HOUSE OF ASSEMBLY

Wednesday 15 February 1995

The SPEAKER (Hon. G.M. Gunn) took the Chair at 2 p.m. and read prayers.

HINDMARSH ISLAND BRIDGE

The Hon. DEAN BROWN (Premier): I seek leave to make a ministerial statement.

Leave granted.

The Hon. DEAN BROWN: This statement concerns the Hindmarsh Island bridge court decision handed down today. The Federal Government handed down its judgment in the case *Chapman v. Tickner and other* today. The court has adjourned the proceedings to a date to be fixed. The court ordered that the decision of the Federal Minister for Aboriginal and Torres Strait Islander Affairs, dated 9 July 1994, which prohibited the construction of the Hindmarsh Island bridge for a period of 25 years, be quashed with effect as from the date on which the decision was made. The court also quashed a decision of Professor Saunders dated 8 July 1994 with effect from that date. The decision of Professor Saunders was the provision of a report to the Federal Minister.

There were three main reasons for the court's decision. The most decisive factor was that the public notification (which was required to be given by the Minister) that he had been called upon to make a declaration was seriously deficient and that the deficiency was so fundamental it could not be rectified by further consideration by either the Minister or Professor Saunders. Accordingly, the decisions were quashed from the date of their making. The other factors which influenced the court were that there had been a fundamental failure by the Federal Minister to comply with the statutory obligation that he consider representations before deciding to exercise his power (and a great number of such representations had in fact been received and were provided to the Minister by Professor Saunders); and, secondly, he did not consider material contained in secret envelopes relating to information of a confidential nature provided by Aboriginal women.

The judge held that the Minister made his decision as a result of that information but did not read it or receive any briefing as to what the information was. The Federal Court will consider the matter again on a date to be fixed. The State Government does not know what the parties to the decision are likely to do, but notes the possibility that there may be applications for appeals and, if so, the decision may be stayed pending appeal.

In September 1994, the State Government established a Cabinet subcommittee to examine the practical and legal consequences of the Federal Minister's declaration prohibiting construction of the bridge. The subcommittee's responsibility was also to draw together the differing portfolio interests affected by the Hindmarsh Island development and endeavour to resolve the legal and practical issues affecting it. Clearly, one of the factors affecting the final resolution of this complex matter is the decision of the Federal Court, and that decision has only become known today. There is further uncertainty because of the possibility of appeals and other steps that might be taken by the parties.

The Government's subcommittee authorised the Crown Solicitor to have discussions with Westpac Banking Corporation, a financier of Binalong Pty Ltd, in order to explore further options. I might add that Binalong is now in liquidation and Westpac Banking Corporation is the major financier of the Binalong development. Therefore, Westpac Banking Corporation is now, in effect, together with the liquidator, the developer of the project. Those discussions did not reach any finality, largely because of the then pending court case and decision.

The State Government will be considering the effect of the Federal Court decision on its legal obligations and also what further action may be taken, whether by the Government or by the parties to the court decision, to resolve the matter. I have already written to the Prime Minister seeking urgent discussions with the Federal Government in the light of today's decision.

The South Australian Government has been concerned that Federal Government intervention in the Hindmarsh Island bridge matter, after the State Government had made its decision, highlighted a serious lack of coordination between the Federal and the State Aboriginal heritage protection regimes. I raised this matter in a letter to the Prime Minister on 11 July 1994, immediately after Mr Tickner's decision.

The South Australian Minister for Aboriginal Affairs pursued the matter at the Ministerial Council on Aboriginal and Torres Strait Islander Affairs in November 1994 and successfully moved for the establishment of a working party of officials to examine and report to Ministers on a national framework of guidelines to promote the cooperation of State, Territory and Commonwealth heritage legislation and decision-making processes. The framework is to cover matters including the need for clarity, consistency and efficiency in approval and appeal processes.

FRUIT-FLY

The Hon. D.S. BAKER (Minister for Primary Industries): I seek leave to make a ministerial statement.

Leave granted.

The Hon. D.S. BAKER: Mediterranean fruit-fly maggots were detected late yesterday in apricot fruit from a backyard tree at Encounter Bay, Victor Harbor. This is the first detection of Mediterranean fruit-fly since February 1992, when an outbreak was detected at Orroroo. Mediterranean fruit-fly is more difficult to control than Queensland fruit-fly, and the eradication program will involve not only the standard application of bait but also the application of full tree spraying to all fruit trees within a 400 metre radius. Mediterranean fruit-fly is endemic in Western Australia and periodic outbreaks unfortunately occur in this State, probably as a result of travellers 'smuggling' infested fruit and vegetables through the Ceduna roadblock.

Primary Industries SA has teams in the affected area and they are establishing an intensive trapping grid. The teams will also be carrying out extensive checks of fruit trees in the vicinity of the outbreak. A 1.5 km radius eradication zone will be established but may be extended, depending on the result of trapping and inspections of fruit trees in the area. All fruit trees will be sprayed on three occasions within the first month of the program and the baiting will continue for a period of 10 to 12 weeks after the last detection of fruit-fly in the outbreak area.

The detection of Mediterranean fruit-fly will have a potential impact on trade in fruit and vegetables which can

be infected because Victoria and New South Wales require that this produce is sourced from outside a 30 km radius from an outbreak of Mediterranean fruit-fly. Tasmania requires an 80 km radius and Queensland requires a 15 km radius.

The Fleurieu Peninsula is a very important area for horticultural produce and has some of the State's finest vineyards. Movement of grapes around the State for wine making will not be affected. Victoria does not consider whole grapes as a carrier; therefore, movement to Victoria will not be affected. My department is at present confirming protocol requirements for the movement of whole grapes with other States.

The current estimated cost of eradicating a fruit-fly outbreak is $120 000, and there are potential implications for our trade in horticultural produce both interstate and overseas. It is very important that travellers realise the risks to South Australia of bringing in fruit and vegetables that may be carrying fruit-fly eggs or maggots.

TAFE STUDENTS

The Hon. R.B. SUCH (Minister for Employment, Training and Further Education): I seek leave to make a ministerial statement.

Leave granted.

The Hon. R.B. SUCH: I wish to make a statement on my responsibilities with respect to the expulsion of TAFE students and with particular reference to the case raised in the House yesterday by the member for Taylor. My responsibility under regulation 46(3) attaching to the TAFE Act 1975 is very clear. That regulation provides:

> . . . the Minister shall expel a student from a college if he considers it necessary to do so for the moral or academic welfare of other students attending the college.

I remind members that any expulsion order is thereby made the personal responsibility of the Minister who, in the eyes of the law and the community, is the person making a decision which may have a dramatic negative impact on the academic career of the student involved. From my own intimate knowledge of the TAFE system, I know that any such impact may well flow to that student's later employment prospects, and I therefore take very seriously my role in any expulsion.

Yesterday I quoted from my two responses to ministerial briefings received from the Tea Tree Gully campus of Torrens Valley Institute, which had requested that I authorise the expulsion of a student following his alleged 'hacking' into computer records, his alleged alteration of such records, and his alleged placement on computer files of offensive messages aimed at female students who might have access to such files. I readily accept that, if proved, such behaviour constitutes an infringement of the moral or academic welfare of the students, and may warrant the penalty of expulsion.

The first ministerial briefing seeking this student's expulsion contained only the vaguest outlines of the offences allegedly committed by this student, and included the statement that the Manager Student Services at the institute '. . . has concerns with the severity of the decision' to recommend his expulsion. My instructions were as follows:

> I have considered the recommendation that this student be expelled from Torrens Valley Institute. Wishing justice to be seen to be done in that and all such cases, I ask that (the student) be told that he is to be expelled for his misdemeanour but that this expulsion order be stayed providing that he agrees to work with institute staff, showing them how he managed to corrupt the SMART system and enter its programs, and then assisting institute staff to restore the student records he altered. Should he refuse, I agree to his expulsion. Should he agree to cooperate and institute staff are satisfied that he has made reasonable efforts to restore the damage he has done, I ask that he be reinstated. In either case, I presume that existing safeguards against hacking will be strengthened at the institute.

I must stress that at this time I had received only an assertion from the institute that this student was guilty of the offences. This assertion was not accompanied by the transcript of a taped conversation in which he is supposed to have confessed to allegations which were not detailed. The institute, through the Acting Chief Executive Officer of the department, responded to my decision, this time with examples of the offensive and frankly puerile messages left in the comments section of students' records files, but still offering no evidence that the student was either apprised of, or given the opportunity to respond to, specific charges of misbehaviour. I immediately sought advice from the Crown Solicitor's office, the gist of which is contained in the following quotation:

> . . . the law concerning natural justice requires the allegations to be put to the student—and it is very much better that they be put clearly in writing—and that the student be given adequate time to respond to those allegations. . . the over-riding duty is to act fairly in the circumstances.

It was essential that Crown Law advice be sought on the appropriate path to follow in ensuring that the student charged with these offences was given the opportunity, in writing, to respond to charges which are also made to him in writing. That has not occurred. If indeed the concerned student has confessed to any or all of the misdemeanours of which he is charged, then I have not been supplied at any time with the primary evidence. I am told that he made certain unspecified confessions in a taped interview with institute staff, but neither in my eyes nor those of the Crown Solicitor's office is this procedure acceptable under the terms of natural justice.

Mr Brindal interjecting:

The SPEAKER: Order!

The Hon. R.B. SUCH: If the institute, or its council, believed that I would simply sign an expulsion order upon their recommendation, but while not being supplied with all the evidence necessary to make such a decision, then they now know that they were mistaken. I have called for full details of the extent to which this student is alleged to have corrupted the institute's computer records—which has not been supplied in two ministerial briefings on this subject—and have insisted that the student be supplied with written details of the allegations made against him, to which I have also insisted that he be given the chance to respond in writing. I will not be railroaded by the member for Taylor into authorising his expulsion, which I shall not further consider until the student has been given the opportunity to respond to the charges made against him.

I turn to the performance yesterday by the member for Taylor. I must question her motives in raising this issue when, as stated by the Deputy Speaker yesterday, the matter is effectively *sub judice*.

Mr QUIRKE: I rise on a point of order, Mr Speaker. In his response the Minister is questioning the motives of the member. The Minister clearly said that, and he ought to know that that is against the Standing Orders of this House.

Members interjecting:

The SPEAKER: Order! Two members have already been taken off the question list for continuing to speak while the Chair is about to rule on a point of order. The Minister cannot

impute improper motives; therefore, he has to be particularly broad in any criticisms that he makes of a member.

The Hon. R.B. SUCH: The matter was raised with the institute council of which the member for Taylor is, for the time being, a member on a strictly confidential basis. She is also a member of the interim institute council by virtue of an employment position at the defence science technology organisation which she no longer holds. Further, the member is not the local member and is not authorised to reveal what is a confidential student disciplinary matter—especially when that process remains incomplete. The member's behaviour is outrageous and is contrary to the expectations of a TAFE institute council member. The member is in possession of the details of the matter which she has chosen to raise under cover of parliamentary privilege before the matter has been resolved. Yesterday, the member said:

> . . . overridden the decision of not only one of his institute directors, that institute council and its equal opportunity unit, but also the decision of his own department.

The member is wrong on all counts. First, no final decision can be made until the student has been given ample opportunity to answer the charges made against him. Secondly, the Act does not empower the institute director, its council, its equal opportunity unit or the department to make that decision. As mentioned earlier, that decision rests with me. I have stated unequivocally that the behaviour with which this student is charged is simply not acceptable and will not be condoned. If present actions to properly investigate the charges made against him indicate that he is guilty as charged, I shall have no hesitation in authorising the appropriate penalty. Finally, immediately prior to entering the Chamber I was advised by the director of my department from the institute director that that student is not and has not been enrolled at that college this year.

Members interjecting:

The SPEAKER: Order! The member for Peake is out of order, and there are one or two other members who are out or order. The Chair has plenty of time, and if members want to talk across the Chamber they obviously do not want Question Time to proceed.

LEGISLATIVE REVIEW COMMITTEE

Mr CUMMINS (Norwood): I bring up the seventeenth report of the committee and move:

That the report be received.

Motion carried.

Mr Brindal interjecting:

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

QUESTION TIME

WORKCOVER

The Hon. M.D. RANN (Leader of the Opposition): Is the Premier prepared to meet with a delegation of injured workers so that they can explain first hand how they and their families will suffer as a result of the WorkCover legislation if it is passed by this Parliament?

The Hon. DEAN BROWN: I meet with an enormous number of people and I am always willing to consider any such request. I simply ask that people put any such requests in writing to me and they will be considered at the appropriate time.

Members interjecting:

The SPEAKER: Order! I point out to members for the last time that, if they want the House to be suspended and if they do not want to proceed with Question Time, the Chair is happy to accommodate them. Some of the conduct is below that which the public would expect of their members. Some members think they can continue to defy the Chair, but I suggest that they have a good read of the Standing Orders. The member for Florey.

Mr BASS (Florey): Can the Minister for Industrial Affairs advise the House of important issues that speakers chose not to mention at the rally held today outside Parliament?

Members interjecting:

The Hon. G.A. INGERSON: I wasn't invited. I would have loved to come but you did not invite me.

The SPEAKER: Order! The member for Spence.

Mr ATKINSON: Mr Speaker, I rise on a point of order. Is the Minister for Industrial Affairs responsible to the House for what speakers at a rally today did or did not mention?

Members interjecting:

The SPEAKER: Order! I cannot uphold the point of order. I am not sure what point the honourable member is trying to make. The honourable Minister.

The Hon. G.A. INGERSON: Thank you, Mr Speaker. I would like to make a few points. The rally has been pumped up as the biggest thing since Ben Hur, but the fact is that 1.6 per cent of the work force in South Australia came but, more importantly, 3 per cent of all trade union members in this city attended: that is 3 per cent of 294 000 trade union members. Also, it is interesting that buses turned up at work places when work place meetings were held; the buses stood there while employees were virtually shunted onto them and put into the position of having to attend.

Members interjecting:

The Hon. G.A. INGERSON: The Leader of the Opposition interjects—

The SPEAKER: He is out of order.

The Hon. G.A. INGERSON: As to the Leader of the Opposition, it was fascinating that a large number of people in the crowd today said, 'We cannot believe what Labor says because it was Labor that created the problem and the mess.' That was said out there and it came out loud and clear from workers today. They said, 'It was Labor that caused the problem.' It is these sorts of things that were not said out there today and I wonder why they were not said.

Members interjecting:

The Hon. G.A. INGERSON: First, 95 per cent of all workers' benefits do not change, because they get off the scheme within six months. Further, 95 per cent—19 out of every 20—have no change to their benefit level at all. No mention was made out there today that the benefits in the overall package will still be the highest benefits in Australia. There is still no mention of that. Why is that? The biggest single issue raised by workers who have come to see me is that they want lump sums. What is in our Bill? It provides for the payment of lump sums. Why was that not said out there today? Because it is a benefit of our scheme.

Members interjecting:

The SPEAKER: Order! I hope that members have noted what the Chair has said. Unless members conduct themselves in accordance with Standing Orders, the Chair has a number

of options open to it and I suggest that the Deputy Leader, if he wants to ask a question, should observe the Standing Orders. I remind the Minister that he should round off his answer in accordance with Standing Orders. The honourable Minister.

The Hon. G.A. INGERSON: Thank you, Mr Speaker. I am fascinated that the Deputy Leader should interject, because another issue came up yesterday in this House that I am sure members would like to know about.

The SPEAKER: As long as the Minister is not inviting interjections.

The Hon. G.A. INGERSON: Thank you, Mr Speaker. It is important for this House to know that yesterday the Leader of the Opposition inferred that I might have been corrupt and might have had an involvement with insurance companies. There was a very strong inference. It is interesting that, the previous day, the Deputy Leader of the Opposition rang WorkCover to find out who the 15 companies were that wanted to be listed, and he was told that not only would he not be told who they were but also that the Minister had not been told. And why?

Members interjecting:

The Hon. G.A. INGERSON: Then why didn't you tell the Leader before he asked the question? You did not want the real truth to get out.

Members interjecting:

The Hon. G.A. INGERSON: You did not want the truth to get out.

Members interjecting:

The Hon. G.A. INGERSON: Mr Speaker, the other issue that was forgotten out there today, and it is very interesting—

Members interjecting:

The SPEAKER: Order! I warn the member for Mawson. He has not been assisted by the members for Peake and Wright. The Minister.

The Hon. G.A. INGERSON: It is interesting to see that the member for Giles comes down. It was the member for Giles who said in this House that the way to fix this scheme is to revert back to what he wanted in 1985. The member for Giles, the architect of WorkCover, has told this House how it can be fixed. It is in our Bill, and he knows that is the way it ought to be supported. The final and most important issue in our Bill that was not revealed out there today is that those who are seriously injured under our scheme will get an increase in benefits from 80 to 85 per cent. That totals in number between 20 and 25 per cent of the people on the tail, who get an increase in benefits.

Those issues were not revealed today because it was an absolute scaremongering exercise. It was absolutely no more than that, because the Labor Party—as it was pulled to task out there—caused the problem in WorkCover, and the Leader knows that full well, as all his mates told him that today.

TERRACE INTER-CONTINENTAL HOTEL

Mr CUMMINS (Norwood): Can the Treasurer inform the House what plans SGIC has for its Terrace Inter-Continental Hotel property?

The Hon. S.J. BAKER: Yes, the Terrace Hotel is now officially for sale.

Members interjecting:

The Hon. S.J. BAKER: I was going to mention the Rolls Royce, because it marks the end of another part of that era about which I know most members on the opposite benches would wish to forget. We disposed of the Rolls Royce which was, if you like, the standard of the previous Government.

The Hon. G.A. Ingerson: The same as WorkCover.

The Hon. S.J. BAKER: The same as WorkCover. They look after themselves; they get the very best, but they really do not give a damn about the South Australian population. They were there; they condoned the decisions taken over the Terrace Hotel and the sloppy management; they condoned the fact that the Rolls Royce was bought for over $200 000; and they condoned the activities of SGIC.

An honourable member: They're having a tactics meeting.

The Hon. S.J. BAKER: They are having a tactics meeting. Perhaps they do not want a little bit of the past revisited, because it hurts. The Terrace Hotel has been an issue that South Australians would well remember, and it did not stop only at the Rolls Royce: it encompassed the whole management of SGIC by the former Government. We are working through that; we are disposing of those assets that are regarded as non-core assets, as members opposite would understand. We have taken out the hospitals; the Terrace Hotel will be gone.

The process is being pursued formally. It is a transparent process and we are interested in the best price possible. Obviously, we would like to think that we will get some international linkages in the process. But, it is important to remember that this is one of the standards that have changed under this Government. We will not have insurance companies running hotels; we will not have a Rolls Royce parked in the basement to be used for the particular purposes of the Government and the former Chairman of the SGIC. So, it is an important step forward.

WORKCOVER

Mr CLARKE (Deputy Leader of the Opposition): My question is directed to the Minister for Industrial Affairs. What would be the cost to South Australian industry of top-up pay claims by unions in the event that the Government's WorkCover Bill passes the Parliament? Does the Minister acknowledge that he would create a totally new area of industrial disputation regarding these claims? Will the Government accept such a claim from the State's public servants? Interstate employers face paying top-up pay to make up the difference between workers' compensation payments and injured workers' original pay. South Australian unions have already begun serving claims for top-up pay on employers.

The Hon. G.A. INGERSON: As the Deputy Leader knows, none have been granted, so no calculation is required. I am fascinated when I hear about these claims for top-up pay and when I hear threats, such as those at the rally today. In 1985, the union movement sat down with the employers in this State and put together a WorkCover scheme. They suggested that we should have second year reviews. Why do you want second year reviews? You want it in order to take off those persons who you believe are misusing this scheme. What are we trying to do? We are including second year reviews, and that is exactly the issue that was canvassed in 1985.

One of the most important issues mentioned in that 1985 document relates to administration resolution disputes, and I understand that was agreed to at the meeting in question, at which the Deputy Leader was present.

An honourable member: He was there?

The Hon. G.A. INGERSON: I understand that he was actually there. So, exactly the same sort of resolution for disputes currently provided for in the Government's Bill was agreed to in 1985 at a meeting at which the Deputy Leader was present. The most interesting fact of all is that I have heard in the past few weeks that we could not possibly have any mention of transference of responsibility to the Commonwealth, but guess what is one of the recommendations of that meeting? It was recommended that the Commonwealth should have a role to play through the social security system.

In 1985 the Deputy Leader, who was involved in the committee, agreed that there should be a transfer of costs; yet, today they are criticising a system which has absolutely no transfer of costs to the Commonwealth but which has a recognition that similar benefits should be paid by the employers in South Australia; there is no transfer of costs whatsoever. The most important issue is this—

Members interjecting:

The SPEAKER: Order!

The Hon. G.A. INGERSON: It came out today at the rally, Mr Speaker.

Members interjecting:

The SPEAKER: Order!

The Hon. G.A. INGERSON: It is very important to point out that the Labor Party sold out the common law rights to all the workers in South Australia in 1985, and the Deputy Leader—

Members interjecting:

The SPEAKER: Order! I warn the Deputy Leader.

The Hon. G.A. INGERSON: —and the Deputy Leader—

Members interjecting:

The SPEAKER: Order! The Deputy Leader has now been warned twice. The honourable Minister.

The Hon. G.A. INGERSON: Finally, all the workers and all the employers in South Australia should have known today that the Deputy Leader and the Leader have been talking to general managers, executive officers and board members of industry in this State and saying, 'We have to get a consensus because we have to ensure that the economic value of this State improves.' They have also been telling them—

Members interjecting:

The Hon. G.A. INGERSON: They have also been saying to them that WorkCover cannot be on the list because South Terrace will not let them do it, and that is the truth of the matter—South Terrace is totally dominating the Deputy Leader and the Leader—

Members interjecting:

The Hon. G.A. INGERSON: You know what the answer is; you ought to fix it up.

GERARD INDUSTRIES

The Hon. M.D. RANN (Leader of the Opposition): Did the Minister for Industry, Manufacturing, Small Business and Regional Development and the Economic Development Authority initially recommend against the request of Clipsal and its Managing Director, Rob Gerard, for assistance to establish a factory at Strathalbyn, and is it the case that approval for the taxpayer funded assistance package of $2.5 million was given only after Clipsal approached the Premier's office? An article by Alex Kennedy, appearing—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: I hate to divide the Minister from his Premier, although he will give a better performance than the Premier gave the other day. However, the article by Alex Kennedy, who used to be the senior adviser to the Liberal Party, stated that the Minister accepted initial EDA advice that Mr Gerard's request for assistance be refused. The recommendation was changed after intervention by the Premier's office before it was put to the Industries Development Committee for approval. Gerard Industries contributed $68 440 to the State Liberal Party's election campaign.

Members interjecting:

The SPEAKER: Order! I warn the Leader.

The Hon. J.W. OLSEN: The Industries Development Committee, a bipartisan committee of this Parliament, endorsed the application by Gerard Industries for the building of this factory at Strathalbyn. I suggest that the Leader of the Opposition consult his colleagues who sit on the committee as to why approval was given for Gerard Industries in that incentive. What this Government is about is ensuring that all areas of South Australia will participate in the State's economic development and rejuvenation of its economy, not just the metropolitan area of Adelaide, as was the wont under the previous Administration.

We are intent on seeing that areas such as Strathalbyn, Mount Gambier, the Riverland, Whyalla, Port Augusta, Eyre Peninsula and Yorke Peninsula all participate. If the Government's objective of 4 per cent growth a year for the next six years, together with $500 million worth of new investment each year, is to be realised (and, despite on average not getting to that benchmark over the past 20 years, this Government has secured greater than $500 million worth of new investment in the first year from a standing start), what will be required is that all areas, all industries and all subsectors of those industries will have to participate in the economic rejuvenation. That is why we will support new industry and the generation of new jobs, wherever they are, throughout South Australia.

WATER SUPPLY

Mr KERIN (Frome): Will the Minister for Infrastructure give the House a progress report on the contracting out of functions of the Engineering and Water Supply Department and explain the significance of his meetings next week with the senior management of four international companies seeking involvement in this program, and will he also advise the House of opportunities that exist for the involvement of Australian companies?

The Hon. J.W. OLSEN: In considering the current proposal to contract out to competitive tender four functions nominated to the Parliament by the Treasurer last year in response to the Audit Commission, the Government will be maintaining ownership of the assets of the Engineering and Water Supply Department passing to the South Australian Water Corporation. In addition to continuing to own the assets, the Government will retain the responsibility for setting water and sewerage charges in South Australia in the future. We will also maintain the responsibility for the asset management policy on water and sewer lines in South Australia. In addition, customer contact will continue to be through the EWS and the South Australian Water Corporation, so we will not be repeating the mistakes that some interstate and overseas companies have made when they have given away their assets and pricing mechanism. They will be maintained, controlled and managed by the Government.

With regard to the four outsource functions, in promoting economic development and the creation of new jobs we are attempting to establish a water industry in South Australia. That water industry will be based on the intellectual knowledge, property and experience of South Australian companies, the Engineering and Water Supply Department and the Centre for Water Quality Studies in dealing with difficult water over 40 or 50 years. Not many States or countries throughout the world have had to deal with the water quality that we have for our industry or have had to pipe that water to such extensive areas as Eyre Peninsula and the like.

The Hon. Frank Blevins: Why are you giving it away, then?

The Hon. J.W. OLSEN: The honourable member ought to wake up, because I said we are not giving it away; the taxpayers—the shareholders—of South Australia will continue to own the asset. Just listen to the answer that is being given to you. What we are doing is getting a competitive tendering base for the metropolitan area for functions.

The Hon. Frank Blevins interjecting:

The Hon. J.W. OLSEN: There's none so blind as those who do not want to see. The member for Giles just does not want to see reality, commonsense and good planning for the future. The honourable member should understand that over the next five years our sewage treatment plants in the metropolitan area will have to undertake significant upgrades to meet EPA requirements for the future. In addition, the metropolitan area has some 6 000 kilometres of sewerage lines and some 8 000 kilometres of water distribution network. It is the operation and maintenance of those which, contracted out to a prime contractor, will give greater efficiencies of scale, greater productivity and therefore greater returns to the Government.

In the process, those cost savings can be passed on to consumers of water in South Australia, as we have done with electricity and with the current pricing structure for water. Just look at how over the past 12 months we have reduced the cost of power and water to the small and medium businesses in South Australia which in the past struggled with a cross subsidy to residential consumers. We have taken that out in order to better position industry in South Australia to be more competitive.

The benefits of going to a prime contractor and getting a better cost of operation can go back to South Australian consumers, whether business or residential consumers. The cost saving benefits will be passed on to them so that they can get a better deal in future than they had in the past. The approximately $50 million in operating costs for sewerage and the approximately $50 million in operating costs for water services will be bulked up, as we are proposing to do with information technology in telecommunications, to one prime contractor, leveraging our purchasing power to get economic development in South Australia. That is foreign to members opposite, but we will use our purchasing and spending power to get economic development in the State of South Australia.

There will be new infrastructure, new jobs created and a new South Australian water industry that can tap into the important Asia Pacific market where $26 billion worth of infrastructure will be required over the next five or six years. We want South Australia to be a beneficiary of and a participant in those opportunities, not let them pass by and have other States of Australia access those markets.

The benefits for South Australia are reduced costs of operating, benefiting consumers; industry development, more jobs created; accessing the Asia Pacific market and positioning South Australia to tap into that enormous growing potential market, a niche opportunity; and building on the intellectual experience and knowledge of South Australian water-based industries, tapping into that knowledge and getting the financial benefit back through those Government agencies and departments to offset the costs of operating those Government agencies and departments in South Australia. All round it is a big benefit for South Australia.

Members interjecting:

The SPEAKER: Order! The member for Unley and the Leader of the Opposition.

Members interjecting:

The SPEAKER: Order! Perhaps the House would care to have an adjournment so that members can continue their discussions and conduct themselves in a more reasonable manner when the House reconvenes.

The Hon. Frank Blevins interjecting:

The SPEAKER: Order! The member for Giles has had far too much to say by way of interjection. I suggest that he goes and has a cup of coffee. The Deputy Leader of the Opposition.

HINDMARSH ISLAND BRIDGE

Mr CLARKE (Deputy Leader of the Opposition): Does the Minister for Aboriginal Affairs support the construction of the Hindmarsh Island bridge; and will he release publicly the full unedited version of the Jacobs report?

The Hon. M.H. ARMITAGE: I suggest that the Deputy Leader should review the ministerial statement by the Premier earlier, which indicates the Government's position. Communications have been undertaken with the Federal Government because the Federal Court decision has called into question the processes undertaken by the Federal Minister.

WUDINNA TAFE CAMPUS

Mrs PENFOLD (Flinders): Will the Minister for Employment, Training and Further Education inform the House whether a final decision has been made in relation to the relocation of the Wudinna Campus at the Spencer Institute of TAFE; and, if so, how will the local community benefit?

The Hon. R.B. SUCH: I thank the member for Flinders, an excellent and dedicated member, who, in conjunction with the Hon. Carolyn Schaefer, has been—

Members interjecting:

The SPEAKER: Order! The Minister has the call.

Members interjecting:

The SPEAKER: Order! The Minister is out of order.

The Hon. R.B. SUCH: It is a pity that St Valentine's Day was yesterday: you would be kissing each other. I would like to acknowledge the constructive support of the Hon. Carolyn Schaefer, who has been most helpful in trying to resolve this issue. What is going to happen at Wudinna is that the—

Members interjecting:

The Hon. R.B. SUCH: I know that you are not interested in country people, but we are. One of the great things that will be happening at Wudinna is that the TAFE facility will be relocated to be part of the Wudinna Area School facility. It will mean that the people there will have access to a greater range of educational opportunities, with the sharing of computing and other teaching facilities. It is my strong commitment and that of this Government that we should not

overlook the training and educational needs of country people. I have visited Wudinna and most country areas where there is a TAFE facility, and I am strongly committed to making sure that people who live in country areas, whether on farms or in towns, should have access to the most comprehensive range of TAFE facilities.

This development has come about through a lot of cooperation by local people. In the end, everyone in that area will benefit. Importantly, it will mean that many of the families and young people who have been leaving the area will be able to access training opportunities there without having to drift away, causing further erosion of community facilities in country areas. It is very much a positive step, and it is part of a commitment by this Government to look after country people who were ignored for so long by the previous Government.

TAFE STUDENTS

Ms WHITE (Taylor): Why does the Minister for Employment, Training and Further Education now claim that he is dissatisfied with the process used by the Torrens Valley Institute in determining to expel a student who confessed to altering records when the Minister had earlier decided not to expel the student if he worked with institute staff to show them how he entered their computer system? In a memo to the CEO of TAFE dated 10 January, the Minister stated that the student's expulsion should be stayed if he cooperated with institute staff. The memo makes no request for any further information, it does not question the process used by the institute in coming to a recommendation of expulsion and it does not indicate—

The SPEAKER: Order! I point out that the honourable member sought leave to explain her question, not to comment on the matter. She has to be cautious in her explanation.

Members interjecting:

The SPEAKER: Order! The member for Giles is aware that, in making ministerial statements, Ministers have considerable latitude. As a former Minister, he would be fully aware of that.

Ms WHITE: In explaining my question, I point out that the memo does not indicate that the matter should be delayed pending Crown Law advice.

The Hon. R.B. SUCH: I think the member for Taylor is on some sort of inquiry which is unproductive. I have answered the questions by ministerial statement. We have what is called a 'Ministerial'; do you want me to spell it out? Ministerial—it has a big M at the front.

Members interjecting:

The SPEAKER: Order!

The Hon. R.B. SUCH: Just because you ran out of yellow stickers. I've still got plenty left! The request was inadequate in terms of providing the information. The details of the sexual harassment were not provided initially, and that was trotted out subsequently. I made the point in responding back through the department that, when I ask for information, I expect to get a full story, not half a picture. Now today I am told, just as I am coming in here, that the student is not even enrolled there. He has not been enrolled there this year. This is the sort of nonsense we are trying to clean up, in trying to get an efficient and effective Public Service. The point is that, when a Minister asks for information from a department or an officer, they expect to get the information in one hit. It is not *Blue Hills*. We want the information in one hit so we can make a judgment, particularly when it involves the life and future of a young person who is no longer at that institute.

Ms White interjecting:

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

The Hon. R.B. SUCH: The honourable thing for the member for Taylor to do is resign from that institute council, because she is there on false pretences. She is not the local member and she is there by virtue of employment which she no longer has.

Ms White interjecting:

The SPEAKER: Order!

INDUSTRIAL HEMP

Mr MEIER (Goyder): My question is directed to the Minister for Health.

Members interjecting:

Mr MEIER: I will just wait until everybody is quiet.

The SPEAKER: Order! The member for Goyder has the call.

Mr MEIER: What action is the Government taking to address any legal issues arising from possible trial plantings of industrial hemp in South Australia?

The Hon. M.H. ARMITAGE: I thank the member for Goyder for his question about this most interesting and indeed important subject. I inform the House that the Government is looking very constructively at taking action which will indeed facilitate plantings of industrial hemp. In due course, we believe that these developments may well pave the way for a new industry, a primary and processing industry, in South Australia. Last year a submission was made to the Government by the Yorke Regional Development Board to undertake field trials in respect of growing industrial hemp for fibre production.

Members may be aware that historically cannabis hemp is possibly the oldest cultivated fibre crop in the world and was a much traded commodity in previous times. More recently, the debate has focused on cannabis cultivated for drug use and the large scale trafficking, which I am sure all members would agree is reprehensible, which surrounds that drug use. However, the proposal put to the Government does not seek to in any way touch on the issue of cannabis for drug use. It is related to particular cannabis with a very low tetrahydrocannabinol (THC) content, which has no hallucinogenic effect. It is very important that any attempt to cultivate industrial hemp distinguishes between industrial croppings of cannabis with that low THC content and cannabis for drug purposes.

We have been looking at this proposal in some detail and we recognise there is a need for agricultural diversification in South Australia. The proposal has very strong support from a number of bodies, including the South Australian Farmers Federation, regional development boards across the Mid North, the North, the Murraylands and Riverland areas, the South Australian Research and Development Institute, and a number of growers (with over 95 of them having registered an interest in being part of this process) and industry processors and export companies. I am told that, on an agricultural basis, this crop is a very good suppressant of weeds and the ability therefore to contribute positively to breaking weed cycles is well recognised.

Hemp core fibres have the same composition as hardwoods and therefore have the potential to provide a significant import replacement for the current billion dollar paper

pulp imported into Australia annually, so that is clearly import substitution (similarly known as export), and it competes very favourably with cotton as a fibre, producing up to three times more fibre than cotton without the attendant requirement for extensive irrigation.

The regulations under the Controlled Substances Act—with which I am sure members would be familiar—declare cannabis to be a prohibited substance. Section 32 of the Act makes it an offence for a person to knowingly manufacture or produce a drug of dependence or a prohibited substance, or to take part in the manufacture or production of such a drug or substance. As I indicated, we have given this a lot of thought, and under section 56 we can issue a research permit subject to certain conditions. Late last month the proponents of the project, the Drug Task Force, the police, Primary Industries, SARDI, the Health Commission and so on, met to discuss a number of issues, including security, sampling of cannabis content and so on, and as soon as the details are available we will issue a research permit under section 56 to allow the proposed field trials to begin. At the moment, overseas seed sources are being investigated. It is an innovative program and potentially another major industry for South Australia.

TAFE STUDENTS

Ms WHITE (Taylor): When did the Minister for Employment, Training and Further Education first refer to Crown Law the matter of the expulsion of a TAFE student who had confessed to altering student records, given he had made his decision not to expel the student on 10 January this year?

The Hon. R.B. SUCH: I think we have got *Blue Hills*, and we have got not only Gwen Meredith but *Neighbours* and a few other series thrown in. Advice was sought from the Crown Solicitor, the exact date of which I will have to check—

Members interjecting:

The SPEAKER: Order! The member for Newland.

The Hon. R.B. SUCH: I will check the exact date, but it was relatively early on in the piece. It is a pity that people within the department did not consult the Crown Solicitor early on, because that is the strong advice of the Crown Solicitor.

Members interjecting:

The Hon. R.B. SUCH: We will sort out those little difficulties sometime in the future. In responding, I should point out that the member for Taylor, who is on the interim council, apparently has copies of documents which were marked 'Confidential', documents that were returned by all other members who attended the meeting on the Monday night. I would be interested to know whether she can indicate where she obtained the documents.

Mr ATKINSON: On a point of order, Mr Speaker, I seek your ruling. Surely the Minister would have to make an accusation of that kind by substantive motion?

Members interjecting:

The SPEAKER: Order! If the honourable member referred to takes offence, it is up to that honourable member to raise an objection.

GRANITE ISLAND

Mrs HALL (Coles): Will the Premier advise the House of the latest developments in proposals for tourist facilities on Granite Island? I raise this question following reports on radio this morning that the State Government had granted the developers an extension of the exclusive development rights on the island.

The Hon. DEAN BROWN: I can indicate that the claims originally made on radio this morning that the State Government had extended the exclusive development rights for the developer Quigley on Granite Island are not correct at all. The Development Assessment Commission simply gave a three month extension to the planning approval that had previously been given. There are two issues here. One is the planning approval previously handed down by the commission. That has been extended for a three month period by the commission which, of course, is independent of the Government. The Government itself had given quite separately—and this goes back to the Labor Government—exclusive development rights to the developer over the flat part of the island, not over the remaining part of the island, because that is leased to the council. The council, the State Government and the Aboriginal community have reached agreement in principle about developing that as part of a series of walk trails, native bush tucker and interpretive centres displaying some of the heritage of the island and surrounding areas.

The Government has put a lot of work in with the council and the Aboriginal community. At this stage the developers are still looking for money. Under the previous agreement, they have exclusive development rights, which have not been extended by this Government, to the end of February this year. The Government is optimistic that some development can be put on the island as quickly as possible. The claim made on radio this morning that I had said that this would be done this summer is preposterous because we were having talks on this just before Christmas, and any such development would take several years to develop.

The Government has made a commitment to the upgrade of the island in that we have put money into the upgrade of the causeway to the island. We have allocated money for the building of a new pipeline to get water across to the island and to take water effluent off the island. We have also allocated money for the upgrade and maintenance of the screw pile jetty—something which the former Government for a long time absolutely refused to do. I understand that Government work on the causeway and the screw pile jetty is now largely or fully completed. The Government has done its part of the work and is simply waiting for the developer to come up with the money. They claim that they are close to that point. Their time is rapidly running out so they had better hurry up.

ANTA AGREEMENT

Mr CLARKE (Deputy Leader of the Opposition): Why did the Minister for Employment, Training and Further Education claim last Tuesday that South Australia's missing out on millions of dollars of growth funding is the fault of the Federal Minister and the previous State Government, and contrary to the spirit of the ANTA agreement? At the November 1994 ANTA ministerial meeting, all Ministers, including the South Australian Minister, agreed to recommendations put forward by ANTA in relation to TAFE funding arrangements for the States and Territories for 1995. Advice from ANTA included that South Australia was not expected to maintain financial effort in 1995 and therefore would not receive a portion of growth funds applied from Commonwealth funds.

The Hon. R.B. SUCH: I said that because it is accurate.

Mr Clarke interjecting:

The Hon. R.B. SUCH: In 1993 the then Government did not deliver. Going back even further, because of some confusion over funding for migrant English programs, there was also another disadvantage imposed on us. We met the target last year in terms of financial commitment to spending on further education in terms of vocational programs. Following that ministerial council meeting, a review group was set up to look at South Australia's situation. I was advised yesterday or the day before by Minister Free that the funding will flow on a staged basis, so we do not have any great difficulty. However, as in a lot of other areas, we have inherited the problems that the former Government created.

ENVIRONMENTAL BEST PRACTICE

Mrs ROSENBERG (Kaurna): Will the Minister for the Environment and Natural Resources explain what role the Environment Protection Authority will have in the promotion of best practice environmental management (BPEM)? How will BPEM affect industry in South Australia?

The Hon. D.C. WOTTON: At the outset, I acknowledge the strong interest that the member for Kaurna shows in environmental issues. I think that is recognised by her constituents as well. The best practice environment management is a system for continuous improvement in environment performance linked in with an overall company business plan. It is a program that is working very well. It seeks to achieve better than just regulatory compliance in the most cost-effective way. It involves bench marking against world best performance in both productivity and environmental performance. The Environment Protection Authority in South Australia will be involved in a number of programs and actions during this year which will further that program in this State. I refer to a couple those.

First, there is the cleaner industries demonstration scheme. A second round of demonstration projects will be announced later this year. Total funds available for this initiative are about $600 000, and that includes $150 000 from the Commonwealth. I am pleased to say that there are approximately 15 South Australian companies presently participating in this scheme. Secondly, there are the environmental improvement programs; negotiations are currently under way with key industries and will continue throughout the year, one goal being that companies have licensed marine discharges which will be approved by these programs. This will assist in the protection of South Australian coastal waters. I am sure that all members would want to achieve that.

Thirdly, there will be environmental audits. On the commencement of the Environment Protection Act, companies will be encouraged to undertake voluntary environmental audits. They will see the EPA working hand in hand with industry to achieve mutually acceptable outcomes. Again, it is a program that I strongly support.

The benefits of the EPA's best practice environment management initiatives are many. They include an improved environment for all South Australians, more competitive industry in this State and enhanced export acceptability as world trading partners search increasingly for green products and develop a preference for environmentally aware corporate companies. Best practice environmental management can be seen as a win-win situation for the Government and industry and is a good example of the EPA working proactively with the private sector to provide a cleaner environment for all South Australians.

AMBULANCE SERVICE

Ms STEVENS (Elizabeth): My question is directed to the Minister for Health. Why did the Government fail to give pensioners in country areas adequate notice of changes to ambulance transport fees? Given that these changes were foreshadowed in the August budget, why was the Minister's department unable to finalise administrative details of the new scheme until after the new fees came into effect on 1 January? A memo from the finance director of the St John Ambulance Service to country services dated 21 December 1994 states:

> The ambulance service is currently trying to establish the administrative procedures that are to apply under these new arrangements with the Health Commission. It is envisaged that these arrangements will be confirmed in early January 1995.

A small notice advising of the changes did not appear in the *Advertiser* until 31 December and in country newspapers until after the starting date.

The Hon. M.H. ARMITAGE: I am not sure when the actual negotiations occurred between the various bodies. I would say that this was a specific commitment that was well and truly highlighted in the budgetary process. I cannot remember whether the honourable member asked me a question about this matter in the Estimates Committees. I do not recall its being highlighted, so the honourable member obviously did not regard it as an important issue otherwise she would have highlighted it in the Estimates Committee process. It was a well-publicised matter. Everyone knew about it and it was part of the budgetary process.

Obviously, if there is a longer lead time in getting it up and running, the Government does not make the same benefit from those savings. It was well-publicised in relation to the budgetary process and I reiterate to the member for Elizabeth that the budgetary process in which the health portfolio and other portfolios are operating is one of trying to repair damage wrought on South Australia's economy by 10 years of administration from you and your Party colleagues.

YOUTH STRATEGY

Mr WADE (Elder): Will the Minister for Youth Affairs provide details of the recent review of the State youth strategy?

The Hon. R.B. SUCH: I thank the member for Elder for his question and his obvious interest in matters affecting young people.

Members interjecting:

The Hon. R.B. SUCH: He is an excellent member. As a Government, we are strongly committed to young people. We want to give them not only hope but a real future in terms of employment and training. As Minister, I have had a review conducted of the youth strategy—

Members interjecting:

The Hon. R.B. SUCH: Have you finished? I have had a review conducted of the youth strategy and we will be refocussing that strategy into areas of employment and training because, whilst the figures for youth unemployment came down last month, they are still too high and we want to make sure that young people have employment opportunities and other opportunities outside the employment area.

The youth strategy involves a significant section of my department. It has about 29 staff and a budget of $2.2 million and we want to channel those staff and resources into areas that produce employment and training outcomes. The youth strategy has done many good things over time, including supporting the excellent youth in motor sport program, with which my colleague is also involved.

It is time to refocus. The youth strategy has been operating for many years and it is time to have a close look at it. That has been and now we are moving into the next phase. I will be announcing shortly details of how that new phase will be conducted. Once again, this Government is getting on with the job. We will be seeing not only a refocussed youth strategy—

Members interjecting:

The Hon. R.B. SUCH: We know you take a lot of interest in young people. We will soon be seeing a youth expo, a youth Parliament and the introduction of youth media awards as part of our program of acknowledging that young people are fantastic and deserve recognition and support.

GAMBLERS' REHABILITATION FUND

Ms STEVENS (Elizabeth): My question is directed to the Minister for Family and Community Services. When will community services agencies receive resources from the Gamblers' Rehabilitation Fund to enable them to provide much needed support for the increased number of people seeking help as a result of gambling related problems? The Gamblers' Rehabilitation Fund was established in August 1994. To date, community services agencies have received no funds from this source.

Members interjecting:

The SPEAKER: Order! The Minister has the call.

The Hon. D.C. WOTTON: First, it is not right to say that no funding has been made available: $25 000 has already been made available to the Central Mission, recognising the excellent work that the Central Mission does in working with gamblers and their families. As to other funding, I anticipate that I will receive recommendations from the advisory committee in this area from the middle of March. I am anxious for that funding, which has been generally provided by industry and as a result of negotiations with Government, to be made available as quickly as possible, but we also have to ensure that we determine the most appropriate agencies to receive that funding. I will be receiving recommendations from the advisory committee in mid-March so that further funds can be made available for that cause.

INSTANT TICKET VENDING MACHINES

Ms GREIG (Reynell): My question is directed to the Treasurer. Is the Lotteries Commission continuing with the trial of instant ticket vending machines? Last year the Lotteries Commission trialled three machines at various retail outlets in the city. The machines dispense instant lottery tickets—or scratchies—and I understand that the trial was undertaken with a view to more widespread use of the machines to improve sales of instant tickets.

The Hon. S.J. BAKER: At the end of the last trial period when the machines had been out in the system for two months and were in the process of being withdrawn, because a limited time frame was in place, the member for Playford discovered one machine was in the community, but there were three machines: one was at Coles supermarket, Port Adelaide; one at Foodland supermarket, Fulham Gardens; and one at BP Foodplus, Mile End. Strict conditions were placed on that trial. One condition, which applied before we changed the age limit, was to test whether there could be a control on young people buying from those machines. That was one of the tests that had to be applied and resolved. Parliament was thinking about the issue at the time and I insisted that we had a way of checking, not to stop kids buying them, because the law did not allow that, but to see whether there was a way to scrutinise the utilisation of instant money tickets.

As the member for Playford would be well aware, those machines were being withdrawn when the attention of the House was drawn to that matter. It was not my intention to continue in that mode. The machines were supplied for nothing and did not cost South Australians any money. Obviously, the proponents want us to utilise their machines so that they can get some revenue through their utilisation. Apparently there are three machines in use and, if anyone wants to know in which hotels they can buy instant money tickets through these vending machines, they are in the Salisbury Hotel, the Portland Hotel at Port Adelaide and the Clovercrest Hotel at Modbury North. Some trials are under way. There is a belief that machines could dispense their products in a way that freed up counter services. As members would recognise, in those outlets counters are taken up with X-lotto purchases and instant money tickets. It is not my intention at this stage to trial them back into those venues unless we receive a request to do so, but these ITVs are being used in hotels to determine whether there is a demand for that product in that situation.

HANSARD MATERIAL

Mrs GERAGHTY (Torrens): Mr Speaker, my question is directed to you. Will you rule on whether it is proper for members to produce and distribute in their electorates material which to all intents and purposes appears to be a reproduction of *Hansard* but is not? Residents of Newland have recently received material from their member described as a grievance debate in Parliament, using fonts and layouts identical to those used in *Hansard* proofs. However, the material is significantly different in content from the actual *Hansard* record—

The Hon. R.B. Such interjecting:

The SPEAKER: Order!

Mrs GERAGHTY: I have been contacted by residents of Newland about the allegations levelled at me by the member for Newland. After they learned that I denied those falsehoods, those people have expressed outrage at receiving what they described to me as censored material.

Members interjecting:

The SPEAKER: Order! The Chair has not seen any of the material referred to by the honourable member, so I am not in the position to give a ruling. If the honourable member supplies me with the material, I will consider the matter and bring down a reply in the future.

GRIEVANCE DEBATE

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

Ms WHITE (Taylor): I previously raised a serious issue in this House in regard to the Minister for Employment, Training and Further Education's handling of the expulsion procedures for a TAFE student. I was prevented from completing that speech due to interjections from the Government. I would now like to talk about that issue today. I believe members of this House should understand the very serious implications of what was discussed. Before I address the events of yesterday, an extraordinary action has been taken by the Minister in this House today. Earlier, the Minister made a ministerial statement in which he implies a threat to remove me from the council of the Torrens Valley Institute of TAFE.

The Hon. R.B. Such interjecting:

Ms WHITE: The Minister interjects to say, 'It's not a threat, it's a promise.' I suggest that the Minister walks down a very precarious path. Is the Minister actually implying a threat to remove a democratically elected member of an independent institute council? In that statement the Minister makes a number of interesting comments. I find it an incompetent action, by a Minister of the Government in this State, to include in his ministerial statement an untruth. I refer to his statement that I am a member of the Torrens Valley Institute Council due to my former position as an employee of the Defence Science and Technology Organisation: untrue. I was democratically elected to that council after applying for the position in response to an advertisement in the local paper—an advertisement, I might say, to which the member for Newland also responded.

Had the Minister bothered to walk the few metres to where the member for Newland sits, she would have advised him, I am sure, of his own institute council's election procedures. They are a democratic process. It was an election, I might say, in which the member for Newland was unsuccessful. It is absolutely unacceptable that the Minister does not know the procedures of his own institute and institute council.

It is further astounding that he did not even bother to check the facts asserted in that ministerial statement, and to further extrapolate those into a dangerous threat. I am disappointed and outraged by the actions of this Minister. Suggestions of impropriety on my part I take very seriously indeed, and I warn the Minister that I take threats to my professionalism—

The SPEAKER: Order! There is a point of order. The member for Unley.

Mr BRINDAL: The record will show that the member warned the Minister. I do not believe that it is within anyone's province in this House to warn anyone, and I ask you, Sir, to rule.

Members interjecting:

The SPEAKER: Order! I do not think the Minister is particularly frightened by the warning.

Members interjecting:

The SPEAKER: Order! It is not contrary to Standing Orders because the honourable member never made a threat. The member for Taylor.

Ms WHITE: Thank you, Mr Speaker, and thank you, the member for Unley. This Minister has attempted to give the impression that he sought information and approached Crown Law for advice before he made his decision on the outcome of the expulsion recommendation by the institute and institute council. In his response to a question from me yesterday, he clearly states:

> I immediately asked for further details and said that I would withhold the expulsion order until I was able to get the full details in relation to what damage he had done, if any.

The Minister is implying that this all occurred before he made his decision: not so. I remind the Minister that he issued a memo on 10 January, in which he agreed to expulsion but, if the student complied with—

Mrs Kotz interjecting:

The SPEAKER: Order! The member for Newland is out of order. The honourable member's time has expired.

Mrs PENFOLD (Flinders): I draw the attention of the House to a significant happening in Adelaide this Sunday, 18 February: the celebration of the beatification of Mary MacKillop is to be held at Football Park. It is a notable honour that the first person in Australia to be considered for sainthood in the Roman Catholic Church was a South Australian. It is not too much to say that the whole of Eyre Peninsula has benefited from this woman's initiative and dedication to an ideal. We have a branch of the Sisters of St Joseph in Port Lincoln. Nowadays, St Joseph's School caters for children from reception to year 12, producing students who not only achieve a solid academic record but also complete their education with sound social graces. Businesses in Port Lincoln, commenting on teenagers who apply for jobs, say that those who have attended St Joseph's School invariably are polite and courteous—something which employers look for in staff relations with customers.

But one of the biggest influences that the Sisters of St Joseph have had locally is in the area of music. Individuals, families and the community have all been blessed through the strict tuition of the Sisters. It is therefore appropriate that, as part of the celebrations at Football Park this Sunday, excerpts from *This Woman* a musical on the life of Mary MacKillop, will be played. This musical received complimentary community comment when staged by St Joseph's School in Port Lincoln. Among those who praised the merit of this work were people of the calibre of ABC pianists and State renowned accompanists.

To put it another way, those who recognise the work of this composition have considerable standing and experience in the world of music. The composer of *This Woman*, Dieter Hauptmann, has had experience across the world in stage presentations. He was formerly the Director of the Cossacks, a troupe of European musicians who toured many countries. The Cossacks' repertoire consisted of Cossack and other European music, highlighted with appropriate folk dances. Dieter made reproductions of early instruments, such as the balalaika, which were used in the performance.

I give members this background to show that the composer of *This Woman* is a man of considerable talent and experience. During two tours of Australia the Cossacks played in Port Lincoln. Dieter and his wife, Almuth, were so taken with Port Lincoln that a friend sponsored them to migrate here. Since moving to South Australia, Dieter has been actively involved in arts in general and music in particular. It is almost as if this man was in this place at this time for the opportunity to write this musical. Now, financial sponsorship is being sought to stage and tour *This Woman*.

The background of the Hauptmanns, as I have described, gives credibility to the proposal because of their past experience. It is an exciting concept, which I trust will come to fruition. It is especially pleasing that a woman from South Australia is being considered for sainthood, and now a South Australian has written a musical about her life. We can be

justly proud of our State. Just as the musical *The King and I* promoted what was then the country of Siam, so the musical *This Woman* could promote South Australia across the world. It would be positive publicity in a pleasurable form.

It would be gratifying if some of our Government departments involved in arts and tourism could work with the proposal. A lot of taxpayers' dollars are spent in these areas. It would require hard work to successfully produce *This Woman* but the spin-offs would be immeasurable. One spin-off would be to put South Australia on the map as a cradle of the arts, nurturing and promoting excellence in all fields. We have world names—such as Robert Helpmann, Julie Anthony and Thomas Edmonds—to add credence. Additionally, the South Australian Festival of Arts has been a vehicle for the performing arts, albeit mainly from the importation of acts and events.

However, one of the thrusts of the festival, which could possibly be given more prominence, would be the promotion of local talent, bearing in mind that we do not want to become an elitist clique playing to ourselves. Compositions such as *This Woman*, could have the double effect of elsewhere publicising this State and its talent, thus encouraging listeners to visit South Australia for more of the same.

The South Australian Education Department has developed a high standard of music education in schools, and the State generally is blessed with considerable talent. Our tertiary institutions, such as the Elder Conservatorium of Music, are well regarded also. Another spin-off could well be an increase in overseas students seeking training in these areas. Paying students would provide additional places for professors and teachers, all of whom would add to our State's reputation in the music world.

The Hon. FRANK BLEVINS (Giles): I wish to speak today about the cleaning industry and, in particular, the cleaning of our schools. If they have not been already, all members will be contacted very soon by school councils and by school cleaners and their representatives about what is occurring in that particular branch of the industry. This Government has determined that there shall be significant reductions in allocations involving the cleaning of schools. The Government has said that trials will take place in certain schools, and schools in my electorate and in the electorate of the member for Flinders are the subject of some of these trials. The cleaner is now expected not to clean the school. Quite extensive orders have been issued by the Education Department stating that schools ought to be given little more than a lick and a promise—and in a very short period.

One of two things will happen as a result of this: either the schools will get filthy or the workers will be exploited, because the cleaners will feel that they have sufficient pride in the school to clean it at their own expense. One or the other will happen, because there is absolutely no way the schools can be cleaned properly in the time that has been allowed by the Education Department. The school contractors have agreed with this obviously and are cutting each others' throat to put in the lowest possible price consistent with the Education Department's guidelines but, of course, we all know what these contractors are: we know that the cleaning industry is full of more shonks than any other industry in South Australia. There is barely a reputable company left in the cleaning industry, as they have been driven out by what I call these shonks.

What particularly concerns me is that, when the schools do become filthy—not just in my electorate but in other electorates—the health of the students is at risk. There is no doubt that, for whatever reason, within Australia, and within South Australia in particular, there is a very high incidence of asthma among children. A survey has recently been released that shows that the Upper Spencer Gulf has the highest incidence of asthma in South Australia. It is an area where quite a bit of airborne dust from the surrounding bush comes into the homes and the schools all the time. It is inevitable, and there is nothing we can do about it, except attempt to keep the place clean. For this Government to say to the cleaners, 'You don't have to clean the schools properly and, in any event, we are not giving you enough money to clean the schools properly' is an absolute disgrace. If funds have to be saved I would have thought that the health of children was more important than the paltry amount the Government will save by this particular measure.

I can say to the Minister that we are not interested in dusty and dirty schools, and the people of South Australia—and, in particular, the people in my electorate—certainly do not want their children living and attempting to be educated for several hours a day in areas that are not clean. We all have to concede that children are not the cleanest of people on this planet and they, by their very nature, from time to time create a bit of mess. However, now the cleaners will not be allowed the time to clean the schools. Our schools will suffer; our children will suffer; those children with asthma will suffer; and I wonder where the liability will lie with this higher incidence of asthma if some of these incidents turn out to be tragic. It is not the place for economies; our schools have to be clean, particularly in areas such as the Upper Spencer Gulf.

The ACTING SPEAKER (Mr Becker): The honourable member's time has expired. The member for Reynell.

Ms GREIG (Reynell): Early last year, on coming to Government, the Minister for Industry, Manufacturing, Small Business and Regional Development made an announcement to this House and to all South Australians that South Australia was open for business and, at the time, I do not think many here would have believed how inviting that statement was, particularly to investment in my electorate. During 1994 we have seen both growth and investment in Reynell: Solar Optical, the Mobil refinery, Mitsubishi and, of course, Transitions Optical Incorporated. Their development and growth are all achievements of this Government.

I would like to share with the House information relating to yet another major project in my electorate. The project, a $4 million aged care complex to serve residents in Adelaide's southern suburbs, will be built at Christie Downs. The project is to be built by St Basil's Homes for the Aged and will create 100 new jobs, as well as much needed nursing home and hostel care accommodation. Work on the aged care complex, comprising a 40-bed hostel, a 60-bed nursing home, a multi-purpose community centre and administration facilities, is scheduled to start at Christie Downs early in March. St Basil's decision to go ahead with this project is a tremendous boost for both the elderly in the outer southern suburbs and the employment prospects for those seeking work.

The project will create an average of 50 to 60 jobs during its first 10 months of construction and a further 50 part-time and full-time positions in connection with the aged care complex upon completion. The importance of new jobs in the outer southern suburbs should not be understated. The unemployment rate within the Noarlunga City Council area is estimated at 12.4 per cent according to the Department of

Employment, Education and Training figures for the June average, and that is 2 per cent higher than the State average. While the rate has fallen by more than 1 per cent since 1993, it is still clearly too high. Projects such as the one planned by St Basil's are a valuable boost in maintaining a downward trend in unemployment.

With South Australia's ageing population tipped to rise more quickly than that of other States, there will be an increasing demand for hostel care or nursing home beds from the frail and elderly. The new aged care complex will be adjacent to St Basil's 48 independent living units, the first of which was built in 1986 as a joint venture by the South Australian Housing Trust and the Greek Archdiocese of Australia, St Basil's parent body. The new complex will also complement St Basil's existing aged care facilities at St Peters and Croydon Park, as well as its Glandore nursing home. My electorate welcomes this project and looks forward to sharing the benefits that will come from such a development.

Mr LEWIS: I rise on a point of order, Mr Acting Speaker. As a friend of the family and also as a concerned member of this House, I expressly ask that the pronunciation of the name Reynell be correctly stated. It is just as offensive to the Reynell family to mispronounce their name as it is to the Pitjantjatjara or Ngarrindjeri people to mispronounce their name. There is no emphasis on the first vowel in the first syllable; it is not 'ray' as in 'Hey, hey, it's Saturday', nor 're' as in 'hee hee'.

The ACTING SPEAKER: I hope that members will take note of the point raised by the honourable member. The member for Price.

The Hon. Frank Blevins: Why should we take any notice of what he says?

Mr Lewis: Because it is offensive to the family.

The ACTING SPEAKER: Order! The member for Price.

Mr De LAINE (Price): An announcement made by the Minister for Education and Children's Services, the Hon. Rob Lucas, in another place that the Port Adelaide Girls High School will close at the end of 1995 has distressed the whole school community at this historic single-sex teaching facility, and it has angered me, as the local member. The justification for the decision was that the school was neither educationally nor economically viable. In my opinion, the school's educational viability has been purposely destroyed over time, not only by this Government but also by the previous Labor Government. It is only now that this is obvious to me. Had I realised at the time that the previous Government was running the school down, I would certainly have been more outspoken and critical.

My reading of the facts is that for several years now the school has had a number of Acting Principals appointed and, while I had thought this was only a temporary measure while assessments and perhaps restructuring of the school were being planned by the department, this has proved not to be the case. Now I realise, as does the school community, that in fact it was being run down in order that parents would lose confidence in the school and what the school had to offer for their daughters and would enrol them in other schools. This has happened to a large extent; therefore, enrolments in the school have run down to a point where the Minister has cause for criticism and can use those figures to justify closing the school. As far as its economic viability goes, I believe very strongly that, because of the enormous importance of education, particularly in these modern times, it is the responsibility of governments of all persuasions to provide appropriate education where it is needed, almost irrespective of the dollars and cents involved.

There are some very good reasons why the school should not be closed. There is the importance of programs delivered by the school to girls and young women in the western suburbs. Apart from the mainstream subjects that are taught at the school, there is a young women's education access program. This is the only program of its type in Australia, and the school is very proud of the fact that educators from interstate have visited the school to see how it is done. There is an electronics club for girls, and I have had some involvement with that. It is an excellent program, which has won a national Engineering 2 000 award and which has been documented as best practice through the Women in Entry Level Training Best Practice Report.

Students in Year 12 Social Studies have published a document called *Angkiku Bultu*, which documents Aboriginal women's lives. Students in the school successfully participated in the South Australian Gas Company E Team program, and the Advertiser Newspapers education award was won by Year 10 students of the Port Adelaide Girls High School. Students also gained a number of credit awards in the Westpac maths competitions. Two students were selected to participate in the Siemen's Science Schools Program, and these are just a few examples of recent achievements by the school and its students.

Port Adelaide Girls High School has been a major focus for the education of girls and young women in the western suburbs, and it has a proven outstanding track record over many years in education. Some of the reasons why the school should not close are the importance of the programs delivered by the school to girls and young women in the western suburbs; the need for students who wish to go to a single sex school to be able to do so; and guaranteeing that the goals of the Social Justice Action Plan are met.

It seems ironic and strange to me that within days of the announcement that the school would close at the end of the year I received a letter from the Minister, the Hon. Rob Lucas, dated 2 February this year. Titled 'Schools Declared under the Disadvantaged Schools Program', it contained a list of 11 schools in my electorate of Price, one of them being the Port Adelaide Girls High School. The schools declared under the Disadvantaged Schools Program are identified as those serving the most economically disadvantaged communities, which of course this is. Factors in the calculation of this index are school card enrolment, school card approvals, Aboriginal student enrolment and the school's student enrolment.

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

Mr BASS (Florey): Today I would like to speak about an organisation for which I have had great admiration since Christmas, and that is the Salvation Army. I have had only two previous contacts with the Salvation Army. Once was when as a 16 year old youth I worked for a Salvation Army officer in an orchard. I remember I ran his truck down the orchard without being in it and smashed it into an almond grove. When the Salvation Army officer came back he took it in his stride: he did not swear but said it was bad luck, and I was most impressed with the way that this Salvation Army person handled what I had done to his vehicle. My second contact was when I was racing motor bikes at Rowley Park. Every Friday a Salvation Army person would be there collecting for the Salvation Army's worthy causes.

Before Christmas I was approached by a member of the Tea Tree Gully Salvation Army in the shopping centre where my electorate office is situated with a request that I act as Father Christmas for them each morning and afternoon for 10 minutes for the five weeks leading up to Christmas. I think probably they asked me because I did not need any padding to fill the suit. I took on this job and for 10 minutes each morning and afternoon and for a couple of nights I went out in my red suit and gave sweets to the kids and played the role of Father Christmas. Every time I went out, sitting at a Christmas tree was a member of the Salvation Army, from 10 o'clock in the morning to 6 o'clock every night and, when there was late night shopping, to 9 o'clock.

Members of the Salvation Army were there, selling little ornaments that could be placed on the tree and raising money for the disadvantaged families in the north-eastern area. They found that they did not collect enough food to hand out to the disadvantaged families, so on their advice my office designed $5 food vouchers, and 60 disadvantaged families were given five $5 vouchers, which the shops in the shopping centre that my office is in readily agreed to swap for goods, whether it was presents, food or books—anything to help the families have a better Christmas.

The dedication of the members of the Salvation Army and their followers is something that you really have to see. Whether it was hot or cold, they were there. They helped anybody who came up to them, they were always cooperative and they were always pleasant to speak to. They have my admiration for carrying on like this day after day, simply to help disadvantaged people. I believe that many organisations in South Australia and Australia help disadvantaged people. The Salvation Army relies very much on donations and assistance from other people.

I may say that this experience has changed my outlook as far as the Salvation Army is concerned and, while I am able, I will continue to assist the Salvation Army with its efforts to help disadvantaged families. I have already been booked to be Father Christmas at the Modbury Triangle shopping centre next year, and I will definitely be there. I congratulate the Tea Tree Gully Salvation Army for the work it is doing in the area and also the tenants of the Modbury Triangle shopping centre who got into the spirit and arranged to cash in the $5 vouchers for food or for presents to help those families.

TAFE STUDENTS

Ms WHITE (Taylor): I seek leave to make a personal explanation.

Leave granted.

Ms WHITE: Earlier this day in this House, the Minister for Employment, Training and Further Education made the implicit allegation that I had acted improperly and had failed to return documents that had been sighted at a council meeting on Monday of this week. That allegation is wrong. I did indeed return those documents after they had been sighted. The Minister does not know what documents I do or do not have. The fact is that I have some documents and, as the Minister suspects, they are documents over which he would be extremely embarrassed.

Mr Wade: Are they confidential?

The ACTING SPEAKER (Mr Bass): I suggest that the member for Taylor does not reply to the interjection and that the member for Elder does not interject.

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE BILL

Adjourned debate on second reading.

(Continued from 14 February. Page 1579.)

Mr BECKER (Peake): When this legislation was first brought into the House in 1992, I (and I think one other member) wished to speak but was denied that opportunity because it was to go to a select committee. There seemed to be a lot of pressure and anxiety on the part of those supporting the move that it quickly get off to the select committee and that those who wanted to speak could wait their turn. On occasions, I get annoyed at the so-called parliamentary democracy procedure in this House. I think it is wrong to deny anyone that opportunity if they wish to speak, because some of us have very strong views on the right to life. So, from that very moment I have been annoyed that I was denied that opportunity to speak in the first place, because it takes a bit of sting out of the argument that I wanted to put forward.

I have watched this debate as it has progressed and the actions and efforts of some people in promoting this issue as hard as they can, and I have watched the twisting and turning. There has been a tremendous amount of compromise from the original legislation. People who are involved in it will deny this. Indeed, the people who are promoting this legislation will deny just about everything that I can find. They have been able to back the churches into a situation where they can openly say that the churches support the legislation or support the legislation if it is amended. It would have to be one of the greatest backdowns of all time. As I understand from my church and the upbringing that I had, we support the right to life. Nobody has the right to take another person's life or to assist in the taking of that life. I cannot understand why the medical profession would want to be party to it, and I cannot understand why some of the churches would agree to that as well. I am surprised that they have agreed so easily and readily on this issue as it has been put to me.

It is not my intention to go into a long debate now, because it is on record. I have spoken previously on this matter and made my views very clear. However, some statements in the Minister's second reading explanation surprised me. On 3 November 1994, page 989 of *Hansard*, the Deputy Premier said:

> The select committee found virtually no support in the health professions, among theologians, ethicists and carers, or indeed in the wider community, for highly invasive procedures to keep the patient alive, come what may and at any cost to human dignity. Clearly, moral and legal codes which reflect such practices are inappropriate.
>
> However, at the other end of the spectrum, the select committee firmly rejected the proposition that the law should be changed to provide the option of medical assistance in dying or 'voluntary euthanasia.' The report dealt at some length with the reasons why the select committee believed the concept of intent, and distinctions based on intent, should be maintained in the law.

Some of us cannot fully accept those statements. I see this Bill as opening the door, albeit very narrowly, to euthanasia. There is no doubt that this will ultimately lead to euthanasia if we look at what is happening in other States and Territories in this country and at practices overseas. Indeed, it is very clear from what has happened in Holland. A recent Dutch Government survey showed that, of 130 000 deaths annually,

22 000 (about 17 per cent) were as a result of euthanasia where the doctor had the implied or explicit intention to kill, and, of those, 12 000 were without the patient's request.

That information has come to me from Margaret Tighe, Chairperson of Right to Life Australia. Many people will dispute and criticise what Margaret has to say on occasions but, having met the lady and the people with whom she is involved and having had the opportunity to speak to those people at a seminar two years ago, I believe this lady has worked extremely hard in preserving the interests of right to life in Australia. On 3 February she wrote to me, as follows:

> I write once again to express our opposition to the Consent to Medical Treatment and Palliative Care Bill 1994 which many naively claim does not allow euthanasia.
>
> If the Bill does not allow euthanasia and is only concerned to ensure that patients receive proper palliative care and appropriate and effective pain relief, then there is absolutely no need to legislate in this way.

That is quite right. She goes on to say:

> Good and conscientious doctors have provided dying and seriously debilitated patients with this for years.

Again, I agree with those comments. She continues:

> Similarly, if the Bill does not allow euthanasia, then why is a conscience vote allowed in the Parliament? The answer is because the Bill deals with the procuring of premature death and represents a further shift in the devaluing of human life.
>
> The saving provision in clause 18 does not cover death by omission and so leaves the Bill wide open to deliberate ending of life by withholding of warranted, life-saving treatment—passive euthanasia.
>
> In clause 4, the definition of life sustaining measures includes artificial nutrition and hydration which cannot of themselves be described as medical treatment since they have no curative value. Rather, they are essential to the general well-being of the patient and if withheld (unless just prior to death) will cause death by starvation and dehydration—a horrible way to die and a means that is as fatal as a lethal injection.
>
> Finally, I recommend a maxim that should be adopted by the Parliament. Britain's leading expert on jurisprudence, Professor John Finnis, of Oxford University and originally educated at St Peter's College and Adelaide University, speaking on the legal implications of the Bland judgment in the UK (which sanctioned the death by withdrawal of nutrition and hydration of a comatose patient Tony Bland) said, 'In my view, Parliament ought now to enact a statute laying down that rule of law which has been a rule of law for many hundreds of years and which was substantially rejected without discussion of its own substance by the House of Lords in their judicial capacity: that those who have a duty to care for someone may never exercise it in a manner intended to bring about that person's death.'

That is the very point that I make. I fail to see why those who are endeavouring to do what they want to do make so forcefully the points that they make.

Let us consider what a former colleague in this House had to say. I refer to Jennifer Cashmore, the Chairperson of the Palliative Care Council of South Australia Incorporated at Eastwood. She wrote to the *Advertiser* on 20 December 1994. Part of the letter traces the history of this legislation, and then she goes on to say:

> [This legislation] is now in the second reading stage in the House of Assembly. Since there appears to be almost universal agreement about the main principles of the Bill, there has been little or no public controversy and, consequently, very little reporting of the issues or the parliamentary debates.

If you want to get something through this House, an old, long Labor socialist tradition is that you go out and seek compromise, no matter what it is, because you get established on the statutes somewhere, somehow the beginning, and in establishing that beginning, you get a toe hold or a foot hold in the door, so to speak; so ultimately, no matter how long it may take, you achieve what you want to do. It is an old socialist action, as far as I am concerned, and, in the 25 years I have been here, I have seen it tried many times.

I still hold the view that this is the beginning of the end, as I have said in previous debates. There has not been the huge demand that is made out for this legislation: it is in isolated pockets. It is in areas where people have been sought out and asked to make a decision on a subject that in many cases they were quite happy to leave with the medical profession. The medical profession is quite capable of and competent at looking after patients. I do not see why we have to go to all this trouble to create this situation. Jennifer goes on in her letter:

> South Australians are entitled to know the history and purpose of this legislation.

She goes on:

> First, it provides the power to appoint an agent to make medical decisions when you are unable to do so yourself.

There can be quite a dangerous situation in appointing an agent. At the time you appoint the agent, you could be well in your faculties and say, 'If I suffer a stroke or debilitating disease, I do not want to linger on, hooked up to all sorts of machines and kept alive at huge expense to my estate, and so on. Pull the plug and let me die peacefully.' I do not know about that.

A very good friend of mine one Friday morning said, 'See you next week.' He had to go into hospital to have an angiogram. He said, 'I will be in there today, out tomorrow, see you next week.' He went in, had the angiogram, and was told that he would have bypass surgery on the Monday morning and would be staying in hospital. He had the surgery on the Monday morning and was dead by the Thursday. The reason given for his death was that, during the operation, he must have had a stroke. There did not seem to be any confirmation whether or not he did, but the relatives told me he had a stroke. He was on the life support system for 48 hours, and a decision was made to take him off that system. He lived for a day or two afterwards, because the bypass heart operation was a great success. His heart was very strong and he was able to keep going, but it took him a couple of days to pass away after being taken off the life support system. I do not know whether it was a good or bad decision. I believe in the right to life and that every opportunity should be taken.

I gave an example last time of a person who was injured in an accident and was given up for dead. The decision was to be made within 12 hours as to whether that person was to be taken off life support if they did not show any sign of life whatsoever. The next morning the doctor came in to check, the person moved their eyelids, so it was decided to keep the person on the life support system. Weeks later, the person was able to walk back into the hospital and thanked everybody for saving their life. It would have been very easy to switch off the life support system on that person and that person would have been dead and not around to tell the story.

So, who is to know? Who is playing the Almighty Maker in this situation? Sure, there is a lot of feeling and emotion in this issue. Many people have been affected by terrible traumas. I will not deny that, but the medical profession and the palliative care organisations and hospitals have established a wonderful method of looking after people in those final days and hours of their life. I do not think it is up to us to interfere in that at all.

As I said, it is very easy to make a decision today, while you are feeling very well, as to what you do not want

regarding what you may perceive to be the end, and no doubt if you are in a tremendous amount of pain and looking for relief, it is very easy to say, 'For goodness sake, end the whole thing.' But I still have faith in the medical profession to come up with the solutions. That is why I find it very difficult to accept what is proposed in this legislation. I hold that view very strongly against the wishes of my own church, which now supports this legislation. I think they have been misled, because I believe that our appointing an agent could turn up legal loopholes.

I think we have all be contacted by Karen Clark of Surrey Hills, Victoria, pointing out that the Victorian legislation was flawed. She went into a long presentation as to what she believed were some of the faults in that legislation and gave us warnings. No doubt her comments will be considered when we get to the Committee stage of the legislation. I believe it is a simple case that members have to consider. I know they have been well and truly lobbied, and the lobby process by those who want to force this legislation through has done a very good job.

The disappointing aspect of this measure is that it has gone on for so long. The people who initially sponsored this legislation have continued to push for it as though it will be a symbol to their efforts to achieve something. As I said, I see it as the opening of a very creaky door that will result in dangers in years to come. I just hope that all members are mindful of that and that in years to come they will recall the warnings I give them now.

The Hon. M.H. ARMITAGE (Minister for Health): It is with some pleasure that I address the House on this Bill. As other members have identified, in reaching this stage of debate in the Lower House in 1995, the Bill has had a long and chequered career. I would acknowledge in that regard the dedicated work of a number of members of Parliament, both former and present. As has been identified in the debate on a number of occasions, the select committee called for so many years ago was the instigational trigger, if you like, for this Bill.

As I indicated, the Bill has had a chequered history to get to this stage, and it has been subject to protracted debate. I well recall that in the most recent session of Parliament considerable concern was expressed about the length of the debate. In that time, of course, the people of South Australia have had a lot of opportunity for input into the Bill, both in the previous Parliament and this one, and it is fair to say that that input has been profuse and also valuable. Certainly, it has reflected the concerns felt by many South Australians.

I thank all members for their contribution to this important debate. In doing so, I acknowledge the obvious sincerity of all the members who have spoken in this debate. It is fair to say that I do not agree with all the views expressed, but I acknowledge that all those views have been sincere. Members have related their personal feelings when confronted with situations either within their family or involving their friends who have been close to death; they have described their experiences surrounding what are horrible times for everyone. Whilst acknowledging those personal contributions and the sincerity of members, I cannot help but note that this debate may well be a good indication of the sincerity with which members of Parliament tackle all debates, although clearly there is an added element when people are expressing their own conscience about such an important matter.

I wish briefly to describe my own experiences in relation to these sorts of matters so that people can see the formative elements of my views in this regard. First, I draw on other members' experiences about people dying to identify that, in the Magill wards of the Royal Adelaide Hospital when I was about 17 or 18 and a fresh faced medical student, I was confronted with 30 of 33 patients suffering terminal cancer. In the three months that I worked in those wards as a nurse assistant, all those patients died, to be replaced by more patients with terminal cancer.

Mr Brindal: Was it a palliative care ward?

The Hon. M.H. ARMITAGE: No. I specifically mentioned those wards because, whilst the standard of care was first class and the staff were dedicated to alleviating the suffering of the patients as much as they could, I cannot help but observe how much better hospices are today in the treatment of such patients.

I wish briefly to relate a moment in my medical career that will stay with me forever. As a resident medical officer I was called to see a patient upon whom what can only be termed heroic surgery, in the worst possible definition of 'heroic surgery', had been performed. This person, who was a farmer, was suffering from oesophageal cancer and the very clever surgeons had bypassed the obstruction in his oesophagus with other parts of his bowel. Whilst, as a former medical practitioner, I acknowledge the need to push back the barriers of surgical practice, when I was called at age 22 to this patient at 3.30 a.m. to administer pain relief and to be confronted with an otherwise healthy farmer in tears saying to me, 'Doctor, if I were a cow I would shoot myself', I could not help but wonder whether these surgeons had helped themselves or the patient in performing this surgery.

Mr Brindal: How old was he?

The Hon. M.H. ARMITAGE: The patient I identify was about 50 years old. It is elements such as that which have been quite formative in my view that patients in these sorts of states ought to be allowed some form of dignity. I am delighted that overall this Bill is about patients; it is about the need of patients; and it is about allowing patients to die with some form of dignity. In many of my personal experiences over the past 20 years in dealing with people who have died in extenuating circumstances, dignity has not been the prime element that one would use to describe their deaths.

Quite categorically, the Bill is not about euthanasia. Indeed, a number of people have spoken to me to inquire what amendments would be needed so that the Bill was about euthanasia. Accordingly, by that admission, it is quite clear that they are saying that the Bill is not about euthanasia. The Bill is not about, and in my view ought not be about, putting barriers in the way of people dying with dignity. It ought not be about an overly legalistic framework to surround people who are dying with the imposition of what to them must surely seem like an unnecessary charade.

The Bill does provide for the appointment of a medical agent. Clearly, in appointing such a person, one must acknowledge, the person expresses confidence and trust in that medical agent. The medical agent appointed is clearly a person with whom one can have discussions about important matters in relation to one's death, the level of pain which one believes one might be able to sustain, and the general matters of survival or otherwise from terminal illness or other instances of indignity.

The Bill assumes clearly—and I believe that this is a most important point—by virtue of the appointment of a person as the medical agent that other people have been considered and excluded. In other words, one appoints a medical agent only after one has given it some thought and other people, because

they are not appointed as one's medical agent, have been clearly excluded from that process. One would not appoint one's enemy; one would not appoint someone off the street. Clearly, a medical agent is appointed because that person is a person of significance in one's life.

The Bill does provide, as a number of members have identified, the options for advance directives. As it stands, the Bill also identifies the potential formation of a register in relation to the intricacies of this Bill. In my view, the register as it is intended may well be impractical. There may well be other difficulties in relation to privacy and there may well be administrative costs involved, and so on. I intend to discuss those matters further in moving amendments in my name.

In overview, this Bill, which has been a long time in getting to this stage, recognises the great advances in medical treatment. I believe it recognises the expectations in society that, because of those aforementioned advances in medical treatment, people can expect to die a more dignified death. It is obviously an issue of great import in the community, and I hope that the end result of the deliberations of the Parliament of South Australia will bring the dignity to which I have referred previously and which was clearly the intent of the original discussions on the Bill. In closing, I acknowledge the obvious sincerity with which all speakers have addressed this issue, and I look forward to further contributions at the Committee stage.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

Mr LEWIS: In the event that the measure passes, can the Minister say when it is likely he will proclaim the legislation?

The Hon. M.H. ARMITAGE: It is the intention to have an education program on matters such as advance directives, medical agencies and so on. When that has been achieved, we would bring the Act into force. In other words, it would be within a number of months, following an education program.

Clause passed.

Clause 3—'Objects.'

The Hon. M.H. ARMITAGE: I move:

Page 1, line 25—Leave out '18' and insert '16'.

The purpose of this amendment is to make the age at which a person can make anticipatory decisions about medical treatment 16 rather than 18 years. This amendment relates to a later amendment on file in my name. The issue is related to both principle and consistency. A person of 16 years of age is mature enough to make decisions about their own medical treatment. Thankfully, that point has been recognised and is reflected in the Bill.

It follows that 16 years also ought to be the age at which people can make an advance directive and appoint a medical agent. This matter also will be dealt with by a later amendment standing in my name. As we would all recognise, a person of 16 years of age is able to procure a driver's licence and can, by means of that licence, donate their organs or at least indicate their wishes about donating their organs. I put to members that, in effect, that is a form of advance directive. It is clearly identifying that a person of 16 has the capacity to make these major decisions. Given that, it is my strong belief, particularly relating to my experience in medical practice (quite a bit of it dealing with people of this age), that 16 is an age at which people ought to be able to make an advance directive.

Mrs ROSENBERG: I understand that it is accepted between both Houses now that 16 is the relevant age at which people can make such decisions for themselves, and I do not disagree with that. However, it is my experience—and because of the Minister's medical background, I would like him to comment—in dealing with some cases that an individual has a medical problem for some time that has delayed maturity. Is there some way we could consider that 16 is not the same for all children?

The Hon. M.H. ARMITAGE: I understand the point that the member for Kaurna makes, but it is a subjective assessment as to maturity or otherwise. There must be an occasion where one makes a definitive decision in this matter and, as I indicated, 16 is recognised by a number of features of society as an appropriate age for maturity. I believe that that ought to be the case in this instance. In no way do I denigrate the member for Kaurna's views on this matter, but we should also recognise that in these instances we are legislating for the vast majority of people rather than a smaller percentage.

Mr LEWIS: I have the most profound respect for the Minister but no support for him on this occasion for the view that he has expressed. He is clearly out of court. People at 16 years of age are still experimenting with their emotional relationships with others. The implication of this and other amendments the Minister proposes to this Bill clearly indicates that he does not understand the difference between adolescence and adulthood and the capacity in adolescence to accept the more or less simple and straightforward decisions, and physical responsibilities does not imply the kind of insight necessary, in my judgment, to hand over responsibility for making decisions about one's life to someone else. And, worse, if it is good enough for someone aged 16 to assign that responsibility it is equally likely that they would want to assign it in some instances to people who are 16 or 17 years of age. Nowhere is that question dealt with and, in my judgment, that is a deficiency of the legislation.

That raises the kind of bizarre pact that could be made between young people, whom I have heard discussing such kinds of behaviour as none of us in this Chamber would countenance, all of which is outside the law, some aspects being more serious than others. Testing the limits of drug dosing and overdosing in a shooting gallery; surfing on the top of rail cars; playing chicken on the roadway with trucks in country areas; bombing the windscreens of cars coming from the opposite direction with stubbies of beer—those are the kinds of opportunity for idiocy in the behaviour of 16 year olds that has largely evaporated by the time they reach the age of majority—18—where those kinds of experiments are well and truly over.

I do not mind that any individuals at age 16 accept responsibility for their own lives, where they are making that decision in the circumstances of full knowledge that they are suffering from acute trauma or incurable disease. I do not mind that at all, but I cavil at the proposition of enabling them to assign to each other the right to make those decisions in the event that they are seriously injured and unconscious, and I urge all members to see the seriousness of the situations I have described in arguing against this amendment.

The Hon. M.H. ARMITAGE: I draw the attention of the member for Ridley to clause 8(3) of the Bill, which provides:

A person is not eligible to be appointed an agent under a medical power of attorney unless over 18 years of age.

I totally support that. None of my amendments addresses that matter and, indeed, the clause which I am now seeking to

amend gives 16 year olds the power to appoint an attorney, but they cannot—unless someone moves an amendment which gets passed—appoint someone unless that person is over 18 years. So, I acknowledge the point that the member for Ridley makes and I would emphasise to him, in seeking his support for my amendment, that my amendments, as on file, do not attempt to alter clause 8(3) in any way.

I would emphasise two other things: from my experience, medically, many children and youths, as they become, do have long-term chronic terminal disease. In fact, perhaps by dint of that disease and their experience of continual hospitalisations, and so on, in the vast majority of cases they demonstrate extraordinary maturity. They are much more mature than a peer of a similar chronological age. So, in my view, youths of 16, with cancers, blood dyscrasias, terminal genetic illnesses, or whatever, not only have the maturity to appoint a medical agent but indeed ought to be allowed to do it, and hence the point of the amendment.

I should also indicate that it is not compulsory to do this. If someone believes they are of suitable maturity and they have a suitable interest in this matter, then, if they wish to do it they can do it, but it is certainly not compulsory that that ought to be the case.

Mr ATKINSON: I was a member of the Select Committee into the Law and Practice Relating to Death and Dying. Only two members of the committee remain: the member for Newland and me. The proposals of the select committee have been around for a couple of years now and there is some impatience among supporters of the Bill for it to become law, and I understand that impatience. Around town, though, its delays are attributed to dark reactionary forces in the Parliament which are holding it up. The Minister points to another place: a great site of dark reactionary forces, which I would abolish forthwith. However, I want to tell the Committee that only about 10 minutes ago the Minister circulated amendments to the Bill.

Mr Lewis interjecting:

Mr ATKINSON: It is fair, and I will tell the honourable member why it is pertinent to mention it: if we in this House agreed to the Bill as it were passed in the other place, it would become law as soon as it were proclaimed by the Government: there would be no further parliamentary legislative stage. But, the Minister is now proposing amendments which will pitch it into a conference of managers. So, let those who want this Bill to be law be quite clear that it is the Minister and his supporters who are postponing the Bill's becoming law. It is the Minister who is proposing amendments which will pitch this into a conference of managers and hold it up for a very long time, and possibly throw it back to the other place. If members want this Bill to become law quickly, they will not support any of the Minister's amendments.

The second issue is that these are important amendments from the Minister, and I find it unsatisfactory that the first I knew of them was about 10 minutes ago when they were put on members' benches, and that is not good enough. Some of these amendments members could not have predicted, such as deleting any proposal for review and deleting a registry. Very few members expected those amendments to come up.

I make the general point that this Bill is now being delayed by the Minister and his supporters from becoming law; and, secondly, ambush tactics are being used to get certain amendments through. My amendments were placed on file before Christmas so that everyone could deliberate on them over the break, but the Minister has not extended the same courtesy to the House.

As to the clause in question, Mr Chairman—and thank you, Sir, for your indulgence in allowing me to range over some of the other clauses—I do not think that any Liberal members in the Chamber can go out to their electorates and claim to support—

Mr Wade interjecting:

Mr ATKINSON: The member for Elder is interjecting. He does not know what I am going to say. What do you think I am going to say?

The CHAIRMAN: That is not really relevant. I would prefer the honourable member to put his own argument and then we can all judge it accordingly.

Mr ATKINSON: I do not think Liberal Party members, many of whom claim to be conservative on social issues, can go out to their electorates now, if they vote for this clause, and say they are in favour of family life and parental authority when they are taking away that parental authority.

Mr WADE: I understand the Minister's comments in relation to changing the age from 18 to 16, and I understand the arguments put forward. However, I believed that, if a 16 year old had a terminal illness of which they were obviously aware—and as both the Minister and I have said in debate, they have a certain maturity—it was covered by clause 3(a)(i), which provides that a person aged 16 can decide freely what medical treatment they will have. Those persons are in a situation where they are aware of their disease, which may be terminal. In relation to clause 3(a)(ii), we have a situation where the Minister is stating that a 16 year old who is perfectly healthy should be able to make an anticipatory decision about what may happen to them in the future if they contract a terminal disease and end up in the terminal phase of it.

As I said earlier, in my view a fit and healthy 16 year old is not at an emotional or cognitive maturity level to take the step of deciding a course of action in respect of something that may or may not occur later in their life. The Minister's point is quite true, and I agree with him that a child who has a terminal illness and who is virtually facing death in a certain limited period should be allowed to decide their treatment, and that is already covered in clause 3(a)(i) which, as I said, provides that someone at 16 years of age can decide freely for themselves on an informed basis the treatment that they wish to have. However, changing the age from 18 to 16 in clause 3(a)(ii) is a retrograde move and one which members should realise gives an immature person, who is quite healthy, the right to decide actions to be taken for them some time way into the future, when they do not even look that far themselves. I oppose the amendment.

Mr BECKER: I agree with the members for Ridley and Spence. I cannot accept the Minister's amendment. I think that the member for Ridley covered the point very well, and I would be very interested to hear the Minister's response to the member for Spence and the member for Elder on this issue.

Mr SCALZI: I support the general thrust of the Bill and, as I said previously, there is a need for such legislation. However, the amendment in relation to having the power to appoint an agent at 16 rather than 18 concerns me. I agree with the Minister that, in many cases, when someone is suffering from a terminal illness, whether they be 13, 14 or 15, their maturity can be well above that of someone older. However, we are legislating for the majority, and I have expressed my concern that this matter should have been

addressed by two separate Bills because palliative care and general consent are two different things. I accept that there is a need for this Bill and a need for us to look at this important issue, but I believe that giving that authority at 16 rather than 18 is a retrograde step.

Giving someone the ability to appoint an agent at 16 for an unforeseen circumstance in the future is not the same as general medical treatment; it is not the same as, for example, going to the dentist; and it is not the same as having an appendectomy, and so on. It is a separate thing. We are talking about a terminal illness and, although the symptoms could be the same, the causes are not, and we have to be very careful when legislating in this area. The age of 18 is generally accepted as being the age at which someone is deemed responsible and an adult, and therefore I would not agree with the amendment to reduce the age to 16 because it is contrary to that principle.

The arguments that people obtain driver's licences at 16, and so on, are not relevant in that sense because we are dealing with two different things. This legislation relates to someone who has a terminal illness or who is suffering from symptoms which have resulted from a state of shock and trauma and which could result in death as well. It is not the same thing, and to say, 'If we allow this at 16, we have to allow a wide range of other things at 16' is misleading.

Mr LEWIS: In response to the remarks the Minister has made in relation to the opinion that I have already expressed, I would like to say that I accept that if someone is suffering from pathology that has arisen from disease causing organisms—it might be the disease itself or it might be some of the symptoms associated with the disease, and so on—that person over time has the opportunity to come to terms with the likely consequences of their condition. That is somewhat similar to my own experience, when I was told at age 12 that I was unlikely to walk again and most certainly very unlikely to live beyond adolescence or to see 21. I can remember coming to terms with that and the effect that the discovery of cortisone hormones had on my survival. I am eternally grateful to medical science for what it was able to do to me and for me to head off what I was otherwise told was almost certainly going to be my nemesis.

I can understand all that, but the circumstances to which I am referring are where acute trauma has arisen either as a consequence of a drug overdose or massive injuries sustained in a situation by someone at age 16. If, prior to the event, they can ascribe a medical power of attorney to someone else in the same age cohort, I have no doubt that there will be pacts in which bizarre exchanges will be made for the hell of it, because those very few adolescents who like the excitement of tempting fate—and films have been made about this—will do it, and test it to the limit, and the ultimate tragedy will occur in consequence. I do not think that it is legitimate for people within that cohort and with that lack of maturity to be given the power to sign away their medical power of attorney if they become unconscious or subside into coma as a result of drug overdose, severe brain damage or something of that order.

At the moment I am trying to deal with a problem in Murray Bridge that arises out of the practice of witchcraft. The kinds of pacts that have been made between people between the ages of 13 and 22 would make your hair stand on end.

Members interjecting:

Mr LEWIS: I am not sure what the member for Playford wants me to understand. However, I am happy to accommodate whatever concern he may have, as long as it is serious in the way it addresses the problem to which I attract his attention in this instance, because it is not just a specific one-off thing; it is a phenomenon, and it is well documented amongst adolescents. They will do these things which they would not countenance doing two, three or five years later on in their life. While they are there they get involved. I am talking about the weaker souls who will be led into assigning medical power of attorney in some number to one other person whom they regard as their leader, who in this instance could be 18 years old or so under the law.

If we leave the age at 18 and not reduce it to 16, we will eliminate a great number of that group of people and therefore reduce the majority support for the pack mentality to get involved in that behaviour. That is the reason for my concern. I could go on in a tactical context in support of what the member for Spence has said and say that I am disappointed that these amendments have only just been given to us. I ask the Minister in all honesty to tell us whether these are amendments that the Government wants to the legislation—in other words, whether they have been through Cabinet—or whether they are his personal amendments to the legislation, because that will have some bearing on the way in which I regard them in the context of the debate and the consequences in the event that they pass.

The Hon. M.H. ARMITAGE: I must address a number of matters in relation to the most recent contributions. Primarily, I wish to address the objections from the members for Spence, Peake and Ridley in relation to the alleged ambush tactics of these amendments. I hope to console them or, if not, nevertheless tackle their objections head-on. We have all been in this Parliament for a long time. We have all—even those newcomers amongst us—debated Bill after Bill. I would hope that we all know the Standing Orders; we would all have been subject to the vagaries or otherwise of those Standing Orders on occasion after occasion. I want it in *Hansard* so that the record shows that every single Standing Order of this Parliament has been upheld in my tabling of these amendments.

If the members for Spence, Peake and Ridley choose to change those Standing Orders so that a Bill debated on 15 February in any one year must have amendments placed on file prior to Christmas, as the member for Spence has indicated that he did with his amendments, so be it. Let the Standing Orders be changed, but it is essential that the people of South Australia recognise that what has occurred in the tabling of my amendments is no different from any other parliamentary practice that happens day in and day out with all the amendments to various Bills.

On behalf of all my parliamentary colleagues, I indicate that I take some umbrage at the contributions from the members for Spence, Peake and Ridley in relation to this matter. Are they assuming that my parliamentary colleagues do not have the intelligence or the nous to understand what these amendments mean? Surely they are not slighting their colleagues and mine, particularly when the amendments relate to matters which have been discussed in other places: in the select committee and in input to us from all sorts of people around South Australia. They are not new amendments as such: they do not break new ground. So, I quite flatly reject the matter of any ambush tactics.

In relation to the contribution from the member for Elder, I merely wish to draw his attention to the fact that clause 3(a)(i) provides quite clearly that persons of or over the age of 16 years are able to decide freely for themselves whether

or not they wish to undergo a particular form of medical treatment. My amendment seeks merely to give a person of 16 the same freedom to make anticipatory decisions about their own treatment if they wish to, on a voluntary basis. I reiterate that it is not a compulsory requirement of the Bill. In making that observation I point out that I applaud the fact that that clause provides that at 16 people are able to acknowledge freely whether or not they wish to undergo a particular form of medical treatment. I think that is a very positive feature.

The member for Ridley made a number of allegations and, knowing how hard the member for Ridley works in his electorate, I recognise the depth of feeling with which he approaches these matters, but I indicate again that clause 8(3) provides that a person who may be appointed, if my amendment were to be passed, cannot appoint an agent until they are over 18 years of age. The clause provides:

> A person is not eligible to be appointed an agent under a medical power of attorney unless over 18 years of age.

I note that there is no amendment on file to increase that age to 25, 33 or whatever, so I think it is an appropriate amendment. Having recognised previously that the member for Ridley has quite valid concerns, I point out that none of my amendments diminishes the age at which one can have power of attorney. Finally, in relation to the member for Ridley's question, I make absolutely clear that the matter of my amendments has on no occasion been the subject of Cabinet discussion and that these amendments are totally my own.

Mr ATKINSON: The Minister protests that his lodging of these amendments with members for the first time 10 minutes before the Committee stage is lawful under Standing Orders, and he is right: it is lawful; it is in accordance with the Standing Orders. Indeed, during the last debate on this Bill in this Chamber, the member for Newland made up an amendment in the course of her speech, and the Chairman pointed out that we could not have oral amendments and that the member for Newland would have to write it down, which the member for Newland duly did. Members accepted the amendment and we debated it. It is quite lawful and it is in accordance with the Standing Orders, but it is most discourteous. That is the point I am making.

Some of the amendments moved by the Minister have not been contemplated during the wide ranging debate, particularly the deletion of the registry. The first I heard of deleting the registry was when this schedule of amendments landed on my desk 10 minutes before the Committee stage was to begin. It has been usual with this Bill for the amendments to be notified well in advance. Members of both Houses have got together in the corridors, the refreshment room and the lounge and had a chat about the provisions of the Bill. It has been a non-Party debate, so I have had planning sessions with members of the Government.

The CHAIRMAN: Caballing.

Mr ATKINSON: Caballing. The Minister has been caballing with different people, not all of them members of the South Australian Parliament.

Mr Quirke: He has even tried to lobby me.

The CHAIRMAN: I think the honourable member is speaking more to a matter of principle than addressing the clause. The Chair can recall having debated on the Opposition benches without having an amendment in his possession and being prepared to speak to it without going to this length, so I ask the honourable member to return to the subject matter, which is the clause.

Mr ATKINSON: Yes, and I am sure that the Chairman at that time regarded it as grossly discourteous that the Opposition had to proceed in that manner. The amendment to delete the registry for medical agents was a total surprise.

Returning to the substance of the clause, I do not accept the Minister's amendment. It is paradoxical, is it not, that the Minister who has moved this amendment is fanatically opposed to 16 and 17 year olds having a smoke? By this Bill he says, 'It is okay for them to determine major surgery for themselves and it is okay for them to write an anticipatory declaration and appoint a medical agent, but you cannot send them to the deli to get a packet of Rothmans.' It is one of the paradoxes of politics that left liberals such as the Minister will let 16 and 17 year olds make major decisions about surgery on themselves and let them make anticipatory—

Mr Quirke: But not light up a fag afterwards.

Mr ATKINSON: Well, he will let them have sexual intercourse but, when the two 16 year olds have completed that, they cannot have a post-coital fag. It is the same Minister who has been putting that version of the law before the House over a couple of years. To catch up with this Minister, we have to go back to the Tobacco Products Control Act to see the inconsistency. Let the Minister explain that paradox.

The Hon. M.H. ARMITAGE: I thank the member for Spence for acknowledging that I am a Left leaning Liberal.

Mr LEWIS: I would make my last contribution on this clause. I acknowledge, as the member for Spence has acknowledged and the Minister has pointed out, that what he has done in circulating his amendments does not contravene Standing Orders. Given that it is a matter for the conscience of each member, it might have resulted in a swifter passage of the propositions had the amendments been circulated at some earlier time. I would have considered discussing a compromise with him—and I will seek your advice on this point shortly, Mr Chairman—the compromise being that if the age is to be reduced to 16 it should be only in circumstances where there is a terminal illness—a certain pathology.

The CHAIRMAN: The Chair really has no discretion over what the honourable member may suggest. The amendment would have to be put to the Committee in writing, which is standard practice. The discretion lies with the member if he wishes to move an amendment to that effect.

Mr LEWIS: I understand that I cannot amend an amendment until the amendment has been passed.

The CHAIRMAN: The honourable member can move an amendment incorporating all or part of another amendment and it can be discussed by the Committee.

Mr LEWIS: I would not have so much concern about the Minister's proposition if it excluded the exercise of the medical power of attorney in circumstances which flowed from trauma, overdose of drugs or a condition suddenly arising not as a consequence of organic deterioration flowing from disease. In those circumstances, it would eliminate the kind of bizarre behaviour that I speak about when I draw attention to what groups of 16, 17 and 18 year olds might otherwise do—surfing on trains or getting involved in taking magic mushrooms and angel trumpet mixtures before going into session, as it were, in their witchcraft activities. Those things ought not to be countenanced by allowing someone of 16 years of age to ascribe medical power of attorney to someone outside their family.

Equally, I would feel more comfortable if they could assign that medical power of attorney to a parent or, in the event that they did not have a parent, some other responsible

member of their family. The Minister dismisses my concerns, saying, 'Let's crunch the numbers.' If that is the way it has to be, it is terribly unfortunate. I do not seek to quarrel: I seek reason, believing that there is a better way than what now faces us.

Mr BECKER: I oppose the amendment. I believe that the responsible age for making a decision of this type should be at least 18 years. The clause provides:

> . . . to allow persons of or over the age of 18 years to make anticipatory decisions about medical treatment . . .

Those of us who have watched their families grow and mature and can compare them with others know that there is no similarity in any age group. We cannot lump people together and say that at the age of 15, 16 years or whatever, they are responsible. Human nature being what it is, each person is different. Indeed, each one can be vastly different. As the member for Ridley pointed out, often those living in the country have a greater maturity than those living in some parts of the metropolitan area. It depends on their upbringing, the social environment in which they reside, the education they receive and their ability to be educated. Therefore, it makes it very difficult when we are trying to legislate to be fair and just.

I believe that the age of 16 is far too young. Yet, one can go out amongst those who compete in the Commonwealth Games in swimming or athletics and other competitive sports and find that many of the 16 year olds are very mature indeed. On the other hand, people who are not that way inclined can be quite immature. On an issue as important as this I believe that we must err on the side of caution. I think it is unfair to ask a 16 year old to make anticipatory decisions about medical treatment in the future. The chances of their understanding the full ramifications of the decisions they are making would be fairly rare and, if they were apprised of what is happening in the medical science field, or what will happen in the medical science field in a year or two, their decision could be entirely different. Rapid changes are being made in drug treatment to control certain disabilities. That has been happening more quickly in the past few years than I have ever seen, and for the past 25 years I have been involved in one particular area of the voluntary health field.

There are some very interesting articles coming out of the AMA journal of which the Minister should be fully aware and which relate to the persistent vegetative state. In January 1993, the BMA *News Review* carried an article headed, 'A glimmer of hope for PVS patients'. It states:

> To label PVS patients as not worth living is to return to the days when the disabled were seen as idiots, argues Keith Andrews. The term 'persistent vegetative state' (PVS) encourages an attitude of nihilism. If the condition is persistent, usually implying permanency, then there is nothing we, as professionals, can do to overcome it. If it is vegetative, this implies that, like vegetables, the patient lives without purpose. So it is not surprising that little attempt has been made to treat these patients beyond the acute phase.

The article continues:

> A variant of this is that of a man under my care who was in PVS at four years and who now, one year later, laughs at the relevant points in *Tom and Jerry* cartoons.

Further, it states:

> A rehabilitative program will involve a number of processes. One of the first clinical acts is ensuring that nutrition is appropriate—80 per cent of PVS patients admitted to my unit suffer from under-nutrition. Gastrostomy feeding is by the far the most appropriate method for feeding. Speech therapists, dietitians and nurses will assess oral feeding ability. It is also essential to ensure the posture of the patient is optimal at all times.
>
> Bowel and bladder function also needs to be expertly controlled. And a sensory stimulation program should be introduced with reactions monitored by experienced staff. These, in my opinion, are the minimum requirements and involve an inter-disciplinary team of staff including clinical engineers, dietitians, doctors, nurses and physiotherapists.

The article continues. The point I am making is that there are studies and scientific examples where controls and procedures are being put in place today and followed through so that in a year or two people who were considered to be clinically dead might have a very good chance of survival. So, woe betide any young person, particularly a 16 year old, being asked to make a decision or being encouraged to make a decision now that may well affect their future life and well-being.

That is why I believe that a 16 year old is not mature. It may well be that the person can drive a motor car and it has been pointed out that, given the age of consent, they can be married, and young women have turned out to be wonderful mothers at 16 years of age or less. Some of those marriages and family relationships have worked extremely well. They did 50 years ago. Today it is a different type of society. Different pressures are being placed on young people. Instead of reducing that age from 18 to 16, I, as do other members, believe that it should be 18. In all facets of this legislation 18 should be the age of maturity, and not the accepted 16 years. There is a vast difference between what happened when my grandmother was a girl and what my children are experiencing at the moment. It is the only way I can relate this issue to the Minister. I have always said—and I might as well go on public record now—that one of the biggest problems we have in the health area is that we make a general medical practitioner the Minister for Health, because he cannot see the emotive issues—

Mr Brindal interjecting:

Mr BECKER: The member for Unley can object. The parents or carers are the ones who experience the problems. The medical practitioners, the qualified people, are the clinicians who do the hard side of it but who do not look at the emotive side. They look at it from a purely clinical point of view. If members have any respect for families, and if they wish to ensure true social justice as far as families are concerned, they will consider this amendment very seriously and reject it.

Mr BRINDAL: The member for Peake has just said that I am an expert. I hate to disabuse him. I am not an expert: I am just trying to participate in this debate. I acknowledge that the member for Peake is, as ever, consistent. He has argued continually under a number of different Bills for a stipulation of 18 years. He has been quite consistent in this debate, and it is not without irony that we will not let people buy scratch tickets until they are 18, yet this Bill provides for 16 years. Nevertheless, I am inclined to support the proposition of 16, only because I am given to believe that that proposition was established over a very long time in common law. Through common law determination, over many years, the courts have held that that is an age at which people should start to make decisions about their own future.

I accept the proposition of the member for Peake, and it is a correct one—that the world is changing and that we live in times when people are much more subject to trauma. It is a lot harder for children to grow up. Notwithstanding that, because it is established in common law and because people have a right to their own determination as soon as possible, I support the proposition for 16 years, although I absolutely

acknowledge that validity of the argument of the member for Peake and commend him on his consistency.

Mr Atkinson interjecting:

Mr BRINDAL: The member for Spence said I voted differently last time. That is true, but what I would like to explain to the honourable member is that, unlike him, I do not want to lock myself into a position. I listened carefully to what the member for Peake said. I acknowledge the validity of his arguments, but I reserve the right to come in here, listen to the debate and change my mind. I would suggest that on this and other matters the member for Spence might like to open his eyes and ears a bit as well.

Mr CUMMINS: I support the amendment proposing 16 years. I do not know why the member for Ridley and other members are worried about the provision. As has been pointed out by the Minister, the agent must be 18, but in addition I know that the Minister intends to oppose clause 10, which deals with review of the medical agent's decision. I will certainly oppose the Minister's deleting that provision. It is clear from that provision that, in most circumstances, if a parent or a medical practitioner is concerned about the situation, they can simply take the matter on appeal to the Supreme Court. Therefore, there is protection. What I find absolutely amazing about members not supporting the age of 16 is that there seems to be in their minds some difference between the quality of pain that a child may suffer as against the quality of pain an adult may suffer.

I understand that the member for Spence is a lawyer, so I am sure he will be aware of the case of re J. decided in the Court of Appeal in England. In that case, the court had to decide between the fundamentalist absolute approach of the concept of the sanctity of life as against the pain and quality of life of a child. In that case, the Court of Appeal in England held that the child had a right to die. All that is being proposed by the Minister, as pointed out by the member for Unley, is something that has been clearly available under the common law for a long time. Quite frankly, I find it amazing that we are even debating the Bill.

I will address some of the amendments proposed by the member for Spence later on; I have never seen more codswallop in all my life than some of those amendments. If the honourable member is serious about going ahead with his proposed amendments, I suggest to the Committee that we throw the Bill out: there is no point in having the Bill, because at common law the rights incorporated in this Bill already exist. The only thing not in this Bill that exists at common law is a direction by someone in writing that certain things are to happen; appointing an agent, for example. That does not exist at common law. Anyone in a hospital, no matter who they are, can direct that no treatment be given to them. This Bill fundamentally achieves two things: it gives power to appoint an agent, who can do things in certain circumstances; and, secondly, it protects medical practitioners in terms of contract, tort and battery. That is all it does, and the common law basically has arrived at all that without this stuff.

Mr Atkinson interjecting:

Mr CUMMINS: The common law basically does what this Bill purports to do other than in the case of the agent. For the reasons outlined, I support the Minister's amendment, because I hold the view that the quality of pain in an adult or a child is exactly the same, and someone who is 16 should have the right to protect themselves in the future against excruciating pain and an excruciating quality of life. I am absolutely amazed that members here should say they do not have that right.

Mr WADE: To my knowledge—I am not a lawyer or psychologist and stand corrected—a 16 year old cannot enter into a contract. It seems that by making an anticipatory decision they are entering into a contract concerning what will happen to them in the future. The word that comes across again and again is 'anticipatory'. No-one is saying that the quality of a 16 year old's pain is less than the quality of an 18 year old's or 80 year old's pain. As to 'anticipatory', we are saying that 16 year olds who are completely healthy do not have the emotional state or maturity to make a judgment on how they could be feeling in 20 or 30 years time.

My argument about 'anticipatory' is that at 18 years we are saying that someone is an adult: that 18 is the adult age selected in this State for voting and other functions, but that at 16 a person still has not reached that stage of emotional development where he or she can make what we would class as an adult decision concerning their possible pain or condition at some unknown future stage.

Again, we come back to the fact that a 16 year old in pain or with a terminal illness can make decisions regarding their medical treatment. If that is members' concern it is already covered in subparagraph (i). Members should be looking at both parts together but appear to be looking at them separately, and they cannot do that.

Mr MEIER: Before addressing this issue I ask for a ruling from you, Mr Chairman, because I have had another set of amendments circulated in the name of the member for Peake. Does this mean that any member speaking, because it is on the same clause, is entitled to speak only three times be it to the honourable member's, the Minister's or anyone else's amendments?

The CHAIRMAN: There are two technical points. First, we are addressing the Minister's amendment at the moment and, should the Minister's amendment fail, the member for Peake may not wish to proceed with his amendments. Secondly, irrespective of whether or not the honourable member wishes to proceed, the Chair's permission would still have to be sought, because his amendment actually deals with a line beyond which the Committee is already considering. We would have to revert to clause 3(a)(i) when we are in fact debating an amendment to clause 3(a)(ii). It would be at the discretion of the Committee to allow consideration of at least the first amendment put forward by the member for Peake. The matter has not yet arisen. At the moment the amendments have been tabled, and I understood the member for Peake was to canvass the possibility of the Committee's reverting to subparagraph (i), but we still have to consider the Minister's amendment which is currently before us before we tackle any part of the member for Peake's proposed amendments.

Mr MEIER: Is a member entitled to speak three times if the member for Peake's amendments are allowed?

The CHAIRMAN: Members can speak three times on each amendment put forward.

Mr MEIER: Thank you for that explanation, Mr Chairman. I have listened to both sides of the argument and must admit that I cannot support the Minister's amendment. I have held that view for a long time. I think that view is being reinforced as I get older and see members of my family growing up. Two members of my family are now past the age of 16: one is 17 and the other is 19. When they reached the age of 16, I think they were both taller than I and I felt that, to all intents and purposes, they were adults. I perhaps sought to treat them that way as I did from perhaps

a much younger age. Now that I have a son who has reached the age of 19, I have been interested to have him tell me occasionally in conversation that he has been looking for much more guidance from me and that at that age he is perhaps seeking even more guidance.

Although I may have judged people on their physical stature rather than their emotional age, I have problems with this provision. Reading it in conjunction with clause 7, relating to the anticipatory grant or refusal of consent, I believe that a mature age, in this case 18 as provided for in the Bill, is a sensible provision.

The Hon. M.H. ARMITAGE: In relation to the most recent contribution from the member for Spence, I reiterate that none of my amendments have not been considered during the debate of this Bill at some stage.

Mr Atkinson interjecting:

The Hon. M.H. ARMITAGE: I am afraid you have. None of these amendments are new. Indeed, the member for Spence identifies that one of the clauses which I will be moving to oppose—

Mr ATKINSON: I rise on a point of order, Mr Chairman. The Minister is referring to debate in another place, not to debate in this Chamber. The amendment on the registry has not been before the Committee: it is only in another place and members are not supposed to refer to debates in another place.

The CHAIRMAN: Probably being over generous to the Minister, the Chair was assuming that he was referring to the debate on the select committee report. As the honourable member himself said, the matter has been before the House for several years. If the Chair has misunderstood, it is correct that debate in another place may not be referred to but, of course, debate on the report may be.

The Hon. M.H. ARMITAGE: I take the point that the member for Spence raises. It was a matter of debate in another Chamber but it was also a matter of public debate. I have had a number of representations made to me about the register being present and its impracticability or otherwise. It is not as if this matter has never been canvassed before: it has been canvassed on many occasions.

By way of interjection, since I last spoke, the member for Spence once again raised the matter of a 16 year old being able to smoke. Indeed, the reason one could look at this is that smoking has passive effects on other people, which has a deleterious effect on their health. In other words, it clearly affects other people. What we are debating here is the autonomy or otherwise of someone able to make a decision about their own potential health care.

The other important issue is that it appears to me from listening to the debate that perhaps members are reading clause 3(a)(ii) in isolation in making their decision on whether they support the amendment to allow an anticipatory decision to be made by someone at 16 or 18, but they need to read clause 7, which is specific in talking about anticipatory grants, detailing that that will be applicable only if the person concerned is at some future time 'in the terminal phase of a terminal illness, or in a persistent vegetative state; and . . . incapable of making decisions about medical treatment when the question of administering the treatment arises'. It is specific and, in my view, when read in isolation, perhaps members have not realised that the circumstances are quite defined by the Bill.

There is, in my view, some inconsistency in the arguments that members have put up about the ages of 16 and 18 years in relation to subparagraphs (i) and (ii) of this clause, and that potentially, if members were offended by my move to allow persons of or over the age of 16 years to make anticipatory decisions about medical treatment, in the name of consistency they ought to have moved to allow persons of or over the age of 18 years in subparagraph (i).

I note that we now have on file amendments relating to that, and I look forward to hearing the member for Spence's condemnation of the late arrival of those amendments, because they are clearly late amendments about a clause concerning which the member for Peake had every opportunity—since Christmas—to note his objection or otherwise to this matter.

Mr SCALZI: As I indicated earlier, I oppose the amendment. I accept the Minister's explanation about smoking affecting others and that we have to deal with autonomy. The question here is not whether or not we should have autonomy but at what age that autonomy is given, and we obviously decide, for various reasons, when that autonomy should apply.

In making a decision such as appointing an agent, although ultimately it involves a question of autonomy, no-one lives in isolation and an individual, whether he or she be an adult or a child, is not an island. Even if we do consider this matter not from a religious but from an anthropological point of view, as Margaret Mead would say, we are a herd animal and every decision, whether it is 16, 18, 25 or 55, in one way or another impacts on others, because we are not really functioning fully as a human being unless we are in relationships with others in one way or another.

The question of autonomy, given our democracy and history, is of paramount importance. What we are arguing here is whether that autonomy to make a decision in the future about something that is unforeseen should be given at 16 or 18. I accept the problem and repeat that I am not opposed to the general thrust of the Bill, but that decision, because it is of such importance, should be at 18 and not 16.

Mr ATKINSON: The member for Norwood misrepresented the position I put earlier and, if he had been in the Committee at the time, I do not think he would have so misrepresented my position. One reason why this Bill is not perhaps as important as some people make out is that people have a common law right to refuse treatment. One of the reasons for the Bill is that not enough people are aware of their common law right to refuse treatment. Indeed, if members of the public were uniformly aware of their common law right to refuse treatment there would not be the demand for active voluntary euthanasia that exists and there would not be quite the demand for this Bill, sensible though most of its provisions are.

The member for Norwood is quite wrong when he tells the Committee that in opposing the Minister's amendment I am somehow trying to take away from people under the age of 18 the right to refuse treatment: I am not doing that at all. What we are dealing with in this clause is what happens when a 16 or 17 year old, or someone of any age, is unconscious and incapable of making his or her decision. If members vote against the Minister's amendment, they are not taking away the right of 16 or 17 year olds to pain relief, as the member for Norwood has claimed: if anything, they are taking away from those people the ability to make an anticipatory declaration and to appoint a medical agent.

If a 16 or 17 year old is unconscious or incapable of making a decision now, under the present law, when they are unconscious or incapable they do not have the ability to make decisions about pain relief. So, the member for Norwood's

point is redundant. People cannot make these decisions if they are unconscious or incapable. What happens now is that for a person aged 16 or 17 his or her parents or parent make(s) the decision. It is a choice between their parents making the decision on pain relief and a medical agent making the decision on pain relief.

Mrs Geraghty interjecting:

Mr ATKINSON: If they do not have any parents, their legal guardian or doctor makes the decision. It is not as if they have to go on in agony because there is no-one to make the decision: there will always be someone to make that decision. The question is who is going to make it. If a 16 or 17 year old is not unconscious, he or she can make a decision to refuse further medical treatment. We are not quibbling with that. So, I am sorry to say, the member for Norwood has the wrong end of the stick.

The Committee divided on the amendment:

AYES (25)

Armitage, M. H.(teller)	Ashenden, E. S.
Baker, D. S.	Baker, S. J.
Bass, R. P.	Blevins, Hon. F. T.
Brindal, M. K.	Brokenshire, R. L.
Brown, D. C.	Caudell, C. J.
Clarke, R. D.	Cummins, J. G.
De Laine, M. R.	Foley, K. O.
Geraghty, R. K.	Greig, J. M.
Hall, J. L.	Hurley, A. K.
Ingerson, G. A.	Kotz, D. C.
Quirke, J. A.	Rann, Hon. M. D.
Stevens, L.	Venning, I. H.
White, P.L.	

NOES (17)

Andrew, K. A.	Atkinson, M. J.(teller)
Becker, H.	Condous, S. G.
Evans, I. F.	Kerin, R. G.
Leggett, S. R.	Lewis, I. P.
Matthew, Hon. W. A.	Meier, E. J.
Oswald, Hon. J. K. G.	Penfold, E. M.
Rosenberg, L. F.	Rossi, J. P.
Scalzi, J.	Wade, D. E.
Wotton, Hon. D. C.	

Majority of 8 for the Ayes.

Amendment thus carried.

Mr LEWIS: I rise on a point of order, Sir, of what I consider to be great moment. I refer to Standing Orders 231 and 298. This measure was introduced on motion from the Legislative Council by the Deputy Premier—not by the member for Adelaide but by the member for Waite. The member for Adelaide, as this is a conscience matter, has taken control of this Bill and can debate all clauses more than three times where no other member has that privilege. It disturbs me that the Committee is therefore unduly influenced by a procedure it has not previously countenanced: to have a Bill transferred from one member to another without due notice being given to members.

The CHAIRMAN: The point of order raised by the honourable member ignores the fact that, irrespective of the source of the Bill, it is still a Government Bill and it is at the discretion of the Cabinet as to which Minister handles the legislation. Therefore, the honourable member's point of order has to be disallowed.

The Hon. S.J. BAKER: Mr Chairman, I make the point that I introduce many Bills in this place because I happen to be on the bench at the time.

The CHAIRMAN: Before he tabled his amendments, the member for Peake indicated that he would seek the concurrence of the Committee to have clause 3(a)(i) submitted again for consideration as he has a late amendment to leave out 16 and substitute 18.

Mr BECKER: I move:

Page 1, line 23—Leave out '16' and substitute '18'.

I apologise to the Committee for the late consideration of this amendment, but it is due to the way in which the legislation progressed. I feel very strongly—and I think most members who have spoken believe the same as I do—that the age of 16 is too young to make these decisions in many cases. As I said earlier, some 16 year olds are mature enough to have and raise a family and to be very successful throughout their working life. We all know what transpired 50 or 60 years ago in our grandparents' time when the question of the age of consent was considered and enacted as 16 years. What occurred many generations ago is entirely different to what transpires today in our children's generation. The demands of life and social justice on the young people today are much more traumatic than they were generations ago, and that is why I believe that the age of 16 is too young for people to decide freely for themselves, even if it is on an informed basis, whether or not to undergo medical treatment.

If you talk to psychologists and social workers who deal with the various health and disability groups, you will find that there is a large grey area in terms of intellectual recognition, and 16 is not included in that age group at all. However, people certainly mature by the time they are 18. The member for Spence put forward various arguments, and the member for Ridley put forward some very good points in the previous debate, so there is no point in delaying the Committee further by going over the same ground. I believe that the age of 16 is far too young for the vast majority of young people to have the responsibility of making these decisions. Therefore, I commend the amendment to the Committee.

The Hon. M.H. ARMITAGE: I oppose the amendment. The member for Peake appears to be trying to make himself one of the great revisionists of all time in that, as members would be aware, the Consent to Medical and Dental Procedures Act 1985 has already enshrined 16 years as the age at which young people can consent to medical treatment and, indeed, that situation was recognised prior to the passage of that Act. The existing legislation works very well in practice and, as an example of that, I would indicate that neither the Health Commission nor the Children's Interests Bureau get a great deal of complaint about the age of 16.

The 1985 Act adopted a very practical and sensible approach to what is increasingly recognised in society as the younger age of autonomy and, indeed, the younger age at which people ought to have their rights respected. The developing and emerging maturity at a younger age is recognised, and it is part and parcel of the body of literature in relation to all the research documentation in developmental psychology. It is my view that to revert to 18 years of age, as the honourable member seeks to do, would be a very retrograde step, and I believe that it would be seeking to enforce legally a state of dependency long after young people are able to make informed decisions on their own. I am encouraged in those views by the level of support for my previous amendment but, bearing all those facts in mind, I suggest strongly that the Committee reject the amendment as proposed.

Mr BECKER: I have just been looking through my files at previous debates that took place in 1992 when the legislation was before this place and when the issue of 16 years of age was raised and was included in the legislation. Whilst the Minister can go back to 1984 or 1985, the age of 16 was established as the age of consent much earlier than that. As I said, the stresses of modern society are entirely different today than those in the past. I concede that in some cases 16 year olds, particularly those who participate in sport and those with academic brilliance, may understand what they are on about but, looking at the age group as a whole, the large majority do not and they are far too immature to make these decisions. I ask the Committee to err on the side of caution at this stage and to amend this legislation to lift the age from 16 to 18 years.

Amendment negatived; clause as amended passed.

[Sitting suspended from 6 to 7.30 p.m.]

Clause 4—'Interpretation.'

Mr MEIER: I intend to support the member for Spence's amendments to clause 4. Members may recall that last night in my second reading contribution I referred to a letter from Dr John Fleming, Father McNamara and Dr Robert Pollnitz and their comments on the Bill, and I believe that the member for Spence's amendments to this clause reflect some of their concerns to a large extent. In fact, I feel certain that it is only right and proper that, given that the member for Spence is moving these amendments, he has the right to explain his reasons for moving them. I believe I know those reasons and I look forward to supporting him on these amendments.

Mr ATKINSON: I move:

Page 2, line 25—Delete 'artificial nutrition and hydration'.

In the Bill as it stands, 'life sustaining measures' are defined as medical treatment that supplants or maintains the operation of vital bodily functions that are temporarily or permanently incapable of independent operation, and include assisted ventilation, artificial nutrition and hydration and cardio-pulmonary resuscitation. The select committee was of one mind that, in the terminal phase of a terminal illness, life sustaining measures could be refused on behalf of the patient by a medical agent. We agreed on that.

What we did not agree on is that in the definition of life sustaining measures a drip or a nasogastric tube could be regarded as a life sustaining measure. It was certainly my view that the provision of food and water should not be regarded as medical treatment, and certainly in my view the provision of food and water to a patient who is in a terminal stage of a terminal illness or who is in a persistent vegetative state is not treatment that is intrusive or burdensome. Indeed, it is my opinion that the provision of food and water is always part of good palliative care.

The Bill is about palliative care, and it seems strange that in the Bill as it currently stands a medical agent can refuse food and water on behalf of a patient. That seems to me to be undesirable. It is one thing for a person to decide on his or her own account to refuse to take food and water. Indeed, it is something of a tradition amongst political prisoners in Ireland sometimes to go on hunger strikes and refuse food and water. That takes enormous will and courage.

Mr Quirke: It certainly would.

Mr ATKINSON: It would take enormous will and courage in the case of the member for Playford, but he has enormous reserves and I would expect him to last longer than Bobby Sands. Be that as it may, the committee was of the view that a medical agent should not be in a position to refuse food and water to the patient who was unconscious. The committee disagreed about what was the provision of food and water. The majority of the committee thought that a nasogastric tube or a drip could be refused by the medical agent, and I did not. The member for Newland scrutinises me very carefully, lest I misrepresent the committee's views one whit. If she was at the meeting she should recall that I asked for a division on this matter and that it was recorded in the minutes of the committee that I dissented from the view that artificial nutrition and hydration could be withdrawn by a medical agent.

I had a number of reasons for doing that. The first is that we heard evidence from Ian Bidmeade that a nasogastric feeding tube or a drip is a usual way of feeding in many hospitals in South Australia. Now the practice varies from hospital to hospital, but at many hospitals it is regarded as a usual way of providing nutrition and water.

Another reason why this is probably the most important clause to be disputed in the Bill is that it does not apply only in the terminal phase of a terminal illness. In the Bill as it currently stands, it also applies to someone in a persistent vegetative State. So, I want now to refer to the case of Tony Bland. Tony Bland was a young soccer fan who went to an FA Cup tie at Hillsborough ground in England. The ground was overfilled with spectators and as a result Tony Bland and others were crushed against a wire fence. Tony Bland's chest was so badly crushed that there was a lack of oxygen to his brain. He was rescued by police and sent to hospital, where he remained unconscious.

After a few years of his being in this state, his parents encouraged the National Health Service in Great Britain to apply to the courts for permission to remove the nasogastric tube that was supplying his food and water. The Judicial Committee of the House of Lords, which is the final appeal court in Great Britain, held that the National Health Service could remove the nasogastric tube. In the course of the majority judgment in that case, Lord Goff said that 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 those circumstances, there was no ground for refusing the declarations applied for simply because the course of action proposed involved discontinuance of artificial feeding.

The tubes were withdrawn from Tony Bland and after a few weeks he died of an infection that could not be treated because he was no longer being supplied with the means to resist the infection. I can understand members supporting the judgment in the Bland case. I do not support it, but I can understand that some right thinking members could support it. The law made by the House of Lords in the Bland case is a lot more circumspect than the law that the Minister is proposing. Tony Bland was given some years to recover from his persistent vegetative state. He was kept under observation and experts looked at him every so often to see his progress. I suppose that if he had shown any progress he would have been given a course of rehabilitation.

That is not what the Minister is proposing. What the Minister and his supporters propose is that a medical agent could at any time have taken the nasogastric drip or tube from

Tony Bland. There is no provision in the Bill as it stands to wait for diagnosis, to see whether the persistent vegetative state continues or whether there are signs of rehabilitation: the medical agent can withdraw the nasogastric tube on day one. That is what is different about the Bill, and that is one reason why I oppose it.

Mr Cummins: Rubbish!

Mr ATKINSON: Is there any particular reason for saying that?

Mr Cummins interjecting:

Mr ATKINSON: I have read the Bland case.

The CHAIRMAN: The member for Norwood will have the right of addressing the issue separately. The member for Spence.

Mr ATKINSON: There is another matter that the member for Norwood's interjection reminds me of. Later in this debate the Minister will try to remove the right of appeal to the Supreme Court. In the Bland case, all the relevant parties could go to court to argue whether the removal of the nasogastric tube was justified, but under this Bill we cannot go to court.

The Hon. M.H. Armitage interjecting:

Mr ATKINSON: We are talking about an agent. I have no trouble with a patient removing his or her own nasogastric tube.

The Hon. M.H. Armitage interjecting:

Mr ATKINSON: It is a feature of the dying process, particularly those who are dying from cancer, that there comes a point when they remove their own nasogastric tube and no-one puts it back: that is the way they die. I have no quarrel with that and I hope that the Minister is not dissenting from that point of view. I would have thought that was common knowledge. That is the way in which some cancer patients die.

The Hon. M.H. Armitage: Some.

Mr ATKINSON: Yes, some. I can think of at least one case in my personal experience where that is the way in which the person died. You do not put back the tube. It is fine for a patient to do that. In my view, if we believe in personal autonomy, people have the right to go on hunger strike. If that is what they want to do, the law allows them to do it. The common law allows them to refuse treatment. What I object to is someone else doing it on their behalf.

The Minister says that there will be an anticipatory declaration about it. I will bet that there will not be: I will bet that, if this Bill becomes law, and I am sure it will soon enough, fewer than 1 per cent of people will appoint medical agents and make anticipatory declarations. Very few people made advance declarations under the Natural Death Act, despite all the publicity surrounding it. One of the terms of reference of the Select Committee on the Law and Practice Relating to Death and Dying was how we could educate people about the Natural Death Act. We gave up on that because it was not going to work.

My view is that, although a person can take out his or her own nasogastric tube, an agent should not have the power to do it; but if an agent is to have the power to do it, it should be subject to review by the courts so that we get the same kind of law as in the Bland case. Although I do not agree with the law in the Bland case, I can see how a reasonable person could reach that conclusion.

I want now to tell the Committee about treatment and non-treatment. At Glenside Hospital, if a patient with dementia develops pneumonia or a urinary tract infection, such patients are not treated now. That is the policy of the Health Commission and that was the evidence that we had when the select committee visited Glenside Hospital.

I ask the Committee to give this clause its earnest consideration, because I believe it is the single most important clause in the Bill. By all means let individuals make decisions about receiving food and water. Let them refuse food and water if they will, according to their common law right, but let us not have agents do it on their behalf. Of the tiny minority of people who appoint medical agents, I would predict that fewer than one in a hundred of those people would make an anticipatory declaration that contemplated nasogastric feeding. It is not something that a person would think about in advance.

Mrs KOTZ: I listened very carefully to the argument of the member for Spence. He is correct; he was the only member of the select committee to dissent on this aspect of the recommendations. I am somewhat disappointed that the member for Spence has put his argument in an emotional way. He made a totally unqualified comment when discussing a patient receiving or not receiving food and water. When we talk about artificial nutrition and hydration, which the member for Spence's amendment would delete from this clause, we are talking about nasogastric feeding or drips. However, the member for Spence in making his comments and enforcing his argument kept talking about removing the provision of food and water from the patient. Obviously, that is not the case at all. The qualification there is that we are not talking about removing any form of provision of food and water to the patient: we are talking about the artificial process of providing nutrition or hydration to the patient.

Mr Atkinson interjecting:

Mrs KOTZ: I thank the honourable member for that, but I thought that it had better be put on the record and stated in this place that that is the qualification and that is obviously what you meant. I am glad to be here to interpret the meaning for you.

The Hon. M.H. Armitage interjecting:

Mrs KOTZ: I am pleased to be here as well. The member for Spence also quoted Ian Bidmeade and suggested that the artificial means of nutrition and hydration was the usual way of providing food and water.

Mr Atkinson interjecting:

Mrs KOTZ: I am quoting the member for Spence in his words, which I wrote down as he uttered them, which were that the usual way—

Mr Atkinson interjecting:

Mrs KOTZ: I have to interpret again, have I? The member for Spence referred to 'the usual way of providing food and water'. However, he did not qualify what Ian Bidmeade might have been talking about—whether he was talking about the nursing home situation and not necessarily the palliative care or the death and dying stages. So, once again the honourable member was using the emotional argument. I find it somewhat confusing when the honourable member on the one hand also states that he will accept the fact that a patient will remove one's own tubes, but he cannot accept the fact that an agent on behalf of that patient cannot make those desires known to those who are medically treating that patient.

Quite obviously the honourable member and I will have a difference of opinion on the logic of that particular argument, but if it is acceptable to all and sundry, as the honourable member indicated, that a patient has the right to remove a tube, thereby indicating it was no longer or never required by their terms, I see no difference at all in the transposition

of that patient's will being noted in a previous document, which can be made known at the time when intrusive treatment may occur. To me, there is no logic in accepting one and not being able to accept the other.

We are not asking someone with a piece of paper signed by a patient to dictate the terms of what will happen to that patient at any given time, other than the fact that it is the expressed wishes of that particular patient. It is not the agent's thoughts. It is not the agent's decisions. It is only a matter of the agent expressing the will of an individual person who has eventually become a patient in a situation whereby in normal circumstances, in normal life, that person would have considered it totally intrusive, totally burdensome and not necessary in—and this is the important part of this whole argument—the terminal phase of a terminal illness.

Mr CUMMINS: I find the approach of the member for Spence amazing, to say the least. He tells me he has read Bland's case.

Mr Atkinson interjecting:

Mr CUMMINS: Good on you. Perhaps you ought to read it again. One of his arguments was that Bland's case was different from what the Minister is proposing. The basis of that proposition, as I understand what he said, was that Bland had several years to recover—in other words, after a period of three years, one could ascertain that he had a situation that was irreversible. That seems to be his argument.

Mr Atkinson interjecting:

Mr CUMMINS: That is correct. The judgment in the Court of Appeal of Sir Thomas Bingham (p. 834, All England Law Reports (1993))—and most of the judges in the Court of Appeal and also in the House of Lords set out Bland's situation in the Airedale General Hospital—states:

> . . . his eyes open, his mind vacant, his limbs crooked and taut. He cannot swallow, and so cannot be spoonfed without a high risk that food will be inhaled into the lung. He is fed by means of a tube, threaded through the nose and down into the stomach, through which liquefied food is mechanically pumped. His bowels are evacuated by enema. His bladder is drained by catheter. He has been subject to repeated bouts of infection affecting his urinary tract and chest, which have been treated with antibiotics. Drugs have also been administered to reduce salivation, to reduce muscle tone and severe sweating and to encourage gastric emptying. A tracheostomy tube has been inserted and removed. Urino-genitary problems have required surgical intervention.

The humanity of the member for Spence amazes me because the proposition he is putting to this Committee is that for three years we should leave a human being in that state. That is his test. For three years his family should come and see him in that state. That is what he is advocating. If that is his humanity, then God help all members in this Chamber and the people of the State.

He was saying there was a distinction between Bland's case and this case on the basis of three years. Of course, he knows that that is not true if he has read the case, because he knows the ratio of the case. He is a lawyer. Lawyers have a concept called *ratio decidendi*, which basically means the gravamen of the case. If you read through the headnote of Bland, it states:

> Medical treatment, including artificial feeding and the administration of antibiotic drugs, could lawfully be withheld from an insensate patient with no hope of recovery . . . discontinuance of life support by the withdrawal of artificial feeding or other means of support did not amount to a criminal act because if the continuance of an intrusive life support system . . .

That is the ratio of Bland's case. The House of Lords and the Court of Appeal do not say, 'It has to be for three years or two years.' That is not the *ratio decidendi* of the case. The member for Spence combines his argument with interlinking and other concepts in the Bill—persistent vegetative state—and, of course, he is implying that 'persistent vegetative state' has no definite meaning in medicine. It is also clear from the Court of Appeal and also from the House of Lords that it has. The case clearly records:

> The medical witnesses in this case include some of the outstanding authorities in the country on this condition. All are agreed on the diagnosis. All are agreed on the prognosis. . .

I do not know whether the honourable member bothered to consult some people in South Australia, but I in fact spoke to Dr John, known as Fred Gillighan, the Director of Retrieval and Resuscitation at the Royal Adelaide Hospital, who says there is no doubt at all that there is a knowledge of what persistent vegetative state means, and it is a state a person is in after all reversible conditions are excluded. There is a clear meaning in medicine: it was accepted by the Court of Appeal in England that there is. All the law lords said that. It was accepted by the Lords as well: they all said it. It is also well known in South Australia as to what the meaning is, and there are well-known tests to ascertain what the state is. There are clinical tests and a brain scan. It simply means that the cortex of the brain loses its function activity.

Mr Atkinson: No-one has ever recovered from it; is that what you're saying?

Mr CUMMINS: If it is correctly diagnosed as persistent vegetative state, by definition no-one can recover from it. The honourable member ought to know that as a lawyer. By definition, if it is correctly diagnosed—and it normally takes a while to diagnose it; their clinical and laboratory tests have diagnosed it—that is it. As I said earlier, I am amazed that the honourable member is putting the proposition that the Bill is really any different from the common law approach set out in *Airedale Trust and Bland*: it is not. It is exactly the same. With all due respect, I think he is misleading the Committee on that matter, and I am surprised that a lawyer should attempt to do that, and suggest to this Committee that part of the evidence in that case was that, to diagnose a persistent vegetative state, a person had to be in that state for three years. That is clearly not the case, either in England or on the word of medical experts in this country.

Mr SCALZI: I support the amendment of the member for Spence. I will not go into too much detail as he has outlined the reasons for the amendment and his concerns with regard to artificial feeding and hydration. I respect the argument of the member for Newland. However, I believe there is a difference between taking out the gastric tubes oneself and giving that authority to someone else. In fact, when you pull out the tube yourself, you must be conscious of that act, otherwise you would not be doing it. There must be a sense of consciousness. We are talking here about the transfer of that consciousness into some time in the future or into a circumstance which is not foreseen, and suggesting that somehow a patient can predict how they would act at that time.

As I said previously, I believe that this Bill is necessary and I agree with its general thrust. I think it is responsible for this House to pass it so that we can look at these difficult cases. However, it is also our responsibility to put beyond doubt and beyond question the matter of people having the correct motives in respect of protecting the rights of an individual not only when he or she is conscious of their rights but also when he or she is not in a fit state to decide. It is important that we be cautious of this fact because we otherwise might pass a law that might not be seen as correct

in the future. I will not go into the cases discussed by members: in a way it is a pity that we use such cases to make a stand on what is or is not the right of an individual in these circumstances. It is better to leave it at a philosophical standpoint so that we look at the rights of the person concerned and not the particular case, because otherwise emotion comes into it, as the member for Norwood has demonstrated.

I admit that the honourable member has good intentions and I respect his humanity but, nevertheless, whether it involves two years, one year or six months, I think he camouflaged the argument. He has camouflaged the reality that we are dealing with a case concerning the transfer of autonomy. There is no question that the general thrust of the Bill is based on that, and all members would agree that to be responsible in this day and age we must head in that direction. However, we must stipulate conditions so that the rights of individuals are not abused or even seen to be abused, because if they are abused that also has consequences.

The idea of what is hydration and natural feeding also changes with time. In other words, what might have been natural 20 years ago might not be natural in 10 years time; nevertheless, the principles must remain. As someone who was on gastric feeding for two or three weeks and who did not think he would reach the age of 30, I inform members that my view on what to do at age 20 was different from what it now is.

Mr Cummins: Don't use emotion.

Mr SCALZI: That is correct; I agree with the member for Norwood, and I did not go on about how difficult I found it. I simply point out that philosophically a person's mind might change. I respect the view of anybody who says what he or she wishes to do but we must make sure that that wish is carried out. There must be some safety valves or precautions taken to make sure that there is no abuse of that transfer of autonomy. That is what this is all about. As I said previously, the Bill deals with general consent to medical treatment as well as the last stage of a terminal illness, or palliative care, and it is not always clear. I am not a medical expert and I will not get into the argument of what is a 'persistent vegetative state' in one case or another, but let us view this matter with caution and make sure we get it right. For those reasons I believe a danger will exist if we do not amend this clause. I support the member for Spence, because I think he has outlined the argument well. I look forward to other members' contributions indicating the necessity to ensure that we get this right.

Mr LEWIS: I support the amendment, because it is not part of medical treatment to feed somebody and make sure that they have adequate body fluids: it is simply part of being decent and compassionate about sustaining life. It is quite different from interfering to administer cardiopulmonary resuscitation. Notwithstanding my respect for the views of the Minister, the members for Newland and Norwood, or any other member who may have a different opinion of this matter from mine, none of us can make a judgment about this without referring to the emotional implications of the decision for ourselves in making it; those emotional implications are there.

First, let us examine those circumstances in which patients find themselves at a certain point so injured or so sick and racked with disease that they wish it would end even though there is a prospect of recovery. That moment, hours, days or weeks can seem unbearable. If it is too much then death will intervene but it ought not to intervene in consequence of starvation or dehydration. It ought to intervene because the bodily function ceases to enable body and soul to stay together; the mind ceases to function and the heart stops—life goes, death occurs.

If any members were to refute the validity of what I am saying, they would have to believe that the Royal Commission into Aboriginal Deaths in Custody was nothing of any great moment, because in the main those people who committed suicide in custody chose to do so out of a feeling of great emotional despair. They found the pain of being so great that they could not contemplate going on any longer. In many instances that is why they decided to end their lives.

If we seek to do something about that, to relieve that level of despair and to encourage those people to believe in themselves and their ability to sustain life more fulfilling and worthy than they themselves may have thought was possible previously, we must surely believe that it is equally relevant to make it possible for people in these circumstances to get through this same pain and distress by providing them with sufficient nutrition and water to live rather than die of thirst or starvation. I cannot support a proposition in law which makes it possible for another human being to make a decision to kill somebody by starving them to death when they might otherwise have lived had they been given sufficient nutrition or water.

Members cannot ignore the implications of emotion in contemplating the position they will take on this matter, because it involves emotions and feelings. I have been there and done that more than once. I would not want it to be different from what it has been. It involves not part of treatment of a compassionate kind but, indeed, the removal of treatment. It cannot be argued that it is on compassionate grounds if you starve someone or cause them to dehydrate. Other things bring about death in natural terms apart from starvation and dehydration, for if there is hope that the other things can be fixed we ought not to extinguish that hope by eliminating the natural life support forms be they provided in an artificial fashion.

It is like saying that we should not feed someone who has injured limbs simply because they cannot feed themselves and does not feel it is worth going on at that moment, and a good many other things besides. I am opposed to the notion of voluntary euthanasia, and it is not just my own experience that brings me to that conclusion but a good many other people to whom I have spoken about it who thought they would have liked to end their life at an earlier time and believed that they were sane and responsible in coming to that conclusion but decided subsequently that it was good that they did not. I am saying there is no necessity to artificially prolong life in medical terms but that we ought not remove nutrition and water. That is basic.

The Hon. M.H. ARMITAGE: The member for Spence and a number of other members have contended (and I am paraphrasing their words) that it is okay for someone to pull out his or her nasogastric tube but it is not valid for an agent to authorise that food not be provided by those means. That seems potentially malicious to me, but certainly it is a misunderstanding of the whole purpose of having a medical agent. It assumes that the agent will not act in the best interests of the patient who, as we have identified before, will voluntarily choose a person to be their agent.

It assumes that the patient will not have discussed these very matters with the agent when the whole purpose of appointing a medical agent is for just such circumstances. The member for Spence in a rather cavalier but nevertheless throwaway line said he did not believe that there would be

more than 1 per cent of people who would go down the line of having an advance directive, and that less than 1 per cent of those—I think I am quoting him correctly—would think about identifying nasogastric tube feeding as one of the options that they would want their agent to make a decision upon.

I should like to quote from correspondence from Dr Michael Ashby, the then Medical Director of the Eastern and Central Adelaide Palliative Care Services based at Mary Potter Hospice at Calvary Hospital. Dr Ashby, who has now been appointed to a professorial position in palliative care in another State, provided a potential advance directive. Of course, that would have to be worked up in the process of whether the Bill passes or not, but I would indicate, as an example to the member for Spence, the type of things that are in the proposed advance directive. One section provides:

> I wish these instructions to apply if the medical practitioner responsible for my care considers that my condition falls into one of the following categories:

It identifies that and then goes on:

> If I have the conditions here described above I do not want the following forms of treatment—

People then initial them, and one of those is:

> I do not want artificial tube or intravenous feeding or hydration.

If the member for Spence's objection is that people will not think about it, we can include it on the form. It is very easy—we can make people think about it. I contend that the whole point of appointing an agent is so one can actually address these matters. I would also like to assure the member for Hartley that, when he says a person must be conscious to pull out a nasogastric tube and hence make a conscious decision, that is simply non factual. He also indicated that at age 30 he no longer feels the same as he did aged 20, and I understand that. However, I would say that one can change one's directive—they are not set in stone. If you decide to have an agent with a directive and you change your mind, you can change all the parameters, so there is no need to be concerned about that.

The amendment of the member for Spence seeks to delete from the definition of 'life sustaining measures' the words 'artificial nutrition and hydration'. It is important that we look at how this affects the rest of the Bill. In fact, 'life sustaining measures' has its major work to do in clause 17, which deals with the care of people who are dying. Clause 17(2) identifies that a medical practitioner is under no duty 'in the absence of an express direction to use, or to continue to use, life sustaining measures in treating the patient if the effect of doing so would be merely to prolong life in a moribund state without any real prospect of recovery or in a persistent vegetative state.'

That is what clause 17(2) provides. By deleting 'artificial nutrition and hydration' from the definition, I believe the member for Spence is clearly seeking to place an obligation on the medical practitioner to use artificial nutrition and hydration or, at least, to put a practitioner in a position where there is some doubt about their legal position should they not provide artificial nutrition or hydration. I contend that, in all of the tenets of the Bill, this is clearly undesirable and hence I oppose the amendment.

Mr ATKINSON: I do not want to put doctors under an obligation to provide artificial nutrition and hydration, but I hope it is something they would consider. Certainly, the evidence to the committee was that it is rare for these things to be withdrawn without the patient's agreement. I thank the member for Ridley for his support and cogent argument in favour of the amendment. It is always nice to see a convert. Last time this matter was before the Chamber he did not support me and I am grateful for his support now.

Amongst the magnificent 10 who supported me last time was the member for Unley who, alas, is not here tonight. The then Leader of the Opposition, now Premier, was a supporter of my amendment, and I hope he will be again; and the then member for Eyre, the Speaker, alas cannot be with us tonight, so it means that I am one down there.

I want to respond to the member for Norwood, who alas is not here. He argued that I misrepresented the *ratio decidendi* of Bland's case. He read from the headnote of the case to argue that Bland's case decided that a nasogastric tube could be removed any time, not just after three years of observation. I know it is a long time since the member for Norwood left law school—about 10 years longer than me—and I can assure him that the *ratio decidendi* of a case is intimately related to the facts of a case. You cannot have a *ratio decidendi*, that is, a reason for decision, which is broader than the relevant facts of the case under our common law system of precedent.

The precedent is formed by the facts of the case together with the judgment. So, the Bland case *ratio decidendi* cannot be that artificial nutrition and hydration can be withdrawn at any time, because those were not the facts of Bland's case. The facts of Bland's case were that the boy had been in a persistent vegetative state for three years or more. So, the most that the House of Lords *ratio decidendi* could possibly be is that, after three years in a persistent vegetative state, it is permissible for the National Health Service to remove the tubes. The stream cannot rise above its source. So, I disagree with the member for Norwood on that matter.

I also think it is a pretty poor practice for a lawyer to argue a case on the basis of headnotes. The headnote is a summary of the case written by people who are deputed to report cases. They might be law students doing this kind of thing in their holidays; or they might be lawyers down on their luck and otherwise unemployed who are writing headnotes to keep the pot boiling. Therefore, you do not go into any court, let alone the highest court in the land, namely, Parliament, and make your legal argument based on headnotes. Notorious cases have been reported of headnotes misrepresenting what was decided in the case.

The member for Norwood should not have quoted from the headnote to Bland's case, which I am sure was a lot longer than what he read out. He should have quoted from the text of the majority judgment, which is what I did. The majority judgment in Bland's case was:

> Every effort should be made to rehabilitate the patient for at least six months.

I think an effort should be made for longer than six months, but I am willing to accept that members might take the view that six months' grace is sufficient time for someone who appears to have lapsed into a persistent vegetative state. You could conscientiously take that point of view.

I disagree with the Minister and the member for Norwood in that I do not agree that the law in South Australia should be such that the nasogastric tube should be taken out on the first day, before the diagnosis of PVS has been tested. There are many examples of people being in a persistent vegetative state for a very long time and then making a partial recovery.

The member for Norwood talked about PVS being correctly diagnosed, and he said that was the end of it. However, that is not the end of the matter because diagnoses are not always correct. If you vote for my amendment you are giving a patient in a persistent vegetative state time to recover, to undergo rehabilitation and to have an opportunity to resume at least a partly normal life.

If you vote against the amendment, that is, with the Minister, you are empowering an agent to put to death, by starvation or thirst, a patient in a persistent vegetative state in the first week of unconsciousness. I agree with the Minister that most agents probably would not do that because they would act in the best interests of their friend, the person for whom they are making decisions. Nevertheless, I think we ought to rule out the possibility that artificially provided food and water could be withdrawn in the first week, or early on in a persistent vegetative state, before there is time for recovery and for the diagnosis to be tested. That is what I am arguing. I think it is really quite a respectable argument, and the Minister and the members for Newland and Norwood ought to treat it with a little more respect than they have been.

So far as people in the terminal stage of a terminal illness are concerned, people who support my amendment have no difficulty with the terminal illness taking its course and the person dying of the terminal illness. What we object to, I think, is to have that person die not of the terminal illness but of starvation or thirst. So, in voting against this amendment you are voting to set aside wards in our public hospitals where—

Mrs Kotz interjecting:

Mr ATKINSON: I am sorry, but that is what you will be voting for. If you vote against this amendment, our public hospitals will have to find some way of coping with this new law whereby they will have to set aside wards to which patients are wheeled in their beds in order to be starved or deprived of water. It will not be a pleasant process.

Mrs Kotz: Are you asking me to take you seriously?

Mr ATKINSON: I ask the member for Newland: when the decision is taken to remove the nasogastric tube and to deprive them of food and water, where will these patients go? How will they be managed? The honourable member might address that in her next contribution.

Mrs Kotz interjecting:

Mr ATKINSON: They are not managed in this way now. We are making new law here, and that is why I am moving an amendment to maintain a little bit of the current law on this, because I just regard it as decency.

Mrs Kotz interjecting:

Mr ATKINSON: I attended far more committee meetings and went on far more site visits than the member for Newland, who took an overseas trip during the select committee's deliberations.

Members interjecting:

The CHAIRMAN: Order! It is very hard for the Chair to hear and for *Hansard* to record the debate accurately. I remind all members that they have the opportunity to take part in the debate.

Mr ATKINSON: The Minister says that, because Dr Michael Ashby has drafted an advance directive that contemplates the withdrawal of food and water, there will be no problem; that everyone who appoints a medical agent will contemplate the possibility that the manner of their death might be the withdrawal of food and water; that they will either tick or cross a box, and that agents will be in no doubt what to do. I put it to him that it is very thoughtful of Dr Ashby to draft such an advance directive, but that directive may not be used by everyone, and it may not necessarily be fully completed.

It is my view that the great majority of medical agents faced with this problem will not have an advance directive on the point; they will not know what to do. It is one thing to refuse intrusive and burdensome treatment: it is quite another thing to take away food and water. The Minister says that this is artificial food and water, and therefore it must be intrusive and burdensome but, to a person with no arms, spoon feeding is artificial nutrition. This is supposed to be a palliative care Bill—that is the name of the Bill. It is supposed to be about helping people in their final extremity, and making them comfortable. I do not think that you make anyone comfortable by taking away their food and water.

Mr LEWIS: I ask the Minister to address those matters which I raised regarding this proposition. Let me spell it out in more explicit detail without in the least bit being bumptious. We all know that many Aboriginal people who have been taken into custody have died: a good many others did not die. The vast majority of those who died did so because they suicided. I have talked about those people earlier and I am now talking about those who wanted to take their lives and who attempted to suicide but who were found in sufficient time to save them. They had indicated by their action that they did not want their life to continue, but they were found in sufficient time by those who were supervising them in custody, and they were then given medical treatment. If they had not been given that treatment, they would have died.

Many of those Aborigines who were in custody are the sort of people I have seen at Kalparrin and spoken to in my office as well as elsewhere. Many of them have had serious problems with alcohol consumption and have done silly things that have resulted in their being taken into custody, at which time the general state of health of their liver and so on has been pretty poor. They have attempted suicide, they have been found and resuscitated, and they have recovered. They have not wanted to live; some of them have inflicted serious injuries on the nurses and other medical staff who have been looking after them during that crucial period when we have been trying through our medical system to keep them alive. Does the Minister and do other members believe that we should have provided them, in most instances, not with tubes through their nose into their stomach yielding them food and sufficient fluid to stay alive but simply with saline drips, or either or both? Do members think that we should have allowed them to die and become an addition to the statistics of those Aboriginal people who have died in consequence of their going into custody and then taking their own life?

It has to be one or the other; if we believe that it is legitimate for a human being to say enough is enough at that point and to attempt to take their own life, when they are found in an advanced state of suffocation or whatever, should they be taken to hospital in an effort to keep them alive? They would not have lived even a day or two beyond that point had they not been resuscitated, but should we attempt to keep them alive and give them medication against their will? They beat up the medical staff who are trying to look after them, but after they recover they are grateful. And they have told me they are grateful and that their whole life has changed. It is either one way or the other. Which is it? Have we been doing wrong by saving their lives?

Mr SCALZI: I agree with the Minister that some patients are not conscious when the tube is taken out, but here lies the problem. I was referring to someone in the final stage of a

terminal illness who consciously stops wanting food and therefore removes the tube. Indeed, if someone has suffered from a trauma and has unconsciously taken out a tube, I believe it is humane to give them a chance and put it back. So, again this problem arises because we are dealing with the terminal stage as well as general consent to medical treatment. I do not believe that depriving one of food and water is humane. I believe that they should be given a chance. As I said previously, people might change their mind but they might not always have the opportunity to change the directives because, once you have transferred autonomy, that is it. You might not think of it until it is too late and you are in a permanent vegetative state.

Let us be careful about depriving someone of food and water. One hundred years ago we would not have had the problem with the type of medical treatment we have today, but the principle still applies; in other words, we should be judged not on the method but on the principle of whether we give food or water. In 20 years we might be dealing with other ways of providing nutrition. This Bill is not relevant for just today; when it is passed, it will be law for at least 10 years or until it is amended in this place. My heart goes out to those people who are suffering, and it is very hard to see someone, especially a loved one, suffering but, even in those cases, we must pull ourselves back and, as legislators, we have to see that we stick to the principle. The way of feeding and the way of giving hydration will change, but the fact that we have a responsibility to provide it should not change.

Mr CUMMINS: I must reply to the member for Spence in relation to his concept of development of the common law. He said that the ratio of the case cannot be broader than its facts; he then went on to say that, therefore, part of the ratio of the case was the three years, and that was part of the facts. Therefore, presumably he is saying that, to be in a persistent vegetative state, one has to be in the state for three years. However, a few minutes ago in this House he contradicted himself again by saying that the majority of the House of Lords said that it had to be six months. He even got that wrong; I have the judgment in front of me. I could not be bothered reading them all to check what he said, but I read the judgment of Lord Lowrie, which consists of three pages, and he does not even mention six months.

However, one thing that all the law lords mention is the concept of persistent vegetative state. If there is a ratio in the case, it is this: certain things can be done when a person is in a persistent vegetative state, and that is precisely the term that is used in clause 7(1)(a) of the legislation. It is exactly the same. That is the ratio in the case of Bland. Certain things can happen if someone is in a persistent vegetative state, and that is the very proposition that is put forward in this legislation; in other words, it goes no further than the common law itself.

All I can say to the member for Spence is that, if he really believes that the ratio of a case is confined strictly to its facts, the common law would never have developed. There would be no such thing as the concept of precedent and no cases would ever be cited in court, because every case would be cited on its individual facts. There would be no necessity for a hierarchy of courts, because there would be no concept of precedent. You would have to prove that everyone in the case had blue eyes, two legs and was five feet six inches tall, on his understanding of the common law, which I find amazing.

The Hon. M.H. ARMITAGE: I wish to address the matter that the member for Ridley raised with me previously, and I recognise that the member for Ridley will be only too interested in my explanation. As I understand the member for Ridley, he was asking whether Aboriginal people who had attempted suicide should, under this Bill, be resuscitated. That is as I understand the issue. The point, of course, is that the underlying cause of the Aboriginal person attempting suicide, for whatever appalling reason, might well have been a depressive problem, a social dislocation problem or whatever, but it is quite clear that the Aboriginal person was not in the terminal phase of a terminal illness and, accordingly, this would not have applied.

The Committee divided on the amendment:

AYES (11)

Atkinson, M. J. (teller)	Becker, H.
Brokenshire, R. L.	De Laine, M. R.
Kerin, R. G.	Leggett, S. R.
Lewis, I. P.	Meier, E. J.
Quirke, J. A.	Rossi, J. P.
Scalzi, J.	

NOES (26)

Andrew, K. A.	Armitage, M. H. (teller)
Ashenden, E. S.	Baker, S. J.
Bass, R. P.	Blevins, F. T.
Caudell, C. J.	Clarke, R. D.
Condous, S. G.	Cummins, J. G.
Evans, I. F.	Foley, K. O.
Geraghty, R. K.	Hall, J. L.
Hurley, A. K.	Ingerson, G. A.
Kotz, D. C.	Matthew, W. A.
Oswald, J. K. G.	Penfold, E. M.
Rann, M. D.	Rosenberg, L. F.
Stevens, L.	Venning, I. H.
White, P. L.	Wotton, D. C.

Majority of 15 for the Noes.

Amendment thus negatived.

Mr ATKINSON: I move:

Page 3, line 5—Add to the definition of terminal illness 'within 12 months.'

Currently, the definition of terminal illness means an illness or condition that is likely to result in death. I suppose you could say that one's coming into the world is likely to result in one's death, and it seems to me that the definition requires more precision. Until recently it was part of the criminal law that, for a person to be guilty of murder, the death of the other person had to occur within a year of the day of the injury being inflicted.

It seems to me that in a Bill such as this it is commonsense to put some time limit on the period that would lead to the death. There are many cancers which go into remission for a very long time, and it would seem to be hasty for some of these measures to be implemented more than 12 months out from the likely date of death.

The Hon. M.H. ARMITAGE: I oppose this amendment. The member for Spence seeks to put a time limit of 12 months on a terminal illness. I recognise that we ought not to canvass debate in future, but it is factual that another amendment standing in the honourable member's name seeks further not only to limit terminal illness to 12 months, as this amendment does, but to amend the terminal phase of a terminal illness to three months. In other words, the various provisions would come into play during the last three months of a 12-month span, and that is clearly far too limiting.

In my view, not only does this amendment attack the very tenet upon which the Bill was originally framed—in other words, patient autonomy—but it imposes, I believe unfortunately, arbitrary and artificial limits. Whilst addressing the

arbitrariness of the limits, I would emphasise that it is impossible to look into the future, particularly when someone has a ghastly illness, and say how long that person will actually live, even though the person is terminally ill. Doctors are particularly good at making a diagnosis of a terminal illness, but they are not very good at determining when that terminal illness will have its final effect. Accordingly, to attempt to put this arbitrary limit on a terminal illness in this amendment and in the next amendment on a terminal phase of a terminal illness I think is inappropriate. It would be expecting doctors to be able to predict the time of death, and that is simply inappropriate. As I indicated before, this amendment, if carried, would strike at the very heart of the underlying theme of the Bill, which is patient autonomy at a time of great crisis and imminent death.

Mrs KOTZ: I am disappointed that the member for Spence has attempted to—

Mr Atkinson: You're always disappointed with me.

Mrs KOTZ: Yes, and most things that you attempt to do I am most disappointed with, I must admit. The member for Spence is attempting to add to the definition of 'terminal illness' the words 'within 12 months'. It occurs to me that if this amendment were carried one of the major purposes of the Bill would be knocked out. The member for Spence attempted to do this with the previous amendment that we debated. If that amendment had been approved, that, too, would have negated the very essence of the Bill. Either the member for Spence is far smarter than I give him credit for, which is unlikely, or he is being mischievous in the manner in which he is attempting to deal with the Bill.

The honourable member not so long ago suggested that members on this side—I, the Minister and one other member—were not being serious about our attempt to debate this Bill. By interjection I took the member for Spence to task at that time and do so again. This is a serious Bill and it should be considered in a serious manner. I do not believe that the intention behind his amendments is serious, other than the fact that, if he could properly and in any manner that he deems fit knock out this Bill, that would be his ultimate aim. I do not believe that he is serious about supporting the methods of pain management in palliative care circumstances for the care of the dying in this State.

I would ask this question of the Committee in the form of the amendment that the member for Spence has moved. It appears to me that the Bill's provisions would be inactive to any agent of any patient and to any patient diagnosed with a terminal illness but who does not die within 12 months. If a patient is diagnosed with a terminal illness with the likelihood of a two-year life span, does that mean that when the terminal phase occurs that person will not be protected by this legislation and that the agent's powers will not be recognised? That is a very serious question that must come into being if there is to be a serious debate about this amendment. I believe it is utter nonsense; it would negate the essence of the autonomy of the patient and the powers of the agent.

Mr ATKINSON: The Minister's persuasive rebuttal of the proposed amendment, together with the member for Newland's scolding, has convinced me of their case. Therefore, I seek leave to withdraw the amendment.

Leave granted; amendment withdrawn.

Clause passed.

Clauses 5 and 6 passed.

Clause 7—'Anticipatory grant or refusal of consent to medical treatment.'

The Hon. M.H. ARMITAGE: I move:

Page 4, line 9—Leave out '18' and insert '16'.

This amendment is consequential.

Amendment carried.

The CHAIRMAN: Does the member for Spence wish to proceed with the next amendment listed in his name?

Mr ATKINSON: No, I do not, but I would like to explain why I do not, if I may. The amendment I had proposed was to delete the words 'or in a persistent vegetative state' from the clause dealing with anticipatory grant or refusal of consent to medical treatment, so that people in a persistent vegetative state would not be governed by the provisions of the Bill. The reason I did that was I feared the result of the last amendment we were debating on food and water would go as it did. It seems to me now that, while I would like people in a persistent vegetative state to be free from the possibility that food and water could be taken away from them by their agent, nevertheless the Committee has decided otherwise and I may as well acquiesce in that by withdrawing the amendment.

So, although my amendment to clause 7 is not entirely consequential on my amendment to clause 4, it is sufficiently consequential for me to withdraw it. Perhaps I did not say enough about this at the time, but I notice that the Minister seemed to be offering to the Committee in debate on the question of food and water for people in a persistent vegetative state that, if the person in such a state had contemplated that possibility and had indicated on an anticipatory instruction that his or her agent might have to take a decision about food and water, the withdrawal of that could be confined to those circumstances. I took him to say that, if the anticipatory grant had not contemplated food and water but that the agent nevertheless came upon that decision, he might agree with me that the agent should not have that power, and that the agent should have that power only if he or she had an instruction in the anticipatory grant. Unfortunately, I was unable to inveigle the Minister further down that line of reasoning, but the Committee has spoken on this matter and the amendment to this clause would now be redundant.

Clause as amended passed.

Clause 8—'Appointment of agent to consent to medical treatment.'

The Hon. M.H. ARMITAGE: I move:

Page 4, line 31—Leave out '18' and insert '16'.

Amendment carried.

Mr LEWIS: I move:

Page 4, after line 33, insert new subclause as follows:

(1a) However, a person who has not attained the age of 18 years cannot grant a medical power of attorney unless a medical practitioner has certified that the person is, in the opinion of the medical practitioner, suffering from a terminal illness.

I understand that the Minister indicated a willingness to accept this aspect of the provision of medical power of attorney for people between the ages of 16 and 18.

The CHAIRMAN: This is the amendment just circulated?

Mr LEWIS: Yes. It arises out of the discussion we had in Committee prior to dinner. Where a 16 year old clearly has a condition arising out of some disease—cancer or other like disease—and has been advised of it by a doctor, they may grant a medical power of attorney to somebody. To that extent, I have some sympathy for that. However, I believe it would be irresponsible of us to allow people between the ages of 16 and 18 to grant a medical power of attorney to anyone

to be exercised in circumstances where they overdosed on drugs or were involved in serious trauma or something of that order that would leave that person to whom they had delegated the power of attorney with the responsibility of deciding when to switch things off, shut it down, as it were, where they were not conscious or capable of exercising that power themselves.

That is to protect against what I see as the very real risk of certain people, who are acting under peer pressure in a group who have the same sort of pack mentality, being compelled by the charismatic leader, who may be only 19 or 20—or for that matter 40 or 50—to engage in activities resulting in their injury from, say, riding on the top of trains or playing chicken with semitrailers or, worse still, drinking a concoction of angel's trumpet and magic mushrooms. These are all things that can and do happen, and you end up with the same kind of pack mentality applying as occurred in Guiana, with that fellow Jones convincing everybody that they needed to commit suicide and be part of it all.

I believe that the charismatic leader could convince weaker members of the group, between the ages of 16 and 18, to sign over medical power of attorney unconditionally as part of the arrangement in their membership of the organisation, as it were, and I think that would be undesirable. I agree with the Minister that young people at age 16 and even younger, who are confronted with suffering from a terminal illness such as cancer, to which he referred in the discussion before dinner, do indeed have an approach, a maturity, in these matters that is probably equal in many instances to that of older people, but I trust he also agrees with me that there is a risk in this instance, if we allow 16 to 18 year olds to assign unqualified medical power of attorney, for it to be abused. I move accordingly and, contingent upon that later on, we would include that small addition to the schedules in the Bill.

The Hon. M.H. ARMITAGE: I recognise the sincerity with which the member for Ridley has addressed this matter but, as I have indicated on at least two occasions previously, I believe that his concerns about someone who is 16 granting their medical power of attorney to someone who may not be of a sufficient maturity to exercise that appropriately is in fact addressed by clause 8(3), which identifies that the person appointed as an agent under a medical power of attorney has to be over 18 years of age.

In my view, and given what we have already discussed, the member's amendment is too limiting. Accordingly, whilst recognising the concern the member for Ridley expresses about young children experimenting with magic mushrooms, and so on I believe that clause 8(3) is sufficient to overcome that concern. I oppose what I believe is a limiting amendment.

Mr LEWIS: The Minister has missed the point completely. The amendment is not about the age of 18 years for a person under clause 8(3); it is about whether or not that person is exercising undue influence over the person who is older than 16 but not yet 18. I said that, with a group of people involved in cult activities, a person over 18 years leading that group could unduly influence members between the ages of 16 and 18 to sign away their rights to the leader. That was the case in some of the witches covens I have had to deal with in recent times. They could be induced to sign away to the so-called charismatic leader of these weirdos their right to be allowed to have a doctor's discretion. Under this assignment of medical power of attorney they would give that right to the group leader.

It is not sensible or reasonable for us as law-makers to allow that course of action to occur. Children grow up not overnight but by a process of experience, and the timing is different in each case. Many people have not had sufficient experience of life at age 16, although they often believe that they know everything. Nonetheless, they get involved in some of these groups on the fringe in the subculture to which they are attracted in the course of growing up. If they were entitled to assign their medical power of attorney, they could be conned into so doing by the charismatic leader of the group who they were with at the time in a miscreant fashion to exercise in an unwise way after he has conned any one or more of them into doing stupid things. That is the point I am making. The Minister has not made clear in his reply to me—

The CHAIRMAN: I ask the member whether he is aware that he appears to be arguing two clauses: the clause to which he moved the amendment and also clause 11 which provides for exactly the circumstances he is amending. His explanation really is related to two clauses.

Mr LEWIS: Mr Chairman, that will come up later. I do not want members to be distracted by that because I do not believe that we would be able to obtain evidence about undue influence being exercised by the leader of the cult group in the circumstances to which I am referring. I am talking about circumstances where an adult person over the age of 18 is given medical power of attorney by someone who is 16 and is not suffering from terminal cancer or anything else. The person over the age of 18, in the event that a 16 to 18 year old has assigned medical power of attorney to the adult, can exercise that medical power of attorney after the 16 to 18 year old has done something stupid which they may have been inspired to do by the very person who has the medical power of attorney to shut down life support systems rather than have them continue.

The Hon. M.H. ARMITAGE: I draw the attention of the member for Ridley to the wording 'while of sound mind', which appears in clause 8(1). That definition, according to law, ensures that a person makes the assignment 'while of sound mind'. In the type of instance mentioned by the member for Ridley the person would not be of sound mind if they were influenced by witches covens or whatever. As the Chairman has already identified, and I was preparing to mention to the member for Ridley, under clause 11(1) a person who, by dishonesty or undue influence, induces another to execute a medical power of attorney is guilty of an offence, and the penalty for that is imprisonment for 10 years.

Mr Chairman, in response to your pointing out clause 11 to the member for Ridley the member said it would be difficult to get the evidence for this. Clearly, the member for Ridley has the evidence of persons exhibiting undue influence because he is informing us about witches, and so on. If that evidence is available to the member for Ridley, we would be able to apply, with discretion, clause 11 whereby a person exhibits undue influence on another to execute a medical power of attorney. Accordingly, the amendment should not be supported.

Mr SCALZI: I support the amendment. As members would be aware, I supported the view that, for consistency, we should make the age 18. However, I have listened to other members discuss the problems of young people faced with terminal illness and the suffering that they go through. I agree with the Minister that people at a younger age who have gone through these experiences have a level of maturity far beyond their years. The age is not consistent in respect of smoking, alcohol, and so on, but the difference is that this involves the

serious step of appointing an agent. There is no doubt that in cases where someone clearly has a terminal illness it is serious; they know what it is all about. Someone who is 14 or 15 would know what it is about. However, those who are not faced with those circumstances, who might be in year 10 or 11, do not have that level of maturity and do not know the seriousness of giving power of attorney to an agent.

I understand the issue about sound mind and so on, but those sorts of things are very difficult to prove. Whilst at 16 a person might appear to be of sound mind and they might appoint someone who appears to be of sound mind, after some time that is not always the case. This amendment is good in the sense that it covers what we have discussed tonight. It covers the points of view of the member for Norwood, who was concerned, as all of us are, about the suffering of the young and the fact that pain does not discriminate. Whether you are young or old, pain is pain, and if you have a terminal illness you have a terminal illness.

However, in terms of soundness of mind it is not realistic to equate a person aged 16 who has not faced those circumstances with someone of a similar age who has faced them. It is fair enough in respect of people aged 18 and over who in the future may have a terminal illness and they decide to take certain action. However, to allow that, as a general rule, at age 16 is acting hastily. I thank the member for Ridley for his amendment. He has put much thought into it. The amendment makes sense and covers the concerns of members, and those who have listened to their concerns tonight would see that it is a sensible amendment. For those reasons I urge the Committee to support it.

Mr CUMMINS: I oppose the amendment for the reasons advanced by the Minister for Health who referred to clause 11, which makes it an offence by dishonesty or undue influence to induce another to execute a medical power of attorney.

Mr Lewis interjecting:

Mr CUMMINS: It is well known in the common law. It is just a matter of obtaining a law dictionary and looking up the cases. The reality of clause 11 is that it makes any power of attorney executed in those circumstances void *ab initio*. In other words, a power of attorney, as a matter of law, has absolutely no effect from the minute it is signed. As the Minister said, the person executing it must be of sound mind. One would have thought in the circumstances hypothesised by the member for Ridley that they certainly would not be of sound mind. I support clause 10. I know the Minister does not support it, but under clause 10 a medical practitioner and a person interested have the right to go to the Supreme Court.

I find absolutely fatuous the hypothesis put by the member for Ridley in respect of someone running a witches coven or a drug addicts den. He creates this vision of someone being given drugs by the leader of a coven or drug den and then, if they lapse into a terminal state, the person running the den or the coven convinces a medial practitioner to do something that should not be done. That is just fatuous. It is mind gymnastics to the nth degree. It does not deserve consideration by the Committee, and for that reason I oppose the amendment.

Mr ROSSI: I support the member for Ridley's amendment and I dispute the arguments of the member for Norwood. Investigations by television programs have revealed several instances where people aged 40 years or more, for love or the like, have signed contracts with partners to go into a business venture or mortgages and then found that their partner, lawyer or agent has swindled them out of money.

I also support the amendment because of the onus of proof. When someone sets out to defraud they usually target those people with few relatives or with relatives who are at each other's throat so that whatever they attempt to do with that person is rarely challenged or questioned in respect of what has happened to the body, to money or how the person has been treated. Under the amendment the onus in respect of abuse of a person or patient falls on the agent. On the other hand, if the amendment is not passed the onus of proof in respect of abuse or maltreatment falls on a relative who may or may not take an interest in the person. I believe it would be detrimental for people with no relatives or friends if the amendment is not passed. It will protect those people who are often overlooked and those who are regarded as the black sheep of a family, and for that reason I support the amendment.

Mr ATKINSON: As I said earlier, I served on the select committee that drafted the Bill. I voted for the Bill at its second and third readings when it was before the Chamber previously, and on this occasion I voted for the Bill at its second reading. Whatever happens during debate on the clauses, I will be voting for the third reading even though I am disappointed about the outcome of the debate on some of the clauses. Let no-one, especially the member for Newland, impugn my support for the Bill. I think it is desirable that the Bill, in whatever form it emerges, becomes law soon.

I make those comments by way of preface to my remarks in support of the member for Ridley's amendment. I support the amendment because it is a compromise between two hitherto irreconcilable camps—those who believe in 16 and 17 year olds being able to appoint a medical agent and those who believe that the right to appoint a medical agent should be postponed until the age of 18, as just about every other aspect of adulthood is in our law.

It seems to me that the other place is quite firm on 18. You do not have to be around Parliament long to know how firm it is on 18. The Minister has convinced this Chamber to go with 16. So be it, but in so doing he will pitch this Bill into a conference of managers from which it might never emerge. It is paradoxical that the Minister, who professes to be a great supporter of the Bill, is changing it so much from the version that arrived from the other place that he is setting up a deadlock between the two Houses.

It seems to me that if we really want this Bill to become law we should not do that. The member for Ridley has come in with a sensible compromise. The Minister, because he is riding high on the numbers at the moment, will knock back the amendment and no doubt he will succeed. A consequence of the Minister's knocking back the amendment is that he will knock out the basis for a compromise with the other place. That seems to me to be bad politics. If we want this Bill to get through, and get through in quick time, members should accept the member for Ridley's attempt at compromise with the other place.

Mr LEWIS: I want to have just one more word to try to help the Minister and the member for Norwood understand what I am on about. Perhaps I need to set the stage for them in context a little more accurately than I have to date. The member for Norwood has been altogether too much prepossessed by his upper middle class upbringing and profession to have had much to do with street kids and the way they act and think. It is unfortunate that he allows that to interfere with his insight and judgment on this matter.

Perhaps one of the greatest benefits that accepting and passing this amendment would bring is the removal of the risk that will, I am certain, arise. Small gang group leaders will require of their members that they assign to them medical power of attorney, where the members are over 16, as part of the conditions of becoming a member of that cult group, if you like. I do not mind what you call it, but you can find them now on North Terrace and in Hindley Street. I bet that I could find five, and it would not be long, if we passed this Bill in its present form, that the leaders of those groups—who are really sinister folk and who cover their tracks nonetheless—would be requiring people who wish to join the group to sign a form that assigns to them, as leaders, medical power of attorney.

That is the kind of power that would not be understood by the person signing it and the kind of threat that could be made to that person later on. That is not fatuous, I would have to tell the member for Norwood: that is real, because I have seen that kind of power exercised over the simpler minds of those folk who have not had the good fortune he has had and the upbringing that has produced the kind of fine, upstanding fellow he has otherwise shown himself to be. I want the Minister to also understand that it is as much about the risk of the way this provision could be exercised—because it is over life itself—and the power that it gives to the person who finally coerces someone else into giving it.

The police would never know whether or not clause 11 was applicable, and they would not be able to get a prosecution anyway. We know the way those gangs close ranks and, once assigned, of course, it stays for all time, until the person, many of whom will be of limited intelligence, withdraws it or changes it. It stands for all time. Unless the 16 to 18 year old person has been told that they have a terminal illness, they ought not to have the power to sign away their medical power of attorney, because it will not be any one of them who abuses it, but they will suffer in fear of having done it; they will not know what that document is, and I bet it is held over their heads by the leaders of the pack that they chose to join. Through indiscretion, they unfortunately sign.

It becomes a matter of hearsay if the police ever do discover it. It is unwise; it does not achieve anything for the Bill. It will enhance the prospects of the passage of the Bill and, in my judgment, enhance the good standing of the Parliament in passing it, with that extra provision, amongst those people who are youth workers by preventing any such indiscretion from ever occurring. So, I urge the Committee to think more seriously about it than the Minister obviously has. He did not understand me when I said that it would happen not just before or even during a session of surfing on trains or taking drugs: it would happen at the time that the individual who just turned 16 joined the gang. That is when the signature would be required and, at some future time down the track, it would be used either to that person's detriment if they were injured or, more particularly, as a coercive tool over their heads. I leave the Committee to make its judgment.

The Hon. M.H. ARMITAGE: First, I would indicate that, in relation to the comments of the member for Ridley, the medical power of attorney once granted to the leader of the pack, or whoever, according to clause 8(7) authorises the medical agent to make decisions about the medical treatment of the young person only if that person is incapable of making decisions on his or her own behalf. Clearly, I believe that the practical situation is that the doctor who is being expected to perform the medical treatment on the younger of these two people about whom the member for Ridley is hypothesising will clearly be able to assess whether the young person is incapable of making decisions on his or her own behalf. If they are capable, the medical power of attorney clearly does not apply.

For that reason, whilst recognising the validity of the comments and the sincerity of the member for Ridley, I believe that clause 8(1), which requires that the person appointing the agent is to be of sound mind, and clause 11, which would see a person with undue influence inducing another to execute a medical power of attorney being severely penalised, are protection enough. Hence, my continued opposition to what I accept is a cogently argued position.

I wish briefly to address the impassioned matter of the member for Spence's indicating that we must legislate in this Chamber for something or other that is acceptable in the Upper House. I think that is absolutely and totally appalling. I am amazed that the member for Spence who is, to all intents and purposes, quite an independently minded young chap, would say, 'I daren't do anything unless it be suitable to the Upper House.'

Mrs Kotz interjecting:

The Hon. M.H. ARMITAGE: Which, as the member for Newland says, he wants, by his own admission earlier, to abolish.

Mr Atkinson: Forthwith.

The Hon. M.H. ARMITAGE: Forthwith, even. The point is that conferences between the Houses occur regularly in the legislative process. Compromise is frequently made during those conferences, but I would put to all members of the Committee that it behoves us, in this instance, to exhibit our own conscience; but, as members representing our own electorates, it behoves us to legislate for what we believe is most appropriate at this stage of the legislative process. If, at a later stage, we have to compromise to not be seen to be throwing out the baby with the bath water, so be it, but let us make the right decisions for the right reasons at this stage.

The Committee divided on the amendment:

AYES (13)

Atkinson, M. J.	Becker, H.
Condous, S. G.	De Laine, M. R.
Evans, I. F.	Leggett, S. R.
Lewis, I. P. (teller)	Meier, E. J.
Oswald, J. K. G.	Rosenberg, L. F.
Rossi, J. P.	Scalzi, J.
Wotton, D. C.	

NOES (24)

Andrew, K. A.	Armitage, M. H. (teller)
Ashenden, E. S.	Bass, R. P.
Blevins, F. T.	Brokenshire, R. L.
Caudell, C. J.	Clarke, R. D.
Cummins, J. G.	Foley, K. O.
Geraghty, R. K.	Hall, J. L.
Hurley, A. K.	Ingerson, G. A.
Kerin, R. G.	Kotz, D. C.
Matthew, W. A.	Penfold, E. M.
Quirke, J. A.	Rann, M. D.
Stevens, L.	Venning, I. H.
Wade, D. E.	White, P. L.

Majority of 11 for the Noes.

Amendment thus negatived.

Mr WADE: I move:

Page 5, line 5—After 'unless' insert 'he or she is of or'.

This amendment is not a fatuous one; it will achieve consistency in the wording, given that clauses 3 and 6, and indeed subclause (1) of clause 8, contain the words 'of or over'. However, subclause (3) ignores that aspect, and the amendment, while not changing the meaning of clause 8(3), brings the wording into line with that in other clauses.

The Hon. M.H. ARMITAGE: I support the amendment.

Amendment carried.

Mr QUIRKE: Clause 8 represents the very basis of this legislation, referring to the appointment of the agent. Exactly how is the appointment of the agent to take place should this legislation be successful? In other words, how do I go about the procedure of appointing or becoming an agent?

The Hon. M.H. ARMITAGE: I thank the member for Playford for his specific inquiry about the appointment of a medical power of attorney, because that is one of the ground breaking aspects of this legislation. I draw attention to schedule 1, which is a form for appointment of a medical power of attorney. The form identifies the person who is appointing someone else as a medical power of attorney; it authorises the agent to make decisions if the person is unable to do so; and it provides a space in which they can set out conditions for the agent to observe. The person nominated as the power of attorney signs the form, a witness certificates it and it is then a valid medical power of attorney. I assume that the person who appointed the medical power of attorney would leave a copy of the form with their will, and obviously they would give one to the medical agent and to whomsoever they chose, as a record of the appointment of a medical power of attorney.

Mr QUIRKE: I thank the Minister for his response. Indeed, there has been some discussion around the corridors here today of the imminent passage of this legislation, and a number of people have been seeking agents or persons who would have power of attorney in such instances. We now know where the form is; I can have a copy run off and given to the Deputy Leader, who I understand is anxious; previously he asked whether the member for Florey, the Speaker and I could take him on a shooting trip in the near future. We gratefully accepted and suggested, however, that it would be necessary for him to wait for the passage and proclamation of this legislation so that it could properly recognise my role in his welfare.

With respect to the Minister's statement that the power of attorney needs to be kept in a safe place, I have a standing offer from the *Sunday Mail* and the *Advertiser* that they will keep any such documents in the best safes, or any safe I wish to nominate. A number of other persons around here have been interested in such documentation; I understand that the Speaker has been inquiring of the member for Unley whether at this stage he has appointed an agent, and he has offered that service. Just to show how bipartisan I am on the whole thing, I understand that the Minister for Infrastructure and everything else, including small business, has offered a similar service to the Premier.

The Hon. M.H. ARMITAGE: Whilst in no way wishing to trivialise this important piece of legislation, I indicate to the member for Playford that I have a little photocopying left on my slip (and I am happy to provide him with one of the forms), and it would seem that he has provided us with a very good reason for speeding up the proclamation of the Act.

Clause as amended passed.

Clause 9 passed.

The Hon. M.H. ARMITAGE: I move:

That the time for moving the adjournment of the House be extended beyond 10 p.m.

Motion carried.

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

Mr ATKINSON: I move:

Page 6, line 30—Delete 'a moribund state' and insert 'the terminal phase of a terminal illness.'

This clause gives the Supreme Court jurisdiction to review disputes about anticipatory declarations and medical agencies. I support the clause; however, I would like to change one of the references in it. The clause provides that the court may not review a decision by a medical agent to discontinue treatment if the grantor is in a terminal phase of a terminal illness and the effect of the treatment would be merely to prolong life in a moribund state without any real prospect of recovery. It is my contention that 'moribund state' is a most subjective and imprecise term and, since the Bill defines a terminal phase of a terminal illness, that is the term we ought to use.

Clause 4 defines 'terminal phase of a terminal illness' to mean 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. So, I put to the Committee that the phrase 'terminal phase of a terminal illness' is a much more certain form of words than 'moribund state'. Because it is more precise and more certain, that is the form of words the Committee ought to adopt.

Mr WADE: I have some difficulty with this. I do not have any problem with the word 'moribund'. My understanding of the word is that it means 'at the point of death'. That is fairly precise and specific—far more specific than 'terminal phase of a terminal illness'. I am quite satisfied with the word 'moribund'. It does not need to be defined in this Bill, because it has been defined in the dictionary, as are most of the other words here. It is a word that is clear throughout the medical profession and throughout the English language and one which to me, contrary to the member for Spence's opinion, means 'at the point of death'. It is precise and should remain in the legislation.

The Hon. M.H. ARMITAGE: I support the member for Elder's remarks, and in particular I draw the attention of the Committee and of the member for Spence to the fact that the honourable member had an amendment to clause 7(1)(a) on file and, from memory, he withdrew it. Clearly, we are no longer talking about the terminal phase of a terminal illness: we are talking about people in the terminal phase of a terminal illness or people in a persistent vegetative state. Given that is not part of the member for Spence's amendment and given that, as the member for Elder says, 'moribund' is easily definable, as are all other words in this Bill, I oppose the amendment.

Amendment negatived.

The Hon. M.H. ARMITAGE: I believe that this clause ought to be struck from this and any subsequent Act on the basis that, as I have said on a number of occasions, a medical agent is appointed solely by someone who believes that the person whom they are appointing as their medical agent is someone whom they can trust, someone in whom they can confide and, in particular, someone with whom they feel comfortable to discuss matters relating to their imminent death, pain relief, the dying process and so on.

Accordingly, I should like to hypothesise that by the very act of appointing person X as a medical agent somebody is

clearly excluding person A, B, C, and so on, from the opportunity to be the person exhibiting or utilising all the powers of being their medical agent. Again, I should like to hypothesise that, if persons A, B and C are members of the same family and person A appoints person B as their medical agent, they are clearly excluding person C. They will have made a conscious decision, 'I don't want person C, who is a member of my family, to be my medical agent.' However, in clause 10 we see:

> The Supreme Court may, on the application of—
> (b) any person who has in the opinion of the court a proper interest in the exercise of powers conferred by a medical power of attorney, review the decision of a medical agent.

I believe that in a familial situation, such as I have outlined, person C, who has been consciously excluded by person A in their decision to appoint person B as their medical agent, may be regarded by the court as having a proper interest in the exercise of the powers conferred by a medical power of attorney. To me, that strikes absolutely, irrevocably and totally at the reasons behind the Bill.

In my view, the medical power of attorney is attempting to say that someone of sound mind is making the decision, 'That is the person with whom I am comfortable to discuss the potentially devastating last days, weeks, months of my life, and that is the person I want.' This clause would provide that the medical agent's decision, having benefited from all the discussions with the ill person, can be challenged or reviewed in a court. I accept that that may mean that the medical agent's decision may still be upheld by the court, but during that process person A, who has legitimately given the power to person B, may be lying in a hospital bed in circumstances of great privation and pain, and undergoing all the problems which were the very reasons for their appointing a medical agent. Accordingly, I believe that to have a review of the medical agent's decision in this Bill, which is about consent to medical treatment and palliative care, particularly by a court, whose role is to uphold the law rather than to look at the rationale and emotion behind people's decisions, is the antithesis of what the Bill is about.

I am also greatly concerned, having seen these examples in practice, that if any doctor is given an instruction by person B, in my previous example, and they know that in this legislation there is a specific power of the Supreme Court on the application of person C to review person B's decision, the doctor will legitimately say, 'I don't know whether I'm coming or going; I don't quite know what's going on here. The Supreme Court has this specific power in the Bill and accordingly I'll wait until the Supreme Court has made its decision.' In that situation, person A, who has in good faith appointed person B in the expectation that person B will relate to the doctor in extenuating circumstances person A's wishes, lies further in a state of privation, in pain, depressed, or whatever the circumstances may be, as they are close to death.

In my view, there ought not to be a specific provision in the Bill for a review of the agent's decision, because it goes against what the appointment of an agent is all about, in the first instance; and, secondly, I believe it will be an inducement for doctors not to make a decision and to wait for the Supreme Court's verdict on the review of the decision of a medical agent. Both those instances, in my view, are the antithesis of what the Bill is all about.

Mr ATKINSON: The Minister is trying to oust the jurisdiction of the courts. It is always dangerous to try to oust the jurisdiction of the courts in any statute. Indeed, even if the Minister gets his way on this clause, in my view the courts will not allow his ousting of clause 10. The Supreme Court will find that it has inherent jurisdiction to review these matters. Therefore, what the Minister is trying to do is dangerous legislative practice at any time, let alone with this Bill.

The Minister tries to characterise all the disputes that will arise under the medical agency as disputes in which a member of the patient's family attempts to recover authority from another person who has been granted the medical agency. It may be that there will be some cases where family members apply to the Supreme Court, but the Committee should be aware that if family members apply in that way the case will be decided according to law, and the relevant law will be the legislation that we are passing tonight. I do not see any danger in a family member being able to make such an application, because the application will be decided on its merits. The danger lies in the Minister trying to prevent the family from even applying to have their case decided according to law.

The Minister says, 'If you appoint an agent, the agent will be your friend, your soul mate, and the agent will decide everything as you would have decided if you had personal autonomy.' That may be true of any agency, but I have to tell the Committee that this will be the first agent whose decisions are not reviewable, because everywhere else in the law of agency such decisions are subject to review by the courts in the normal way. Thus, if an agent who is acting as a commercial agent is given authority in certain terms, perhaps by letter, by his or her principal, and the agent violates the terms of that appointment, the principal can go to the court and seek damages or an injunction or bring the agency to an end. However, if the Minister gets his way and this clause is defeated, he will be attempting to oust the possibility that anyone, including the patient, can apply to have the terms of the appointment reviewed by the court. Indeed, he goes further in the next clause and abolishes the registry, so there will be no record of these appointments. So, not only will there be no record but there will be no means of reviewing these appointments. I think the Minister's move to defeat this clause is very dangerous indeed.

The Supreme Court is a most appropriate venue in which to decide these cases. It is a court that is effectively open 24 hours a day. Judges will make the time, at any time of the day or night, to hear these cases. As I said earlier, I think that very few medical powers of attorney will be created and that there will be very few disputes about them. Therefore, it is hardly likely that the Supreme Court will be clogged with these types of cases. These cases will arise only in extraordinary circumstances—circumstances such as the Bland case, which I referred to earlier.

The Minister and I had a disagreement about the removal of feeding tubes. I lost that vote, and I accept it. The Minister is now saying that the agent can not only take away food and water from a patient but he can do it without having it reviewed by the courts. That is what the Minister is saying, because in this provision he is attempting to overturn the jurisdiction of the Supreme Court. In the Tony Bland case, the National Health Service, Tony Bland's parents and people acting on behalf of Tony Bland were able to have their day in court and to have the principles of the case argued before an independent tribunal—the court. The Minister would deny them that opportunity, and that is a most disturbing development by the Minister. However, it is a development which the

other place will resist, God bless them.

The Hon. M.H. Armitage: Good reason for an Upper House!

Mr ATKINSON: I think members of the parliamentary Labor Party ought to know that supporters of Supreme Court jurisdiction in respect of this clause include the Hon. Terry Cameron, the Hon. Trevor Crothers, the Hon. Ron Roberts, the Hon. Terry Roberts, the Hon. George Weatherill and the Hon. Mario Feleppa.

The Hon. M.H. Armitage: But this is a conscience vote.

Mr ATKINSON: That's right, it is a conscience vote, but it is helpful to know where the majority of parliamentary Labor Party members in another place stand on this matter. If one turns to clause 10 and looks at its terms, it really does limit the Supreme Court's ability to review a medical agent's decision. Clause 10(2) of the Bill provides:

> The court may not review a decision by a medical agent to discontinue treatment if—
>
> (a) the grantor is in the terminal phase of a terminal illness; and
>
> (b) the effect of the treatment would be merely to prolong life in a moribund state without any real prospect of recovery.

So, the scope for appeal to the Supreme Court is limited by clause 10, yet the Minister wants to abolish even that. It is paradoxical that, if you support the Minister and you defeat this clause, you may broaden the scope for appeal to the Supreme Court because then we will go back to the inherent jurisdiction of the Supreme Court to review all agents.

Mr SCALZI: I have great concerns about deleting the review of the medical agent's decision by the Supreme Court. As the member for Spence has outlined, there must be an area of appeal. It is quite clear that this will not hinder an agent who has been appointed for the right reasons and where that autonomy is transferred. It will take place but, nevertheless, in any good laws there is always a case for appeal. Any good laws will include that option. To delete this is really to take away that fundamental principle.

We are taking away that fundamental principle from this important Bill which deals with death and dying. We are not talking about the selection of a football team—or a soccer team, to be multicultural; we are talking about someone appointing an agent to review their situation when they are in a state of a terminal illness. The safety aspects are there to prevent it from being a hindrance because it limits the Supreme Court. As the previous member stated clearly, the court may not review a decision by a medical agent to discontinue the treatment if the grantor is in the terminal phase of a terminal illness. The effect of the treatment will be merely to prolong life in a moribund state without any real prospect of recovery.

This does not say that we will prevent the natural death process from continuing. It says it will be there in case it is not taking place. In other words, if there is something which is not going right and which contradicts the original contract that the person signed when he or she gave an agent the power to act on his or her behalf, any court of law should be able to intervene. I say this because, as I said previously, we are not islands. We come into this world in families and we die in families, and if families have concerns about someone appointing an agent—

Mr Cummins: What about an orphan?

Mr SCALZI: They have friends, and most of them are adopted. The member for Norwood is trying to put up obstacles which just do not exist. I have spoken to people in my electorate who are concerned about the diminishing role of the family. A parent has the responsibility to look after children well beyond the age of 16 or 17. Many of us who have children older than that in tertiary education and so on foot the bills for the telephone and so on. We have a situation where, if they appoint someone else and something goes wrong, you are saying that the parents have no right of appeal. According to the law, they cannot intervene to see that natural justice has taken place. We delete that and say, 'They appointed the agent; the agent has taken over the autonomy.'

We have not only the transfer of the decision making process from one person to another but the fact that it takes place at a different time. If something goes wrong there are no rights of appeal. That is not a sense of justice and it does not take into account the concerns of family members, friends, next-of-kin and people who, apart from the individual, have that person's interests at heart. If that person is just putting up obstacles, the clause clearly states that they have no right of appeal. The death process will take place and the wishes of the person who appointed the agent will not be questioned. However, if there are any concerns about that, there should be a right of appeal: it is as simple as that. It would be irresponsible of us to delete this clause.

Ms STEVENS: I support the Minister in his opposition to this clause. I will reiterate the points that the Minister made with a few extra points. The central tenet of this Bill concerns patient autonomy and self determination. It is about what the person wants at a time in their life when they are incapable of making a decision. It is about giving power back to that person so that it is used in the best way it can be used in relation to what that person would have wanted. The member for Hartley referred to families. It is important to understand that, in these times, family intervention can be negative. Sometimes, the needs, guilt and feelings of family members can outweigh what the person would have wanted. One of the positive things about this Bill is that it centres on the person and what they would want. We need to understand that, when people appoint someone to be their agent, it is not done lightly. It is someone whom they trust, who knows them and who knows what they want in a certain situation.

These sorts of decisions have to be resolved on a human scale and people should not be subjected to extensive litigation and court processes which can be expensive, distressing and frightening. Above all, it can be completely disempowering for the person at the centre of it. Instead of having greater autonomy and greater self determination, the person finds that their life, their situation, is taken out of their hands and put into the hands of lawyers in the Supreme Court. If this clause is passed, the Supreme Court, which deals with the most horrific crimes in our society, will be making decisions in relation to a person's life.

In my second reading contribution I referred to a return of the Guardianship Board, as provided in the initial Bill. Since that time I have spoken to a number of people in that regard and I have changed my mind. I believe that, if we pass this Bill, we should adopt the concept of patient autonomy, go with it, and allow the person's agent to make the decision. The decision would stand. I support the Minister in opposing this clause.

Mr CUMMINS: I support the Minister in his move to delete clause 10. There is no doubt at all that the Supreme Court has inherent jurisdiction in relation to the substantive law, both civil and criminal. It has that jurisdiction unless the statutory enactment unequivocally takes away that jurisdic-

tion. That has been so since 1667 with the case of *Peacock v Bell and Kendal*. That case was subsequently followed in the English Court of Appeal in 1919 with the case of *Board v Board* and subsequently went to the Privy Council and was followed there; therefore, it is law.

Mr Atkinson interjecting:

Mr CUMMINS: It must have been on appeal from somewhere else. It certainly went to the Privy Council, so it would be law in this country. Of course, the Supreme Court has inherent jurisdiction to deal with matters, although legislation might not specify any grounds of appeal to anywhere. The jurisdiction goes to the maintenance of justice, and that is clear from Lord Diplock's statement in a 1981 case in *All England Reports*.

I support the Minister in what he is doing but not for the reasons he is doing it. I support the sentiments of the member for Hartley. What concerns me about clause 10 is that it limits the grounds of appeal. As has been pointed out by the member for Spence, it limits the grounds of appeal where there cannot be a review if the person is in the terminal phase of a terminal illness or in a moribund state. It seems to me that the advantage of striking out clause 10 as mentioned by the member for Spence—this is probably the first time I have agreed with him tonight—would be to broaden the scope of appeal to the Supreme Court. Not only could you deal with matters raised in clause 10 but you could also deal with whether someone is suffering a terminal illness or is in a moribund state.

The effect of striking out clause 10 achieves exactly what the member for Hartley wants to do. Indeed, I suspect it goes further than what he wants to achieve because, as I have said, it will give the court power to deal with the concepts of terminal illness, terminal phase and moribund state. For that reason I support the Minister in striking out clause 10 but I support it for different reasons than those he talks about.

The Hon. M.H. ARMITAGE: I would like to see statutorily the Supreme Court omitted from any power in this matter whatsoever.

Mr Atkinson interjecting:

The Hon. M.H. ARMITAGE: No, for the reasons I have stated before, that is, someone appointing a medical agent clearly is making a conscious decision whilst of sound mind (and we have been through all that before) that that is the person they want representing them in certain circumstances. However, on investigating that matter, I was informed of the inherent jurisdiction of the Supreme Court which, on the information with which I have been provided, would see the Supreme Court potentially still able, because of that inherent jurisdiction, to act even if we put into this law that it was not able to review a medical agent's decision.

Bearing that in mind, I did not deny that the Supreme Court would have inherent jurisdiction. Interestingly enough, I do not believe that, if we were to pass a law saying that the Supreme Court ought not to have that power, it ought to have it. As the member for Spence identified earlier, the highest court in the land is this Parliament, and I have some difficulty being told in advice that I sought earlier that, if we were to say for all the reasons that I have mentioned before that there was to be no review by a court of a medical agent's decision, the court could still do it.

I intend to address that in other fora. In regard to this Bill, I recognised previously that there was an inherent jurisdiction of the Supreme Court in this matter but I do not believe that it is appropriate in this Bill. The Bill is about the consent to medical treatment and palliative care, which is about the appointment of an agent that someone trusts; it is about the human dimension and human scale and it is certainly not about overly legalistic appeal processes and review procedures. In this Bill, such provisions are the antithesis of everything the select committee and all the proponents of the Bill have been speaking about for so long.

Accordingly, it is inappropriate in this Bill to have mention of the Supreme Court appeal, whilst recognising, unfortunately (according to advice I have received), that there is an inherent jurisdiction of the court. I remind members, whilst they contemplate whether they ought to support me in my attempt to have clause 10 struck from the Bill or whether they should support other members who seek to have it retained, that the select committee rejected the notion of any form of review or appeal of a medical agent's decision. The committee believed, completely appropriately, that, just as a decision which one takes in relation to treatment for oneself when one has full capacity is in no way subject to review, so a decision taken by a medical agent whom one has appointed whilst one is in complete possession of one's faculties and, presumably, an agent to whom one has identified all the nuances of one's views about death and dying should not be subject to review.

In my view, there are some very good reasons why this clause ought to be omitted from the Bill. I have stated my views before and, as I have indicated, I intend to investigate further the way in which the Supreme Court has the option of overruling a decision of what the member for Spence identified as the highest court in the land, namely, Parliament. For those reasons, I oppose clause 10.

Mr ATKINSON: There are three choices in arranging for review of matters covered by the Bill. The first is for Parliament to draft a complete ouster clause, ousting the jurisdiction of the courts. We could replace clause 10 with a clause that provides that no disputes arising out of this Bill may be subject to appeal in the courts. We could do that; it has been done before in Bills. Sometimes it works and sometimes it does not. If the words are sufficiently unambiguous and aggressive on behalf of the Parliament, that will oust the court's jurisdiction. The member for Giles or the Minister is welcome to do it. I would have thought that they would be of a mind to do it. I am not quite sure why they have not done it.

The Hon. M.H. Armitage: My advice is that it would not work. I investigated it.

Mr ATKINSON: I think your advice is incorrect.

Mr Cummins interjecting:

Mr ATKINSON: I am glad that I have the support of the member for Norwood on that. The second choice is to have a partial ouster clause, which is what is in front of us. Clause 10 provides that people can appeal to the Supreme Court on matters arising under this Bill in a limited range of circumstances. That kind of ouster clause probably will be upheld by the Supreme Court, so that partially achieves the objectives of the member for Giles and the Minister, but are they supporting the first or the second choice? No, they are supporting the third choice, which is no ouster clause at all. If you vote against clause 10, you are restoring the Supreme Court's inherent jurisdiction to review in full every matter raised by this Bill.

That is what you are doing. That is what the member for Norwood is doing, that is what the member for Ridley is considering, and I am considering it right now, as we speak. Here we have a total reversal of the original position. I advise the Minister to get further legal advice, because I believe that

some ouster clauses are completely effective provided they are worded correctly. I believe, on principle, that there ought to be some review by the Supreme Court. I acknowledge that it can get messy when a family member, or the family as a whole, try to interfere in the medical agent's job and the anticipatory direction, but, as I said earlier, there are circumstances where there will be appeals to the Supreme Court on matters other than that.

There may well be appeals where the anticipatory direction is unclear. I am surprised that the member for Giles would have such faith in anticipatory directions. Obviously, the member for Giles thinks that whoever writes an anticipatory direction will do it with such clarity that it will be readily understood years down the track. There are many reasons why such a direction may not be understood years down the track: the method of treating the malady may have changed; the drugs mentioned in the anticipatory direction may no longer exist, or be called by some other name. It may be that the anticipatory direction is just thoroughly crazy—makes no sense at all.

Those of us who have studied the law of succession (the law of wills), know what kinds of things get into wills and must be interpreted by the courts. For the same reasons quite bizarre things may well get into anticipatory directions. It may be that the medical agent wants to go to the Supreme Court and say, 'What does this mean?' A second circumstance in which there may be an appeal to the Supreme Court is where the medical agent declines to act. A third occasion on which there may be appeal to the Supreme Court is where the medical agent seeks to act contrary to the anticipatory direction. So, the Minister and the member for Giles say, 'Oh well, too bad, let's not have any appeals. Let's just let those inconsistencies, ambiguities and difficulties fall where they may.' That is not good enough. However, the member for Giles and the Minister have convinced me that the best way to obtain full and complete Supreme Court review of this Bill is to support the Minister's amendment, and that is what I propose to do. He has convinced me.

Mr LEWIS: I am indebted to the member for Norwood. His training in the law, I guess, ensures that he is aware of Halsbury and its contents, in this instance concerning Supreme Courts in Australia, and it is page 22 of Vol. 37 where we find the matter to which he was referring. Let me, for the sake of honourable members, emphasise the point which he made and make it plain to them, and I quote:

> In the ordinary way the Supreme Court, as a superior court of record, exercises the full plenitude of judicial power in all matters concerning the general administration of justice within its territorial limits, and enjoys unrestricted and unlimited powers in all matters of substantive law, both civil and criminal, except in so far as that has been taken away in unequivocal terms by statutory enactment.

So that if we delete this clause we do not take away from that; we do not detract from it at all. We, in fact, leave it intact. That is further clearly delineated in Halsbury, where it is stated (page 23):

> The inherent jurisdiction of the court enables it to exercise (1) control over process by regulating its proceedings, by preventing the abuse of process and by compelling the observance of process.

I guess that point 2 is more important in the context of this debate, namely:

> (2) control over persons as, for example, over minors and mental patients, and officers of the court; and
>
> (3) control over the powers of inferior courts and tribunals.

Altogether, then, with the particular authorities that the member for Norwood cited—and I will not waste the Committee's time by reciting those—quite clearly that is the case. As the honourable member has pointed out, any barrister admitted to the bar to practice law here in South Australia in a matter of minutes, certainly no more than hours, could have a matter on for hearing if a citizen had any doubt whatsoever about any aspects of the conduct of any person involved in this legislation.

Mr Cummins: It is urgent.

Mr LEWIS: An urgent application is the one that we are speaking about. So we do not even need subclause (6), which provides:

> The court must conduct a review under this section as expeditiously as possible.

It seems to me that someone has overlooked something somewhere. That was always extraneous in the law. It is tautological in the sense that it is already there; you do not have to state that it is there. I find that, to ensure that there is no miscarriage of justice in any instance in the application of this legislation, the most sensible thing to do is delete clause 10. I commend the Minister for his good sense in that regard.

Mr SCALZI: I, too, will have to support the Minister, although I do not know how this has come about. I cannot understand the law as well as the member for Norwood and others may understand it. However, I am very grateful that such a law exists. I was trying to ensure that there was an avenue of appeal, and here we find that it was there all the time, but it was overlooked. For those reasons I support the Minister. I have expressed concern tonight about many of the clauses, especially this clause, because I wanted an avenue of appeal, and it is already there.

The Hon. M.H. ARMITAGE: For the reasons I have identified previously, my inclination is to remove any possibility of unnecessary legal review of a decision taken by a perfectly legitimately appointed medical agent. All the advice I received from clever lawyers was that it was impossible to exclude the inherent jurisdiction of the court. Both the member for Spence and the member for Norwood have indeed opened up a chink in that they have both indicated that there is the potential for the passage of a clause that would see the Supreme Court omitted from the process of review if our words were—and I think the member for Spence said—'strong enough and unambiguous enough', or words to that effect. Everything I have done to remove clause 10 is intended to omit the unnecessary Supreme Court review of a legitimate agent's decision.

I now understand that my legal advice may be incorrect, or some people have informed me that that is the case. I assure the Committee that I intend to continue with my process to remove this clause from this Bill tonight but, given the window of opportunity opening ever so slightly to legislatively remove the Supreme Court from these deliberations, I intend to take more legal advice and, if there is a single possibility of a clause in any way being moved to remove the Supreme Court from this legislation, I guarantee that, in the words of Arnold Schwarzenegger, 'I'll be back.'

Clause negatived.

Clauses 11 to 13 passed.

Clause 14—'Register.'

The Hon. M.H. ARMITAGE: This clause would see the necessary establishment by the Minister of a register of advance directives and medical powers of attorney and, indeed, the assigning of a suitable person to be referred to as the registrar under the Government Management and Employment Act to administer the register. I believe that this

is a prime example of unnecessary bureaucracy and that it opens up more opportunities for slighting the implementation of the Act. Would the register be available 24 hours a day for the purposes of searching, because clearly it would have to be if there were to be reasonable legitimate decisions taken from it? Who would have access to it? We do not know. What about privacy considerations? Who has these sort of opportunities to access it?

Would the medical practitioners come to rely on the register as the sole source of evidence that an advance directive or medical power of attorney existed, even though it is voluntary for persons to lodge their advance directive on the register? I believe that clearly they would. Once you have a register, whether or not you can access it 24 hours a day, obviously the temptation is to press the enter button and, if nothing appears on the screen, one assumes that there is no directive, almost legitimately. I can understand that happening. However, it is voluntary for a person to lodge their advance directive.

At some stage in the future a register may be developed; it may be that a voluntary organisation with some experience in holding private information for the public about medical conditions or medical related matters may well take on that task if, at some stage further down the track of the implementation of this Act, a register were deemed to be prudent. Much discussion has taken place about a 'smart card', which is a specifically designed plastic card, *a la* bank card, kept in the wallet or purse as an indication that the holder has made an advance directive or appointed a medical power of attorney, and that may be a more efficient and better way to go. However, that clearly has many limitations, just as the register does, because the fact that a person does not have one of those cards on their person should not lead to an automatic assumption that they have not made an advance directive.

I do not believe that that is a conclusion to which one can legitimately jump. Following the assumed passage of this legislation, a great deal of attention will be focused on education of the public regarding its provisions and applications and, indeed, its intentions. I believe that to constrain the Minister to have to set up such a register with the potential difficulties that I have identified (bureaucratic and privacy concerns, etc.) on day one, bearing in mind that all the provisions of the Act must come into force simultaneously, would create unnecessary trouble. In other words, it may well be that, with time and as the process evolves, it may be seen to be prudent to develop a form, but I believe that to require that on day one with such specific detail is asking too much, and accordingly I oppose this clause.

Mr LEWIS: Woe is me. This was my last hope that commonsense would prevail in the use of these forms. Without reflecting at all on the decision of the Committee or anything else, one of the ways in which I felt there might be some protection against people obtaining from the weaker members of the community this so called medical power of attorney and then abusing it, because the person who gave it did not understand what it was they had given, so that the person who had it was sort of waving it over their head, was that with the establishment of a registry under the control of a registrar—and I do not think that would be very expensive—we would guarantee the integrity of the authorisations that are given. We would also in the process make it easier, if not certain, to avoid forgery. Let me put that in another context: it would make it darned near impossible for anyone to get away with a forgery, because they must present their medical power of attorney (once granted) to the registrar or, at least, once the form referred to currently in the schedules attached to the Bill has been filled in, it must go to the registrar for inclusion in the registry. That is a safeguard, and it would almost eliminate forgeries.

The Minister's proposal to delete this from the Bill and prevent the establishment of a registry makes it impossible to have any place for a doctor or a concerned parent or other relative to check whether or not a medical power of attorney has been given by a patient. Do not say to me that there would not be some people who for one reason or another might not be tempted to forge such a document. I do not think it is wise to eliminate this clause, and I believe we must retain it. It would be simple for the register to be kept on computer. It could easily be accessed by land-line at terminals all over the State or wherever else you wanted it, but access to the records would be restricted by providing only those people entitled to see the records with a password—and a cipher password at that. I will not go into discussion on how you can establish that in the binary structure of the hardware of a computer, but it is dead easy. To that extent it is not an expensive exercise. You would need only a 486 to serve the entire needs of every South Australian.

Mr Atkinson interjecting:

Mr LEWIS: A computer, which could identify the existence of a medical power of attorney for a given person and provided to another given citizen and the date on which it was given. What happens now if a doctor is presented with a forged document from one or other of the people who may have an interest in the matter and he or she does not bother to check whether there is any other document assigning medical power of attorney? To delete this clause is to invite a mess, and it will cause a great deal of angst at some later time for one or more parties until, to use the Minister's words, we have to come back to rectify the deficiency in the system. I urge members to retain the register and the necessity to appoint a person to be responsible for it.

Mr CUMMINS: I support the Minister in his proposition that clause 14 should be deleted. This authority is fundamentally in the nature of a power of attorney, and it is similar to wills and powers of attorney where you give someone authority to do something on your behalf or to deal with your property in a certain way. As all members would know, you must have two witnesses to a will, and they must be in the presence of each other and in the presence of a testator when the document is executed. It is very rare indeed that the problem of a forged will arises. In relation to powers of attorney, once again a witness executes that, and they fall into certain categories.

I appreciate the problems raised by the member for Ridley in relation to protection, but the legislation clearly provides for protection. If one looks at schedule 1 and the acceptance, one sees that the medical power of attorney has to be signed by the person giving it and the person accepting it, and those facts are witnessed by people who fall into a certain category. If we look to the definition of an authorised witness in clause 4—the interpretation clause of the Bill—we see that they must be justices of the peace, a commissioner for taking affidavits in the Supreme Court (and to be a commissioner for taking affidavits in the Supreme Court you must be a legal practitioner), a member of the clergy or a registered pharmacist. Therefore, it seems to me that the requirement as to the category of witness affords protection in respect of the matters raised by the member for Ridley.

I appreciate what the honourable member is attempting to do, and I certainly agree that one should try to stop forgeries,

but it seems to me that there is no difference between wills and general powers of attorney, where you can sign a general power of attorney, disappear overseas and allow someone to do anything at all to your estate—to your house, your property and your bank accounts. It seems to me that there is fundamentally no difference between a will that is executed prior to death and is acted on after your death and this measure. It seems to me that there is greater protection in the power of attorney provided for in this Bill, because of the requirement that the two parties involved must sign in the presence of a witness who falls within categories of people whom we would think would not be involved in some sort of conspiracy to forge a document. For that reason I support the Minister.

The Hon. M.H. ARMITAGE: For the member for Ridley I reiterate that clause 14 (3) quite specifically provides:

> A person who has given a treatment direction, or granted a medical power of attorney, may,. . . have the direction or power of attorney registered in the register.

In other words, it is a voluntary register. I do not believe that a compulsory register is appropriate, and I do not believe that appropriate and reasonable decisions will be made if it is only a voluntary register. Given the concern of the member for Ridley in relation to the fact that a medical practitioner would have to rely on the register to make the appropriate decisions, I remind him of clause 9(1)(a), which provides:

> A medical agent is only entitled to act under a medical power of attorney if—
>
> (a) the agent produces a copy of the medical power of attorney for inspection by the medical practitioner responsible for the treatment of the grantor of the power.

In other words, a register for the medical practitioner is superfluous because, according to the law that we have just passed, the medical agent can act only if he or she sights the medical power of attorney.

Mr ATKINSON: The debate on this clause is much like the debate on clause 10. It is another example of the Minister acting in a way that is inconsistent with his stated intentions. It seems to me that, if the registry exists, that is a bonus for the system of medical agency. I would have thought that these agencies will exist in fewer than one in 100 cases of terminal illness or persistent vegetative state. If the treating doctor goes to a computer, presses a button, accesses the registry and looks to see whether such an agency exists, that is a good thing from the Minister's point of view.

In the vast majority of cases there will not be a medical agency, so I would have thought most treating doctors would overlook the possibility. They would not even think about it unless a medical agent came rushing into the theatre and said, 'Here is the agency agreement.' I would have thought a registry boosts the effectiveness of the Bill. From what the Minister says, I am not quite sure why he is opposing it. I know the Minister—

The Hon. M.H. Armitage: It's not certain.

Mr ATKINSON: The Minister says it is not certain because merely by accessing the registry you will not determine that a medical power of attorney does not exist. The Minister is saying the medical power of attorney may exist but that it might not be in the registry, and the Minister fears that, if the treating doctor accesses the registry and finds no power of attorney, he or she will conclude that there is no power and therefore will not make other searches.

I put it to the Minister that the best you are likely to get out of treating doctors is a dip into the registry, because they will not go searching for a medical power of attorney, given that it will be so rare. They will certainly not go searching for it in emergency circumstances. I am not quite sure why the Minister opposes the registry, although I am quite happy to join him in voting against it; it does not worry me. I am willing to take his word for it, but it seems to be contrary to his stated intention.

As to the point about unnecessary bureaucracy, that is a bit rich. Given that there will be so few of these medical agencies, I would have thought that it is not exactly a full-time equivalent job. I should have thought it was something that the Minister's staff could do in their spare time. I know that the Minister has to cut $65 million out of the health system over three years because he took a pasting around the Cabinet table. That much has been established.

The Hon. M.H. Armitage: And I am doing it with aplomb.

Mr ATKINSON: He says that he is doing it with aplomb. I should have thought that the cost of someone spending one hour a week handling such a registry would be minimal. However, if the Minister does not want us to support the clause, I am happy to take his advice.

Clause negatived.

Clauses 15 to 17 passed.

Clause 18—'Saving provision.'

The CHAIRMAN: The member for Spence has two amendments to the same clause, the second of which appears to be a grammatical and sense correction.

Mr ATKINSON: I move:

> Page 11, line 8—Add between the words 'administration' and 'of' the words 'or omission' and delete the words at the end 'the person to whom the treatment is administered' and replace them with the words 'a person'.

Clause 18(1) would then read:

> This Act does not authorise the administration or omission of medical treatment for the purpose of causing the death of a person.

I move this amendment because the Bill does not authorise the omission of certain types of medical treatment. For instance, if a person is knocked out during a sporting endeavour, is unconscious and is brought to hospital and happens to be a diabetic, the Bill does not authorise the omission of the normal treatment for diabetics in such a way as to cause the death of that patient, and the same applies to a patient requiring dialysis. It seems to me that omissions could cause the death of a person in an unauthorised way, just as the administration of medical treatment could. I believe that the clause ought to cover both the administration and the omission of medical treatment where it causes the death of a patient in an unauthorised way.

The Hon. M.H. ARMITAGE: I understand that clause 18 was inserted, in the first instance, to give solace to people who were concerned that the Bill authorised euthanasia. My advice is that the clause is virtually unnecessary, because there is no intention for this legislation to authorise euthanasia. I am happy to support these dual amendments.

Mr ATKINSON: I thank the Minister for his agreement. Not only is he right to support the amendment but also he gives me great pleasure, especially as when this Bill was last before the House the former member for Coles and the member for Newland indicated that a saving clause of this kind would be a terrible thing and might undermine the Bill as a whole, and my amendment was voted down in this place. It has now been accepted by another place and it is now accepted by the Minister, and I am most grateful.

Amendment carried; clause as amended passed.

Progress reported; Committee to sit again.

ADJOURNMENT

At 11.13 p.m. the House adjourned until Thursday 16 February at 10.30 a.m.