded in plain language and expressed in such a way that whoever read it would be able to comprehend, not only the letter of the law, but the spirit of the law.

It is fair to say, I think, that 10 years ago one would not have found in the South Australian statutes words as informal as 'to decide freely for themselves', and yet that kind of language is, in my opinion at least, appropriate in the statutes because it immediately conveys a very clear message. It was after the select committee had completed what we thought was the very best we could do in terms of plain language and an expression of intent that someone looking at the Bill for the first time said, 'I don't think your objects are sufficiently positive, and how about this form of words?' It happened to be a form of words that appealed to the Minister, it happened to be a form of words that appealed to me, and so it was complementary to what we had already put down. However, I agree that as those changes come up clause by clause it is reasonable to explain them at the outset and it may save some questioning and, further, it is agreed to by the other members of the select committee.

Mr BECKER: I am not satisfied with the Minister's attitude towards the old Bill and the new Bill. If legislation is to be brought into this House and members are expected to debate the second reading, I think it is only fair and reasonable, if substantial alterations have been made to the original Bill and even though a new Bill has been created, I still believe the Committee, or the House itself, is entitled to an explanation, because we debated what I would call the old Bill. We could not debate the proposed amendment—we are not allowed to under Standing Orders.

So, that prohibited the general members from a much wider debate and probably from alerting the members of the select committee to the attitude of members generally and, of course, of organisations interested in the legislation. That is the first thing I find disappointing, and I am not interested in what happened in history: I am interested in what is happening now and in the dilemma confronting the Committee. There is a significant reason for it, and I think we would have had a much wider debate in the House had we known about allowing persons over the age of 16 years 'to decide freely for themselves'. Why 16? Why not 18, why not 21? Any parent with a 15, 16 or 17-year-old will agree that they are not without problems in today's society. Indeed, 16-year-olds can go out and do all sorts of things about which the parents may not be very happy.

Mr S.G. Evans: That's the highest category of suicides.

Mr BECKER: Unfortunately, they get into drugs, overdose and do all sorts of stupid things. In my opinion, 16 is too young. With parents who care for their children, and with all the pressures that are placed on them today within society, I wonder how seriously the Committee considered that age. Later on the legislation provides that you can appoint as an agent a person who is over 18 years of age. So, a 16-year-old or a 17-year-old could go out and get married, but you cannot appoint a 17-year-old as an agent; it must be someone who is 18. There is no doubt that a 16-year-old would probably appoint one of his or her parents, but the Minister is also Minister for Family and Community Services and he knows what heartaches that organisation has created in society in the past 15 years as far as parental control is concerned. That is one point I am annoyed with: that we were denied the opportunity during the second reading to debate that issue.

Secondly, the Minister did not explain the reason for changing 'medical procedure' to 'medical treatment' in paragraph (c); he forgot that. To deal with this clause, of course, we must also refer to schedule 1, the appointment of a medical power of attorney, because there were also alterations in the draft form of that. That also needs explanation to the Committee, because in clause 2 of the schedule the words 'I authorise my medical agent to make decisions as to' have been changed to 'decisions about my medical condition if I should be unable to do so myself'. Clause 3 provides 'I require my agent to observe the following conditions', and that has been changed to 'conditions and directions in exercising, or in relation to the exercise of'.

Then in brackets we have 'here set out any conditions to which the power is subject', and that has been altered to 'and any directions to the agent'. They are significant alterations. In that same schedule, the witness certificate states 'Here set out the name and address of the witness and the qualification by virtue of which—

The Hon. JENNIFER CASHMORE: On a point of order, I do not want to impede the argument of the member for Hanson or his concerns, but am I right in thinking that we are debating clause 3, and the member is referring to the schedule, which is at the end of the Bill?

The CHAIRMAN: I uphold the point of order. The member for Hanson can refer to those matters as we come to them. I would ask him to restrict himself to the clause in front of us.

Mr BECKER: The point was that paragraph (b) of the objects relates to the providing of medical powers of attorney. However, if we get a chance to do that, fair enough. That is why I am disappointed that during the second reading I could not comment on the proposed amendments made by the Minister. I may as well let the Minister know that this new Bill has not been that long on my table—I think I got it late yesterday afternoon—and I was disappointed that the amendments were not highlighted. I understand that with modern computer technology you can do that.

I think the members of the committee got a Bill that was highlighted, and that would have made it easier for us. However, the Minister is not prepared to cooperate with the Committee. I would like an explanation as to why it is 16 years of age and why in (c) 'medical procedure' is changed to 'medical treatment'.

The Hon. M.J. EVANS: I very much regret my attempt to assist the member for Hanson in considering this debate. Obviously, from his point of view I was misguided, but I suspect from other points of view throughout the Chamber it may well have been helpful. Certainly, my discussions with all other members interested in this matter indicated that they preferred to have a reprinted, clean Bill, which they could then examine and comment on. It would have been very easy

for me simply to table the amendments in the normal course of events and move them one by one, and the member for Hanson could then no doubt have been very critical of me for tabling amendments that he would have had difficulty matching to the Bill.

This was thought to be a mechanism for allowing the Committee to examine the best available draft of the Bill by amending in this manner *pro forma.* A substantial majority of members appeared to be in favour of that version and that procedure (and certainly a vote was taken on that issue, I remind the member for Hanson, and was overwhelmingly adopted); it would appear that the House felt that that mechanism was the best way to proceed. I apologise to the honourable member for not explaining the issue of 'procedure' as against 'treatment'. That amendment was made because it was pointed out to us that, throughout the Bill, there were some examples of both uses of the words, and it was felt preferable in a legal/technical sense to standardise on one word or the other, which in fact we did.

There was no substantive reason beyond the wish to be clear and precise in the use of language. There was no hidden agenda in the use of one word over another, simply what was deemed to be the best word to choose and then to use it consistently throughout the Bill.

If the member for Hanson examines most Bills that are dealt with in this place he will see, particularly with controversial matters, that they are frequently amended extensively. Of course, the same rules of debate apply to those Bills. Indeed, the member for Hanson sometimes suggests amendments to Bills, and none of those amendments is debatable in the second reading speeches; it is the normal means of the House proceeding. The member for Hanson did have the benefit of the amendments being before him at the time he made that speech. I am sure that with the appropriate lenience from the Chair he could have commented on that if he wished.

The other amendments throughout the balance of the document often concern some of those procedural matters such as treatment and so on. If those technical (if I can use the term) amendments were to be removed from the list the honourable member would find that it would come down to a very short list of amendments to be updated, much less than one often sees in this place, because of the attempt to improve the Bill that we have before us. I think the procedure that was followed was a perfectly reasonable one; it was done without any ulterior motive and was done solely to assist the Committee in its deliberations.

Mr ATKINSON: I support the Minister's remarks. I support the procedure that the Minister has adopted here and all the Minister's amendments which appear in Bill No. 103. I think all the amendments to the Bill moved by the Minister take away the possibility of unintended or muddle-headed consequences. Their effect is entirely beneficial. I place on record that I support this objects clause, save the reference to age 16, which was inserted in the Bill by the Minister and which has rather caught me out because I do not have an amendment on notice to amend that reference to age 16, although I do to all the others. The fears that the member for Davenport expressed about the clause I think are just a little outlandish and I cannot agree with them.

The CHAIRMAN: I want to clarify that. There is nothing to stop any member from moving an amendment at any time, whether or not it is on file. If an amendment is not on file, I am prepared to wait until such time as members put their amendment in writing and everybody gets a copy of it. The honourable member for Coles.

The Hon. JENNIFER CASHMORE: I point out to the member for Hanson, in response to his claim that during the second reading debate he was unable to address the issue of the age of consent to medical treatment being 16 years (although I cannot speak to it), that clause 5 of the Bill has not altered and that was available for debate at the second reading stage. It states quite clearly that a person over the age of 16 years may consent to medical treatment. That provision has been in the statutes for the past eight years. It was incorporated in 1985 in the Consent to Medical and Dental Treatment Act and it has been operating in South Australia for eight years with, as far as I can recall, no ill effect that has been publicly raised.

Whilst there was some debate about it at the time, I think it would be unusual if the Parliament were to take away something it has given. However, that is a question for debate when the member for Spence moves his amendment on that matter.

The Hon. M.J. EVANS: The member for Hanson raised the question of persons aged 16 to 18 years. The committee simply sought to continue the present law. The law was last changed in 1983-84, when the age of 16 was selected, and the committee simply continued that age. The committee felt that Parliament had made a decision some 10 years ago, and indeed the honourable member contributed to that debate; I have examined the speech, and it is quite interesting. I believe that the decision Parliament took at that time was correct. I had thought the committee was unanimously of that view but obviously I was wrong in that understanding; one member appears to dissent from that. We took the view that the law had been in place for 10 years and there was no reason why we should now change it. The committee did not have brought to its attention any adverse findings over the past 10 years that would lead it to change that view. Therefore, the committee believed it was perfectly reasonable to continue the law that has been in place for over a decade. I apologise that I did not address that point earlier.

Clause passed.

Clause 4—'Interpretation.'

Mr ATKINSON: I move:

Page 1, line 21—Leave out '16' and insert '18'.

It is my opinion that, over the past generation, many laws passed by this Parliament have undermined parental authority, family values and the authority of the family. We now have an opportunity to look again at a law which we passed eight years ago and which made an exception to the rule that adulthood starts at 18. By this amendment I propose to withdraw that exception. I do so because I think there is a desire among my constituents that the question of when adulthood begins should be treated more uniformly by the law. A small number of parents in the Spence electorate are most upset with the Department for Family and Community Services, because that department allows their 16 and 17 year old children to leave home—it supplies them with homes and

money and sets them up, often in the Noblet Street flats in Findon. They resent this bureaucratic and governmental undermining of their parental authority.

In this case I think that parents ought to have the authority to decide whether their children will undergo medical treatment. If we take that authority away from them, as we did in 1985, we are undermining their authority and undermining the family. If those parents are not responsible and they unreasonably withhold permission for the medical treatment of their children, provisions already exist in our law for their authority to be revoked because of their unreasonable withholding of permission and for a guardian or some other Government authority to take over their function and to grant permission for that medical treatment. So, it seems to me that we would do better to proceed in that way in individual cases where parents do not behave responsibly than to persist with this proposed clause, which uniformly takes away from parents the right to decide on medical treatment for their children, should those children be 16 or 17.

There is just one other thing I want to add, and it is in reference to an article in *The Australian* earlier this week. From that article it appears that soon there will be a proposal before this Parliament for 16 and 17-year olds to have the right to smoke taken away from them. It seems to me odd that, on the one hand, the Minister is asserting the right of 16 and 17-year olds to have medical treatment, indeed major surgery, without the permission of their parents, yet, on the other hand, he will soon be telling them that they cannot smoke. It is one of the oddities of political ideology in South Australia that the very same people in this Parliament who say that 16 and 17-year olds should not be allowed to smoke are the same people who, I predict, will be saying in this debate that they ought to have the right to decide their own medical treatment and major surgery without the permission of their parents.

The Hon. JENNIFER CASHMORE: I oppose the amendment of the member for Spence to increase the present age of consent to medical treatment from 16 to 18. As was stated earlier, this provision has been in the Consent to Medical and Dental Procedures Act (which, according to my copy of the statutes, is dated 1985) for eight years. I would suggest that as there has been, as far as I am concerned, no public debate in terms of South Australians being aware of what the member for Spence is proposing, which would be a very significant change to a law which has operated, as far as I am aware, very satisfactorily for the past eight years, I would not countenance such a change unless there had been public debate. I happen to oppose it with or without the public debate and I will explain to the Committee the reasons why.

It might be interesting for the Committee to note that section 6 of the Consent to Medical and Dental Procedures Act 1985 provides:

> The consent or the refusal or absence of consent of a minor who is of or above the age of 16 years in respect of a medical procedure or dental procedure to be carried out on the minor or any other person has the same effect for all purposes as if the minor were of full age.

For a start I am very pleased that we are now expressing ourselves more simply and clearly than that, but that is the law as it stands. The member for Spence said that we are proposing to take away from 16-year olds the right to smoke. I am very surprised that the member for Spence, who prides himself on his intellectual rigour, should have expressed it in those terms. The Government is not proposing to take away any right to smoke because there is no such thing as a right to smoke and the member for Spence knows it full well. What is proposed is a prohibition on the sale of cigarettes to those under the age of 18, which would bring tobacco, a carcinogenic substance, in line with alcohol. That would create statutory consistency which I am sure the member for Spence, with all his intellectual rigour, would agree is important. Therefore, we can dismiss that part of the honourable member's argument as having no relevance to the wider argument of the practicalities of medical treatment.

Of course, we need to extend as much care as we possibly can under the law to those who are minors for the purposes of the law at whatever age it may be set. For example, the Family Law Act gives children from the age of 14 the right to decide which custodial parent they will live with.

The law is not necessarily consistent. It applies the age of consent variously, whether it be the right to choose with which custodial parent a child shall live, the ability to buy alcohol or tobacco, the right to vote, or whatever. The law discriminates in respect of age, and so it should. As I understand it, having re-read the debates of 1985, the reason was a very practical one, that very many young people are on their own at the age of 16, have to care for themselves at the age of 16 and need and require the right to obtain medical or dental treatment at the age of 16 and, indeed, younger, but I do not propose that the age should be further reduced. I am simply opposed to increasing a statutory age that has operated very satisfactorily for the past eight years.

Mr S.G. EVANS: I support the amendment. I do not accept the argument of the member for Coles. There is a vast difference in seriousness between legislating that a person cannot buy a packet of cigarettes until the age of 18 years but that the same person can appoint an agent who may have to decide whether that person is to live or die in the event of illness or accident. At the same time, there is no direction that parents should be consulted. The argument put forward at the time was that many young women did not want to go to their parents about some matters and preferred to act independently of the family. The member for Spence did not use my terms in his argument, but he knows that many young people want freedom, not for the sake of better family relations, just as a matter of freedom. When we are young, we want freedom; indeed, we want it when we are older.

I feel that a 16 year old is too young to be able to make such a decision. If that person is still conscious and the doctor says that it is futile, that there is not much chance, a 16 year old should not be able to say, 'Okay, send me on my way.' There is more instability at that age than at any other age. There are more suicides in this country between the ages of 16 and 18 years than there are in any other age group. Does that indicate that there is some problem in that age group? It is unlikely that many 16 year olds would appoint an agent, but some 16 year olds suffer horrible damage to their body

through motor vehicle accidents. It may be unlikely that they will live, they may be on their own and they may not want their family to know where they are. People in that age group, just as elderly people, may well agree with what a doctor says about taking away the life support system, even though there might be a remote hope, and sometimes medical opinion is wrong.

I support the age of 18 as being an appropriate age. I do not think that we gained anything by lowering the age for drinking alcohol to 18 years and those who supported it at that time now realise that it was a pretty sad error. Every State in the United States of America has taken the age for drinking alcohol back to 21 years. They are still surviving as a society. I support strongly the amendment moved by the member for Spence.

The Hon. M.J. EVANS: I oppose the amendment. The law was changed by Parliament nearly a decade ago. I believe that it has operated very satisfactorily in the intervening period and, in its deliberations over an extensive period, the committee received no evidence of which I am aware to the contrary view. I believe that the committee had the correct view when it opted to continue the present arrangement of 16 years of age. That debate was held here some time ago. The issues raised then were thoroughly debated and canvassed, a decision was taken and that arrangement has operated satisfactorily since. So, I support the present arrangement and oppose the amendment of the member for Spence.

The Hon. D.C. WOTTON: I have some sympathy with the amendment. Over a period, I have received considerable representation on this subject from both parents and young people. I do not agree with everything that the member for Coles has said, but I do agree with one of the concerns that she has expressed, that is, that a change of this magnitude should not occur to legislation without appropriate debate in the community. I foreshadow that this matter needs to be and should be addressed, but I also recognise the need for more debate in the community before a decision is made. I reiterate that I believe there is much concern in the community about this issue; particularly since I have had the responsibility in Opposition for the portfolio of Family and Community Services and before that as a member, I have received considerable representation on this matter. The only reason why I will not support the amendment at this stage is that I believe there is a need for further debate. I would encourage such debate in the community and, if the amendment is not successful, I look forward to participating in further debate in the near future.

Mr HOLLOWAY: I have some sympathy with the amendment moved by the member for Spence. The age at which children should be able to undertake any activity is obviously a difficult area, because children mature at a different rate. Those members who have studied statistics would know that most human attributes fall under a natural distribution. In any spread of the population, there will always be some people who are more advanced than others in whatever attribute we are talking about. There appears to be some evidence that the average age of maturity of young people could be falling. I do not know whether or not that is true, but I think the real point here is that, if we are considering allowing children to consent to medical treatment, it probably requires a level of mental maturity greater than that which we would consider appropriate if we were allowing them to undertake other activities. When it comes to drinking alcohol, we consider that people under the age of 18 years are not mature enough to partake, and the same has been said about smoking.

In respect of children aged between 16 and 18 years, let us consider the subject of cosmetic surgery, because that might well be one of the more practical cases we will have to consider under this Act. What if a child of 16 years wishes to have some form of cosmetic surgery? Will that child be mature enough at that age, on average, to make such a judgment, or should we apply the qualifications that have been placed in the Act for medical treatment of children under that age? It is worth pointing out that under the Act children under the lawful age who wish to have medical treatment, provided they consent and can get the acceptance of two medical practitioners, can be given such treatment, but of course the medical practitioners must believe that that treatment is in the best interests of the child. We may have a problem if a child in that age group wishes to have some form of unnecessary cosmetic surgery due to peer pressure, and they may well be susceptible to that at that age.

I have come to the conclusion that 18 years is probably a more appropriate age. We could argue this matter at some length. A reference to age in any legislation is an arbitrary limit; it will be appropriate for some and perhaps not for others. What we are dealing with is the best we can do in legislation—an average limit that will cover most cases. If we look at questions of income support—and I would be interested to hear the Minister's comments about the payment of such medical services—my understanding is that, as far as private health cover is concerned, parents are responsible.

Mr Gunn interjecting:

The CHAIRMAN: Order! The Member for Eyre is out of order.

Mr HOLLOWAY: Children can be covered under Medicare at any age. I believe they can get their own Medicare card when they are over the age of 15 years. So, we have another age limit. It appears there is much inconsistency in this area, and we are in the position where we do have to make this arbitrary judgment.

Generally, parents are responsible for other income support measures, involving Austudy, unemployment benefits and so on, until the child is 18 years. Certainly, while a child can get their own form of income support at age 16 years, they get it at a vastly reduced rate, so the child, when in that age group of 16 to 18 years, is effectively dependent upon their parents anyway. It is a difficult matter to achieve consistency in this area. I have come to the conclusion that 18 years is the more appropriate age for the reasons I have cited, and I will support the amendment.

Mr MEIER: I agree with the amendment, and I have great problems identifying, under this Bill, an adult as a person above the age of 16 years. I just wonder where we are heading. I recognise that the age of 16 years is cited in the medical and dental procedures legislation; I well remember the debate, and I was opposed to lowering the age at that stage, and I have not changed my mind. It is certainly difficult to determine that age at which a person becomes an adult. I perhaps recognise it

better than most people, because I have one son aged 17 years and one son aged 15 years. Certainly, the 17-year-old will be officially an adult within six months or so, and one has to help lead the person to that.

I also see examples of other people's children where, once they reach the age of 16 years, they can be on their own. It is tragic that some children of the age of 16 years deliberately leave home so that they can get their own supporting pension. I know that one lass got a rude shock when she did leave home and applied for unemployment benefits. She was told, 'Oh, well, just because you've left home doesn't mean to say you can get unemployment benefits. You've got to have been away from home for so long. If you go back to either of your parents, that doesn't count.' She was told exactly what she could do, and over the next few months she set out to do that. Now it is eight or nine months down the track and she certainly is independent, virtually living by herself, with her own taxpayer-funded income. I believe we as legislators have opened up many of those loopholes that young people are taking full advantage of, and it is causing more problems in society than we should have.

For us in a Bill in 1993 to be leaving the age at 16 years is not in the best interests of those people, and it is not in the best interests of legislation. So, I hope that we can change it. I think the member for Spence summed up the arguments quite well. I have great reservation about smoking at the age of 16, and I guess that people could argue with me: it is 16, why do you argue against it? That does not mean to say that I do not think that we should not seek to change it.

The issue of alcohol consumption at age 18 is something that also concerns me. I guess it is that much harder to increase the age limit to 19 or 20 years. It has led to many problems. It is almost accepted that, by the age of 16 or 17, young people can drink because they are so close to the age of 18. I have heard examples from people in that age group, not quite 18, who have been to the hotel and were assumed to be 18 because they were fairly well built. By lowering this age limit we really are bringing additional problems with us.

I hope that this Parliament would see fit to play safe. I think the member for Heysen identified some key points. Debate is needed, and I hope that the honourable member will realise that this is the opportunity for debate and that we need to stand up and indicate at which level we feel the age limit should be set: whether it should be lower or perhaps maintained at the official adult age, namely 18. I support the amendment.

The Hon. D.J. HOPGOOD: I support the Minister in this matter. My mind was really made up by the debates that occurred at the end of 1984 and the beginning of 1985. I have checked the *Hansard* record, and the conclusion of the Committee stage and the third reading vote were actually in early 1985. Can I say, by the way, since I did see the member for Hanson seeking your eye, Mr Chairman, and no doubt he will shortly be intervening, I wonder where he was on that day. I am a little mystified.

This is just for the historical record, but he spoke in the debate and was equivocal in his remarks. However, his name is missing from the division list and he was not paired, either. So, I just wonder where he was. Perhaps it is a little unfair, because how many of us can really account for our movements so long ago.

It seems to me that the select committee's task was reasonably simple. It had to make a decision about this point, and what it had to guide it was a decision of the Parliament taken back at that time. If any honourable member wants to review that in relation to all medical procedures, let him or her introduce a Bill and let us look at it. I do not see why we should get away from the rules of medical consent here, why there should be any different rule in relation to making decisions and appointing medical powers of attorney and that sort of thing, than making decisions about whether you want your teeth fixed up. It seems to me that, if a person is competent to do the one, they are competent to do the other.

I would be quite happy to enter some other debate at some other time about the general principle here. All we are seeking is the extension of that principle to certain decision-making which up until now has not been envisaged in the law but which is a very important part of the recommendations of the select committee.

The other point I would make is that, whatever a person's philosophical commitment may be to the issues which surrounded the 1984-85 debate, if one looks at the empirical evidence of what has happened since that time, one sees that it does not seem to have changed very much. What evidence have we that 16 and 17 year olds are really flocking along to dentists or people who carry out terminations of pregnancy, or people who perform surgical operations to remove an inflamed appendix or whatever else it might be? Whatever realms of freedom were opened up to 16 and 17 year olds at that time do not seem to have been taken up enthusiastically by those people since that time. To the extent that they have been taken up at all it does not seem to me that they have contributed materially to such social problems as we may have confronting us at this time.

Mr ATKINSON: I want to assure the member for Baudin that my amendments are intended to make 18 years the age uniformly for consent to medical treatment. We are not concerned here just with medical power of attorney, although that is what we are on at the moment. I intend to change the age throughout the Bill.

From the standpoint of political ideology, I was interested to hear the remarks of that avowed democratic socialist, the Minister of Health, and that avowed liberal, the member for Coles, saying that we ought to oppose this amendment because of the blessed antiquity of this provision—a good old Tory argument if ever there was one: 'It has been a law for eight years, so we ought to stick with it.' I do not accept that as an argument at all. I would rather debate this provision on its merits.

The member for Coles raised the provision in the Family Law Act whereby a child at the age of 14 was lawfully entitled to decide with which parent he or she wanted to live. It seems to me that that is an entirely false analogy in this debate. It does not relate to the question of adulthood at all. I emphasise that, if a parent has abandoned responsibility for a 16 or 17-year-old child or is unreasonably withholding treatment, there are already provisions in the law for that irresponsibility or unreasonable withholding of consent to be dealt with.

So, what I am opposing here is the uniform taking away from parents of control over the medical treatment of children aged 16 and 17. I do not care that it has been the law since 1985. That does not impress me at all. The question I want to ask the Minister is: if a 16-year-old boy decides that he wants cosmetic surgery, to wit, a nose job, and his parents will not consent to that surgery, and nevertheless the 16-year-old using the right given him by this Bill goes and has a nose job, who will pay the bill?

Mr BECKER: To put everyone's mind at rest, I support the member for Spence. Agreeing to 16 years as an adult as set out in this legislation is too low. I believe that 18 years is a reasonable age, although I would be happier with 21 years. The member for Baudin reminded the Committee what I said eight years ago. I cannot explain why I did not vote, having then spoken on the matter. Perhaps the pairs were left out of *Hansard!*

The Hon. Jennifer Cashmore: Never!

Mr BECKER: It would be nice to think that the Clerk made a mistake back in 1984-85. 1 was not happy then providing 16 years as the age at which one could consent to medical treatment. I feel that is too young and, as I said in that debate, some people at 15 and 16 years can be quite mature. Some people at 18 can be quite immature, and we have doubts about some of our own colleagues.

This is a serious issue in respect of deciding between extending life or not, depending on the circumstances. While I do not believe that many 16-year-olds will rush out and appoint an agent in relation to medical treatment, it is people in that age group to whom we have given permission to drive motor vehicles, and they are involved in some of the most horrific accidents on our roads. We heard only recently that one-third of young people, 16 to 18 years of age, who start work in industry are subject to very severe accidents in the workplace.

It is a very vulnerable age group and I doubt whether they have the ability to make the decision whether or not life should be prolonged in case of an emergency. I am still a bit old fashioned, I suppose: I believe that a parent should have the right to decide for their children until at least 18 if not 21 years of age. Regardless of their age they are part of the family. In our house we have team meetings and discuss these various issues.

The legislation is a little too wide for my liking, because there is no definition as to the mental ability of 16, 17 or even 18-year-old people, to cope with the decision being required of them, let alone understand the ramifications. As was pointed out by the member for Davenport, you can appoint a person as an agent and 24 hours later you can have an argument with that person, who may then be faced a short time later with a decision between life and death and may quickly say, 'Yes, pull the plug', to use an unfortunate phrase.

So, I go back to my original attitude towards this legislation and that is that I am not happy with it, I do not like it, and I am even more distressed to think that the church leaders would agree that the adult age be reduced to 16 years, because I believe that as a society we owe the young people so much. We have failed in the education process and in the process of their upbringing, to contain the current generation of young people. We have failed to provide them with a meaningful work environment, let alone the environment itself and the question of lifestyle. History: will look back on this era and show that as parents and politicians we have failed the teenagers of today.

Therefore, I believe we have the opportunity here to rectify or go part of the way towards rectifying that situation. What we have to do as a Parliament, and what the Minister has to do as a Minister in charge of a very important portfolio, is to ensure that parents accept their responsibility to train and educate the children the way they should be educated in a modern society, and this is not the way to do it. I support the member for Spence and urge all members to support his amendment.

The Committee divided on the amendment:

Ayes (10)—M.J. Atkinson (teller), H. Becker, P.D. Blacker, M.K. Brindal, S.G. Evans, G.M. Gunn, T.H. Hemmings, P. Holloway, W.A. Matthew, E.J. Meier.

Noes (34)—H. Allison, M.H. Armitage, L.M.F. Arnold, P.B. Arnold, D.S. Baker, S.J. Baker, J.C. Bannon, F.T. Blevins, J.L. Cashmore, G.J. Crafter, M.R. De Laine, B.C. Eastick, M.J. Evans (teller), R.J. Gregory, T.R. Groom, K.C. Hamilton, V.S. Heron, D.J. Hopgood, C.F. Hutchison, G.A. Ingerson, J.H.C. Klunder, D.C. Kotz, S.M. Lenehan, I.P. Lewis, C.D.T. McKee, M.K. Mayes, J.W. Olsen, J.K.G. Oswald, N.T. Peterson, J.A. Quirke, M.D. Rann, J.P. Trainer, I.H. Venning, D.C. Wotton.

Majority of 24 for the Noes.

Amendment thus negatived.

Progress reported; Committee to sit again.

[Sitting suspended from 1.3 to 2 p.m.]

QUESTION TIME

STATE BANK

The Hon. DEAN BROWN (Leader of the Opposition): My question is directed to the Premier.

Members interjecting:

The Hon. DEAN BROWN: I am just waiting for a bit of order on the other side.

Members interjecting:

The SPEAKER: Order!

The Hon. J.P. Trainer interjecting:

The SPEAKER: The member for Walsh is out of order. Will the Leader leave the conduct of the House to the Chair and proceed with his question.

The Hon. DEAN BROWN: Thank you, Mr Speaker. Why has the Premier put only one condition on the- sale of the State Bank? In statements yesterday by both the Premier and Prime Minister the only condition put on the sale of the State Bank was that South Australia must receive a fair price. The Premier's statement does not even require the buyer to retain a head office banking operation in South Australia, let alone look after the interests of the 3 400 employees employed by the State Bank Group.

The Hon. LYNN ARNOLD: Obviously the Leader did not read the statement or listen to it properly in the House yesterday. I made the point that, for a start, it is a recommendation from me to my Cabinet colleagues and the Government on this matter. Secondly, I finished off the statement by giving a guarantee that a consultation process with the staff of the bank would be involved so that we could ensure that all fairness was being displayed. I believe that at the end of the day the key point is a fair market price, and that will be taken into account in furthering this issue.

I would like to know exactly where the Leader stands on this issue. I think he is feeling very outmanoeuvred on the whole thing. Yesterday he tried to raise some concerns about the offer from the Prime Minister—the offer that was worked out between the Prime Minister and me as being in the best interests of South Australians. He tried to pick on a few things but he was not doing awfully well at it. He first tried to pick on the matter of the market value of the tax losses without acknowledging that they have a market value of only 10c in the dollar on running market rates.

The Hon. Dean Brown interjecting:

The Hon. LYNN ARNOLD: The Leader says I am wrong. I suggest he do a bit more research on that matter before he starts making those sorts of comments. Secondly, he then said that the offer by John Hewson was somehow the same as the offer by Paul Keating. I am prepared to acknowledge, in fairness to the Opposition, which I will give the benefit of the doubt—although it did not make the point clear in its own statements on this matter—that John Hewson's offer did allow for inflation over the years, and that would have somewhat of a mitigating effect on the real net present value of John Hewson's offer.

Whereas yesterday I was saying that that would be $242 million if it were not taken into account, I have had the calculations done and if it were taken into account it gives a net present value of $294 million. But the deal still comes down to this: it is only half as good as that worked out between the Prime Minister and me. I know that is something that is accepted in many quarters. What did Cliff Walsh of the Centre for Economic Studies—I guess the Leader heard Cliff Walsh's comments on TV yesterday on this matter—have to say about the offer? He said:

> Very generous I think by the comparison to other cases in which simply compensation for privatisation of the sale of a State Government authority is concerned.

What did the *Advertiser* editorial this morning say about it? It acknowledged that it is a better offer than the offer Dr Hewson made to the Leader of the Opposition, and it suggested that perhaps the Leader of the Opposition should be doing something to up the ante on his side of politics. What does the Leader of the Opposition think about it? What was his own considered opinion about it on radio this morning? When he was asked, 'Mr Brown, what is wrong with Mr Keating's offer?', he had to come up with the answer, 'Nothing is wrong with it.' They are his words. He went on to say that $600 million is better than $400 million. He went on to try to hedge around the tax credit issue, but without doing a proper analysis of the tax credit issue and its real market value. At the end of it he has to acknowledge that $600 million net present value is not only better than $400 million but it is certainly better than $294 million net present value.

FEDERAL FINANCIAL ASSISTANCE

The Hon. J.P. TRAINER (Walsh): Will the Treasurer advise the House what the implications for South Australia would be if there was no Commonwealth assistance for small States? On the front page of this morning's *Advertiser* there was a report that Dr Hewson questioned whether it was fair or necessary for the rest of the country to help South Australia and quoted him directly as saying:

> You are spending money from taxpayers who live in other States—therefore you need to be sure you are doing the right thing and are not unjustifiably expecting people who live in other States to pick up the tabs.

Dr ARMITAGE: On a point of order, Mr Speaker: the questioner quite clearly asked for a solution to a hypothetical question, namely, if there was no compensation for smaller States. I ask that the question be ruled out of order, in accordance with Erskine May's *Parliamentary Practice.*

The SPEAKER: On advice, and on considering the point of order, I think that there is a possibility that it could be ruled as a hypothetical question. However, a report was referred to where assistance to the States could be withdrawn. Therefore, there is an effect upon the State and I will allow the question to be asked of the Treasurer.

The Hon. FRANK BLEVINS: Not only would there be an effect on the State, as you quite correctly point out, Sir; it would be quite a devastating effect on the State, because one of the fundamentals of Federation is that we are one nation, and the only way that realistically we can continue to be one nation is if there is some fiscal equalisation from the Commonwealth, particularly to the smaller States. Without that, we do not have one nation; we have two nations and South Australians would be second-class citizens in it. It is absolutely fundamental for the type of Australia that we have that we continue with fiscal equalisation. Cut out the jargon and what does fiscal equalisation mean? It means that the more prosperous States subsidise States such as South Australia, Tasmania and so on. That is what it means, and for the Federal Leader of the Opposition to say that he and his Government will not support that very important principle of fiscal equalisation is absolutely appalling.

The quote has been read out, and that would be quite devastating for this State. In the 1992-93 budget papers alone, over $380 million can be attributed to fiscal equalisation. I know that the States of New South Wales and Victoria have been complaining about this for very many years, and we have always fought to maintain the principle of fiscal equalisation—the principle on which this Federation was founded. I would hope that the State Leader of the Opposition thinks about this the next time he is talking to the Federal Leader of the Opposition, although I must say that agreements between the Federal Leader of the Opposition and a State Leader of the Opposition do not inherently have a great deal of worth. I appreciate that Leaders of the Opposition do not have a great deal of clout. I would hope that, the next time the

Leader travels to sign some agreement with the Federal Leader of the Opposition, this very question is taken up. I hope that the reassurances that South Australians demand and need are given and that fiscal equalisation will continue.

Members interjecting:

The SPEAKER: Order! The Treasurer is finished. I assume that there is a point of order from the member for Hayward.

Mr BRINDAL: Not if he is finished, Sir. The point of order was—

The SPEAKER: If there is no point of order, there is no point of order.

STATE BANK

Mr INGERSON (Bragg): Will the Premier give a firm guarantee to the 3 400 people still employed by the State Bank in 180 branches throughout South Australia that their jobs and their branch network will be preserved in any sale of the bank?

Members interjecting:

The SPEAKER: Order!

The Hon. LYNN ARNOLD: I spoke with the union representing the employees of the bank yesterday and I gave them the undertaking that there would be consultation with them on the sale process. I may say that they supported my approach and have publicly said that. At a press conference yesterday I was asked about bank rationalisation of staff or branch numbers and I said that in a situation where the bank was not to be sold that I cannot give any guarantees about what will happen in terms of the bank's right sizing—I think that is the jargon—of its operations, as it has been doing for the past 18 months or so. I could not give that guarantee if the bank was not sold.

I cannot say what will happen in terms of the bank management and their operations of the bank and what they believe in terms of keeping a solid core foundation of that bank—getting back to the basics of good business that they are on about, and I congratulate the bank management and board for doing that. If I cannot do that in the situation of the bank's not being sold, it is clearly very difficult to do that in the situation of the bank's being sold. All reasonable people understand that, but I have learnt very quickly that there is not a great deal of reasonable approach from the other side.

Certainly in detailing the professional and commercial approach to the sale of the bank, these issues will be important and will be part of the consultation process, and I have given an undertaking to participate in that with the union representing the employees of the bank. I believe that is quite adequate and I know it is certainly adequate to the union representing the employees of the bank because they have said so publicly.

Mr Becker interjecting:

The SPEAKER: Order! The member for Hanson is out of order for the second time.

AUTOMOTIVE INDUSTRY

Mr FERGUSON (Henley Beach): Can the Premier explain the Government's position on the South Australian automotive industry in the light of comments yesterday by the member for Victoria and the Leader of the Opposition?

The Hon. LYNN ARNOLD: I must say that the Opposition is obviously in deep trouble over the automotive industry. Members opposite know that they have got the policy wrong on this matter. They know that their Federal colleagues have got the policy very badly wrong. They know that the major automotive companies of Toyota and Mitsubishi would not easily be drawn into this debate during an election campaign unless they knew the States were for real.

What are they going to do about this matter? They see their Federal leader prepared to make all sort of changes in other parts of the country, including the sugar seats, yet he refuses to do anything on the automotive industry. Now they are trying to build up a counter defence. They are trying to build up an impression that really the automotive industry does not count for South Australia. Yesterday the member for Victoria made the comment that in reality there is no problem because the automotive industry employs less than 1 per cent of the work force. What was his point? Maybe nationally the figure is less than 1 per cent of the work force, but in South Australia it is more significant than that. It is 20 per cent of the manufacturing work force in South Australia, and I would say that that is important. For someone who has the desire to represent people in the State Parliament, to see the governance of the State, I would have thought that 20 per cent of the manufacturing work force is a significant figure. We should not take account of the fact that, over the whole country, the automotive industry may not be as significant to the other States, for it is important to this State.

The Leader of the Opposition is trying to hedge in a different sort of way. Steele Hall knows it is important and I acknowledge the fact that he has had the courage to stand up for South Australia, courage that is not represented on the other side, as the member for Victoria seeks to belittle the industry. As for the Leader, what does he try to do? He will not sign the letter that I want to send to John Hewson to see whether we can get John Hewson to do a sugar issue on this and change his policy with respect to the tariff. He will not do that. He has attempted to say that there is no difference between the two and on radio this morning he said that there was no difference between the two major Parties on tariffs and that he would be highly critical of any attempt to draw a distinction between the two Parties on tariffs.

The mathematics are very simple. The Federal Government's policy is for a 15 per cent tariff for the automotive industry by the end of the phase-down period, which is different from zero or negligible tariffs. That is the phrase they use. We have heard enough automotive people say that there is no difference between zero and negligible, that they are in the same category. They ought to know, because they have to deal with the balance sheets and the profit and loss statements.

Mr D.S. Baker: You are lying to this House.

The Hon. J.P. TRAINER: On a point of order, Sir, I suggest that the language yelled out by the member for Victoria was clearly unparliamentary, and I ask you to demand that he withdraw that reflection on the Premier's veracity.

The SPEAKER: Order! The Chair heard the interjection but the member for Walsh took a point of order before I could get to my feet. I ask the member for Victoria to withdraw the statement that he made.

Mr D.S. BAKER: On the grounds of its being unparliamentary, I withdraw.

The SPEAKER: Order! A straight withdrawal is required. The member for Victoria.

Mr D.S. BAKER: Mr Speaker, I have made the withdrawal.

The SPEAKER: Order! The Premier.

The Hon. LYNN ARNOLD: I finish with the plain, irrefutable, basic fact that a 15 per cent tariff is more than a zero or negligible tariff and there is a major difference between the two Parties. That difference has been put before the electorate of South Australia to enable them to choose, and I know which way the manufacturing workers and the people who run the automotive companies in this State will go. They have made a decision. They say that there is a difference. The Leader of the Opposition does not know when to pull his head in and change his policy. He has done a back flip on the bank issue with his comments this morning. Why does he not have the courage to do another one on this?

STATE BANK

Mr S.J. BAKER (Deputy Leader of the Opposition): I direct my question to the Treasurer. Will the Government use the powers it has under section 25 of the State Bank Act to initiate an investigation by the Auditor-General to establish whether home and contents insurance offered by the bank is illegal, excessively priced and deficient in the protection it gives to bank customers? In 1989, the State Bank appointed the New South Wales-based QBE Insurance Ltd as its preferred supplier of insurance to bank customers. This was done with the approval of the former Premier. I have been approached by a solicitor and loss adjuster representing home owners who have mortgages with the State Bank and whose properties were seriously damaged by flooding late last year. Their clients live in Callington, Kanmantoo, Strathalbyn and Lobethal and it is believed that there may be up to 300 home owners in a similar position.

All have discovered that the insurance arranged for them through the State Bank does not cover them for flooding. They claim that they were not told of the exclusion when they took out their policies and, in some cases, they did not receive their written contracts, which did contain the exclusion, until a fortnight or more after signing an agreement. They have been advised that the way their insurance policies were signed is in breach of the Federal Insurance Contracts Act, which requires flooding to be included in the absence of a specific exclusion.

I have also been advised that an independent analysis has shown that QBE Insurance, through the State Bank, may be amongst the most expensive in Adelaide and that the commission paid to the State Bank by QBE is higher than the industry standard.

The Hon. FRANK BLEVINS: As regards the last part of the question, I would have thought that the marketplace ought to deal with the question of premiums. I would have thought that is something any decent Liberal Party would support. However, I do not need to go to the drama of using whatever section of the State Bank Act. If the Deputy Leader gives me a copy of the legal opinion and any other material that supports his statement, I will have them investigated. My experience in this place of the Deputy Leader and several of his colleagues is that they make statements during Question Time when the press is here; on investigation, it is found that those statements are, at best, half truths and on most occasions are a load of nonsense. Nevertheless, if the Deputy Leader furnishes me with the legal opinion and with any other supporting document, I will have the question examined and bring back a report to this Parliament. I have always enjoyed bringing back reports to the Parliament on these questions because without exception the answers have pointed out the fallacious nature of most of those questions.

EDUCATION SERVICES

Mrs HUTCHISON (Stuart): I direct my question to the Minister of Education, Employment and Training. Will the Minister advise the House what effect the Hewson proposal to scrap fiscal equalisation would have on the delivery of education and children's services in South Australia?

The Hon. S.M. LENEHAN: As the Treasurer has said, the proposal, judging by the comments that have been made by the Federal Leader of the Opposition, Dr Hewson, would impact upon the budgets of the South Australian Education Department, the Department of Technical and Further Education and the Children's Services Office. Given that the budget for my portfolio is in the vicinity of $1.307 million, which equates to in excess of 26 per cent of the total State budget, if we looked at the $380 million we are currently receiving under the fiscal equalisation scheme, we would be looking at a reduction to education of $102.2 million, or 8 per cent. That is an incredibly significant amount of money—just over $102.2 million—to slice from this budget.

What this highlights is that we now know why the Leader of the Opposition foreshadowed last October that he could cut expenditure on education by between 15 and 25 per cent. I guess we must acknowledge that the Leader now has been put in a position between a rock and a hard place, and he certainly—to echo the sentiments of the Premier—does not have the courage to stand up and fight for South Australia within his own Party and within the national context, because this policy would be a disastrous blow to education in South Australia, should a Hewson Government be elected federally.

TRANSPORT HUB

Mr OLSEN (Kavel): Is the Premier aware that the Prime Minister has ridiculed the State Government's

proposal to establish Adelaide as Australia's transport hub? During last year's Estimates Committee, the Premier described the proposed transport hub as the Government's major economic development project and said there was no doubt South Australia was ahead in the race. The 1992 State budget included an allocation of up to $10 million for the project. However, when interviewed on the Phillip Satchell show yesterday about Adelaide's role in a transport hub, Mr Keating said:

I think SA has got a probably better chance through the link to Melbourne by standard gauge.

Further, the Prime Minister also rejected the proposed Adelaide to Darwin rail link saying:

The containers on it will never come near Adelaide; they will just go right past to Melbourne.

He added:

I think it's a case of 'hello' and 'goodbye'.

Members interjecting:

The SPEAKER: Order!

The Hon. LYNN ARNOLD: The Adelaide to Melbourne standardisation is actually an important part of the transport hub, and I commend the statement in the One Nation document that that line should be standardised. While we have never attempted to have a transport hub for all goods going into and out of the south-eastern section of Australia—that would be an unrealistic program—what we have gone for is time sensitive container traffic. We are saying that we have a real opportunity to take market share from Melbourne and Sydney but, for that to be effective, we do need the standardisation of that rail line.

Indeed, that is one of the points we made to the Federal Government in wanting it to bring forward that project. The Federal Government under the prime ministership of Paul Keating accepted that very important point and brought forward the project.

The Hon. Frank Blevins: And the rail loop to Outer Harbor.

The Hon. LYNN ARNOLD: Yes, and the rail loop to Outer Harbor, another important part of the One Nation statement. Why was that in there? Why was it approved? It was because it is part of the transport hub concept accepted and supported by the Federal Government. Then we have the situation with respect to the Darwin to Alice Springs railway line. Of course, he has made some comments that he does not seem to be supporting it. It is a pity that that is not being supported by him. I know that it has also received very lukewarm support from the Federal Opposition. Indeed, that is something—

Mr Olsen interjecting:

The SPEAKER: The member for Kavel is out of order.

The Hon. LYNN ARNOLD: If we read—

Members interjecting:

The SPEAKER: Order! The Deputy Leader is out of order.

The Hon. LYNN ARNOLD: When the Prime Minister came here a couple of weeks ago saying that the Government was prepared to look at something with us concerning support for the State, I was not prepared to accept it then because there was nothing on the table. There were no figures on the table. All I had was, 'After the election we will see what we can do.' I said, 'No, thanks, that is not good enough.'

He came back after a couple of weeks, this time after discussions, and put some real figures on the table; we have been through just how good those figures are and how good everyone accepts them to be. Now I am prepared to further think my position, as I said yesterday, and I have done so. What the Federal Opposition is saying on the Darwin to Alice Springs railway line is, 'After the next election we may do something.' I was not prepared to accept that kind of approach on the State's finances and I would not be willing to accept it in other areas. I do not know why the Leader and the Opposition are trying to claim that somehow the Federal Opposition has a policy on the Darwin to Alice Springs railway line that is better than that of the Federal Government. That policy is not worth anything.

The other point to which I draw attention—and I cannot remember the exact date last year—is the Prime Minister's visit to Port Adelaide when he was shown over the transport hub; he made supportive comments about the transport hub. We know he took it to heart; why else would his statement have given the support it has to the rail loop and the standardisation of the railway line between Melbourne and Adelaide?

The Hon. J.P. Trainer: You should get Alex Kennedy to write your questions. She does better ones.

The SPEAKER: The member for Walsh is out of order.

DEVIATION ROAD

Mr ATKINSON (Spence): Can the Minister representing the Minister of Transport Development advise the House on what authority Adelaide City Council proposes to close Deviation Road? Adelaide City Council and the Department of Road Transport this week advertised that they proposed to close Deviation Road permanently as part of the improvement of the Port Road bridge over the northern railway. In 1987 Adelaide City Council closed Barton Road, North Adelaide, without any lawful authority and, as of today, that road is still closed without any legal justification.

Mr Brindal interjecting:

The SPEAKER: The member for Hayward is out of order.

The Hon. M.D. RANN: I know of the honourable member's keen interest in this matter on behalf of his constituents and I shall certainly take up the matter with the Minister of Transport Development.

SCHOOL SECURITY

Mr BRINDAL (Hayward): Will the Minister of Education, Employment and Training confirm that at least one school in the southern suburbs is employing security guards to protect students and staff during normal school hours and, if so, will she also detail how many other schools have sought assistance from the department this year on security matters concerning student and school staff safety? Radio reports identifying Morphett Vale High School stated last week that the school obtained the services of two security guards following two incidents a fortnight ago in which students

were assaulted. The Liberal Party has confirmed the accuracy of these reports.

The Minister will be aware of questions raised in another place yesterday by the Hon. Mr Lucas relating to the use of two-way radios as a security device for teachers employed in northern suburb schools for their own safety while on yard duty. The Minister seemed to think that these were isolated incidents.

The Hon. S.M. LENEHAN: In answer to the first part of the question, I have had discussions with the school principal—in fact, it is in my electorate—and the incidents to which the honourable member referred involved people coming from outside the school: in other words, undesirable people who were coming to the school and creating a problem and an incident involving some degree of violence. It needs to be put on the public record that we are not talking about students attending the Morphett Vale High School. I have the highest regard for the professionalism of the staff and for the quality of support that the local community provides for that school.

I do not want that school used by the Opposition to denigrate the reputation of an excellent secondary school within the public system. They have looked at ensuring the security and protection of the students at Morphett Vale High School in terms of an incident like this happening again. I can give the honourable member that assurance, and I am sure that he will be supportive.

In the second part of his question the honourable member raised the issue that was earlier raised by a member in another place about people using two-way radios and teachers doing yard duty in pairs. I have looked at these absolutely ridiculous allegations in terms of the conclusions that the member from another place has drawn. I thank the honourable member for giving me the opportunity to put some facts on the record. The use of two-way radios is about communication and better management of the schools, and I would like—

Members interjecting:

The Hon. S.M. LENEHAN: The Opposition will not like this answer, because I have to inform members opposite that two-way radios have been used in the very large secondary campuses for some years. In fact, one of my own staff members taught in a school in 1981 where they used two-way radios on the campus of a very large secondary school. The reason was not that teachers feared for their safety, which I know is a wonderful beat-up in the media and sounds a lovely way of denigrating education in this State. The first of a number of reasons is to ensure that if a student is injured, for example, has some type of turn or fit, or breaks a bone, the teacher who is doing playground duty alone can immediately call back for help.

Secondly, if intruders come onto a school premises—and everyone who has been involved in education or taught in a school, as I have, knows that this can happen—the teacher on playground duty can call for assistance with the intruders. It has also been used as a means of communicating urgent messages to teachers on playground duty and, as I have said, to ensure the safety and security of the students.

The other point made by Mr Lucas was that teachers did playground duty in pairs. Again, in large secondary schools this has happened over a number of years and, again, there is a commonsense reason. If a student is seriously injured in the playground one teacher remains with the student while the other teacher goes back and gets help. It has also been demonstrated—and deputy principals have told me this over the years—that if intruders come onto premises and two adults are on playground duty they will obviously be more easily deterred than if one teacher is doing duty at the perimeters of the school.

Rather than trying to beat up what has been in practice in the education system in this State for some time, the Opposition would do well to find out what is going on in schools in terms of behaviour management policies. We had the ridiculous spectacle of the Opposition spokesperson who has been in that position for five to six years not even knowing what the behaviour management policies are, not knowing that we had introduced a pilot program last year and that we were moving to introduce the suspension—

Mr S.J. Baker interjecting:

The SPEAKER: The Deputy Leader is out of order.

The Hon. S.M. LENEHAN: —exclusion and expulsion policy right throughout the system in term 2. I believe that the Opposition was trying to create an underpinning for its policy of going back into the dark ages, of caning and using physical violence as a means of behaviour management. That is the underlying philosophical principle it was trying to establish: let's create in the media a furore about these situations so that we can go out and justify the kneejerk policy of the Leader of the Opposition about going back to caning and using physical violence in our schools. This Government will not buy into that kind of an argument and neither will the community of South Australia.

GOODS AND SERVICES TAX

The Hon. J.P. TRAINER (Walsh): I direct my question to the Minister of Tourism. In light of his concern for the health of the tourist industry, can he advise the House whether lobbying from the tourism industry has persuaded the Federal Opposition to alter its GST proposals?

The Hon. M.D. RANN: Tourism is at the forefront this weekend with the AFTA/*Advertiser* Tourism and Travel Expo here in Adelaide, so it is a very apt question. It appears from all the evidence that the Federal Opposition has not changed its attitude towards the GST despite the cries of the industry which believes it will be seriously wounded on a number of scores. The tourism industry has asked for the removal of the GST from Australian tour packages sold overseas. It argues very strongly that these should be zero rated in line with Fightback's treatment of other exports.

It is interesting that members opposite are suggesting that this is not an industry looking for special treatment and that all it is asking for is to be treated the same as other export industries are treated under Fightback. Let us look at the comments of the Federal Opposition. We saw what David Giles did: he came in very strongly behind it one day and back-flipped at 5 o'clock in the afternoon. They said that the Coalition would rip $1 billion off tourists—that was the National Party candidate for Kennedy.

The Hon. JENNIFER CASHMORE: On a point of order, Mr Speaker, the Minister was asked and answered a question which is almost identical to this one on 11 August in this session. It was about the impact of the GST on the tourism industry. I therefore submit, Mr Speaker, that the question is out of order.

The SPEAKER: Obviously I do not have the question asked on 11 August in front of me at the moment. Can the Minister recall the question?

The Hon. M.D. RANN: Yes, I was asked about the impact of the GST—

The SPEAKER: Order! If the Minister has responded to this question before, it is out of order: it is a repetitive question.

The Hon. M.D. RANN: In August the question was whether the industry's submissions, which had been made over the past few previous weeks, had had any impact on the Opposition. It is obviously very relevant in a Federal Opposition campaign context. The Fightback pamphlet went on to say:

With the introduction of a GST—

The SPEAKER: Order! Will the Minister resume his seat. I have had a very quick look at that question. I must say that I did not hear the full question because my attention was distracted, but they do seem to be the same question.

The Hon. M.D. RANN: There has been an enormous amount of lobbying by the tourism industry since then.

Members interjecting:

The SPEAKER: Order! The Minister is out of order. The Chair will ask for the question to be repeated.

The Hon. J.P. TRAINER: Thank you, Mr Speaker. This question concerned the success or otherwise of the lobbying that has been conducted by the industry. I said, 'Can the Minister of Tourism advise the House whether lobbying from the tourism industry has persuaded the Federal Opposition to alter its GST package?'

The SPEAKER: The Chair rules the question out of order. The Minister is not responsible for the Federal Government's change in attitude on the GST.

PRISONER, DRUGS

Mr MATTHEW (Bright): Will the Minister of Correctional Services advise the Parliament why his department has been frustrating police investigations into alleged drug dealing by prison officers and advise what action he has taken to identify the culprits and reduce the opportunity to smuggle drugs into prisons? I am reliably informed that for some time police officers have been investigating the activities of a small group of correctional officers who are allegedly dealing in drugs in prisons and are also allegedly involved in a variety of other crimes. During their investigation into the activities of one officer, police were, at the insistence of senior correctional services management, forced to identify the officer under investigation. Within 48 hours the officer, who was under continual police surveillance, had become aware he was being watched and police were forced to abort the investigation. I am advised that police have good reason to believe that the officer was tipped off by his superiors in the Correctional Services Department.

The Hon. R.J. GREGORY: I thank the honourable member for Bright for his question and I note the comments that have been reported in the *Advertiser* this morning. I m advised by the Department of Correctional Services that it is not aware of any current police investigation of correctional officers alleged to be supplying drugs to inmates. The department is informed of some investigations conducted by the Police Department but not all. A police officer placed in the Department of Correctional Services liaises between the two departments, but the department is not always informed about the extent and nature of police investigations.

I raised the matter with senior officers of the Police Department this morning. I am advised by them that only two people would know within the department of the number of investigations being conducted into allegations of drug-running by correctional services officers. I was advised that both those officers are trustworthy, and I was led to believe that what the member for Bright is talking about is a figment of his imagination.

UNIVERSITY FEES

Mr HAMILTON (Albert Park): Has the Minister of Education, Employment and Training been asked to assess the impact on university fees and opportunities for higher education in South Australia of plans by the Federal Liberal Coalition to introduce a scheme involving up-front fees and vouchers for students wishing to undertake university courses?

The Hon. S.M. LENEHAN: Yes, I have been asked to look at this and I have to say that I share the concerns of Vice-Chancellors right around this country in terms of the concern they are expressing about the apparent lack of detail contained in the higher education policies of the Federal Coalition. Dr Kemp, the Opposition's spokesperson on higher education, has described the introduction of fees, as follows:

The introduction of fees is one of the key elements of the Opposition's policy.

It seems that the Coalition is now committed to a scheme with vouchers of different values based on the cost of teaching particular courses, but there is little other detail available. What we do know about vouchers—

The SPEAKER: Order! The honourable member will resume her seat.

The Hon. JENNIFER CASHMORE: Mr Speaker, as far as I can ascertain, this question is very similar, if not identical, to one asked of the Minister of Education on 27 October during this session, and therefore it is out of order.

Members interjecting:

The SPEAKER: Order! I would ask the honourable member to ask the question again.

Mr HAMILTON: Has the Minister been asked to assess the impact on university fees and opportunities for higher education in South Australia of plans by the Federal Liberal Coalition to introduce a scheme involving up-front fees and vouchers for students wishing to undertake university courses?

The SPEAKER: Order! The question is not the same, so the Chair does not uphold the point of order. However, the question is very similar.

Mr Ingerson interjecting:

The SPEAKER: Does the member for Bragg have a problem with the Chair? I rule that the question is not the same, although it is very similar. I advise all members with questions to be sure that they are original and are not repeats of previous questions otherwise they will be ruled out of order. The honourable Minister.

The Hon. S.M. LENEHAN: I thank you, Mr Speaker, for your ruling. Students with vouchers are likely to gravitate towards institutions that they perceive as most prestigious and this will make it very difficult to achieve a reasonable geographic distribution in higher education. It also underpins the enormous philosophical shift from a system based on labour market projections to a system that would be driven by the individual preferences or choices of students. This would result in a major concentration of resources into a certain type of institution, the older and better-established universities. It would also be highly destabilising for the rest of the system.

Under the Labor Government, higher education numbers have grown by in excess of half a million places since 1987, the equivalent of an additional 12 medium-sized universities in five years. Labor has made higher education more accessible than ever before. On the other hand, the Industries Commission estimates that, at the top end in courses such as medicine, the Liberal Party fees proposal would be in the range of $20 000 to $25 000 a year with an average fee in the vicinity of $12 000. The Liberal Party's Federal policy denies equality of access and equality of opportunity and would mean that only the very wealthy would be able to afford university. We would go back to the system that was prevalent in this country in the 1950s and the 1960s where only the wealthy could afford to pay up-front fees while the poor were unable to do so.

Every South Australian, including members of the Opposition, should be deeply concerned at the proposals that are being put forward by Dr Kemp and I ask members opposite to at least try to find out further details from their Federal colleague because the community of South Australia is asking very serious questions about these policies.

PRISONER, DRUGS

Mrs KOTZ (Newland): Will the Minister of Correctional Services advise Parliament of the circumstances that resulted in a fully primed injection syringe being found in salad prepared in the kitchen at Yatala Labour Prison and detail what extra precautions have been taken to ensure that such an event does not recur? I am reliably informed—

Members interjecting:

The SPEAKER: Order!

The Hon. H. Allison interjecting:

The SPEAKER: Order! The member for Mount Gambier is out of order.

Mrs KOTZ: I am reliably informed that on or about 27 January 1993 a fully primed but not used injection syringe was found in a salad prepared in the kitchen. This incident follows the release of official departmental reports revealing an alarming increase in the presence of drugs in our prisons and also follows allegations of drug smuggling into Yatala prison by a very small group of prison officers. Those who have advised me of this latest incident are concerned that the drug problem at Yatala prison is out of control.

The Hon. R.J. GREGORY: I am not aware of the individual circumstances to which the member for Newland referred. However, I acknowledge that the efficiency of officers of the Correctional Services Department in detecting instances of drugs within prisons has improved tremendously, and figures tabled in this House from time to time demonstrate that.

Members interjecting:

The SPEAKER: Order!

The Hon. R.J. GREGORY: I treat these allegations with all due seriousness, even if members opposite do not. As I indicated, I will have the matter investigated. I believe that officers in the department perform very well in the area and respond to the training. The number of incidents reported has increased because the detection rate in prisons has increased. The department itself is undertaking a drug strategy to ensure that we limit the amount of drugs within prisons. I will outline the strategy that we will be releasing shortly. It hinges on several matters: first, to deny entry to the prison and, secondly, to ensure that people who are there have proper education, counselling and assistance to overcome the problems they may have in this area.

One of the unfortunate tragedies of our society is that too many people depend upon drugs to be able to survive in it. One of the other problems—and it is well known—is that the medical profession in some cases over prescribes those drugs. We should encourage people who overindulge in drugs not to do it. Within our own society, as a result of actions undertaken by this Parliament (such as the increase in the price of cigarettes and the establishment of Foundation SA), we have seen the incidence of smoking drop. We all know that those initiatives have resulted in a reduction in the number of people going to hospital with illnesses caused by smoking tobacco.

We have also seen a reduction in the use of alcohol in our community. The member for Morphett interjected a little while ago about getting off the track. What he does not understand is that one of the drug problems within the prisons is the manufacture of alcohol, and that has caused problems in the past. What we need to do is educate all those people in our institutions of the problems created by the overuse of drugs and to provide secure accommodation for them. The member for Newland suggests that we change the laws. She has made a number of suggestions about changing the laws but I am not interested in some of the changes she wants. I am quite confident that the strategies that we will be releasing shortly, when implemented, will have an effect upon the amount of drugs within prisons, just like the strategies our Government has introduced in South Australia have had a positive effect upon the use and consumption of drugs in the State in general.

FIGHTBACK

Mr FERGUSON (Henley Beach): Will the Minister of Housing, Urban Development and Local Government Relations inform the House of the implications for public

housing in South Australia of the Federal Coalition's Fightback package?

Members interjecting:

The SPEAKER: Order!

The Hon. G.J. CRAFTER: Members opposite may not want to hear the answer to this question, but I am sure the people of South Australia do, particularly the 62 000 householders who are living in public housing in this State. I am sure they will not hear it from the Opposition, but I would like to briefly explain to the House the impact that policy would have on the State should the Coalition be elected in Canberra. First, we know that Fightback proposes to slash $9.6 billion from public sector spending which, if allocated across Australia on *a per capita* basis, is a little less than $1 billion for South Australia. The Fightback document (page 265) states:

> The Coalition believes taxpayer support for public housing should be in the form of means-tested rental subsidies, with the ownership and control of housing stock resting with the private sector. The Coalition will, therefore, move towards the elimination of housing payments for capital purposes.

It continues:

> This decision will be phased in starting in our first year of office.

One can only assume, therefore, that the Federal Coalition is proposing to abolish the concept of public housing altogether; there is no other explanation from that document. On what basis it proposes to do it is unclear, because no statements have been made to the Australian people about this policy. Fightback provides no justification or supporting evidence for this massive and fundamental social policy change in Australia, and particularly in South Australia, where we have had such an enormous commitment to public housing. As I said, 62 000 families in this State are in Housing Trust rental accommodation.

In addition public housing will receive no exemption from the goods and services tax, resulting in a cost increase per unit of housing in the order of $4 275. There will be no off-setting of this cost for the State, as the South Australian Housing Trust is already exempt from sales tax. The conclusion is very clear: if this policy sees the light of day, by Christmas this year we will be closing the doors of the Housing Trust in South Australia.

ALGAL BLOOM

The Hon. D.C. WOTTON (Heysen): My question is directed to the—

Members interjecting:

The SPEAKER: Order!

The Hon. D.C. WOTTON: —Minister of Public Infrastructure. Will the Minister give a categoric assurance that his department has the resources to monitor and implement safety guidelines recently laid down to deal with outbreaks of blue-green algae? Algae research authorities are warning that, unless there are heavy falls of rain in the headwaters of the Murray-Darling, significant outbreaks of the algae can be expected within weeks. They also inform me that the current resources of the relevant Government departments are inadequate to monitor any outbreaks and to implement the three-stage alert so that the safety of the public can be assured.

The Hon. J.H.C. KLUNDER: I thank the honourable member for his question. However, I think he is going a bit over the top in arguing that the department has no capacity to detect any outbreaks of blue-green algae, because that is utter nonsense.

Members interjecting:

The SPEAKER: Order!

The Hon. J.H.C. KLUNDER: We will let *Hansard* be the judge of that.

Members interjecting:

The SPEAKER: The member for Bragg is out of order.

The Hon. J.H.C. KLUNDER: The situation is that a number of blue-green algae outbreaks have taken place in other States, and clearly we are not monitoring them: we are cooperating with the departments in other States. The outbreak of algae along 1 000 kilometres of the Darling River was one of those situations in which we kept in contact. The department has recognised that there may well be problems from time to time when hot weather and low flows combine. In those circumstances the department has indicated to me that it has prepared contingency plans for the supply of water to various regions by looking to alternative water supplies when the normal water supply for an area cannot be supplied because of the presence of blue-green algae in that water.

HOUSING APPROVALS

Mr HERON (Peake): Can the Minister of Housing, Urban Development and Local Government Relations tell the House what the latest Australian Bureau of Statistics figures show about South Australia's housing demand?

The Hon. G.J. CRAFTER: I thank the honourable member for his question, because very good figures are coming forward about housing demand in South Australia and I would like to bring those figures to the attention of all members; they represent the sort of news that, unfortunately, we will not be read in the press at this time. I thank the honourable member for raising this question, because I know of his particular interest in the generator effect of the creation of jobs through an increase in housing activity in our State.

The latest ABS figures indicate that South Australia's housing approvals lead the way for the month of December, with a 29.4 per cent increase in seasonally adjusted figures. This figure should be compared with the national average of 7.8 per cent. As the House can see, South Australia is performing extremely well in this area of economic activity. The percentage boost can be translated in real terms to 1 175 new dwellings being approved in December, compared with 908 in November. Indeed, over the first six months of the 1992-93 financial year, South Australia has experienced a 25.4 per cent growth in seasonally adjusted figures. South Australia has not experienced the booms and busts in housing, as have other States, because of sensible management by both the public and private sectors.

That is why it is particularly disappointing to see the Housing Industry Association in this State having really sold its soul to the Coalition by putting out biased information, having chosen to ignore altogether the

reality of the impact of the GST on the housing industry. How can one say that is an objective assessment, which it is distributing across the State obviously in conjunction with the Coalition and the Liberal Party organisation in this State.

The continued buoyancy indicates a growth pattern that will flow through into the resale side of the economy. For every new house built, there is a need for additional expenditure by the householder on retail goods. These figures are clearly a positive sign and should be recognised as an indicator of growing confidence in, and a move towards recovery in, this State's economy.

MID NORTH DEPARTMENTAL HEADQUARTERS

Mr VENNING (Custance): My question is directed to the Minister of Public Infrastructure. Is it a fact that a review has been conducted into whether the Mid North headquarters of the E&WS Department or the Department of Road Transport should be rationalised or even closed at Crystal Brook? If so, when will the results of the review be announced? I have been told that the review has just been completed but that the results will not be announced until after 13 March, the date of the Federal election.

The Hon. J.H.C. KLUNDER: Clearly, I cannot answer on behalf of the Minister of Transport Development. I have not yet had from the department any indication of what it wants to do in that area. Since the honourable member has raised the issue, I will ask whether such a report has been finished, and I will ensure that the honourable member gets the results in due course.

GRIEVANCE DEBATE

The SPEAKER: The proposal before the Chair is that the House note grievances.

Mr GUNN (Eyre): The unemployment levels in the electorate of Grey are, to put it mildly, disastrous; the latest unemployment figures released by the Federal department are alarming. In view of the fact that the Labor Party has been running a campaign on 'Jobs or GST', it should be pointed out that one thing at which the Labor Party has been successful is the creation of unemployment. No wonder certain members opposite are not looking at me.

In Port Augusta, 1 554 people are unemployed; in Port Lincoln, 1 567; in Port Pirie, 2 300-odd; in Ceduna, 346; and in Coober Pedy, 370. To top it off, we read in the latest edition of the *Transcontinental,* the Port Augusta paper, a heading, '50 AN train guards jobs to go'. Guess how many are at Port Augusta?—33! That is another 33 jobs. I wonder what Mr Piltz has to say about that. We have been listening to him talking at great length about unemployment. He is the promoter of unemployment. What has he done about the next 33? Of the 1 500, I was advised yesterday, nearly 400 have lost their jobs in the past 12 months, and the Government will put another 33 people beyond hope.

The only solution for those people who have been so unfortunate as to lose their jobs is to change the Government. The scare tactics will have no effect. The move is on: the chilly winds of the ballot box are blowing through the corridors. Many Labor Party members will be swept out with them. The people understand. It is 50 today; next week, there will be another 50 or 100 somewhere else as businesses close down. I put to the House and to the people of the electorate of Grey that, if they want to turn around this disastrous situation and if they do not want any more headlines such as the one in yesterday's paper, they will support the endorsed Liberal candidate for Grey, Mr Barry Wakelin, and they will solve the problem.

We have heard much talk about alleged cut-backs. I bring to the attention of this Government an actual cut-back in which it has been involved. We all thought that the provision of a school dental service in this State was an accepted fact and that every 12 months students would have the services of a dentist. I received a letter from my representative on the Karcultaby school council, who says:

> At the Karcultaby Area School annual general meeting held on 2 February a letter was presented to the meeting from the Streaky Bay-based dentist... pointing out that the present arrangement of 12 monthly free dental checks currently being provided for our schoolchildren will be cut back to 18-monthly checks as of next year.

We have not been told anything about that. The letter continues:

> The meeting felt that this was a backwards step and yet another example of cost cutting at the expense of our children's health. This move will disadvantage our children, requiring the removal from their schooling for attendance at appointments. The remoteness of our children from the nearest dental surgery will require long distance travel, placing further financial burden on our rural families. These two factors will no doubt mean that all country children will no longer get the same standard of dental care. The meeting requests that you address the social justice and health issues that arise before this move, and raise the matter before the Parliament.

That is what I am doing today, and I have no hesitation in doing that. The letter continues:

> We have also written to Dr Martin Dooland, South Australian Dental Service, protesting against this action.

This letter should have been addressed to the South Australian Minister of Health, and this is just one more example of the high price that my constituents and the rest of the residents of South Australia will pay for the mismanagement of the State Bank, the fiasco of the Scrimber development and many other financial blunders which this Government has been involved in.

I wanted to raise these two issues today because I believe not only that they are important but that the Government should respond to them. We have as yet heard nothing about what the Minister of Transport Development or the Minister of Industrial Relations and Occupational Health and Safety in this State will do about the ongoing dispute concerning the attempts of the National Rail Corporation to ease out the Australian

Workers Union in relation to having any representation in the rail industry at Port Augusta—and that is quite wrong.

The SPEAKER: Order! The honourable member's time has expired. The honourable member for Albert Park.

Mr HAMILTON (Albert Park): I welcome the opportunity to follow the member for Eyre in this debate. He has the gall to stand here and talk about unemployment, yet the policies of people of his ilk will slaughter the motor car industry in this country, especially here in South Australia. The member for Eyre should not go wandering into this place where he and his lot are found wanting. They know that the motor car industry has been trenchant in its criticism of his colleagues' tariff policies enunciated, so let him not come in here crying crocodile tears when he knows damn well that his colleagues are running scared on the motor car industry. We all know they do not have a great deal of concern for South Australia: their only concern is to grab Government.

Let me return to the question I asked today about university fees that are proposed by the Liberal Coalition. When I was first asked to stand for preselection for the Labor Party in 1978, I looked around for a topic on which to address my colleagues at the State convention and the topic I chose was equality of opportunity in education. One of the reasons I chose that was the lack of opportunity I had in my youth. This is what we are talking about today in terms of Liberal Party and Coalition policies. They want to remove the opportunity for working-class people out there in our community. They want to return to the 1950s and 1960s, as the Minister indicated in her response today, to an elitist number of people who will be able to go into those universities—elitist in that the universities will rake the cream off the top.

This is not just my view but the view of Dame Leonie Kramer and other university vice-chancellors. They are very concerned about the Opposition's policy—where we have information on it. This is the tactic that the Liberal Party is using, as it did in Victoria, and we should not forget that. Liberal Party policy is not clear and it will not disclose full details, whether that be in relation to education, universities, transport or industrial matters. It is not made clear what the Liberal Party intends to do. There is a vagueness about it; there is a vagueness about its policies—

The Hon. J.P. Trainer interjecting:

Mr HAMILTON: We all know what it intends to do but it does not have the guts to get out there and tell the people in the community what its intention is. The Labor Party is quite clear about where we intend to go. We are quite clear on what we intend to do. In the area of public housing we are all well aware of the Liberal Party's intention. They will slaughter public housing here in South Australia as they will in other parts of Australia. We all know that but they do not have the guts to come out and spell it out to people living in Housing Trust homes. They will not spell out what they intend to do.

It was educational to read the list in the *Australian.* Despite John Hewson's call for a 'no lies' campaign, the Coalition is peddling its own fiction. Unfortunately I do not have the time to go through all the matters listed but I would like to lay to rest one of the untruths, if you like, of John Hewson. He said:

> Since the last election real living standards in Australia have fallen by 3.5 per cent and unemployment is almost double.

Since March 1990 real *per capita* income has dropped by 3.5 per cent, that is fair to say, but during Labor's 10 years in Government real living standards have risen by about 18 per cent. They are not telling the truth in relation to that matter.

They are peddling half truths and misleading those people out in the community—tens of thousands of people throughout Australia—in terms of what they will do for those people on pensions. They will be phased in; people will not receive increases in pensions and family allowances as the Liberal Party proposes. I will have a lot more to say about that when the opportunity arises in the House.

The SPEAKER: Order! The honourable member's time has expired.

Mr LEWIS (Murray-Mallee): The first matter I wish to raise relates to the Holiday Shorts, as they are called in South Australia, provided as prizes for Tourism SA in a competition to promote such holidays here in this State. The important point arising from this is the bungling which has occurred by Tourism SA during the period leading up to the competition and the awarding of prizes won by people who entered.

The Hon. M.D. Rann: No trips to Burma.

The SPEAKER: Order! Interjections are out of order.

Mr LEWIS: Mr Speaker, let me quote from a letter from a constituent of mine at Lameroo who offered one of these prizes in the Holiday Shorts at Meranwyney Host Farm, and I quote:

> To begin with we were reluctant to be in the 1992 Shorts as we only got one booking from the 1991 book, but we felt this booking would pay for the 1992 entry. The donation of a prize of the Shorts package was compulsory for inclusion in the 1992 book and we had to sign a form to this effect (also, we did not agree with all the rules and conditions for entry in the Shorts campaign, but all this is another issue). We went into it freely and are prepared to stand by our commitment. ...our prize was offered in the *Advertiser* 'Getting Out' on 20 November 1992.
>
> We first heard of this from a friend who got the paper that day. We do not get the *Advertiser* as we are 28 kilometres from Lameroo and only go to town about once a week. Early in December we received Shorts Newsletter No. 2. The paragraph Prize Bank stated that TSA would let us know where the prize will be, not has been promoted. There was no date on this letter but in the same mail was a letter from Andrea Morris dated 27 November saying our prize had been won. We were not unduly perturbed at this stage, as we are used to TSA bungling things.
>
> On about 7 December the travel centre booking service rang to make a booking for 6 to 8 January 1993 for (people whose names do not matter). We were not told it was for the prize until I had confirmed the dates. In fact at no time when they rang did the booking staff ever volunteer the information that the booking was for a prize. As we have never in four years had a booking from TSA except for free ones for executives, which is another questionable practice, I always knew they were ringing about the prize. At this time I think I was talking to Rosie; she said the prize was for $600 and when I said, No, $400' she

argued but sought advice then came back and said it was for $400.

The winners had two children and could they come free too. I said, no, children were $100 each, which for two was $200, and if this was paid the children were welcome to come with their parents on that weekend. Rosie said the parents had agreed to this. On about 8 or 9 December the Travel Centre rang again to ask whether the booking could be changed to 20 to 22 January 1993. I said okay. Even now we were not too upset although the staff's attitude could have been more honest and friendly. They were obviously trained in making operators feel guilty and defensive. The same day the Travel Centre rang again, I think it was Wendy this time, saying that the people had no money and could the children come free. As this had already been discussed I said that I could not afford that. Then she asked if they could go without meals. In a homestead on a host farm?

I shared the concern of my constituent in asking such a question. The letter continues:

I thought she was joking but apparently not. I was asked if I was prepared to negotiate at all and I said no. She then said, and I believe this is the important part, 'Forget about it, I will get back to you.' On the afternoon of the 10th we went to Mannum for the tourism association dinner meeting and as the Travel Centre had not rung back to let us know what was going on I spoke to Pam and Jeff Pope about it. They said that they had unpleasant dealings with TSA too.

They are the proprietors of a motel in Mannum. The letter continues:

For the next two weeks life got busier and we became fully committed for January. Then on Christmas Eve our daughter Bronwyn answered the phone. I heard her say you'd better speak to mum and as she passed me the phone she said, 'Someone wants a map.' It was the Travel Centre. I explained that they had not rung back as promised about the arrangements for the weekend.

The weekend was aborted.

The SPEAKER: Order! The honourable member's time has expired.

Mrs HUTCHISON (Stuart): In the time available to me, I should like to talk about my concerns regarding the effect of the Fightback package on women generally. I do not think that I could state it any better than has Jennie George, who is Assistant Secretary to the ACTU. I should like to read an extract from an address that she gave to the Industrial Relations Society of Queensland, which was reprinted in the journal *Contact,* No. 2 of 1993. Under the heading, 'Women stand to lose the most from deregulation', Ms George said that, in a recent address, Dr Hewson stated that he did not believe in gender and that women should be treated 'in exactly the same way as everybody else'. Ms George said that, in view of that, reality cannot be ignored. Women are already concentrated in low paid, low status jobs, in part-time and casual employment with fewer opportunities for training and promotion and are earning less than men, and I do not think that anyone on the opposite side could disagree with that.

She went on to say that part of the purpose of reforming the award system through award restructuring has been to narrow the wages gap and improve the position of women in employment, and I think they have been doing that very well. She also stated that it is through the award system that the greatest gains for women have been achieved, and she listed pay levels commensurate with skills, the introduction of career paths, proper entitlements for part-time workers, parental leave, and superannuation entitlements to name but a few.

Ms George also stated that we are all familiar with the range of difficulties faced by women in the bargaining process and these include: less industrial strength, so therefore women are potentially more vulnerable; high numbers in part-time employment; many women are employed in small, non-unionised workplaces; lack of involvement by women in union activities in the workplace; a tendency for the interests of men to dominate the bargaining agenda, and that has been noticed particularly in New Zealand; constraints to participation through family responsibilities and language; and concentration in industries where productivity is not open to measurement in conventional terms.

She also went on to say that, in recognising these difficulties, the ACTU has welcomed the safeguards built into the certification of section 134 agreements in the current Federal system. In particular, there is the new test that 'an agreement cannot be certified if it disadvantages the employees it covers by reducing the employment standards which apply to them'. Again, that is a very important agreement because effectively what happens in New Zealand is the exact opposite to that. Ms George further stated that, in the course of his second reading speech on this Bill, Senator Cook made it clear that:

The provision is not intended to operate in a way to reduce well established and accepted standards which apply across the community, such as maternity leave, standard hours of work, minimum rates of pay, termination change and redundancy provisions, and superannuation.

Ms George stated quite categorically that deregulation is anti-women. If the award system is to be dismantled as the method of reducing wages and conditions, it is women who will be the single largest group of workers to be adversely affected, and I totally agree with that comment. She went on to say that the Federal Opposition's lack of concern for the disadvantaged position of women in the work force is compounded by other proposals contained in the Fightback package, namely, the abolition of the affirmative action agency, the equal pay unit and the work and family unit. Those units are of vital concern to women and women's rights.

Ms George said also, 'In case I am accused of promoting the women as victims syndrome, let me give you but one example to show that market forces do not produce fair and equitable outcomes.' Through a variety of strategies, the union movement has succeeded in reducing the ratio of female to male weekly award rates to 93 per cent. A recent ILO study confirms that Australian women have fared better than others in a regulated environment. However, even in Australia the pay gap is still considerable for women in award free areas. A recent survey of Australian executives found that, despite an equivalence in educational qualifications and/or background, 57 per cent of women surveyed received an income of less than $50 000 while 76 per cent of men received an income above $70 000 per annum. It would be expected that such women would

have considerably more personal bargaining power than the typical migrant clothing factory worker.

The SPEAKER: Order! The honourable member's time has expired.

Mr BRINDAL (Hayward): Those who follow the debates in this Chamber in *Hansard* could be excused for forming the impression that Government members are the tireless champions of all people in Australia. They would have us believe that not only are they in any worthy cause you can name but that they are in the vanguard of social justice and on every issue of concern to all people in South Australia. Yet their hypocrisy today is no better exposed than in the statements of the Minister of Housing, Urban Development and Local Government Relations, who berates the Housing Industry Association for a letter which was written in good faith.

If any member of the Government believes that the Housing Industry Association is not a legitimate, independent, free-thinking body, let them stand up under the privilege of Parliament and say so. For a brief period I was shadow Minister of Housing, and I believe that it is independent, free-thinking and capable of reaching its own conclusions. A letter from Mr Kennett states:

> Independent surveys show that compulsory unionism of the housing industry will increase the cost of a new home by $15 000!!

He refers to legislation that was rammed through the Federal Parliament to allow building unions to force home builders to use only union labour. That will be at cost to the people of this State and, indeed, to the people of Australia. Indeed, Mr Kennett is a very brave man, because he also goes on to say:

> Australia can't afford the cost of the rorts and corruption that have crippled high rise office building and which now threaten the survival of the housing industry.

When this Opposition quite legitimately asked questions about the Remm-Myer site, we were told there were no rorts and there was no corruption and that everything went very well. In fact, it went so well there that, from memory, it cost over $600 million for a building which is now worth a fraction of that.

I do not know many wealthy contractors, but a friend of mine, someone whom I have known for years and whom I met outside the Remm-Myer site, operates big plant with appropriate qualifications in mining cities, such as Hamersley Iron, around Australia. I asked, 'What are you doing down here Greg?' His reply to me was, 'I can make more money as a tradesman's assistant on the Remm-Myer site than I can pursuing my trade in any mining camp in Australia.' That says something about the conditions and the levels of wages that were paid merely to get the building completed, somehow in the interests of a Government desperate to increase its own stocks. Yet they come in here and they decry Mr Kennett and the Housing Industry Association for making a considered and valuable assessment and for sharing that assessment with the people of marginal electorates who must go to the polls in three weeks. It is just part of the continual rubbish that we are fed in here about Fightback and its effect on public housing.

I remind every honourable member in this House that Thomas Playford started public housing in this State, and he did this before the cargo cult mentality of the Federal Government. If any Government has the priority to continue public housing in this State, it can do so from its own resources. That is the nitty-gritty. If this Government wants to continue public housing, no-one is stopping it, and let it not bleat that a Federal Government is depriving it of the opportunity to do so: it can make that decision itself. We as an Opposition are capable of lateral thinking. We are capable of looking past capital works. We want to house the maximum number of people. We want to help the homeless. We do not want to tie up our money in capital works. We want to help put them into homes, and we will do it. We are capable of lateral thinking. Unlike the benighted and tired members opposite, we will provide fresh impetus to this State, and, the quicker an election is called for the benefit of South Australians, the better for them, for we might be rid of some of the tired faces opposite.

The SPEAKER: Order! The honourable member's time has expired.

Mr QUIRKE (Playford): I must say that members of the Liberal Party are an odd lot. This week they have shown just how odd they can be. The other day we were treated to a question and comments from a letter written by Gordon Bilney. In fact, if I remember rightly, they highlighted the last sentence in paragraph 4 which made some gratuitous comments about the State Bank. There is no doubt that many members on this side of the Chamber will raise that matter with Mr Bilney and with others in the appropriate forum, and this is not the place for it. It really is an odd thing that the next day an Opposition member came in here and went on about the fact that Mr Bilney lives in Boothby. In fact, he said that he is inappropriately on the Commonwealth electoral role. I want to make quite clear now that, under the Commonwealth Act, Mr Bilney has every right to be a constituent of himself, wherever he lives.

It seems curious to me that one day they want to hold up Mr Bilney and say, 'This guy really is the pinnacle and he has made some great comments', and they next day they throw tomatoes at him. It is an interesting comparison because, when I went out of here on Tuesday after that question, not one, two, but three members of the Liberal Party came up to me and said, 'Look, we think it's important that you tell the world that Chris Gallus lives up in Eden Hills, that she doesn't live anywhere near Hindmarsh, and we think this issue should be brought up.' I do not want to say too much about it, other than that members of the Liberal Party are quite at liberty to leak on themselves.

Members interjecting:

Mr QUIRKE: That is the way it goes. In this House, I am quite happy to place on the record—and I have done so many times—that I live in the middle of my electorate. I know a number of people prefer the leafier suburbs of North Adelaide, and I understand that Dr Catley has 14 members of State and Federal Parliaments who vote in that electorate. Whether they vote for themselves somewhere else, I do not know. In any event, members of the Liberal Party really are an odd lot to come to me and say, 'Look, you'd better get on the record where Chris Gallus lives.' I thought she was a nice lady, and I did not realise that various factions

within the Liberal Party wanted to pay her out in the way they did.

Mr Atkinson: But she can see her electorate from where she lives, can't she?

Mr QUIRKE: I understand that the member for Spence is quite correct: she can see her electorate, and from where she lives she can see many other electorates on the plains.

Members interjecting:

The SPEAKER: Order!

Mr QUIRKE: Well, I don't want to respond to interjections; I know that is improper. Indeed, the interjector was trying to say that she can look down on the working class: in fact, she can look down on a lot of the middle class and others, too, as I understand it. I am not having a go at that person but at the organisation, the Liberal Party. What we found out here today is that the Liberal Party is going to be the great saviour of public housing in South Australia. I agree with the member for Albert Park, who made it very clear that the Federal Liberal Party does not believe one iota in public housing.

None of those members opposite who call themselves the 'Fightback team' believe in public housing. They made that clear. They do not like public education much, either. They are not much into public education but they are very much into private education and they are quite happy for university students and other students to pay fees up-front. The Opposition knows from its analysis who will be able to make those payments and make them up-front. They know from which areas they will come; and they know from what backgrounds they will come. That is the way they think the world ought to be: it ought to be there for those they represent—the rich.

Through Fightback the Liberal Party has come up with a number of repressive measures. Another repressive measure relates to what will happen to the Australian Broadcasting Corporation. The reduction of 10 per cent straight off the top of the ABC's budget will emasculate the ABC and desperately affect regional organisations that the ABC needs.

The SPEAKER: Order! The honourable member's time has expired.

DISABILITY SERVICES BILL

The Hon. M.J. EVANS (Minister of Health, Family and Community Services) obtained leave and introduced a Bill for an Act to provide for the funding and provision of disability services in accordance with certain principles and objectives; and for other related purposes. Read a first time.

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

Since the United Nations International Year of the Disabled Person in 1981 there has been increasing community recognition and acceptance of people with disabilities. Prior to this, these people with disabilities led lives out of the mainstream of our community and were often treated as second class citizens.

In SA, in the 1970's and 80's pioneering studies were undertaken into the circumstances and needs of people with disabilities. These studies provided strategies to improve the lives of people with a disability.

The Commonwealth Disability Services Act 1986 was a landmark piece of legislation which emphasised greater protection of the rights of people with disabilities. It provides a legislative base for the provision of financial assistance to a range of disability and rehabilitation services. A statement of principles and objectives enshrined in the Act ensures that funding and administration remain focussed on the achievement of desirable outcomes for people with disabilities.

The 1986 Commonwealth Act also accorded proper recognition of individuals' rights and dignity, and provided opportunities for the fullest possible participation in the community.

In SA we have also contributed to the process of reform in the area of people's rights and opportunities, particularly those who may in some way be disadvantaged. The introduction of Equal Opportunity Legislation in 1984, bears testimony to this Government's commitment to the principles of social justice. More recently, the South Australian Government has created a Disability Services Office to give the disability community a new focus. A Disability Services Implementation Steering Committee has also been established, to advise on the framework of disability services and structures in this State.

In the years since enactment of the 1986 Commonwealth Legislation, it has become evident that the lack of clear delineation of responsibilities between the different levels of Government has resulted in overlap and duplication of services.

Following the Special Premiers' Conference of October 1990, a Commonwealth/State Disability Agreement was developed in the context of an overall framework for improving the workings of the Australian Federation.

After nine months of Commonwealth/State negotiations and consultations, the Commonwealth/State Disability Agreement which will operate until 1995/96 was signed by each Head of Government at the July 1991 Special Premiers' Conference. This set in train a new stage in the evolution of disability services nationwide.

Under the Terms of this Agreement:

- The Commonwealth Government will administer employment and vocational training services for people with disabilities, recognising the Commonwealth's National responsibilities for employment services for the general community and the direct links with the income security system;
- Accommodation and support services for people with disabilities will be administered by the States/Territories, recognising their traditional responsibility in this area and the existing infrastructure to continue that responsibility;
- Research, development and advocacy will be carried out by both levels of Government;
- Both the Commonwealth and States/Territories will be involved in co-operative planning.
- The framework for the provision of services for people with disabilities will be in accordance with the principles

and objectives set out in the Commonwealth Disability Services Act 1986. The States and Territories are to introduce their own legislation to complement this Act.

The Bill before Hon. Members today does indeed mirror the principles and objectives of the Commonwealth Legislation. It thereby serves to endorse and protect the rights of people with disabilities to dignity, autonomy and self-determination. The Bill is further enhanced by The South Australian Equal Opportunities Act, 1984 and the Commonwealth Disability Discrimination Act 1992 which underpin the general rights of all people in our society.

The principles and requirements of this Bill are set out in Schedules 1 and 2. Schedule 1 is a statement about the principles which apply to people with disabilities. Schedule 2 provides a framework for a service provider to assist or act on behalf of a person with a disability.

The Bill will enable the State Government to comply with the requirements of the Commonwealth/State Disability Agreement. As a result the $1.7m transition funds can be made available in this financial year. The Bill also sets out essential funding provisions, principles and objectives which are to apply with respect to people with disabilities and to service providers.

Under the legislation, disability in respect of a person means:

- disability deriving from an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment or a combination of these;
- disability is permanent or is likely to be permanent;
- may or may not be of an episodic nature;
- disability results in a reduced capacity for social interaction, communication, learning mobility, decision making or self care;
- a need for continuing support services.

In our community people who care for a person with a disability are highly valued. Their work is necessary for many people with a disability to achieve a quality lifestyle. The Bill recognises the involvement of carers in the life of people with a disability and ensures that their needs and capacity are considered when decisions are made.

The types of organisations which will be eligible for financial assistance under the Act will be broadly similar to those eligible under the Commonwealth Disability Services Act 1986. The principles and requirements provide parameters for determining the eligibility of potential service providers.

The legislation allows for direct funding to people with disabilities as well as funding to community based providers of service including private care givers. It also provides for the introduction of agreements between the Government and recipients of funding, both to allow for proper accountability in the expenditure of public funding, and to ensure that appropriate standards of service delivery are met.

The Act will set the basic parameters, leaving administrative detail to be dealt with by means of guidelines, covering for example terms and conditions of grants and transitional funding provisions.

The Commonwealth/State Disability Agreement requires State, Territory and Commonwealth Governments to maintain, as a minimum, levels of effort as at 30 June 1989. Growth funds can be contributed by either level of Government.

Under the Agreement the Commonwealth will also be providing payments to the States and Territories under three categories:

- Transfer of Existing Services
  This covers grant monies and an additional amount to be determined regarding administrative overhead costs. In South Australia this transfer is approximately $25 in, recurrent at 1991/92 levels from the Commonwealth to the State.
- Funding of Growth
  The Commonwealth is committed to additional funding over each year of the Agreement. In 1992/93 the South Australian growth money is $499,000 increasing to $987,000 in 1995/96; and
- Transition Payments
  Payments will be made available to the State to increase the overall quality of existing services. This will be $1.7 in. in 1992/93, increasing to $4.25 in, in 1995/96.

Hon. Members will be aware that there are many demands on services in this area. Regrettably, there are waiting lists for services. It is intended that the additional funds injected into the State as a result of this Agreement will not only improve those services which are under pressure but will enhance those services which have operated on minimal funds. There will be opportunities under the Agreement to examine service structures and to identify efficiencies. Priority will be given to expanding the range of community support services for a range of disability groups.

Bilateral negotiations between the State and Commonwealth Governments regarding financial and administrative arrangements are continuing. The Agreement only comes into effect when all aspects of the Commonwealth /State Disability Agreement have been met, that is, legislation is in place and bilateral negotiations are complete. The Bill therefore is an essential element in the successful conclusion of the Commonwealth/State arrangements.

The Bill was developed in consultation with a group of consumers and service providers. It has been examined by the Disability Services Implementation Steering Committee. It is being circulated widely in the disability community.

It is essentially enabling legislation. It provides for a comprehensive review after twelve months of operation. This review will provide the opportunity for people to participate in fine tuning and further development of the legislation.

The Bill demonstrates the Government's commitment to people with disabilities living in South Australia, their families, carers, and service providers in these difficult economic times. We are witnessing a constructive time of social reform, where Governments at all levels, together with non government service providers, are working closely to provide a better quality of life for all people. This legislation provides a flexible and responsible process for meeting the needs and aspirations of people with disabilities.

I commend the Bill to the House.

Clause I: Short title

Clause 1 is formal.

Clause 2: Objects of this Act

Clause 2 states the objects of the Act which are to set out certain principles and objectives (based on principles and objectives originally formulated by the Commonwealth) that are to be applied by the providers of disability services funded under this Act and by persons or bodies that carry out research or development activities funded under the Act.

Clause 3: Interpretation

Clause 3 provides some necessary definitions. The definition of **"disability"** involves a level of permanent impairment resulting in a reduced capacity for communication, learning, mobility, etc., and a need for continuing support services. The definition of **"disability services"** includes services to carers.

Clause 4: Funding provisions

Clause 4 empowers the Minister to fund disability services and research or development activities, whether in the public sector or the private sector. It is made clear that an individual person with a disability or the carer of such a person can be funded under this Act so as to enable that person or carer to personally obtain the care, support or assistance needed. The Minister is required to further the objects of the Act in carrying out this funding role.

Clause 5: Obligations on service providers and researchers funded under this Act

Clause 5 requires disability service providers and researchers funded under this Act to apply the principles and meet the objectives set out in the schedules to the Act. In order to ensure compliance with this requirement, the Minister may require a funded person, body or authority to enter into a performance agreement.

Clause 6: Consultation with persons with disabilities and carers

Clause 6 directs the Minister to consult with persons with disabilities and carers, to the extent that is practicable, before making any major decisions in relation to disability services or research or development activities funded, or to be funded, under this Act. The Minister is also directed to encourage the informed participation of persons with disabilities and carers in the design, development, management and evaluation of disability services.

Clause 7: Review of services or activities funded under this Act

Clause 7 requires the Minister to review funded services and activities at least every five years to assess whether the principles and objectives set out in the Act are being applied and met.

Clause 8: Power of delegation

Clause 8 gives the Minister a power of delegation.

Clause I.: Act does not give rise to civil liability

Clause 9 provides that nothing in the Act gives rise to a civil liability.

Clause 10: Regulations

Clause 10 is a general regulation-making power.

Clause 11: Review of this Act

Clause 11 requires the Minister to cause the Act and its administration and operation to be reviewed after one year from its commencement. The results of this review will be laid before Parliament.

Schedule 1: Principles

Schedule 1 sets out the principles that are to be applied by disability service providers and researchers funded under the Act.

Schedule 2: Objectives

Schedule 2 sets out the objectives that are to be met by those service providers and researchers.

The Hon. B.C. EASTICK secured the adjournment of the debate.

TAB INQUIRY

The Hon. G.J. CRAFTER (Minister of Housing, Urban Development and Local Government Relations): I seek leave to make a ministerial statement.

Leave granted.

The Hon. G.J. CRAFTER: On 24 September 1992 the former Minister of Recreation and Sport informed Parliament that he had requested the Government Management Board to undertake a review of the TAB and had requested the Anti Corruption Branch to examine specific aspects of the conduct of the General Manager, Mr Barry Smith. Those requests arose out of a report of the Crown Solicitor concerning allegations of impropriety on the part of the General Manager. I have received the reports of the Government Management Board and the Anti Corruption Branch. They are consistent with the report of the Crown Solicitor. I table the Government Management Board and the Anti Corruption Branch reports.

The police investigated allegations concerning the misuse by Mr Smith of TAB staff and resources. As a result of the police investigations, the Acting Commissioner of Police is of the view that 'no criminal offences have been committed'. The Government Management Board review examined the management practices within the TAB; the actions of the TAB Board in relation to the allegations of impropriety by Mr Smith; and whether the Racing Act is adequate from a Government management perspective. It is to be noted that the conclusions of both the police investigation and the Government Management Board review are consistent with the conclusions of the Crown Solicitor that certain management practices within the TAB were inappropriate and inconsistent with obligations imposed on public authorities by the Government Management and Employment Act.

It is apparent that there was a belief within the TAB that general principles prescribed by the Government Management and Employment Act concerning administration, management and conduct to be observed by public authorities and their employees were not applicable to the TAB. In some part this belief seems to have arisen from legal advice obtained by the TAB from private legal advisers that 'members of the TAB would be excluded from the operation of the Government Management and Employment Act'. The Government Management Board report and the Crown Solicitor's advice establish that the TAB was mistaken in its belief and that those general principles do apply to the TAB and its employees.

Although the Government Management Board report is critical of the manner in which the TAB Board dealt with the allegations against Mr Smith concerning use of TAB staff and resources, and that it was lenient in the action it took against Mr Smith, it is clear that at all times the TAB Board was dealing with the issue and Mr Smith in a manner in which it considered was in the best interests of the TAB and, as acknowledged by the author of the report, 'did so with the best of intentions'. The board does not agree with the conclusions concerning what the board considers was an informal meeting to deal with and resolve an internal management issue. I have written to the board requesting that the board address the management practices identified by the Government Management Board as requiring urgent attention. I have been assured by the board that the management deficiencies either have or are being addressed.

The Government Management Board report is particularly critical of the General Manager, Mr Smith, in three respects:

1. the use of TAB staff and other resources of the TAB for private and personal use;

2. the 'autocratic' style of management of Mr Smith; and
3. lack of judgment and acting inappropriately in respect of the employment of a number of employees.

Notwithstanding these criticisms, the TAB Board has accepted legal advice from the Crown Solicitor that, if it proceeded to terminate Mr Smith's employment based on the conclusions of the author of the Government Management Board report, the TAB Board would be at risk of being successfully sued for damages. The reasons for this conclusion are:

1. the board has already reprimanded Mr Smith in relation to the use of TAB staff and resources and no criminal conduct was found by the police investigation;
2. it is clear that, when Mr Smith was first appointed in 1982 to the position of General Manager, it was made known to Mr Smith that he was expected to adopt a 'hard' management approach and at no time since then has Mr Smith been told to adopt a different or perhaps less autocratic approach to managing staff;
3. notwithstanding the view formed by the author of the Government Management Board report, it is by no means certain that the allegations of patronage and nepotism are capable of being proved in the course of any litigation. Mr Smith, for his part, denies the allegations. The Government Management Board report confirms that there is no evidence that Mr Smith expressly requested that certain persons be employed. Further recent inquiry by the Crown Solicitor's Office confirms that Mr Smith's conduct was, at worst, only implicit and certainly over the 18 months prior to his suspension, Mr Smith made it expressly clear to the staff member that she had the decision as to employment within her area and it was up to her; and
4. like the TAB Board, Mr Smith has at all times been acting under the misapprehension that the general principles prescribed by the Government Management and Employment Act and applicable to public authorities and employees since 1 July 1986 were not applicable to him or the TAB and, until the Government Management Board review, Mr Smith had not been disabused of that belief.

The TAB has accepted that advice. The TAB has also decided that, notwithstanding the contribution which Mr Smith has made to the good performance of the TAB, the findings and recommendations in the Government Management Board report are such that it is not in the best interests of the operations of the TAB that Mr Smith continue his employment with the TAB. The TAB has instructed the Crown Solicitor to act on its behalf in negotiating with Mr Smith's legal representative the terms on which Mr Smith will resign from his employment with the TAB.

I am advised by the board that agreement has been reached and that Mr Smith resigned this afternoon. It is a condition of that agreement that the terms and conditions are to be confidential to the parties although the agreement does permit disclosure to me in my capacity as Minister of Recreation and Sport and I have been informed of the terms of the agreement. I have decided that it is proper for me to inform the House of the salient points of agreement:

Mr Smith has agreed to:

- resign from his employment effective immediately;
- not to commence or proceed with any claims against the TAB;
- not to disclose confidential or commercially sensitive information of TAB operations within Australia;

The TAB has agreed to:

- make a termination payment of $100 000;
- meet Mr Smith's reasonable medical expenses up to a maximum of $2 000;
- offer to sell to Mr Smith, at the dealer trade-in value of $23 000, the motor vehicle which he had the use of during his employment with the TAB; and
- not to commence or proceed with any claims against Mr Smith.

Although the Racing Act gives me general powers of control and direction, 1 am advised that 1 do not have the power to give a specific direction to the TAB in relation to either the future employment of Mr Smith nor the terms of agreement reached between the TAB and Mr Smith concerning his resignation. This issue will be addressed in amendments which I propose to introduce in light of the Government Management Board report.

I propose to introduce legislation which will increase the number of board members, from five to six, in order to achieve a better balance of interests represented on the board. The additional member will be nominated by the Minister, and the Chairman is to have both a deliberative and a casting vote. The Chairman of the board, Mr Ken Taeuber, has advised me that he does not seek re-appointment when his term expires on 15 March 1993 and a new chairperson will be appointed. I also propose that legislation be introduced to enable the Minister to issue specific directions to the board, to replace the current general powers of control and direction which are ambiguous and therefore open to legal interpretation and dispute. It is further proposed that any such direction given to the board should be referred to in the TAB's annual report so as to enhance accountability to the Parliament and be a safeguard against inappropriate interference in the management of TAB.

COURTS ADMINISTRATION BILL

Second reading.

The Hon. G.J. CRAFTER (Minister of Housing, Urban Development and Local Government Relations): I move:

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

The *Courts Administration Bill* represents a striking advance in the complex discipline of judicial administration, and this Bill

will, I believe, be studied widely as a new model for court governance in Australia.

Members will be aware that the Chief Justice of South Australia (Justice L J King) has on a number of occasions recommended that the efficient administration of the courts, in a manner consistent with the delivery of justice by an independent judiciary, can only be secured by the existence of a structure of court administration which is both effective and compatible with the needs of an independent judiciary. The Chief Justice, in a paper delivered at the New Zealand High Court Conference in May 1992 has recommended the establishment, for South Australia, of the models adopted for all the federal Courts of Australia (i.e. the High Court, Federal Court, Family Court and Administrative Appeals Tribunal). The question of court governance in Australia has also been the subject of a recent comprehensive report undertaken by Professor Peter Sallman and Professor Tom Church on behalf of the Australian Institute of Judicial Administration. The Church/Sallman Report examined three models of courts administration in Australia. The first model examined was the 'traditional' one (egg Victoria) where courts administration is handled through an existing Law Department with other legal functions. The second model examined was the separate Department exemplified by the current South Australian Court Services Department. The third model examined was 'autonomous' model, exemplified by the new Federal court system structures referred to above with approval by the South Australian Chief Justice.

The reforms in courts administration in the federal sphere reflect the following statutory characteristics:

- The Chief Judge (of the particular Court) is 'responsible' for managing the administrative affairs of the 'court' (eg entering into contracts, acquiring property etc).
- The Chief Judge is assisted by a Registrar appointed by the Governor-General on the nomination of the Chief Judge and is subject to the directions of the Chief Judge.
- Other officers and staff are employed under the *Public Service Act.*
- The Chief Judge is required to submit to the Attorney-General annual estimates of expenditure, in a form approved by the Attorney-General. Money appropriated by Parliament for the purposes of the court must be expended in accordance with the estimates approved by the Attorney-General.
- The Chief Judge is required to submit to the Attorney-General an annual report of the management of the administrative affairs of the Court during the financial year, and provide financial statements which must be submitted to the Auditor-General.

The Government considered that in the light of developments at the federal level, and in the light of the continuing recommendations of the Chief Judge, that it was timely to consider whether a new Courts Administration Authority would be a more effective and more efficient means of providing a unified, cheaper and accountable courts administration in South Australia.

In February 1992, Cabinet approved in principle a statutory courts commission for the provision of a unified judiciary based (i.e. non-executive) system of courts administration in South Australia and also agreed to examine the benefits and advantages of a statutory courts administration model. Cabinet approved that the Attorney-General consult with the judiciary and other relevant parties to examine the proposal, subject to the conditions that satisfactory arrangements for judicial accountability for administration be assured, and that the arrangements not result in additional cost to Government. It was agreed that the Industrial Court and Commission not be involved in the proposal, although the Bill (Clause 4) does make provision for courts to be declared as 'participating courts' under the new State Courts Administration Council established by the Bill.

An establishment Committee was formed to develop the proposals: the Committee comprised the three jurisdictional heads (Chief Justice, Chief Judge and Chief Magistrate), the Chief Executive Officer of the Courts Services Department, the Chief Executive Officer of the Attorney-General's Department (as Convenor), with representatives of the Under-Treasurer and Commissioner for Public Employment, and representatives from the Public Service Association.

The Committee met on a number of occasions and examined a wide range of materials, and sought the views of federal court administrators.

The Committee reported that the most desirable approach to meet Cabinet's decision and specifications was to recommend the establishment of a statutory body ('the Courts Administration Authority') with the management responsibilities of the administrative affairs of the Supreme Court, District Court, Magistrates Court, Children's Court and Coroners Court being vested in a State Courts Administration Council. The Council would be composed of three Heads of Jurisdiction (Chief Justice, Chief Judge and Chief Magistrate), together with three associate non-voting members drawn from each jurisdiction. The State Courts Administration Council would be assisted in the management of the administrative affairs of the Courts by a State Courts Administrator, an independent statutory officer who would be appointed by the Governor on the recommendation of the Council.

The Committee recommended that certain senior 'prescribed' positions within the Courts Administration Authority be appointed by the Governor on the recommendation of the State Courts Administration Council, but in all other respects these officers would be subject to the terms and conditions of the *Government Management and Employment Act* (save for the protection that disciplinary measures against a senior officer could not be instituted except with the consent of the Council). Staff of the Courts Administration Authority would in all respects enjoy the terms and conditions, rights, protections and privileges of the *Government Management and Employment Act,* including grievances, promotion, discipline, re-assignment etc.

Cabinet has agreed with the recommendations of the Committee, and the Bill now before the House reflects the detailed work undertaken by the Committee.

I inform Hon. Members that the State Courts Administration Council, which comprises the Chief Justice of the Supreme Court (who will preside at meetings of the Council), the Chief Judge of the District Court and the Chief Magistrate, together with a non-voting associate member of each of those members of Council, is charged by the Bill with the responsibility of providing, or arranging for the provision of the administrative facilities and services for participating courts that are necessary to enable the courts to carry out their judicial functions (Clause 10).

The 'participating courts' which are the subject of the State Courts Administration Council's responsibility are the Supreme Court, the District Court, the Children's Court of South Australia, the Magistrates Court, Coroners Court, and any other prescribed court or tribunal.

Clause 3 describes one of the objects of the Bill as being 'to establish the State Courts Administration Council as an

administrative body independent of control by executive government'. This object has been achieved, and the Council has been vested with the necessary powers to carry out the responsibilities assigned to it under the statute, including the control of property (Clauses 11, 12 and 15). On the other hand, by way of necessary balance in terms of our system of government, judicial accountability has been assured by the provision of a number of obligations fixed upon the Council in respect of the discharge of its duties.

The Council is obliged to provide an annual report to the Attorney-General, which is tabled in Parliament within 12 days of receipt by the Minister (Clause 13), and the Council is also obliged to make such further reports to the Attorney-General as may be necessary to ensure the Attorney-General is kept properly informed about the administration of the courts (Clause 14).

As to financial accountability, the Council (Clause 25) must prepare and submit to the Attorney-General a budget showing estimates of receipts and expenditures, and the budget must conform with any requirements of the Attorney-General as to its form and the information it is to contain.

In accordance with long established constitutional procedures, the Council may not expend money unless provision for the expenditure is made in a budget approved by the Attorney-General (Clause 25(4)).

Clause 26 makes detailed provision in relation to accounting records, and Clause 27 provides for audit by the Auditor-General, both annually or at any other time.

As the Council and the Courts Administration Authority are established independent of control by executive government, it has been necessary for the State Courts Administrator (as the Chief Executive Officer of the Council) to be established independently of the *Government Management and Employment Act.* The State Courts Administrator is to be appointed by the Governor on the nomination of the Council for a term of up to five years, and the State Courts Administrator is not a member of the Public Service. Senior staff of the Council are to be appointed by the Governor, on the nomination of the Council, but are otherwise subject to the *Government Management and Employment Act* save that no disciplinary action may be taken against a senior staff member expect with the consent of the Council. All other staff of the Council are to be appointed by the State Courts Administrator under the *Government Management and Employment Act,* and Schedule 1 makes transitional provisions in respect of senior and other staff, and preserves and continues existing and accrued rights of employment.

The Bill represents a far reaching, innovative and accountable system of judiciary based courts administration, and will place South Australia in the forefront of progressive reforms in court governance in Australia.

I commend the Bill to the House. *Clauses 1 and 2* are formal.

Clause 3 states the objects of the new Act.

Clause 4 contains definitions required for the purposes of the new Act.

Clause 5 provides that the Council, the Administrator and the other staff of the Council may be collectively referred to as the *Courts Administration Authority.*

Clause 6 establishes the State Courts Administration Council. The Council is to be a body corporate and an instrumentality of the Crown.

Clause 7 provides that the Council is to consist of the Chief Justice, the Chief Judge of the District Court, and the Chief Magistrate. Provision is also made for associate members of the Council who may act in the absence of the principal members.

Clause 8 empowers the Chief Justice to determine the times and places for meetings of the Council.

Clause 9 deals with proceedings of the Council and provides that a decision supported by the Chief Justice and one other member of the Council is to be a decision of the Council.

Clause 10 provides that the Council is responsible for providing or arranging for the provision of the administrative facilities and services for participating courts that are necessary to enable those courts properly to carry out their judicial functions. It allows the Council to establish guidelines to be observed by participating courts in exercising their administrative responsibilities. It also provides that participating courts are responsible for their own internal administration.

Clause 11 sets out the powers of the Council. The Governor's consent will be necessary before the Council enters into a contract involving liabilities in excess of a prescribed limit, or the acquisition or disposal of real property. Certain other procedural rules for transacting business can be prescribed.

Clause 12 empowers the Council to delegate any of its powers.

Clause 13 requires the Council to make an annual report and provides for the tabling of the report in Parliament.

Clause 14 requires the Council to make any additional reports that may be necessary to ensure that the Attorney-General is kept properly informed on issues relevant to the administration of participating courts.

Clause 15 places all courthouses and other real and personal property of the Crown that has been set apart for the use of participating courts under the care control and management of the Council. It provides certain procedures for setting apart land and buildings of the Crown for the use of courts.

Clause 16 provides for the appointment of the *State Courts Administrator* and the conditions on which he or she is to hold office.

Clause 17 sets out the functions and powers of the Administrator.

Clause 18 deals with the appointment of senior staff apart from the Administrator.

Clause 19 provides that disciplinary action may not be taken against a member of the senior staff of the Council without the Council's consent.

Clause 20 provides for the application of the *Government Management and Employment Act 1985* to the senior staff of the Council.

Clause 21 provides for the appointment of other staff under the *Government and Employment Act 1985*.

Clause 22 provides that a member of the Staff of the Council is responsible — through any properly constituted administrative superior — to the Administrator and the judicial head of the court in which he or she is assigned to work.

Clause 23 provides that the Commissioner of Public Employment must consult with the Council before making a determination specifically applicable to the Council's staff. The Council is empowered to vary the Commissioner's determinations in their application to the Council's staff and itself to exercise any power vested in the Commissioner to make determinations or give instructions to the Council's staff. This power does not, however, extend to determinations affecting remuneration or conditions of employment.

Clause 24 provides that the money required for the purposes of the new Act is to be paid out of money appropriated by Parliament for the purposes.

Clause 25 provides that the Council's expenditure must be in accordance with a budget approved by the Attorney-General.

Clause 26 deals with accounts and financial management.

Clause 27 provides for an annual audit of the Council's accounts by the Auditor-General.

Clause 28 exempts persons engaged in the administration of the participating courts from civil liability for acts or omissions occurring in the course or purported course of their duties.

Clause 29 provides that if requested by a Parliamentary Committee a member of the Council, or the Administrator, must answer questions about the administration of participating courts.

Clause 30 empowers the Governor to make regulations for the purposes of the new Act. Such regulations are, with limited exceptions, to be made on the recommendation of the Council.

Clause 31 provides that no power given to the Governor or the Minister can be exercised so as to impugn the independence of the judiciary.

Schedule 1 provides for the automatic transfer of the staff of the present Court Services Department (except the Chief Executive Officer) to corresponding positions on the staff of the Council.

Mr S.G. EVANS secured the adjournment of the debate.

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page 2122.)

Clause 4—'Interpretation.'

Mr S.G. EVANS: I refer to a couple of the definitions and interpretations. The clause talks of terminal illness as meaning an illness or condition that is likely to result in death: it states not that it will result in death but that it is likely to. I find that a little strange. I thought that a terminal illness would be a terminal illness. We are putting another interpretation on the word 'terminal' and saying that, if there is likely to be death, we can say to the agent, through the medical practitioners, 'This is one you can consider whether to pull the plug and let them die or not.'

My colleague the member for Coles, in relation to 'parent', commented about plain language. I know that the Minister has always said that he would like to see language used in Parliament that the ordinary people can understand, in other words, plain language. I wonder how many people out in the street would know the meaning of *'in loco parentis'*. I would think only about 10 per cent, yet that term is included in the definitions clause. I went to the dictionary that is provided in the Chamber to see whether that term is defined, and it is not. After some inquiries, I have learned that it means persons other than the parents who are given parental control. Some simple language could have been used instead of this language foreign to the average person.

The definition of 'terminal phase' is 'the phase of the illness reached when there is no real prospect of recovery or remission of symptoms (on either a permanent or temporary basis)'. At that point, with no treatment at all, the person will not have a temporary span of life. I find it a little strange also that that definition will be used to decide whether a person, if still conscious, can make a rational decision and say, 'I agree with the medicos', or whether some agent who might have been appointed 25 years before can make the determination. The patient might not have thought in recent times that they could suddenly be placed in the position where their life was at stake through illness or through some other avenue if the medicos and the agent agree. I wonder whether the Minister would consider changing the interpretation of 'parent' before the Bill is sent to another place or during the debate there.

The Hon. M.J. EVANS: I would maintain that, notwithstanding the view of the member for Davenport, the expression *'in loco parentis'* is commonly used throughout the community in referring to people who stand in the place of the parent on a temporary or permanent basis. That phrase has common usage and appears in the Education Act, as I recall. I do not know what point the honourable member seeks to make in relation to it.

Mr S.G. Evans: We should use simple English that ordinary people can understand.

The Hon. M.J. EVANS: I would accept that if we could find an expression that means the same thing in law, but that phrase is not one of the more obscure in the law. I would suggest that it is one that is more commonly used than average, but I accept that it is a Latin phrase and that it would be desirable if, in future, the Parliament could find better terms. I do not know that a lot really turns on that expression itself. Most people know what parents are, and this very much flows from that. I am really not quite sure what turns on that part of the expression.

I also take this opportunity to comment on the definitions of 'terminal illness' and 'terminal phase'. Quite clearly, while it is possible to determine that all people will die—all men are mortal, as Socrates would have said in those sexist times—the reality is that it is not possible to have absolute certainty about the imminence of these processes. That is why the consideration of this part of the Bill has led to two parts to the expression—one being, first, a terminal illness which indicates something that is likely to result in death, and then we also talk about the terminal phase in order to ensure that we are talking about the end stage of that terminal illness and, by that point in time, I think there would be much more certainty about these issues.

Quite clearly, the definition is not amenable to absolute certainty until someone does die of the condition. One can understand that a particular patient will be in the terminal phase of a terminal illness. It is quite well known what conditions are likely to lead to that. Some people can die of quite trivial illnesses when first diagnosed. But, by talking about the terminal phase of a terminal illness, I think we have sought to reduce what is really an intractable and difficult medical definition to something which is quite understandable and which is a fairly certain course of events in order to produce the right circumstances for the sorts of procedures that we are talking about.

All the other safeguards and conditions apply in relation to that matter, and we will no doubt talk about that when we get further into the Bill, and I would rather do that at that time. These two definitions have been worked over to a considerable extent, and I believe they

properly define the types of conditions we are talking about. I will take on board the honourable member's comments about the term 'in *loco parentis'* and see what options are available on that.

Mr MEIER: Why was a definition of 'dentist' included in clause 4?

The Hon. M.J. EVANS: This has to occur, because this Bill replaces the Consent to Medical and Dental Procedures Act and therefore it covers both medical treatment in the layman's definition of the term and also dental treatment. When dental treatment takes place, it is equally obligatory for a dentist to require informed consent. Obviously, dentists as a group are not particularly concerned with palliative care as such: it is not that area of the Bill we are talking about. But with respect to ordinary consent for ordinary dental procedures, obviously those parts of the Bill apply as do the emergency treatment provisions in the event that there was some dental medical emergency condition which needed to be treated. It simply includes dentists in that part of the package. They have always been covered under that legislation, and this simply restates the law in relation to the obtaining of consent and dental treatment.

Clause passed.

Clause 4A—'Application of Act.'

The CHAIRMAN: I draw members' attention to the fact that a clause inserted in the Bill when it was amended *pro forma* is shown as clause 4A rather than being renumbered as clause 5. Given that all amendments would need to be renumbered if the following clauses 5 to 12 were renumbered now, I will stick with the numbers as they appear in this Bill during the Committee stage, but I advise members that the numbering will be corrected in the Bill when it is referred to another place.

Clause passed.

Clause 5 passed.

Clause 6—'Appointment of agent to consent to medical procedures.'

Mr ATKINSON: I move:

Page 3, line 31 — Leave out 'natural provision or natural' and insert 'provision or'.

Subclause (6) provides:

A medical power of attorney...

(b) does not authorise the agent—

that is, the medical agent holding the medical power of attorney—

to refuse—

(i) The natural provision or natural administration of food and water...

As a member of the committee, I was a supporter of this provision. I do not believe that a medical agent should be able to refuse food and water on behalf of the patient. If a patient wants to starve to death, they are free to do so under our law as it stands, but the kind of willpower required to do that, while in some respects admirable, should not be transferred to an agent who can do it on behalf of someone else. So, I support the principle of the provision, but I do not support the wording that has been used. I wish to delete the word 'natural' in the two places it appears in subparagraph (i) because I think the use of a drip or naso-gastric tube is by now a well accepted and ordinary way of providing food and water to patients. What this provision really does is allows a medical agent to order a drip or naso-gastric tube to be removed from a patient who is incapable of making a decision on the matter. That is not a power I think a medical agent should have.

The judicial committee of the House of Lords last week considered just this point when it looked at the case of Tony Bland, a young man who attended an FA Cup semi-final at the Hillsborough ground—the home ground of Sheffield Wednesday. In the course of that fixture, the Hillsborough stadium was filled with too many people; something of a stampede ensued and a number of spectators were jammed against a wire fence at one of the goal ends of the ground. Tony Bland was in the front row and he sustained severe chest injures that led to deprivation of oxygen to his brain, resulting in brain damage.

He was admitted to hospital. He was alive but he could not feed himself and therefore he was supplied with food and water through a naso-gastric tube. After some months he was diagnosed as being in a persistent vegetative state. Just recently, the hospital that cared for him made an application to the courts that it be permitted to remove the naso-gastric tube. It was the hospital's expectation that once the tube was removed he would starve to death or dehydrate or, perhaps, because antibiotics were also supplied in the tube, he might suffer from an infection that would kill him within a matter of weeks. That was the expectation of the hospital and the people applying for the application.

The application was granted by the Family Division of the High Court in Great Britain. Permission to remove the tube was upheld by the Court of Appeal and then it was upheld by the House of Lords. In the course of the majority judgment in that case Lord Goff said:

It was true that in the case of discontinuance of artificial feeding it could be said that the patient would, as a result, starve to death, but it was clear from the evidence that no pain or suffering would be caused to Anthony, who would feel nothing at all. Furthermore, the outward symptoms of dying in such a way, which might otherwise cause distress to those caring for him, could be suppressed by means of sedatives. In these circumstances there was no ground for refusing the declarations applied for simply because the course of action proposed involved the discontinuance of artificial feeding.

Well, it seems that the South Australian Parliament is now set to make that the law of South Australia also and I can only presume that the people who are resisting my amendments support that view of the law and they support the idea that certain wards in our hospitals ought to be set aside to accommodate patients who are being starved to death or dehydrated by the removal of naso-gastric tubes. For myself I cannot support that. As I said before, I see naso-gastric tubes as an ordinary, accepted method of providing food and water to patients.

I raise the House of Lords case for another reason, and I will come to that in a minute. However, under clause 6(6) as it stands, if we do not carry this amendment, the result will be that, if someone—perhaps a young man—suffers an accident, is admitted to hospital unconscious and is fed through a naso-gastric tube, and if that young man has a medical agent, then that medical agent, unfettered, has the right to remove that nano-gastric tube before there has been any long-term diagnosis of what is going to happen to the patient. This Bill, if it stands unamended and if this clause is not

accepted, will be the law that provides that a naso-gastric tube can be removed in those circumstances and so a young man who has suffered an accident could be starved to death or dehydrated to the point of death.

Coming back to the Bland case before the House of Lords, although Lord Goff for the majority agreed with the principle that this Bill is putting forward he also said that in cases like the Tony Bland case every effort should be made to rehabilitate the victim for at least six months. So, six months was the time the House of Lords said ought to be given to see if these kinds of patients will come good and a diagnosis of persistent vegetative state should not be made for at least 12 months after the injury—this is the House of Lords making law for Great Britain—and, further, that the diagnosis of persistent vegetative state ought to be made by two doctors. That is the safeguard that the House of Lords put on this principle but that safeguard is not in this Bill. I am putting forward this amendment to remove the word 'natural' in both places where it appears because in my opinion we ought to persist with providing food and water to patients.

Mr MEIER: I support the member for Spence's amendment. In my mail today I received a letter from Right to Life Australia signed by Mrs Margaret Tighe who, among other things, says that whilst Right to Life Australia still believes the Bill is fundamentally flawed they have three major objections. The first relates to the provision we are seeking to amend (clause 6(b)), which now states that the Act does not authorise the agent to refuse firstly the natural provision of food and water. Mrs Tighe states:

> This clearly infers that the agent has the right to refuse tube feeding even if it can be readily provided and will sustain the life of the patient. In other words, the Bill will allow patients to be deliberately starved and dehydrated to death. This is a common and hideous means of causing the death of people with a serious but life threatening disability, e.g., quadriplegics, stroke paralysis, coma and dementia.

I can only agree with that statement—that using the word 'natural' means that tubes cannot be used—and I believe that the honourable member's amendment would overcome this particular concern. I would hope that the Minister will see his way clear to accepting the amendment. I think the member for Spence has clearly outlined the remainder of the argument.

The Hon. M.J. EVANS: I think it must be borne in mind that this is the minimum condition that an agent must accept. What the committee was recommending here was that there should be a baseline below which an agent should not be permitted to make decisions and that was defined to be the natural provision of food and water, by which we exclude naso-gastric feeding because there are many people who regard that as intrusive (I would suspect that if members could see it operating they would also regard it as intrusive), and the administration of drugs to relieve pain and distress.

The committee was firmly of the view that the administration of such drugs where it was indicated should always occur no matter what the wish of the agent might be and that it would be unreasonable to expect an agent to make decisions that would deny the natural provision of food and water and the normal provision of drugs to relieve pain and distress. This does not require such things to be done. It simply states that this is the area which is excluded to an agent. Patients, of course, may make such requests of themselves in relation to their treatment, but quite clearly the member for Spence in putting this forward has not sought to address the area about which he makes comment because his amendment does not require this treatment to be given.

He does not say to this Committee, 'I want you to insist that under all conditions every person in a comatose state is subject to nano-gastric feeding and that that is done until that person dies.' He does not say that. He does not require that compulsion to be entered into the Bill. He simply seeks to make this change, so that the member for Spence is changing what is the minimum threshold in relation to an agent and that is the point at which we differ. But the majority of his comments were indeed directed at another objective, which his amendment does not address, and I find that to be of some concern.

The committee felt that this was the appropriate point at which to draw that particular line, and I accept that one can discuss and debate it, but in fact the comments we have heard to date have not been directed at that objective. I would suggest to the Committee that, after all, the agent has been appointed by the patient as their friend, as their agent, as their nominee, on the understanding that that agent is acting in their interests, and that is indeed the declaration which agents sign—to act in what they genuinely believe to be the best interests of the patient.

This is not some person selected by the courts, Parliament or some outside agency who is compulsorily assigned to patients at random. This is someone chosen by the person in question and charged with the very heavy duty, I agree, of protecting the best interests of that patient as he or she believes them to be and as the person concerned has directed him. I do not believe that the arguments that have been presented address the issue that is before us. While the argument was a very emotive one, I do not believe it covers the area that the honourable member seeks to address and I believe that the committee's recommendation of drawing the line at this point should stand.

Mr BRINDAL: The Minister said that he and the committee have set a base line below which an agent cannot go. However, later in his argument he stated that, because it is a friend or trusted person who does this, it is therefore right. Society would truly degenerate if we say that our friends and loved ones are incapable of anything that would diminish us.

The Hon. M.J. Evans interjecting:

Mr BRINDAL: That is what the Minister said.

The Hon. M.J. Evans: But that wasn't the point.

Mr BRINDAL: The point is that this Bill deals with people who are dying and with palliative care. I support the amendment. If people who are dying are sustained by nutrition and water, they will still die for whatever reason they are dying. They are not dying through lack of food or water. However, if we take away the food and water—and I heard the member for Spence say that quite clearly—that taking away would constitute that person's death. That is not what I understand the Bill to be about: it is about smoothing the way for people who are dying. If they are dying of a medical condition, this Bill is

about their dying. It is not about starving them to death, it is not about making them die of thirst and then covering it up with a variety of medical techniques, which is less distressing for those around. It is about dying.

I presume that they are not dying because they are starving or suffering from lack of water. I believe that the member for Spence's argument is cogent and correct. If it is about dying, let them have naso-gastric feeding, because they will still die, and I think that the honourable member is quite right. The Minister spoke about the minimum level, the base line below which we should not descend, and I think that starving someone to death or letting him die of thirst is a fairly basic minimum.

The Hon. M.J. EVANS: That statement was not directed at suggesting that this was a desirable objective, that one should proceed to starve people to death in hospital. The honourable member goes too far when he draws that conclusion from this clause.

Mr Brindal interjecting:

The Hon. M.J. EVANS: What the member for Spence said is the member for Spence's problem.

Mr Atkinson: It is not a problem.

The Hon. M.J. EVANS: I suspect that it is. It was a highly emotive address that did not relate to the topic under discussion, and that is what makes it a problem. This Committee has been led to believe by those remarks that the purpose of this clause is to provide for the withdrawal of food and water from those who are dying, and that is not the purpose of this clause. It simply draws a threshold below which we do not believe it is appropriate to require or ask an agent to even consider moving. Of his own volition, a patient can enter this particular territory, but the committee did not think it appropriate that an agent should be put in a situation where he or she might consider such a proposition, because it would be beyond what we all consider to be the right level.

That does not mean in any way that the withdrawal of food and water is an objective that is part of the palliative care of people. That is not what this Bill insists upon or requires; that is the slant that the honourable member has placed on this debate, and it is not right. It simply says that a patient has the autonomy to decide what treatment he or she will receive, and naso-gastric feeding is very definitely intrusive treatment if it is not what a person wants.

Some years ago, this discussion focused on a patient in Victoria who was subjected to nano-gastric feeding. He was a quadriplegic and he wished to reject the treatment (because treatment it was), and he could not. As the law stood as espoused by the member for Spence, and as he desires it to be, this individual was continuously force-fed by naso-gastric feeding, even though he himself removed the tubes from his nose and mouth on a couple of occasions. That is hardly an appropriate way to conduct palliative care in this day and age. All this provision states is that the patient has the right to refuse any form of treatment or to require and accept any form of treatment, and so does an agent on his behalf—because that is all they are doing—but there was a certain area in which we did not feel it appropriate for the agent to be required to act as the delegate.

The Hon. JENNIFER CASHMORE: The points that the members for Spence and Hayward raised are very vexed and difficult points that many of us who have little or limited knowledge of the dying process—and that, the world being what it is today, covers most of us in this Chamber—can be expected to understand. The fact is, and this is confirmed in the evidence and by the opinion of those who are expert in palliative care, that a natural part of the dying process, when leaving the world is imminent, is to reject food and water. The patient who is dying often does not want food and water to be forced upon him or her. That is something that many of us find hard to come to terms with because we regard sustenance as essential to life, as it is.

Because of the death-denying nature of society, we assume that everyone wants sustenance and wants life up to the very moment when life expires. However, the fact is that, as death approaches, many people refuse food and water. To have it forced upon them through naso-gastric feeding is an oppressive act that causes extreme distress and discomfort. Having heard the evidence, the select committee wanted, above all things, to avoid the distress and discomfort which the intensive curative model forces upon patients. We did not believe it was fair for anyone acting on behalf of a patient to literally starve him or her to death. That is why we did not permit the refusal of the natural provision of food or water as part of the duties and obligations of an agent. I hope that, in explaining to the Committee that denial or refusal of food and water by a patient who is dying is a natural part of the dying process, I have enlightened members as to the reason why the select committee came to that decision. Whilst one can refuse food and water of one's own volition, it is not reasonable for other people to refuse it. However, neither is it reasonable for it to be forced upon a patient through an intrusive measure, namely, naso-gastric feeding.

Mr ATKINSON: The member for Coles objected earlier that I misrepresented her on the question of preserving the law of homicide. She has seriously misrepresented me on the question of naso-gastric feeding.

The CHAIRMAN: We have to maintain an orderly debate. We cannot go back to clauses that have already been debated, otherwise we will be here until Saturday morning. I ask the honourable member to make his point on the clause before the Committee and not return to previous debate. If the honourable member had a point to make, he should have made it then.

Mr ATKINSON: I will make my comments relevant to this clause. The misrepresentation here is that the member for Coles and the Minister of Health have imputed to me the belief that conscious and competent patients ought to have naso-gastric tubes forced on them, and I did not say that when I moved this amendment. I am talking purely about the question of whether an agent should have power to withdraw those tubes. So, all the remarks about a nano-gastric tube being forced on a conscious and competent person are not relevant.

It has been said that some of my colleagues on the select committee are surprised at some of my amendments, because I was supposed not to have raised them during the course of the select committee. I can assure the Committee that, as to this issue, I forced the

matter to a vote. One of the reasons I did so was that Ian Bidmeade, who was an expert in this area, gave evidence to the committee that, so far as he was concerned, naso-gastric tube feeding was a normal and ordinary part of treatment—that is on the record—but he did accept that some hospitals did not agree with his views.

I think this is the most serious of the amendments that I have placed before the Committee. I am very disappointed that on this, a conscience vote, when every one of the 47 members of the House can make up his or her mind, more than half the members of the House are absent, so I do not know on what basis they will be able to make a judgment when this matter is voted upon. I accept the member for Coles' point that it is part of dying to reject food and water, and I can tell the Minister of Health, in response to his question, that I have seen a naso-gastric tube removed. When my father was dying of liver and pancreatic cancer he removed the tube from his nose shortly before his death. I went outside and asked the nurse, 'Shouldn't we put it back in?' to which she replied, in effect, 'Well, you know, that's the way they die.' I accepted that then and I accept it now. What I do not accept is the suggestion from my adversaries on this that I should have been allowed to take out the tube. I do not accept that and that is why I am moving this amendment. My amendment relates only to agents.

It should be stressed at this point, although it may become more relevant later on, that there is no appeal from or review of an agent's decision. People who appoint agents had better make a pretty good decision, because there is no way a doctor, relatives or the hospital administration can review the agent's decision. If, like Tony Bland, you come in from Hillsborough possibly with brain damage and with the possibility that in 12 months you might be diagnosed as being in a persistent vegetative state, under this law, which we are considering and which we are about to pass, you could have your agent pull out your naso-gastric tube and starve or dehydrate you to death well short of 12 months. There is no review on that; no-one can argue with the agent or review the matter as you would a normal power of attorney. What kind of a friend would have taken out Tony Bland's naso-gastric tube the week after he arrived in hospital from Hillsborough?

Mr MEIER: On a point of order, Mr Chairman, I draw your attention to the state of the Committee.

A quorum having been formed:

Mr S.G. EVANS: I support the amendment, and the member for Coles convinced me I should. As the member for Coles said, most people do not understand the process of dying. If that is complicated, as the honourable member has suggested, anybody signing a medical certificate to give power of attorney on medical matters to an individual, at whatever stage of their life, before they became ill, would not understand the process of dying. If they do not understand the process of dying and they give medical power of attorney to somebody, how do they know, at the time of signing, at what stage the agent should start thinking about removing the supply of food or water applied under what people might call an unnatural method—and I wonder what the difference between natural and unnatural is—of feeding? The agent would have to make a judgment at that time. It is impossible for patients to be able to describe all the possibilities that might occur later in their life whenever they face death. The member for Coles convinced me that I should support the amendment—even more strongly than I did originally.

The Committee divided on the amendment:

Ayes (10)—M_J. Atkinson (teller), H. Becker, P.D. Blacker, M.K. Brindal, D.C. Brown, S.G. Evans, G.M. Gunn, K.C. Hamilton, P. Holloway, E.J. Meier.

Noes (34)—H. Allison, M.H. Armitage, L.M.F. Arnold, P.B. Arnold, D.S. Baker, S.J. Baker, F.T. Blevins, J.L. Cashmore, G.J. Crafter, M.R. De Laine, B.C. Eastick, M.J. Evans (teller), R.J. Gregory, T.R. Groom, T.H. Hemmings, Y.S. Heron, D.J. Hopgood, C.F. Hutchison, G.A. Ingerson, J.H.C. Klunder, D.C. Kotz, S.M. Lenehan, I.P. Lewis, C.D.T. McKee, W.A. Matthew, M.K. Mayes, J.W. Olsen, J.K.G. Oswald, N.T. Peterson, J.A. Quirke, M.D. Rann, J.P. Trainer, I.H. Venning, D.C. Wotton.

Majority of 24 for the Noes.

Amendment thus negatived.

Mr ATKINSON: I move:

Page 3, after line 32—

insert subparagraph as follows:

or

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

The amendment would mean that under a medical power of attorney an agent would not be able to refuse on behalf of an unconscious or incompetent patient medical treatment that is part of the conventional treatment of an illness and is not significantly intrusive or burdensome.

One feature of the Bill, which I do not think is widely understood, is that it does not apply only in circumstances of terminal illness. It is a Bill that applies more generally. It applies to situations in which the patient is in no danger of death in the ordinary course of events. Under the Bill, as I read it, and I stand to be corrected by the Minister if I am wrong, the power of the medical agent is absolute. For example, in the case of a young woman who was admitted to hospital after an accident, the medical agent could refuse or veto vital kidney dialysis on behalf of that woman, refuse the supply of insulin were she a diabetic or refuse the occasional use of a ventilator.

It seems to me that this feature of the Bill is not widely understood. It does not only apply in the case of a terminal illness and so the medical agent could be called upon at any time and would have the unreviewable power to veto these quite conventional and ordinary treatments. If I am incorrect about this, I plead with the Minister to set me straight.

The Hon. M.J. EVANS: It is the case that the committee intended the agent to exercise the autonomy of the patient, on the patient's behalf. Of course, sometimes that may lead to agents making decisions which you, Sir, or I or the member for Spence may not find totally in accordance with our own beliefs or wishes, were it us who were the patient and the person concerned with the decision. But that is not the point. The point is that it is

the individual who makes these choices; it is the patient who makes these choices. It is the intention of the Bill to create a situation where people may delegate that right to a person they appoint and trust, an agent to act on their behalf.

If we further constrain the terms of the agency agreement, if you like, the basis on which the patient may make that decision, by saying that the medical treatment is part of the conventional treatment of an illness and is not significantly intrusive or burdensome, we are setting up absolute standards that would have to be determined by the courts as to what constitutes in an objective test 'intrusive or burdensome'. We are no longer relying on what the patient regards as intrusive or burdensome, but rather what the Supreme Court would consider to be intrusive or burdensome. That is not the objective of the Bill.

An honourable member: Whose life is it?

The Hon. M.J. EVANS: Exactly. Whose life is it? It is the life of the patient. It is the intention of this arrangement that in fact it is the patient who should be able to make these choices, or an agent on their behalf. Again, I remind the Committee that it is the patient who appoints the agent. If the patient wished to restrict the terms of the agency by applying a condition like this, it would be well within the law and well within the terms of this Bill. Indeed, they could be more or less specific as they choose in relation to the matter. Of course, it is not possible, other than through court proceedings, to determine whether in an individual case that treatment is intrusive or burdensome. The committee expressly wished to avoid the spectre of court hearings arguing about the actual medical condition of the patient and what would be burdensome, futile or intrusive. That decision has to be the patient's choice and, therefore, if they are unconscious and unable to act, it has to be the agent's choice. That is the relevant criteria.

The Hon. JENNIFER CASHMORE: I oppose the amendment on the ground that it would destroy the whole concept of autonomy that the committee tried to build into this Bill. If I have the right to refuse treatment and if I am unconscious and cannot exercise that right, I want the person whom I have chosen to exercise that right on my behalf to be able to do so unfettered. The only fetter that the committee placed on that right was that we did not believe that an agent should have the right to refuse natural food and water on the part of patients for obvious reasons that have already been canvassed.

I refer members to the committee's first interim report at page 5 where, under the heading 'Key Issues' and the subheading 'The right to refuse treatment', it states:

> Witness after witness, regardless of religious affiliation or ethical perspective, stressed the importance of patients being aware of their right to refuse treatment.

We quote from numerous witnesses associated with numerous churches, all of whom stressed the right to refuse treatment should be upheld. I imagine that all members of the House, including the member for Spence, endorsed those sentiments, but the committee went further when it introduced the concept of agent—

Mr Atkinson interjecting:

The Hon. JENNIFER CASHMORE: I know the member for Spence will speak for himself, and I am not trying to speak for him. The committee went further when it adopted the concept of agent as an extension of self in order to preserve that right of autonomy which a patient loses when a patient becomes unconscious. The committee commissioned a survey to see whether our beliefs were different from those of the general community. The survey was undertaken by the Epidemiology Branch of the South Australia Health Commission and covered 462 people. It found that 87 per cent of those surveyed thought it should be legal for patients to appoint a relative or friend in advance to take medical decisions for them should they no longer be able to do so for themselves, for example, because of a coma.

The whole purpose of this Bill is to give effect to that conclusion reached by the select committee after considering not only expert evidence but conducting community surveys in order to ensure that we were indeed giving expression to representative opinion. The notion of autonomy is central to the purpose of this Bill and is expressed in the appointment of an agent who shall be able to act unfettered in accordance with the wishes, directions and conditions placed by the patient. The only fetter is that the agent shall not have the right to refuse natural food and water. To extend those fetters is to destroy the concept of autonomy that is central to this Bill. I oppose the amendment on those grounds.

Mr S.G. EVANS: I do not accept the argument of the Minister and the member for Coles. The *National Right to Life News* of 16 November 1992 states:

> The 1976 *Quinlan* case inaugurated the doctrine of 'substituted judgment' under which it was argued that an incompetent individual could not be deprived of the *competent* individual's right to reject medical treatment 'merely' because she or he could not chose to do so. Rather, it was held that another party—court, family member, or Government bureaucrat (in this case, I will put in 'agent')—could step in and exercise that right on the incompetent person's behalf. Ignored was the person's at least parallel right to choose to accept treatment—to choose life.

What power does one give an agent? One does not know when one will suddenly fall ill and cannot describe the circumstances, and the agent may not be as friendly as a fortnight ago or five years earlier. That is only a minor part of my argument, but none of us can judge what our condition will be to be able to put it into a document. If one could ask whether they wanted to live or die, some would say that they would live because it is inherent in all forms of animal life to strive to live if possible. The article goes on:

> The next steps were to move from rejection of medical treatment to rejection of food and water (at first, 'artificially administered,' but soon to include spoon-feeding)...

They are the very things we are talking about. That is an argument in other parts of the world. The article goes on:

> ...initially for a competent adult (as in the *Bouvia* case) and then (using 'substituted judgment') for an incompetent person who had never expressed an opinion. Now, of course, with the narrowly defeated 1991 Washington and 1992 California assisted suicide initiatives, the agenda has moved to direct killing. Initially, of course, proposals speak of voluntary killing only, but the Netherlands statistics (where data from an official Government commission demonstrate that roughly half of the

12,000 killings annually are non-voluntary) point inexorably to the next step.

Meanwhile, the medical journals are full of advocacy of involuntary denial of treatment, and Dr Pieter Admiraal, the leader of the successful push for active euthanasia in the Netherlands, openly predicts that after the next decade that will be involuntary as well.

This is the first step. I still believe that we are leaving too much to the agent. I support the arguments of the member for Spence, even though he is on the other side of politics.

Mr BRINDAL: I have heard the members of the select committee, and the Minister in particular, in this debate refer continually to the need for patient autonomy and for this fact to be embodied in the power of a patient before they become incompetent to give a medical power of attorney. I have heard the member for Coles speak eloquently of the attorney as an extension of self. 'To err is human.' It would be fine in a perfect world if those people to whom a power of attorney may be given were extensions of self or perfect extensions of our own will in this matter. Then there would be no debate from me on the matter in this Chamber. I am sure that the member for Spence himself would be much more satisfied.

When sometimes we do not understand ourselves and try to express ourselves to others, we have problems. When we ask that person later to interpret that expression of self, we run into further trouble. That embodies this debate. The member for Spence and my colleague the member for Davenport are not arguing anything other than 'Have we got the balance right?' The member for Coles can continue to argue eloquently in her own case that her medical attorney may have such a loving and complete knowledge of her that that person is capable of acting exactly as she would act in the circumstances, but everybody is not perhaps as fortunate as the member for Coles. Many people are flawed and make mistakes. That lies at the heart of what the member for Spence is trying to accomplish, which is to ensure true autonomy for the patient, but at the same time safeguard that patient because life is sacred. It is a precious gift and should not easily be taken away. This Legislature should do all that it can to embody that most important and fundamental principle of all law.

The Hon. M.J. EVANS: The thing that must be kept in mind is that the present situation is what we are addressing in seeking to reform the law. At the moment, if the patient is conscious, that is fine: obviously, there is no issue. We simply ask them and they tell us. If the patient is unconscious now and these agency provisions do not exist, the medical profession, who may not be particularly well known to the person concerned, will make all those judgments of their own volition and in the absence of any knowledge, however imperfect or otherwise, of the patient's choice. They may be able to consult at random with relatives and friends of the patient in making that decision, but they will not know which of those people was the preferred person to speak to on behalf of the patient.

The Bill proposes a model whereby the medical professional knows at least from whom to get directions in the absence of the person who really counts: the patient. At the moment all these decisions are made anyway. The decisions that we propose should be made by an agent chosen by the patient are now made regardless, but not in such an open and direct way. People still fall ill, have accidents, and require feeding: all these things occur now. This Bill proposes that the patient has the right to nominate who will stand in the place of the patient when the patient is not there. These decisions are made now but on a lot less information than if a patient's agent is nominated to say what the patient would have wanted to do—

It is all very well to be critical of agents as only being human and erring and not having a perfect knowledge of the patient, but these same decisions are made every day now but with much less knowledge of what the patient would have wanted if conscious. That is what the select committee is looking at. Certainly, we cannot claim that the agent is perfect. Like the doctor and the patient, agents are human and can err.

The Hon. Jennifer Cashmore: So can the Supreme Court.

The Hon. M.J. EVANS: Yes, and this Parliament. Exactly the same decisions are still being made, but by people who have even less knowledge of what the patient would do. That is not a criticism of the medical profession. It deals with many patients. In fact, it is undesirable that doctors should form close emotional ties to patients: that would not be a good model of medical practice. Yet, doctors must still make these decisions instead of being able to refer to the patients' own appointed agent.

Mr BRINDAL: I accept what the Minister says and I accept his point of view. I do not believe that I am a fool; I realise that those decisions are made every day by the medical profession, and sometimes they are made with great difficulty because, underlying that profession, is an absolute belief in the sanctity of human life. That is what underlies the profession, and the decision is made in the light of that belief.

I put to the Minister that what we are debating here is the baseline, to use his own words, of a medical power of attorney. I think what the member for Spence and I are trying to argue is that perhaps the baseline is not quite tight enough. While we are seeking to take into account the expression of the patients' will, we are often doing it through interested agents who are not bound by the same fundamental beliefs as is the medical profession. These people will come from a variety of religious practices, a variety of beliefs and, in our own country, a variety of cultures. What I am talking about does not really go against anything the Minister is saying: it is really about the baseline and whether the baseline in this legislation is adequate. There can be fewer more important debates than this. We might debate the State Bank or all sorts of things—but they concern only money. This concerns life. So, I put the point to the Minister again.

Mr MEIER: I strongly support the amendment and I urge all members to do likewise. At the outset, I had great problems with the original Bill, as I believe all members would have had, and that includes the Minister, because he has incorporated so many amendments into this Bill to try to improve it. I was prepared to look at it carefully and to weigh up the pros and cons. We have had amendment after amendment from the member for

Spence to further improve the Bill—to ensure that the technicalities that could be misinterpreted by a variety of people, be they in the health area or even in the legal area eventually, will not occur.

This amendment again is one that seeks to ensure that, whilst there are many problems with the medical agent, at least that agent will not be able to refuse medical treatment that is part of the conventional treatment of an illness and is not significantly intrusive or burdensome. If this House opposes this amendment, what it is saying is that it will authorise the agent to refuse medical treatment that is part of the conventional treatment of an illness. That is what will be done by our refusing to accept this amendment.

If the Committee refuses this amendment, I see that as the thin edge of the wedge. There are increasing reservations: as the Right to Life association has said, 'This Bill gives a blanket immunity to acts and omissions made with the intention of causing or hastening death.' There can be no argument that that is what the Bill seeks to do in a surreptitious way. Here is an opportunity for the Committee to say, 'This is not what we want done.' If the Committee does not vote in favour of this amendment, it is quite clear in what direction the Bill is going.

Mr ATKINSON: The Minister has alas confirmed my original fears about the Bill. I pleaded for him to correct me, but he was unable to do so. It does have the effect which I foreshadowed in my initial contribution on this clause. The House of Assembly Select Committee on the Law and Practice Relating to Death and Dying was, as members would expect, known as the death and dying committee. When I left my house each morning to catch the train into town to go to the meetings, my wife would ask, 'Where are you going?' and I would say, 'I am going to death and dying.'

It seems that, because of the title of the select committee, many members of this House are under the misapprehension that this Bill is only about death and dying. The point I want to make most strongly on this clause is that the right of an agent to deny treatment to a patient does not exist only where there is a terminal illness. Someone could be quite well but incompetent, and the agent could withdraw conventional, ordinary treatment.

Those of us who follow Australian Rules football will probably remember—it is a while ago now—when John Greening, the Collingwood half forward flanker, was poleaxed behind the play, I think at Victoria Park, by a St Kilda half back and was knocked unconscious. He was unconscious for a long time, and the papers at the time dwelt on the question of when John Greening would come back to consciousness and whether he would ever be able to play league football again.

If John Greening had signed one of these medical powers of attorney and appointed an agent—let us assume for the sake of argument he had been diabetic—that agent, under this Bill, could have withheld his insulin. So, he could have put that perfectly well man, who just happened to be unconscious because of an accident, into a terminal state and killed him.

Mrs Kotz interjecting:

Mr ATKINSON: The commission agent for White Lady Funerals is chiacking me a bit. If she had been here when the Minister was explaining the effect of this clause, she would have heard him confirming my interpretation. The hypothetical case I have given to the Committee is a correct illustration and the Minister does not deny it. So, if the member for Newland knows better, perhaps she will tell me.

I think the member for Coles—or perhaps it was the Minister—said that this situation could be avoided if the patient had left behind written instructions for the agent. Again I go back to the point that few people who sign these medical powers of attorney can have the foresight to see what conditions they need to be guarded against by their agent and what conditions might prevail in the future. They just do not have that foresight.

In my amendments I have bent over backwards to try to accommodate my fellow members of the select committee. The amendment refers to medical treatment that is part of the conventional treatment of an illness and is not significantly intrusive or burdensome. I am surprised that my fellow members of the select committee are not supporting the amendment. I certainly hope that the member for Newland will rise to explain her interjection. I would like to hear her comment on this amendment and this clause. In conclusion, I would like to say that the individual in these cases does not make the choices: the agent makes the choices. The idea that this is some fulfilment of the theory of autonomy is false indeed.

The Committee divided on the amendment:

Ayes (9)—M.J. Atkinson (teller), H. Becker, P.D. Blacker, S.G. Evans, G.M. Gunn, K.C. Hamilton, P. Holloway, E.J. Meier, J.A. Quirke.

Noes (35)—H. Allison, M.H. Armitage, L.M.F. Arnold, P.B. Arnold, D.S. Baker, S.J. Baker, F.T. Blevins, M.K. Brindal, D.C. Brown, J.L. Cashmore, G.J. Crafter, M.R. De Laine, B.C. Eastick, M.J. Evans (teller), R.J. Gregory, T.R. Groom, T.H. Hemmings, V.S. Heron, D.J. Hopgood, C.F. Hutchison, G.A. Ingerson, J.H.C. Klunder, D.C. Kotz, S.M. Lenehan, I.P. Lewis, C.D.T. McKee, W.A. Matthew, M.K. Mayes, J.W. Olsen, J.K.G. Oswald, N.T. Peterson, M.D. Rann, J.P. Trainer, I.H. Venning, D.C. Wotton.

Majority of 26 for the Noes.

Amendment thus negatived.

Mr ATKINSON: I move:

Page 3, lines 33 and 34—Leave out subclause (7) and substitute:

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

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

(b) with all due diligence; and

(c) in the best interests of the patient.

This amendment provides further conditions on the exercise of the power by the medical agent. Currently clause 6(7) provides:

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

Of course, I support that provision, but I think it ought to be fleshed out a little bit, thus I propose paragraphs

(a), (b) and (c). It would be extraordinary if my fellow members of the select committee opposed this amendment, but I suppose they will. The conditions are taken from the Powers of Attorney and Agency Act 1984, which is an Act of Parliament creating powers of attorney. As I said during an earlier debate on this matter, it is my opinion that conditions and safeguards that apply to powers of attorney as they relate to property are surely good enough to be incorporated in a power of attorney as it relates to life. I commend this amendment to the House.

The Hon. M.J. EVANS: On the face of it, this proposal looks perfectly reasonable, but the reality is that many of the provisions are already contained in other ways within the Bill, and the distinction between the way in which they are now contained in the Bill and the way in which the member for Spence seeks to incorporate them is important.

The Bill provides, under clause 6(7), that 'the powers conferred by a medical power of attorney must be exercised in accordance with any lawful directions contained in the medical power of attorney'. Quite clearly, the patient has the right to instruct his attorney. That is fundamental to the concept of patient autonomy. The agent is required to sign a declaration, under schedule 1:

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

In other words, the test is in what the agent genuinely believes to be the principal's best interests: it is not an objective test set by the Supreme Court as to what it considers would be in the patient's best interest if it were judging the topic. That is the difference. Because of the way the select committee has drafted the provision, all these things—that the agent must act in accordance with instructions and must act in accordance with what they genuinely believe to be the patient's best interests—in the Bill, but they are not expressed in a way that will give rise to objective tests by the Supreme Court: rather, they are expressed in a way that allows the patient's wishes to be implemented. And that, as the member for Coles has previously said, is what we are about here.

We are about extending patient autonomy when patients are unable to do it for themselves. That is the critical difference between what the member for Spence proposes and what is already in the Bill. That difference is critical. It is fundamental to the whole basis on which this Bill is drafted, and I believe that to accept the amendment would be to destroy many of the things that the select committee has sought to build up.

If members look at the safeguards in the Bill, I believe they will find that they match what is required in the circumstances, under this scheme of allowing patients to be autonomous properly and for the critical determining factor to be their interest and their view of their interest, not what some outside agency in the form of the courts might think, because that is entirely irrelevant to what individuals may regard as important.

Individuals may have views with which we as individuals may not agree. Some people may have religious beliefs that we do not share. Those religious beliefs may lead them to hold that particular medical treatment is not appropriate for them, and they may hold those religious views deeply. Would we seek to force that treatment on them simply because in the opinion of the Supreme Court that would be in their best interests? Medically and scientifically that might be the case, but the patient would not agree with us and, were he then to be in a position to discuss it, he would violently disagree with that proposition.

Had he been conscious, his will would have prevailed and his religious belief and personal, moral belief would have been enforced. Simply because a patient lapses into unconsciousness does not mean that his religious beliefs, moral beliefs and deeply held convictions are immediately set aside and substituted with convictions which are held by the Supreme Court or which may or may not be shared by the member for Spence. That is not the test that I want to see in this Bill.

Mr QUIRKE: The question arises about a blood transfusion that might be required for a minor. How is that affected by the arguments that the Minister has just presented? What would happen if the Supreme Court issued an instruction that a blood transfusion should take place but, for religious reasons, the agent of the child or of an adult patient determined that that should not be the case? Would that be satisfied by this provision?

The Hon. M.J. EVANS: What the Bill provides is that it is the view of the patient that is paramount. If the patient has a religious belief that strongly forbids a certain kind of medical treatment, when the patient appoints an agent, one would assume that he would do so on the basis that the agent shared or understood that particular religious conviction. While the patient was awake, he would prohibit that form of treatment. Were the patient to lapse into unconsciousness, the agent, on behalf of the patient, would continue to prohibit that form of treatment. Were we to lapse into a situation where the test was a standard legal test of what was in the best interests of the patient, no doubt by the standards of the legal community and those of the balance of society, who would normally accept that treatment, what is in the best interests of the patient would be that he be required to take that treatment. Therefore, the patient's beliefs and views would be set aside by that process but, if the agent were able to insist on a continuation of the patient's own views, that would clearly be the case.

With children, of course, a different argument arises. Society protects children and, once they reach the age of consent, their views are enforced in the normal way. While they are six, seven, eight, nine or 10 years old, clearly what is in their best interests by the normal objective tests would apply, and the emergency treatment of children provisions cover that.

Mr MEIER: I support the amendment. I feel again that this simply strengthens the Bill. So much of what has been put forward to strengthen the Bill has been rejected. Surely it should be very clear that this measure seeks to ensure that it is in the best interests of the patient, not as the medical power of attorney provides, that the person genuinely believes it to be in the best interests of the patient. I know it is highly unlikely, but it is possible that the agent could be an unscrupulous person and what he believes to be in the patient's best

interests could be vastly different from what is in the patient's best interests. I cannot understand why members do not want every safeguard included in this Bill and, for that reason, I support the amendment.

The Hon. JENNIFER CASHMORE: In my opinion, the Minister has given a response to this amendment that could hardly be bettered, but I want to explain why I oppose the amendment, principally in response to the member for Goyder's statements. It is true that on the face of it this is a very appealing proposition. It appears to be an unexceptionable addition to the Bill, except when one realises what is its actual effect as distinct from its apparent intent. Certainly we believe that powers conferred should be exercised in accordance with any lawful directions, and the schedule takes care of that. They should be exercised with due diligence, and the schedule takes care of that in respect of the requirement for agents to act honestly and in accordance with the patient's best interests.

The best interests of the patient should be paramount but, as the Minister has pointed out, if accepted, this amendment would establish an avenue of appeal to the Supreme. Court that would give rise to objective tests. We should all know that courts of law act on precedence, and their view of what is in the best interests of patients is invariably what would be the objective test of the reasonable man—and I use the word 'man' advisedly, because that is what the courts use although it should be 'person'.

The fact is that some of us are unreasonable people and, if what we want in respect of our medical treatment is unreasonable in the eyes of the law, that is not important as far as this Bill is concerned. It is what the patient wants and, if the patient's view is unreasonable in the eyes of the law, that does not alter the fact that we think the patient's view should be paramount. The patient's view will have some chance of being paramount if the agent exercises authority on behalf of the patient and if, in accordance with the schedule, the agent is bound to do that having signed an undertaking that that will be the case.

Whilst as I say the provisions of the amendment are appealing in terms of their intent, the effect is distinctly unacceptable to me, at least, because it paves the way for the courts to intervene and decide what is in the best interests of a patient. I, for one, do not want any judges of the Supreme Court of South Australia to decide what is in my best interests, and I say that with very great feeling!

Mr S.G. EVANS: My colleague the member for Coles meant that, I think. Those who are supporters of the Bill in its present form say that they believe the patient's view is paramount. The patient's view is the one that is important, yet all the time this Bill talks about an agent. I know that many people do not agree with me, but I hope that members in the Upper House agree, because it is my proposition that, if an individual can sign a power of attorney, why can that person not have the right to appoint three agents rather than one for safety reasons? Is the patient's view important or not? A person might not want to leave the matter in the hands of one person but in the hands of two or three people. Quite often that is done with wills.

What is wrong with that if the patient's view is paramount? The argument will be that those two or three agents might argue, but it is the patient's wish that he wants people to be sure and that they must all agree before it happens. So, the argument that the patient's view is paramount is not truly reflected by this Bill by stopping the patient from having more than one agent. I do not accept the arguments that have been used, and the member for Spence has taken the right path and left some alternatives for decision making. As I said earlier, none of us knows at what stage we would like the agent to interfere in the decision making and agree to pull off a life support system.

Mr ATKINSON: I am very pleased that the member for Coles and the Minister have described—on the face of it—this amendment as being reasonable: it is the nicest thing they have said all day. The safeguards that the Minister and the member for Coles talk about are safeguards that are expressed mainly in the schedule in the forms of appointment and acceptance. Alas, these safeguards are not expressed in objective terms, so they cannot be tested or reviewed. The agent is just able to hide behind genuine belief. Those of us who dealt with the law of self-defence know what 'genuine belief' means.

The Minister said that my amendment will destroy the Bill: I think his pride in ownership is perhaps getting the better of him there. I do not think it will have a very great effect; it is only a small amendment. The other thing I should add is that the Minister gave the Committee the impression that Jehovah's Witnesses, for example, or people with deeply held opposition to particular medical treatments, would, under my amendments, have their religious beliefs violated. That is just not so. It is the practice in Australian and United Kingdom hospitals that, if a Jehovah's Witness decides not to have a blood transfusion in the course of an operation, that wish is respected. That is the current practice. There are no appeals to the court to administer the blood transfusion now, so I do not see why that practice would be changed if this Bill became law with my amendment included.

Amendment negatived; clause passed. Clause 7 passed.

New clause 7A—'Supervisory jurisdiction of the Supreme Court.'

Mr ATKINSON: I move to insert the following new clause:

7A. (1) The Supreme Court may, on the application of a medical agent, or any other person who has in the opinion of the court a proper interest in the exercise of powers conferred by a medical power of attorney, exercise any one or more of the following powers—

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

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

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

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

(2) The court may make an order under this section on such terms and conditions as the court thinks fit.

This new clause would introduce supervisory jurisdiction for the Supreme Court over these powers of attorney. I have modelled this provision again on the 1984 Powers of Attorney and Agency Act. Again, the principle is: if it is good enough to have supervision of powers of attorney in respect of property, why is it not good enough to have supervision with the question of life? The right of appeal that I am proposing is even more important now than at the start of these proceedings, because a majority of the Committee has consistently ruled out the previous amendments. Given the breadth of the agent's discretion the need for review in the Supreme Court is greater than ever.

I refer again to the case of Tony Bland that was so recently before the judicial committee of the House of Lords. As members will recall, I said that the House of Lords was willing to allow the hospital authority in that case to remove a naso-gastric tube from Tony Bland, and they gave reasons for that with which I do not happen to agree. I read their reasons into the record. But the House of Lords introduced a safeguard which I would hope the Minister and the member for Coles would not reject; that is, the House of Lords said that all such cases of patients in a persistent vegetative state should come to court for judicial review. I agree with that, so I am giving the Committee the opportunity to include that in the Bill. I do so without making any reflection on the qualities of those people who currently hold office in the Supreme Court; I do not think that is relevant or becoming.

As to paragraph (a), it seems to me that, if the power of attorney that is written by the patient is unclear, it may be the medical agent himself who applies to the Supreme Court for some aid and assistance in interpreting the terms of the agency. The promoters of the Bill do not make any allowance for that. That is a serious omission by the promoters of the Bill. As to paragraph (b), that is a sensible proposal because it may be that when the medical power of attorney comes to light its terms may be so bizarre that neither the agent, the treating doctors nor the family would want to uphold those terms.

Before my opponents here start crowing about patient autonomy again, they ought to try to foresee what kind of instructions may be put in a medical power of attorney. In the law of wills and the law of succession the courts have had to deal over the centuries with many bizarre wills. Indeed, the provisions of some wills have been so bizarre that courts have had to strike them down and, therefore, frustrate the will of the testator. It is taking a great risk for us to introduce this form of power of attorney and then provide no means of reviewing its terms.

As to paragraph (c), we may be faced with the situation where the agent refuses to act or refuses to carry out the terms of the instruction and it seems sensible that an appeal may be made to the court to appoint an agent who will carry out the patient's instructions. Paragraph (d) simply vests the Supreme Court with jurisdiction. I appeal to the Committee that, since it seems determined to introduce much of the House of Lords' law derived from the Bland case, then having accepted that kind of reasoning it also accepts the House of Lords' safeguards on this matter.

The Hon. M.J. EVANS: It is certainly the case that I do not accept this amendment. Indeed, it is one of the least desirable of those proposed by the member for Spence this afternoon.

Members interjecting:

The Hon. M.J. EVANS: They are all undesirable, but this one is over the top. There is no question that the whole basis of the Bill is to assign rights to patients and agents on their behalf and acting in accordance with their instructions, and to vest the Supreme Court with jurisdiction, not only to set aside the whole basis of the appointment, in other words to revoke the appointment, but to appoint some other person who the patient may not even have known as their medical agent to make these decisions of life and death over that patient and, indeed, to set aside any other part of the attorney's draft, including specific directions by the patient: all would be vulnerable to the court and, of course, the court would not use objective tests, the tests of the community.

It would not use the test of the individual patient: what the patient's wishes may be. The reality of this business is, 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 member for Spence does not agree with it, if the whole of the Supreme Court or the Minister of Health does not agree with it, 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, deprived even of the opportunity to make the medical decisions that may be the subject of the moment, because the patient's life will not be in suspension while the court considers these matters. In fact, the patient may find that their choice of attorney is set aside, that their directions are set aside and that the Supreme Court imposes tests and conditions that they had never contemplated, and that their medical circumstances are determined by the court, whereas had they not appointed an agent and had they been conscious they would have had the freedom to do all of this themselves. The very concept indeed makes a mockery of the idea that people have autonomy in their medical decision-making processes.

I remind the Committee that a medical agent only acts 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 and there are many inherent practical day to day safeguards in all of this. 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 as their agent especially for the purpose.

Mr ATKINSON: If a medical agent is empowered by a power of attorney to treat a patient and that patient has included in the power of attorney certain conditions which either explicitly or implicitly by argument require

that the medical agent act in a particular way, and the medical agent has, as so many powers of attorney do in respect of property, violated the terms of that agency, how does the matter get before a court of competent jurisdiction?

The Hon. M.J. EVANS: The medical agent loses authority if they do not act in accordance with the appointment. The medical agent would have no authority to give instructions that were contrary to the document that appoints them and, therefore, the medical practitioner would not act in accordance with them and the medical agent would have no way of enforcing his decisions—no more so than the member for Spence would if he walked into a hospital ward at random. A medical agent who acts contrary to the instructions given by the patient is not a medical agent at all in that respect. He is no longer acting within power and, therefore, his instructions have no weight any more than the instructions of any other member of the family, any other family friend or any other member of the community.

Mr ATKINSON: Where does it say that in the Bill?

The Hon. M.J. EVANS: There are many things that the Bill does not say, including the prohibition against assisted suicide, but that is still there by implication. The Bill requires this specifically and provides:

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

If the agent does not act in accordance with the power of attorney, it is as if he does not have the power of attorney; it is as if he is not the attorney, because those instructions are simply not lawful, are not properly given and have no force and effect, any more so than any other instructions given by any other person. It is not necessary to take them to court, if you like: it is just that their instructions have no more force or effect than those of any other person.

The Committee divided on the new clause:

Ayes (6)—M.J. Atkinson (teller), H. Becker, S.G. Evans, G.M. Gunn, P. Holloway, E.J. Meier.

Noes (36)—H. Allison, M.H. Armitage, P.B. Arnold, D.S. Baker, S.J. Baker, F.T. Blevins, M.K. Brindal, D.C. Brown, J.L. Cashmore, G.J. Crafter, M.R. De Laine, B.C. Eastick, M.J. Evans (teller), R.J. Gregory, T.R. Groom, K.C. Hamilton, T.H. Hemmings, V.S. Heron, D.J. Hopgood, C.F. Hutchison, G.A. Ingerson, J.H.C. Klunder, D.C. Kotz, S.M. Lenehan, I.P. Lewis, C.D.T. McKee, W.A. Matthew, M.K. Mayes, J.W. Olsen, J.K.G. Oswald, N.T. Peterson, J.A. Quirke, M.D. Rann, J.P. Trainer, I.H. Venning, D.C. Wotton.

Majority of 30 for the Noes.

New clause thus negatived.

Progress reported; Committee to sit again.

SITTINGS AND BUSINESS

The Hon. M.J. EVANS (Minister of Health, Family and Community Services): I move:

That the motion for limitation of debate as adopted on 16 February be rescinded.

Motion carried.

WORKERS REHABILITATION AND COMPENSATION (MISCELLANEOUS) AMENDMENT BILL

Returned from the Legislative Council without amendment.

ROAD TRAFFIC (PEDAL CYCLES) AMENDMENT BILL

Received from the Legislative Council and read a first time.

MINING (PRECIOUS STONES FIELD BALLOTS) AMENDMENT BILL

Returned from the Legislative Council without amendment.

LAND AGENTS, BROKERS AND VALUERS (MORTGAGE FINANCIERS) AMENDMENT BILL

Received from the Legislative Council and read a first time.

The Hon. M.J. EVANS (Minister of Health, Family and Community Services): I move:

That the sittings of the House be extended beyond 6 p.m.

Motion carried.

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE BILL

Adjourned debate in Committee (resumed on motion).

Clause 8—'Medical treatment of children.'

Mrs KOTZ: I have a problem with one of the combined Bills and one of the Bills that is not combined with the amendments.

The CHAIRMAN: The honourable member's amendment must be in writing.

Mrs KOTZ: I will recommit.

The Hon. M.J. EVANS: I will be happy to look at the matter before it goes to another place if that suits the convenience of the honourable member.

The CHAIRMAN: I have never been prepared to accept an amendment in the five years in which I have been in this Chair unless it was in writing, and I will not do it now.

Mrs KOTZ: To put your mind at ease, Mr Chairman, I did indicate that there may be an amendment. I have not prepared the amendment, so I am not asking the Committee to look at it. However, I will talk to the clause and perhaps the Minister can consider the amendment when the Bill goes to the other place. I want to discuss this clause in relation to the medical treatment of children.

I seek your indulgence, Sir, because, in talking to this clause, I need to refer to the next clause (emergency medical treatment) which is relevant to the comments that I wish to make for the Minister's consideration. Clause 9(5) provides:

> If the patient is a child, and a parent or guardian of a child is reasonably available to decide whether the treatment should be

administered, the parent's or guardian's consent to the treatment must be sought but the child's health and well-being are paramount and if the parent or guardian refuses consent, treatment may be administered despite the refusal if it is essential to the child's health and well-being.

That subclause commits a responsibility to the parents of a child for them to make a decision on the treatment that might be administered to a child. In my opinion clause 8 does not give the same consideration to the rights and responsibilities of parents. It is therefore that area that is of concern to me and I ask the Minister to address this situation.

In the area of emergency medical treatment, we have in fact alluded to the rights and responsibilities of parents to make a decision on behalf of their child, even though in the end circumstance doctors can overrule that decision if consent is withheld on other grounds that relate to the well-being of the child. But in this provision, which deals with the general medical treatment of children, we have not given the parents the same consideration that we have given them in the next clause, which addresses emergency medical treatment. Will the Minister give a commitment to the Committee that that clause will be further considered? The amendment I would like to see is similar to the clause I read out. I seek the Minister's commitment on that.

The Hon. M.J. EVANS: I understand that the member for Newland is talking about children under 16 years, and I believe she makes a valid point in relation to ensuring that parents are consulted about this kind of treatment for children of or under that age. I am certainly happy to have a look at that kind of amendment before the Bill goes to another place. Quite clearly, as she says, if necessary the treatment must proceed in an emergency anyway, and that is recognised in clause 9.

She does make a valid point about children under 16 years. That has not been addressed previously because the committee was not principally focusing on these areas but was looking at a potential improvement to the law. I am happy to have this matter addressed and, if agreement is reached on that, I will prepare an amendment suitable for another place and for possible consideration there. Obviously I cannot commit the other place as to how it might consider a matter because it is beyond my jurisdiction and, I suspect, beyond almost all our jurisdictions as to how members there would vote on a given matter. While I cannot do that for the honourable member, I can certainly undertake to do almost everything short of that.

Mr BECKER: Can the Minister give the Committee the reason for his amendments? In the original Bill, No. 90, clause 8(1)(a) provided:

A medical procedure may be lawfully carried out on a child if—

The new Bill, No. 103, contains the amended clause as follows:

A medical practitioner may lawfully administer medical treatment to a child if—

Why has there been the change from 'medical procedure' to 'medical practitioner'?

The Hon. M.J. EVANS: The matter is entirely technical and I think it was probably covered in the earlier discussion when I explained why we changed from 'procedure' to 'treatment'—to standardise on that phrase, not because of any deep and meaningful significance behind the use of the word. It simply relates to the technical changes that were made to make the Bill internally consistent and, of course, the definition of 'medical practitioner' includes a dentist. So, there is nothing particularly beyond the drafting of consistent technology, and that 'medical procedure may be lawfully carried out on a child' is the same, except for the way the Bill is made internally consistent, as saying 'a medical practitioner may lawfully administer medical treatment to a child'. We simply felt that it expressed the phrase better; it has no great significance beyond that.

Clause passed.

Clause 9 passed.

Clause 10—'Medical practitioner's duty to explain.'

Mr ATKINSON: This clause casts a duty on the medical practitioner to explain to a patient the nature, consequences and risks of proposed medical treatment, the likely consequences of their not undertaking treatment and any alternative treatment or courses of action—that is, any courses of action—that might reasonably be considered in the circumstances of the particular case. In so far as we have had two sides to this debate today, so far as I am aware both sides are most enthusiastic about this clause. I want to record that I am not, and I shall state my reasons.

Those who follow events in the United States of America will know that that country is plagued by medical negligence actions and those medical negligence actions are so common and can result in such a magnitude of damages that American doctors are reluctant to treat some patients, particularly people who have been involved in accidents. Indeed, in the United States I guess it is a bit of a joke that, if someone is involved in an accident, it is more likely that a lawyer will reach them before a doctor. That is how serious this proliferation of litigation in America has become.

Although clause 10 is designed, on the face of it, only to require doctors to explain—and this makes all my fellow members of the committee feel warm inside and think that, 'At last, the doctors are being brought to book; they are required to fulfil this duty'—the danger is litigation. It is one thing for a medical practitioner to be taken to court by a patient with the patient alleging that the medical practitioner was negligent—and, as we all know, the standards of negligence are becoming stricter and stricter, even in the Australian jurisdiction—but it is quite another thing for a patient to bring a doctor to court and say, 'Well, you were not negligent. I am not alleging that you were negligent, but you breached your statutory duty under clause 10 of the Consent to Medical Treatment and Palliative Care Bill, in that you failed to explain to me any alternative treatment or courses of action that might reasonably have been taken, and then I suffered from not being aware of those alternatives.' So what this provision does, and it is an unintended consequence, is that it introduces strict liability into medicine and I think that is a bad thing.

Mr HOLLOWAY: I also have concerns about this clause for the reasons that the member for Spence has just outlined. It really has little to do with the general thrust of this Bill as far as palliative care and consent treatment are concerned. My concerns, like those of the member for Spence, are with the possible litigious

consequences that could come as a result of this. I am not a lawyer but certainly if one reads clause 10 it seems very reasonable that doctors should undertake the things that they are required to do but just the very prescription of them, particularly paragraph (c), where doctors have to indicate any alternative treatment or course of action that might be reasonably considered in the circumstance of the case, does open the way for a lot of litigation.

I remember when I first stood in this place to make my maiden speech one of the matters I raised was the fear that this country was following the American path towards excessive litigation and that really we should be doing everything possible to prevent going down that track because it will really not bring justice and it will not bring any benefits to society. So, I have concerns for those reasons that have been outlined.

The Hon. M.J. EVANS: I am sure that all members would share the concern that has been raised that we should not move to a situation where people are inclined to be overly litigious. However, I have to say that I think it is very important, and so does the committee, that patients have explained to them the three matters that are set out in this clause, and indeed in many ways we have simply adopted the common law position and requirements in the previous legislation and, of course, the latest position as enunciated by the High Court.

So doctors are already under substantial obligation to explain their actions, their proposals and the risks that flow from them and the possible alternatives there are in medical treatment to what is before you. I think it is perfectly reasonable that doctors should be so required.

The reality is that whether the provision is in the previous statute, this new statute we are proposing, or the existing common law before the recent decision in the High Court or after the recent decision, people always have and always will be able to sue their doctor on the basis that he failed to adequately get their informed consent. That concept of informed consent is pretty vital to this Bill; it is pretty vital to the way in which people receive medical treatment and I would say that it was fairly vital to most patients.

It is certainly the case that the failure to explain the nature, consequences and risks of a proposed medical treatment is quite central and fundamental. The consequences of not having the treatment are also vital to making a proper decision about whether to have it or not and the fact that some other treatment may be reasonably available to you, which you may well prefer, should certainly be explained to you at the time that you take the decision. Medical and surgical decisions and the like are very serious things and I think that people have the right to have them put before them fully. The reality is that we are not taking the law much further, if at all, by this clause. We are simply setting it out in a neat and available way and I agree with the members who have spoken.

There is an ongoing and continuing risk that the society will become litigious. But I would remind the honourable member that he just moved an amendment which would have opened up quite a bit of litigation in this context. So, I do think that this is a reasonable area and we must accept and deal with it in other ways with the legal consequences which may flow from that. I think patients do have the right to the items listed in (a), (b) and (c).

The Hon. B.C. EASTICK: The member for Spence would recall a number of occasions on which nursing staff, patients, people who presented evidence before the committee and others in various areas of social work advised of the lack of knowledge that was given to the patient or given to the family. It is very deliberate that this measure is in here so that there will be a better education, a better understanding of the consequences, and if it is done properly and before witnesses then it does not become the minefield that the honourable member suggests.

On a personal note, I am fully aware of the difficulties to which the honourable member refers in relation to the American system, and in these precincts last night I cited an example. I referred to a person with kidney disease who does not know what is wrong with the kidney because the Americans refused to do a biopsy at the commencement of the treatment. When challenged, the story was, 'We do not do biopsies here because it might put us into litigation, because the drug we gave you for the 'flu, or whatever we did, might be seen to be or turn out to be the cause of the kidney deficiency.' That is very real. As I say, the person directly involved was in these precincts last evening, so I am aware of the position.

That person's daughter has been under the control of a paediatrician who happened to be the paediatrician who looked after her mother. That paediatrician had been in practice for almost 40 years but has recently gone out of practice because the cost of insurance to safeguard him and his partners is over $US300 000 per annum. He just reached the stage, as do so many others, of not being able to meet it and carry on the practice. The lawyer reaching the car accident first is a situation not only in America but starting to come very close here and, unfortunately, many medical practitioners will say that, because of litigation that has taken place in South Australia and in Australia, they prefer to drive past and wait until the ambulance delivers the patient rather than getting out of their car as a good Samaritan.

I do not say that lightly and I do not say that it applies to every medical practitioner, but the problem is here with us today. Education is an essential part of this Bill, as has been referred to on a number of occasions, and if this is part of the education of the patient and of the patient's family, then we have done a great service to the medical profession and to patients present and in the future.

Mr HOLLOWAY: I wish to ask the Minister whether he considers that clause 10(c) will require medical practitioners to explain various alternative types of medicine, natural therapies, chiropractic, acupuncture, and so on. How far does the Minister consider this definition of alternative treatment should go? Secondly, what sort of records would doctors need to keep to ensure that they had advised their patients according to the requirements of clause 10? Would they need to keep records, for example, to show that they had suggested various courses of action? How will the matter be decided if it becomes a statutory provision? Would they need to make such recommendations to their patients?

The Hon. M.J. EVANS: Of course, much of this is in the common law, and doctors have always explained to their patients, I would hope, the alternative treatments available—what is required in given circumstances. The clause refers to what might be reasonably considered in the circumstances of the particular case. The courts will always take that into account, but we are not introducing anything diabolically new here. This concept basically is as it is and as it has been in the medical world for quite some time. Doctors also routinely keep case notes and will jot down that they explained the other courses of action. Individual facts of a case will always be the subject of debate and contest and, at the end of the day, it will be for the courts to decide that.

I do not think members need be unduly concerned that we are dramatically changing the *status quo,* because that is not the case: we are simply setting out what is basically the requirement now, and it has always been such. Doctors have always tried to explain the nature, consequences and risks of proposed medical treatment in accordance with good medical practice. Occasionally, things will go wrong and a patient will sue. Those individual cases are, no doubt, extremely messy for all concerned and result in much ill will and confusion, but we cannot prevent people from obtaining this kind of information. I think it is essential; they have a right to it and doctors have an obligation to provide it. I understand that that will periodically create difficult legal cases; it always has and always will.

Mr ATKINSON: Alas, I do not think the Minister has quite understood the point. You, Mr Chairman, as a former trade union official would readily understand the distinction between a common law action based on negligence and an action to recover damages based on breach of statutory duty. The distinction is this: the common law of negligence sets forth what a particular provider of services ought reasonably to foresee in the course of providing those services and, if the service provider fails to foresee something that he or she should have foreseen and as a result damage is caused, damages are awarded for negligence. So, what the service provider ought to have seen is something that is judged by the standards of negligence at the time.

As I said earlier, those standards of negligence are becoming progressively tighter with the result that in America, for instance, doctors sometimes avoid acting as a good Samaritan. However, the point that the member for Mitchell and I are trying to make is that something radically new is being introduced into this Bill. We are putting in statute what a doctor's duties are and we have not done that before. If I am wrong, would the Minister please read out the equivalent section from the previous Act from which this Bill grows? If I am wrong, I am happy for the Minister to correct me but, as I understand it, for the first time, a statutory duty is being placed on medical practitioners to explain to a patient 'any alternative treatment or courses of action that might be reasonably considered in the circumstances of the particular case'.

That is a statutory duty. If there is some alternative procedure that might have, say, a one in 150 chance of curing the patient no matter how expensive or experimental it may be, and if the doctor fails to tell the patient about that alternative treatment and if, as a result, the patient's condition worsens when it might have been cured by this alternative treatment, the damage suffered by the patient can be recovered with strict liability against the doctor without any proof of negligence. The patient would go to court and say, 'I know, Doc, you couldn't have reasonably foreseen that, but under clause 10 of the Consent to Medical Treatment and Palliative Care Bill you had a statutory duty to warn me about it and you didn't do it.'

The Hon. M.J. EVANS: The High Court recently held that an extraordinarily narrow probability event had to be explained to the patient in order to secure informed consent. That was what the whole case was about.

Mr Atkinson: That is negligence.

The Hon. M.J. EVANS: It may be negligent not to tell the person what they should have told them.

Mr Atkinson: It is the law of negligence.

The Hon. M.J. EVANS: I do not quite see the relevance of that, Mr Chairman.

The CHAIRMAN: Members should make interjections through the Chair.

The Hon. M.J. EVANS: The reality is that the High Court said that to obtain informed consent you had to explain material risk no matter how narrow the probability. I agree that the Bill codifies this for the first time, but the law has always required consent and the common law stipulated what the consent was. What the common law was up to anyone to guess. It was only recently that the High Court again extended that. We are correctly defining the appropriate level of explanation and, according to the preamble to clause 10, we require it to be 'so far as may be practicable and reasonable in the circumstances'.

I think that is perfectly fair. It is a statement of a reasonable consent provision. We have codified it. Because we codify it does not make it any more subject to litigation. Rogers and Whittaker litigated on the last case on common law. You can take a doctor to court on common law just the same as you can on statute law. The reality is that everybody now knows what the law is, if this Bill is passed into an Act.

I do not think we have opened up any whole new area of litigation. The requirements we have set out are certainly the minimum, and I for one do not believe that anyone in this State would want to see fewer requirements than this. They want to know the nature and the consequences, and certainly they want to know the risks. They want to know the consequences of not undertaking the treatment, and they certainly want to know any reasonable practical alternatives. Whilst that may certainly open up some cases for litigation, I do not see how this Parliament could reasonably set down a lesser standard. Is the honourable member suggesting that we should not explain risks to people or tell them of reasonable alternatives? All these things must be done. Occasionally that exposes a doctor to litigation. I accept and understand that. They understand that, and it is an unfortunate trend if we move towards a litigious society, but these are the minimum standards.

Mr BECKER: I support the member for Spence and the member for Mitchell. The Minister has not convinced me one iota on the whole thing. I think he is letting the medical profession off the hook. There is always a percentage of risk in all operations and all medical

treatment. There is always a percentage of risk in drug treatment with the side effects. Members should attempt to get the medical profession to spell it out to them. As hard as they can, they would have to thump the table to get the explanations, and you do not always get the proper explanation. Every case must be considered on its merits.

We are dealing with people who have an incurable disease and who may not be able to make decisions at all, but here we have the new clause which provides 'the nature, consequences and risk of the proposed medical treatment'. The clause in the original Bill stated 'the nature and consequences of a proposed medical procedure'. With the side effects and the percentage of risks that occur, the opportunity to sue surgeons in particular is fairly slim. Even in the most simple of operations, a cataract operation, 4 per cent are failures. If you happen to be in that 4 per cent category, like I am, it is damn frustrating and annoying, and there is nothing you can do about it. So, when you are on your death bed and you are in that category, if something goes wrong, there is not much you can do about it, either. I do not think you can sue once you have gone past life. Certainly your relatives will not have much chance because nobody will know whether or not it has been explained to you.

The next clause wipes it out, anyway. It provides, 'The medical practitioner ... incurs no civil or criminal liability for an act or omission done or made.' You are letting them off the hook. I just cannot in any way, shape or form support the legislation, and I could not, even as a compromise, consider a clause like this. I know that the committee has spent two years on this and has conducted a lot of research and work—I acknowledge that. However, this whole thing is a compromise to appease certain people and certain groups within the community. I keep coming back to that. In the whole wash-up, it is euthanasia, and that is being vehemently denied by all members of the select committee. I can see that the door is slightly ajar. With the door slightly ajar, this clause and the next one help it.

Mr MEIER: I cannot support the arguments put forward by the member for Spence. As I have said on previous occasions in relation to other amendments put forward by the member for Spence, we need all the safeguards we can get in this Bill, and I am pleased to see that the medical practitioners' duties are clearly codified here. I recognise that the religious part could be enhanced because of it. I hope that that does not occur; nevertheless, when it comes to a case of life or death, we need all the safeguards we can have.

Clause passed.

Remaining clauses (11 and 12), schedules and title passed.

The Hon. M.J. EVANS (Minister of Health, Family and Community Service): I move:

That this Bill be now read a third time.

In so doing, I would like to thank members of the House and the committee who have worked very diligently on this Bill over a long time. I believe it does represent a significant reform and improvement to the law, and I would like to congratulate those members who have participated in what is a truly parliamentary process on a bipartisan basis to reform the law in consultation and cooperation with the public. I believe it is an appropriate measure to commend to the Parliament and to the people of this State.

The Hon. JENNIFER CASHMORE (Coles): The Bill, as it emerges from Committee, is an improvement on the Bill that was introduced. The amendments have tightened the definition of 'terminal illness' by referring to the terminal phase of a terminal illness. They have tightened further the proposed controls on appointments of medical agents. They have clarified the prohibition against agents refusing natural food and water or pain relief.

A most important amendment is the requirement for medical practitioners to act in order to preserve or improve the quality of life, and they have excluded research from the provisions of the Bill. When the select committee took evidence, it heard from Dr Michael Ashby, Medical Director of the Mary Potter Hospice at Calvary Hospital, who said:

> It would be a good thing if this State could maintain its strong track record in innovative social welfare and health legislation by having at the end of this select committee a policy on death and dying that would place South Australia amongst the world leaders of public policy.

I do not believe there is anything particularly creditable about being a world leader unless the result of that leadership is for the common good. I believe that this Bill will contribute to the common good, and I can only wish it a safe and speedy passage through another place.

Mr ATKINSON (Spence): I am delighted that the Minister's enthusiasm for free debate on this subject has returned at this late hour, and I thank him for that remark. Obviously, I am disappointed that none of my amendments has been accepted. Be that as it may, the Bill still has some merits, and I will be supporting its third reading.

Obviously, from the reaction of some of my colleagues on the select committee, I have today violated the canons of political correctness by moving my amendments, but I am not in the least ashamed of that. Should this Bill become law, very few people will sign these medical powers of attorney. Less than 1 per cent will sign them. Therefore, if less than 1 per cent wishes to sign them, I am prepared to go along with that. I have done my best to amend it. I really think this Bill is very much a Bill for the chattering classes, for the politically correct. They have got their Bill, and I am happy to go along with it.

Mr S.G. EVANS (Davenport): I do not support the Bill as it comes out of the third reading and, if the member for Spence is correct in relation to the figure of 1 per cent to signing a medical power of attorney, so be it. If that power of attorney is used by their agents, the patients will not live to regret it; we know that. So, that is quite conclusive in the end result. The patient may be willing, when signing the document, to place trust in the hands of an agent. However, when the decision is to be made, if they are able to be asked whether they want to proceed, they may give a different answer to that of the agent. I do not support the third reading.

Mr MEIER (Goyder): I do not support the third reading. I recognise that this Bill, as it comes out of Committee, is a considerable improvement from that which we debated at the second reading stage, and I acknowledge that more safeguards have been inserted. I am very disappointed that, to my recollection, not one of the amendments put forward by the member for Spence or anyone else was accepted. I said time and time again that I believed additional safeguards were necessary, but they have not been brought in.

One could highlight some of the problems that I still have if one considered the clause that went straight through, namely, clause 11 in the amended Bill, in which a new section was inserted providing that medical practitioners for their own protection will have to consider preserving or improving the quality of life. However, quality of life, like beauty, lies in the eyes of the beholder, and I am sure that there will be serious problems with its interpretation down the track.

I am sorry that more members have not been able to participate in this debate. The things which have been moved here and which will be voted on shortly have serious consequences for all people in South Australia, and it is something that we will only know the effects of during the next five to 10 years.

Mr BECKER (Hanson): I predict that we have not heard the last of this legislation as it has come out of Committee. We are now dealing with an entirely different Bill than we dealt with during the second reading debate, and this is because of the substantial number of amendments in principle which were moved by the Minister and which were then incorporated in the new Bill. This is certainly the first time that I can remember—although I have been reminded that it is not the first time—that a Bill has come into this House and then been reprinted. It came in as Bill No. 90 and leaves this Chamber as Bill No. 103.

I still object to the whole principle of the idea involved, even though a very sincere, honest and genuine attempt has been to provide certain procedures and certain legal means for medical treatment for the person who has been deemed by a medical practitioner to be suffering from an incurable disease or condition. I am not satisfied that one person should be judge and jury in that respect. I believe that we should have had more medical practitioners involved. I understand that three are involved in Queensland.

I do not like the appointment of a medical agent; even the term frightens me. Whilst today one could be encouraged to sign that type of power of attorney or form to appoint a medical agent, the circumstances surrounding the need for the medical agent, who then makes the decision on behalf of the patient, could be entirely different. We have, and I have been made aware of, cases where persons have been considered to be clinically dead, but after 12 hours there was slight movement or a slight improvement in their condition and, in one case, six months later that person walked out of hospital. So, errors can be made. It is frightening.

Decisions have been made in courts in other countries, and even the House of Lords has been involved in determining what should occur. It is strange that over the past few years I have asked questions of the Minister of Health about when life begins. Certainly, the Health Commission, the medical profession and the Minister have refused to answer the question and cannot tell me when life officially begins, yet we find it easy in this Legislature to determine when life can cease to exist. That frightens and really worries me. For that reason I find I simply just cannot support the legislation.

Mr S.G. EVANS: I rise on a point of order. I believe the sittings of the House were extended until 6.30 p.m.

The SPEAKER: The Chair's recollection is that sittings were extended beyond 6 p.m.

Mr BRINDAL (Hayward): I am disappointed with this Bill as it comes out of Committee. I believe the member for Spence had some valid points to make and I am disappointed that the House in its wisdom did not accept some of those amendments. In my second reading speech I told the Minister that I would listen carefully to the debate. I have done so, and I will support this Bill, but I hope that this House in its wisdom is making the right decision, because it is a serious step that we take today.

The Hon. B.C. EASTICK (Light): I certainly support the Bill. It arrives in, and goes out of, this place not without sweat, and that sweat goes back over a period of almost two years. With the opportunity having been taken of consulting with the community and listening to the fears and doubts which exist at the present moment, listening to those who have contrary points of view, and seeking to balance and compromise—I stress 'compromise' because that is the art of politics—the Bill meets those requirements without in any way going against the principles of life being all supreme. To the best of our ability we have achieved that and the community at large will benefit as a result of our deliberations.

To my colleague the member for Hanson, I stress that nothing relative to a medical power of attorney is compulsory. I agree with the member for Spence and I believe it might have been my colleague the member for Goyder who doubt that many powers of attorney will be given. That will be a tragedy that has already been visited upon us by the sadness of people not taking up the opportunities that exist within the Natural Death Act.

We have much evidence of that, but I genuinely

believe that, with the universities and medical profession having embraced in a very practical way palliative care and the other aspects of hospice care, we are on the threshold of a much better informed community.

An essential part of this whole procedure, as I mentioned earlier, is that an education program be adequately conducted. It is directed to the attention of the Minister of Health in the reports that have been brought down in this House: such education is required to be actively pursued at all levels in medical, public, hospital, nursing and other areas, including members of Parliament, who might have benefited by a greater deal of education or a deeper reading of a number of the provisions which are in the interim reports and in the evidence that was placed before us. I believe it is a monumental piece of legislation that (with the experience of the Victorians since they brought down an Act not

dissimilar but not exactly the same) has advanced the cause of humanity a very great deal.

Mr VENNING (Custance): Briefly, as a new member of the House, I rise to congratulate members on this debate. As the debate progressed I was torn to and fro, listening to the arguments, some of which were very emotive. I have enjoyed the debate, which has been of very high quality. It has been a very emotive debate. There is nothing surer than death, and most of us have been or will be affected by it. I appreciated two or three of the personal contributions we heard from both sides of the House, because they were quite thought provoking. It makes one look on others very differently when we hear true stories of personal commitment. I congratulate the select committee and in particular three of its members.

I refer, first, to my colleague the member for Coles. The whole time I have been in this place she has been a tireless campaigner on this issue and she must have a sense of satisfaction that at long last this Bill has passed at least this House, and I only hope that to her total satisfaction she sees it pass in another place. I also congratulate the Minister for his guidance of the Bill: he guided it very well. I have to congratulate the member for Spence. I listened to his amendments very carefully and obviously he put a lot of effort and thought into them. It is great to know that people opposite think that deeply and that there is that capacity over there, even if we do not see much of it in action. I was very heartened by that. As a new member of this place, I have been very critical of the way we debate things at times, but I only wish that this sort of bipartisan approach was much more common on many more issues, because it is Parliament at work: it is democracy. We can all stand in our places and vote how we think. It has been a very positive and interesting day for me. I support the Bill, with reservations. It has been great for me to see this: it is certainly a monumental piece of legislation. I support the Bill.

The House divided on the third reading:

Ayes (37)—H. Allison, M.H. Armitage, M.J. Atkinson, D.S. Baker, S.J. Baker, F.T. Blevins, M.K. Brindal, D.C. Brown, J.L. Cashmore, G.J. Crafter, M.R. De Laine, B.C. Eastick, M.J. Evans (teller), D.M. Ferguson, R.J. Gregory, T.R. Groom, G.M. Gunn, K.C. Hamilton, T.H. Hemmings, V.S. Heron, P. Holloway, D.J. Hopgood, C.F. Hutchison, G.A. Ingerson, J.H.C. Klunder, D.C. Kotz, S.M. Lenehan, C.D.T. McKee, W.A. Matthew, M.K. Mayes, J.W. Olsen, J.K.G. Oswald, J.A. Quirke, M.D. Rann, J.P. Trainer, I.H. Venning, D.C. Wotton.

Noes (3)—H. Becker (teller), S.G. Evans, E.J. Meier.

Pair—Aye—L.M.F. Arnold. No—P.D. Blacker.

Majority of 34 for the Ayes.

Third reading thus carried.

ADJOURNMENT

At 6.43 p.m. the House adjourned until Tuesday 2 March at 2 p.m.