LEGISLATIVE COUNCIL

Wednesday 26 October 1994

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

PAPERS TABLED

The following papers were laid on the table:

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

Regulations under the following Acts—
Education Act 1972—Teacher Registration.
Electricity Trust of South Australia Act 1946—Powerline Clearances.
Fees Regulation Act 1927—Teacher Registration Board.
Superannuation Act 1988—Prescribed Authorities—Construction Industry—Long Service Leave Board.
Superannuation (Benefit Scheme) Act 1988—Members—Festival Centre and TransAdelaide.

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

Regulation under the following Act—
Fisheries Act 1982—Rock Lobster Fisheries—Fees.
Rules of Court—District Court Act 1991—Appeals—Meat Hygiene and Guardianship Board Acts.

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

Regulations under the following Acts—
Harbors and Navigation Act 1993—General.
South Australian Ports Corporation Act 1994—Control and Management of Ports.

LEGISLATIVE REVIEW COMMITTEE

The Hon. R.D. LAWSON: I bring up the tenth report 1994-95 of the committee.

The Hon. R.D. LAWSON: I bring up the annual report 1994-95 of the committee.

LOCAL GOVERNMENT REFORM

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a copy of the ministerial statement made in another place by the Premier on the subject of local government reform.

Leave granted.

QUESTION TIME

PRESCHOOL STAFF

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister for Education and Children Services a question about preschool staff cuts.

Leave granted.

The Hon. CAROLYN PICKLES: Today is Universal Children's Day, celebrated each year in over 100 countries, to promote the welfare of children. Unfortunately, today is also a sad day for early childhood education in South Australia because we now know the affect the Minister's decision to increase child-staff ratios will have on staffing at preschools and child-parent centres. In his budget media release, the Minister outlined savings of $400 000 to be achieved by increasing the staff-child ratio from 1:10 to 1:11 for the majority of preschools and child-parent centres.

The Opposition has a copy of the staffing allocations for 1995 based on a new formula and this shows that 92 preschools and child-parent centres will have fewer staff next year. The Minister's department is also offering separation packages to cut some 30 permanent early childhood workers from his department. These decisions have been made by a Government that promised to increase spending on education and by a Minister who professed to have a special interest in early childhood education. My questions to the Minister are:

1. Will the Minister release the names of the 92 preschools and child-parent centres to have fewer staff in 1995?

2. What is the target number for the reduction of early child workers?

3. What are the estimated savings this year and in a full year from the new staffing formula?

The Hon. R.I. LUCAS: The honourable member has some information because we have sent all the information to all 300 or so preschools in South Australia during the past week—starting at the end of last week and the beginning of this week—as a follow-on from the budget announcements. On the budget evening on 25 or 26 August, I met with the Institute of Teachers, and I said that the effects of the budget decisions in preschools would mean that abut 30 early childhood workers would be able to take a targeted separation package.

So, the information that the honourable member has is what we just sent to preschools and exactly what we told the Institute of Teachers and anyone else who was prepared to listen from the budget evening on. That is the first point. There is no new news in relation to this particular story; it is confirmation of a decision that we took some two months ago as part of the budget.

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: I have a copy of the statement on 'Early years of education boost' which I released on 6 June 1994 in Early Childhood Week. I gave a commitment on behalf of the Government to provide extra funding to assist children with learning difficulties. I said that we would increase the number of speech pathologists, and we have. I said that we would reduce the number of assessment services, and we have. I said that we would increase funding for training and development, and we have. I said that we would increase funding for early intervention programs in the budget, and we have. That is what I said in June. That is a copy of the media release which acknowledges the Hon. Carolyn Pickles as the then shadow Minister for Children's Services and a variety of other dignitaries and which indicates exactly what I said: that we would increase funding in a number of areas that I have just highlighted. So there is no inconsistency at all with the statement I made in early June and the decisions that were taken in the budget. That is the second point.

The third point is that what the Hon. Carolyn Pickles does not highlight in her question is that she was a supporter of a Government that actually funded some preschools on the basis of one staff member to every 13 children. The Government has decided to fund preschools on the basis of one staff member to either 10 or 11 children. So, the Government has got rid of the category of one staff member for 13 children which the Hon. Carolyn Pickles and the previous Government supported. Of course, there is no mention of that by the honourable member or, indeed, by anyone else when we discuss this. The simple facts are that that category has

disappeared, and that all our centres will be staffed on the basis of 1:10 or 1:11.

The Hon. Carolyn Pickles: Will they all be trained?

The Hon. R.I. LUCAS: What a naive question from the shadow Minister: 'Will they all be trained teachers?' Even under the previous Government there was always a mixture of teachers and early childhood workers. So, that question is a nonsense. There has always been a mixture of teachers and early childhood workers in preschools in South Australia, and the Government will continue to maintain that. So, we have got rid of the 1:13 category and said that all our programs for four year olds in preschools ought to have a ratio of 1:10 or 1:11. As a commitment to social justice in the truest sense of the word, preschools in socioeconomically disadvantaged areas and small rural centres will be staffed on the basis of 1:10. Those centres which might perhaps be in Burnside or a number of other areas that are a little bit better off will be staffed on the basis of 1:11. So the Government is committed to continuing the ratio of 1:10 or in some cases 1:11, but it has got rid of the previous Labor Government's staffing ratio for some centres of 1:13.

The fourth point is that the Government has advised all centres. I would be happy to provide a list because that has already been provided to all centres. Again, what the honourable member does not highlight is that 30 centres will actually have increases in staffing as a result of this changed staffing formula; 60 centres will have decreases in staffing as a result of budget changes; and 30 centres that were going to have decreases any way irrespective of budget changes, because they were in effect going to lose staff on the basis of enrolments under the Labor Government's formula. The true comparison is a simple one: there will be an increase in the numbers of staff in 30 centres, and there will be a decrease in staff in about 60 centres as a result of the budget decisions the Government has made.

The Hon. Carolyn Pickles: How much money will the Government save?

The Hon. R.I. LUCAS: Again, that is quite simple because the Government announced it in the budget. This is not seeking new information. I refer the honourable member to the budget statements I released on budget day: $400 000 or thereabouts in this financial year ratcheting up to about $1 million—not the $1.5 million that the honourable member and the Institute of Teachers were talking about—by the end of the third year. The final point is that we in South Australia will be staffing our centres with one staff member for every 10 or 11 children. In some other States the numbers are as high as 1:15, or 1:16 or 1:17. In South Australia we will have and continue to have the very best preschool services of all States.

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: Exactly. That is the policy of the Government. I am pleased to see that the Shadow Minister agrees with that. We will have the best preschool services for four year olds and the best programs for four year old children in the nation. I invite members to compare that with either the 1:13 category of the previous Government or some of the other States which have ratios of one staff member for every 15, 16 or so children within their four year old programs. Any objective observer of preschool programs in Australia would have to say that the preschool programs this Government will continue to provide, together with the additional assistance like speech pathology, assessment services and intervention programs, are very good.

There is no mention from the Shadow Minister about the additional funding going into those areas: some $2.7 million this year and some $10 million over four years in the early childhood areas—which takes not only this area of preschool but the junior primary schooling area as well. It is convenient to forget these things. I assure the Shadow Minister that, when parents see the additional programs that will be funded by the Government in these important areas of tackling early intervention, there will be and continue to be strong support for the Government's programs in early childhood and preschool services generally.

PRIMARY INDUSTRIES DEPARTMENT

The Hon. R.R. ROBERTS: I seek leave to make an explanation before addressing a question to the Attorney-General, representing the Minister for Primary Industries, concerning morale within the Department for Primary Industries.

Leave granted.

The Hon. R.R. ROBERTS: I have received telephone calls from a number of areas. Since 1992 there has been an overall reduction in Department for Primary Industries' staff from 1590 until 1994 of 500 people. Since the introduction of the new Government, and as a consequence of targeted separation packages, throughout the Department for Primary Industries, and in particular in the Adelaide offices of the Department for Primary Industries, there has been a further reduction of some 90 persons. This has caused a number of problems in regard to staff morale. During Estimate Committees' discussion a range of questions was asked and a range of answers given. It is not pertinent to canvass those now. The consequence is that research—

The Hon. K.T. Griffin interjecting:

The Hon. R.R. ROBERTS: We will go through it if the Attorney-General wants to go through it—projects have been shelved. Important research has just been left and there are concerns as to where it will finish up. I am told that there is an all round air of despondency within the Department for Primary Industries, and the workload of those who have left I am assured has increased dramatically.

I am advised that recently (I believe in the last couple of days) the Minister has been concerned at the performance of some of his staff and has asserted that they are not friendly enough on the phone and, in a nutshell, are not doing their job up to standard. I have been advised that the Minister has engaged his own private pimp service, I suppose, to spy on his workers, to ensure that they will be randomly monitored as to their performance. My questions are:

1. Is it true that the Minister has engaged this service?
2. What is the name of the firm involved?
3. What is the cost of the survey?
4. Will the Minister's own staff and advisers be included in the surveillance?
5. Will the Minister's performance in this area of cooperation, friendliness, consultation, telephone manner, sociability, magnanimity and all-round pleasantness also be tested by the consultancy firm?

The Hon. K.T. GRIFFIN: I would have thought the Minister would pass all those tests, and he does not need a consultancy firm to tell him that, nor to tell the public. I am surprised that the honourable member would be worried about this. I have not heard of any problems with staff morale. Of course, throughout the Public Service all public servants are keen to provide service to the community. I will

refer the honourable member's questions to my colleague in another place and bring back replies.

HALLETT NUBRIK

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Health, a question about community health.

Leave granted.

The Hon. T.G. ROBERTS: The debate about the emissions from the Yatala Vale brickworks owned by Hallett Nubrik continued in another place yesterday when further revelations were made by the local member, Scott Ashenden, that there were concerns in the community about the emissions from the Yatala Vale brickworks. I have had telephone calls from propagators of plants and growers of orchids that their market gardens are being affected by the emissions and not too many answers appear to have been given to the honourable member in the Lower House. I was interested in following the problem through, given that it is part of my shadow responsibilities. The accusations that have been made against the company are very serious in that the emissions from the brickworks are sulphur dioxide, sulphur trioxide, nitrogen oxide and hydrogen fluoride, the emission that started the concerns of the people in that area.

In many cases, community health scares are just that: there are suspected problems in particular areas that after investigations show to be nil, negligible or serious but, in the case of Hallett Nubrik, there does not appear to be any information on which to make an assessment in any of those three categories. My questions to the Minister are:

1. Do the Yatala Vale Brick Company emissions of sulphur dioxide, sulphur trioxide, nitrogen oxide and hydrogen fluoride over the past five years pose any health effects or problems to residents in the area?

2. Will the Health Commission be conducting any health checks on residents in the area for health problems associated with these emissions and, if not, why not?

3. Have any epidemiological studies been conducted in the Yatala Vale area in the past five years for health problems associated with emissions?

The Hon. DIANA LAIDLAW: In relation to the honourable member's first question, certainly the health concerns are matters that have been raised by the member for Wright (Mr Ashenden) and there seems to be a war of words between the honourable member and Hallett Nubrik. Those words seem to be more ferocious as the days go on. I am not sure how that is to be resolved at this stage. I will refer the questions to the Minister for Health and bring back a reply.

SCHOOL MAINTENANCE

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question on school maintenance.

Leave granted.

The Hon. M.J. ELLIOTT: My question relates to concerns raised in November last year by the Minister for Education and Children's Services when in Opposition about South Australian schools which had urgent maintenance needs. At the time the then Opposition education spokesperson put out a media release. The release cited examples of five schools with specific problems, including appalling toilet facilities, the urgent need for painting and general maintenance problems. The release stated:

> These schools illustrate the widespread malaise in Labor's maintenance of its schools that has seen many Education Department schools starved of funds.

That release was put out on 16 November.

The Hon. R.I. Lucas: Last year.

The Hon. M.J. ELLIOTT: That is right. It was put out under the Premier's name, but stated, 'For further information contact shadow Minister of Education, Rob Lucas.'

Members interjecting:

The Hon. M.J. ELLIOTT: That is what the release said. It went on:

> Labor must not be given another chance to further mistreat our school students and staff.

It also revealed a 'Rebuild our Schools' plan by the Liberals, which included a $20 million boost for maintenance and minor works.

Members interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT: It is now almost a year since the Liberals gained office and were given the opportunity to rectify these problems. It will be natural to assume—

Members interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT: It would be natural to assume that the schools which the Minister himself highlighted as having urgent problems would have received attention. I can tell the Council that several South Australian schools feel betrayed by the Liberal Government's lack of action on these maintenance problems.

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order! The Minister will stop interjecting.

The Hon. M.J. ELLIOTT: I have been contacted by a school on this list, which is disappointed by the present Minister's lack of action on this issue. This school, Paringa Park Primary School, was cited as a prime example of the maintenance problem. It was singled out by Mr Lucas as being in poor condition with most of the school being of early 1950s Bristol type aluminium-clad construction, which had 'long outlived its usefulness', along with poor toilet amenities and no shower facilities for staff or students. A letter from the school council that I revealed this month reveals the school's frustration at the lack of action by the new Liberal Administration, especially as that school had been highlighted by Mr Lucas as requiring action. The letter reads, in part:

> As evidenced by the record of the meeting, we were disappointed with the attitude taken by the Liberals now that they are in Government. The condition of the school is deplorable, as the Liberal's media release states quite clearly. Nothing has changed from last year when they first inspected the school, except, I suspect, the attitude of Rob Lucas.

Members interjecting:

The Hon. M.J. ELLIOTT: I am reading a letter. It continues:

> It is difficult to see the Liberal's letter to the school last year as anything but a political stunt to win government. Well, they won, and we believe—

Members interjecting:

The PRESIDENT: Order! I suggest that the questioner get on with the question.

The Hon. M.J. ELLIOTT: If I am allowed to. I can't help it if there are a few injured Government members.

The PRESIDENT: Order! That is uncalled for. I will sit the member down if he wishes to challenge my ruling.

The Hon. M.J. ELLIOTT: The letter continues:

> Well, they won, and we believe it is time that they acknowledged their commitment to the Paringa Park school community.

I have been told that the Paringa Park Primary School has been deemed satisfactory by the Education Department, even though it has heaters that are unflued and contrary to occupational health and safety guidelines. It is worth noting that Mr Lucas's original press release also stated that similar unflued heaters at the Sturt Street Primary School did not meet current safety requirements. His release said that they were not any good at the Sturt Street Primary School, but Paringa Park has them and nothing will be done about them.

I have also contacted other schools named by the Minister in that November 1993 release as requiring urgent attention. Many remain dissatisfied with the lack of action in relation to their school's pressing maintenance needs. Some are reluctant to criticise the Government for fear of jeopardising any ongoing negotiations with the Education Department regarding maintenance funds. One of the schools identified by Mr Lucas last year—Marryatville Primary School—was highlighted as having essential maintenance requirements that had been repeatedly deferred. The deferrals seem to have continued under the Liberal Administration. The school remains concerned at the lack of action taken regarding its problems, which include holes in asbestos panels inside classrooms as well as in exterior panels. My question to the Minister is: will the Government address the immediate maintenance that he identified himself almost 12 months ago in those schools and, if so, when?

The Hon. R.I. LUCAS: The simple answer is that the Government is not in a position to clear up 20 years of neglect by previous Labor Government Administrations in 12 months.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: Let me just identify a few details. First, the press release and the letter to which the refers were not put out by me but, of course, I support the statements that were made by the then Leader of the Opposition. But let me clarify this. The press release was issued by the Leader of the Opposition; the letter to which the honourable member refers was written by the local candidate—not by the shadow Minister for Education. Let us just get that right.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: There was no letter written by me to the Paringa Park Primary School at all, contrary to the inference being drawn by the honourable member that in some way the shadow Minister wrote to the Paringa Park Primary School and made various commitments. There was no letter from me as the shadow Minister for Education to that school promising anything—not one thing; not one letter written by the shadow Minister.

The Hon. G. Weatherill: Why?

The PRESIDENT: Order!

The Hon. R.I. LUCAS: The Hon. Mr Weatherill seeks to assist by asking 'Why?' It is because the press release and statement or any letter covers only a page or two. If we were to list the 700 schools that have essential maintenance needs as a result of 20 years of neglect by previous Labor Governments then the list would have covered 50 pages. All the Liberal Party could do was to look at the 700 schools that had been neglected by the Labor Government and, in effect, select just a handful to say, 'There you are. There is a half dozen schools that represent the 700 or so schools that have been neglected by the Labor Government over 20 years.'

Of course, you cannot put 700 schools in there. There is no commitment at all for what the Paringa Park Primary School has claimed which is, in effect, a significant redevelopment or capital works for Paringa Park Primary School. There is no commitment at all in the press release by the Leader of the Opposition, in the letter from the local candidate or from me as shadow Minister. In discussions that I have had with members of Paringa Park Primary School, I have told them point blank, face-to-face, that there was no commitment at all from the shadow Minister for Education in relation to the maintenance needs of that school. They, together with 700 other schools in South Australia, have essential maintenance needs. There is a $230 million backlog because the previous Government was not prepared to put in the money for maintenance that it should have been putting in for 20 years.

Now this Government and future taxpayers have to start the long process of cleaning up the mess. I say that unequivocally. I have not said anything different from that which I said to the Hon. Mr Elliott or after a 1½ hour meeting with the representatives of the school face to face, that is, that I reject unequivocally—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: There is no commitment in that press release at all in relation to specific schools. The commitment was (and the headline on the front page of that press release from the Leader of the Opposition stated this) a $20 million boost over four years for maintenance and minor works expenditure in the Education Department. What is the actual situation as a result of the first budget of the Government? As a result of the first budget, there has been a $7 million increase in maintenance and minor works expenditure for this financial year 1994-95 to try to correct the long process of neglect of 20 years of maladministration of the previous Government. There is a $7 million increase in expenditure when one looks—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: Now Mr Elliott says he agrees that there is an increase but that it has been taken from other areas. He does not indicate that in his question, but he acknowledges by way of interjection, 'Yes, there has been that increase but what about other areas?' The Hon. Mr Elliott is correct: there has been a $7 million increase. In effect, there has been about an 18 per cent increase in the total capital works budget of the Department for Education and Children's Services—at a time when money is tight.

An honourable member interjecting:

The Hon. R.I. LUCAS: There are budget cutbacks in a number of other areas. The Government is committed to the long process of trying to correct 20 years of neglect by the previous Government, and we have started that process. The promise in that press release of the Leader of the Opposition—

The Hon. R.R. Roberts: Oh, there was a promise.

The Hon. R.I. LUCAS: The promise—was to provide additional money overall to start the process of tackling this problem. We have done that, and we have done more than that. We are actually too generous in the budget, because all we promised in the budget was $20 million over four years or $5 million for each of the four years. In the first year, we put in $7 million rather than $5 million to start the process.

The last point I make in relation to Paringa Park Primary School involves the Hon. Mr Elliott's outrageous suggestion that, for example, the Government was in effect doing nothing at Paringa Park Primary School and that we are saying that the unflued heaters, or something along those lines, were all right in some schools but, if there was an occupational health and safety problem at the school we as a Government would neglect the occupational health and safety laws of the State. That is absolutely outrageous, even for the Hon. Mr Elliott, who makes some outrageous statements on occasions. Even for the Hon. Mr Elliott it is a particularly outrageous statement to suggest that the Government is ignoring the statements in relation to occupational health, safety and welfare.

Last year, the Paringa Park Primary School received almost $50 000 in back to school grant money to go towards making some minor works, which it still has. It will receive additional funding this year from back to school grant funding to assist it with maintenance and minor works. Some of the money will go towards one of the identified needs for the school, namely, to prepare what are unsatisfactory, unsavoury and unhealthy toilet blocks down there for the boys and girls at Paringa Park Primary School. There have already been discussions with the Paringa Park Primary School in relation to the unhealthy and unsatisfactory nature of some aspects of the toilet block. That money is to be used—in part anyway—to seek to correct those problems.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: Well, the Hon. Mr Elliott doesn't want to spoil a good story with facts. The other thing that we have agreed with the Paringa Park Primary School is that we will sit down with it and identify the essential needs, first, obviously the occupational health and safety needs of the school and then its other needs and, together with all the other schools with which we have to work over on the coming three or four years, we will see how we might be able to meet some of those essential maintenance and minor works needs. We have told the Paringa Park Primary School that we do not have the money for a multi-million dollar redevelopment of the school, given the state of some facilities in other schools.

We must make difficult judgments in relation to schools. For example, at Northfield, green slime is oozing out of power points as a result of water dripping down and leaking through the roof and the interior walls. In my judgment, after 20 years of neglect by previous Governments, in seats where the Premier was the local member, when you look at those sorts of circumstances, you have to say that schools such as Northfield have greater needs than schools such as Paringa Park Primary. It is very easy for someone on the side or cross benches or wherever they are in effect to say, 'You should solve $230 million worth of problems overnight; go off and find one of these Democrat magic money trees and pluck $230 million off them and solve all the problems in 12 months.' The attitude is, 'You've been there 12 months; why haven't you solved all the problems?'

The Hon. Anne Levy: I think you are debating the question.

The Hon. R.I. LUCAS: I can answer the question in the way I want to.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: It is not possible to solve $230 million worth of backlog overnight. We are starting the task in the best fashion possible. We are meeting the commitments in the press release made by the Leader of the Opposition prior to the election, and we will do the very best we can in the shortest time possible to catch up with the 20 years of neglect by the Labor Government.

The Hon. M.J. ELLIOTT: As a supplementary question, does the Minister have any knowledge of a departmental officer informing the school that they could not expect favourable funding consideration unless they sold what the department considered to be surplus property, in particular, the school's basketball and netball courts?

The Hon. R.I. LUCAS: That is not true. We have said in our policy document—this is nothing new—that one of the ways of catching up on the minor works backlog in schools is that some schools which were previously built for 700 or 800 students and which now have about 300 students in them and may be on 2 1/2, 3 or 4 hectares of land could decide to sell off part of the excess or surplus land in the school. We would fast track that process, and some of that money could be diverted towards some maintenance and minor works expenditure.

That is a policy commitment from the Party to try to help to meet the backlog that exists within schools. There is nothing new in that except the fast tracking proposition. Prior to the election, I met with schools such as Underdale High School and West Beach Primary School and a variety of others which had gone to the previous Government and department and said, 'We understand that money is tight. We are now a primary school of 300 or so. We used to have 700. We are prepared to sell off the basketball courts or part of the backyard or one of the blocks out the back because we don't need them any more. Will you assist us [and I stress that] to sell this off if we can get some of the money for the school?'

The only way in which some redevelopments at schools such as the Westbourne Park Primary School, Seaton High School and a variety of others will be able to go ahead is if they sell off part of the land that is surplus to their needs. So, there is no 'shock, horror, we mustn't sell any part of the school oval' sort of a story in this. It is part of an ongoing process which we intend to encourage. It is a decision generally taken by the school communities themselves. There has been some discussion with school communities about whether or not they are interested in looking at that part of the option which is part of the Government's policy. In the end, they will need to make those judgments themselves.

TRANSADELAIDE TOUR BUSES

The Hon. M.S. FELEPPA: I seek leave to make a brief explanation before asking the Minister for Transport a question about TransAdelaide tour bus services.

Leave granted.

The Hon. M.S. FELEPPA: Privatisation of services provided by the public sector is the policy of the Government in keeping with the Audit Report. That has been made abundantly clear. This is particularly so with regard to bus services for Adelaide and the surrounding areas. The intention is to privatise 50 per cent of the bus routes, starting with the Bee-Line bus and services to some of the outlying districts. In the face of this policy of privatisation, the St Agnes depot is in the process of developing a charter service for tours of the north-eastern suburbs. It is its intention to extend the tour service to the whole of the metropolitan area if the pilot scheme is a success.

The Manager of the St Agnes depot, Mr Steve Treloar, is confident that it will be a success, and he justifies the scheme as an alternative to private tour operators as TransAdelaide

can provide a cheaper service. No doubt it can provide a cheaper service as it might have to be subsidised by public money, and it is an adjunct to a present service.

The private operators object to this scheme on the grounds that it is unfair competition. TransAdelaide does not have to pay fuel tax, for instance; tyres are cheaper for their very large fleets and their running costs are therefore lower. So say the private operators.

If TransAdelaide can operate cheaper than the private sector—and the private operators admit that it can—privatisation does not seem to be a viable option. Privatisation would not be cost effective and it should be scrapped as a policy. My questions are:

1. In the light of the policy of privatisation of 50 per cent of public sector transport services, can the Minister justify TransAdelaide's intrusion into private sector public transport services which are already prepared and capable of providing charter tour services at competitive prices amongst several operators?

2. Was the tour service put up for private tender before the St Agnes depot undertook to provide the service, and did the St Agnes depot win and sign a contract?

3. To what extent will TransAdelaide tour services be subsidised by taxpayers' money, and has costing been submitted to the Minister?

4. Is it the intention of the Minister and TransAdelaide to develop the tour service and then privatise it as part of the 50 per cent privatisation of bus routes?

The Hon. DIANA LAIDLAW: The Government has no policy to privatise 50 per cent of public transport or TransAdelaide routes. That was made clear over and over again during debate on the Bill in this place earlier this year, and it has been stated by me many times since. I am not sure of the purpose, other than to raise fear, the honourable member has in raising this question in this form today. The Government's policy, endorsed by the Parliament, indicates that 50 per cent of TransAdelaide's services will be put out for competitive tender from March this year, and until March 1997 there can be only 50 per cent of services based on 1996 passenger journey figures. Competitive tendering and privatisation are two entirely different, and some would even argue foreign, concepts because competitive tendering does not preclude TransAdelaide from competing to operate the services that are put out for tender.

It is TransAdelaide's intention to compete for those services. If one spoke to anyone within TransAdelaide today or even the union movement, I believe they would argue that they aim to win every single one of those services that are put out to tender. That is not privatisation. They aim to compete for the right to operate those services, and it is my expectation that they will win many of those contracts. It is entirely up to them if they wish to put in a tender, if they wish to be competitive, and if they wish to win. So the concepts are quite different, and the Government has no policy for privatisation of 50 per cent of public transport services.

In relation to the St Agnes tour charter proposal, I was interested when I first heard of this because a few years ago the STA, as it then was, was heavily into bus charter services. It gave them up, I think about 18 months ago, because when it looked at them on a fair basis, taking into account all costs not subsidised and hidden costs, it saw that it was not able to operate reasonably compared with the private sector.

The Hon. T.G. Roberts interjecting:

The Hon. DIANA LAIDLAW: Yes, I concede there are some difficulties at present. However, as I indicated, I was interested to see St Agnes's plan in the light of recent history with the STA in terms of charter services. I have sought an immediate report on the matter because I am aware that the Bus and Coach Association has concerns to which the honourable member has referred. I have not yet received that reply, but now that the honourable member has raised the matter I will ensure that I have a reply by tomorrow if that is feasible.

HOSPITAL WAITING LISTS

The Hon. T. CROTHERS: I seek leave to make a brief explanation before asking the Minister representing the Minister for Health a question about hospital waiting lists and the shortage of Australian trained surgeons and specialists.

Leave granted.

The Hon. T. CROTHERS: I refer to a recent report regarding a medical inquiry set in train by the present Federal Government and headed by Professor Peter Baume who is currently the head of the New South Wales School of Community Medicine and a former Federal Health Minister in a previous Federal Liberal Government, a man who is eminently qualified to head the inquiry. The report had this to say: first, that Australians faced long delays for surgical procedures because there are too few surgeons rather than the oft stated fact that our hospital system is run down; secondly, that Australia might have to import surgeons to overcome the shortage. Thirdly, it linked the shortages with the high incomes earned by surgeons and the lack of adequate training programs being put in place by the Royal Australian College of Surgeons and its allied surgical disciplines. In fact, the Baume report states that the present specialist training programs will not now or even by the year 2001 produce sufficient graduates to meet reasonable standards of provisions in Australia.

Fourthly, the report further says that the current training programs of the Royal Australian College of Surgeons will train just 100 new specialists per year which is very slightly in excess of the number of surgical specialists who will die or retire. This is in spite of the fact that the report found there were already some 152 too few general surgeons and that that number will increase to 500 by the year 2001. Fifthly, the Baume report also found that the shortfall problems were also worsened by the reluctance of some surgeons to work in the public hospital system and that, whilst it was true that currently there were, for instance, enough ophthalmic surgeons, public patients still faced delays.

Sixthly, the report also stated that there was a shortfall of 150 orthopaedic surgeons than required and blowing out to 350 short by the year 2001. In the field of urology there will be a shortfall of 97 which will reach 169 by 2001. Finally, in the field of ear, nose and throat specialists, a shortfall now of 40 will reach 120 by the year 2001. Last, and by no means exhausting the report on the matters, it says that most specialists receive gross annual fees ranging from $200 000 to $700 000 per annum for some specialists such as cardiothoracic surgeons. Other salaries mentioned are for ear, nose and throat specialists who earn on average $680 000 per annum and for ophthalmologists some $550 000 per annum.

The findings of the Baume report do not surprise me. I am sure they will strike a note of abhorrence amongst the general community. The report findings will have to be dealt with by both State and Federal Governments. In light of the huge salaries earned by some of these people we at last start to understand why it is that health care in Australia is amongst

the most expensive in the world. We at last now know to whom a lot of the funding for health treatment is going.

The Hon. A.J. Redford interjecting:

The Hon. T. CROTHERS: The honourable member would not know one if he fell over it. In addition, the report tells us that the Royal Australian College of Surgeons controls the number of specialists who are trained in the various specialist disciplines. Mr President, the exorbitant fees and monopoly control are an absolute recipe for disaster. Given the numbers of Australians and South Australians who are currently queuing for surgical treatment it must be all the more galling when by and large it is the general public who fund Australian universities where these people get their initial training as general practitioners. My questions to the Minister are as follows:

1. Does the Minister agree with the Baume report?

2. If he does not agree with all of it, which parts does he disagree with and why is that so?

3. Will he undertake in the interests of all South Australians to implement State legislation in order to ensure that the various surgical colleges will as soon as possible commence additional training so as that the needs and interests of all can be catered for and not just the needs and interests of a select few?

4. In the light of the shortfalls highlighted by the Baume report, what has possessed the RACS to be so conservative in the numbers of people that it is prepared to train? So that the Minister for Health is aware of it, in the interests of the South Australians whom I represent, I intend to press on until such time as justice is done.

The Hon. DIANA LAIDLAW: That was a very noble statement by the honourable member. I am aware that Dr Brendon Nelson, President of the Australian Medical Association, has refuted the claims by Professor Baume. Certainly, that was the case two days ago when the report was released. I will refer the honourable member's questions to the Minister for Health and bring back a reply.

DE FACTO RELATIONSHIPS

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Attorney-General a question about *de facto* couples and the law.

Leave granted.

The Hon. T.G. CAMERON: South Australian couples in *de facto* relationships endure archaic, expensive and second-best processes when settling property disputes, the Federal Attorney-General (Michael Lavarch) believes. He says *de facto* couples in South Australia must rely on cumbersome general common law principles of contract and equity for property settlements. He said that this is just not good enough in this day and age. The criticisms are contained in the speech circulated at a family law conference in Adelaide recently. The speech outlines significant reforms relating to property settlement after divorce that are to be introduced in Federal Parliament this year. The proposed reforms include an equal starting point in property division so parties come to the bargaining table as equals. Mr Lavarch went on to say that the Government also plans to introduce agreements that can be entered into before or during marriage, to quarantine specified property. Mr Lavarch said:

> A property ownership agreement must state or imply the property is to remain the property of the owner and is not to be made the subject of a property order. These provisions will benefit people with significant assets whether they are a result of their own efforts, gift, inheritance or windfall.

Mr Lavarch said that *de facto* couples would not benefit from the reforms unless other States and Territories followed Queensland in referring jurisdiction to the Family Court. The Commonwealth cannot extend the procedures of the Family Court to *de facto* couples unless it obtains a referral of constitutional power to do so.

The State Attorney-General (Mr Griffin) was reported as saying that referring jurisdiction to the Family Court was not a high priority. He said that *de facto* couples may not want to be bound by the same restraints as married couples. He went on to say that it could be considered unreasonable to pass a law which imposed the division of property regime on couples who did not wish to be or who did not choose to be bound by such a regime. Could the Attorney-General explain why he considers this matter not a high priority? Why will the Government not follow the example of the Queensland Government so that *de facto* couples can avoid the need to rely on cumbersome general common law principles of contract and equity for property settlements?

The Hon. K.T. GRIFFIN: It is correct that it is not a high priority, but the issues referred to by Mr Lavarch are under consideration. The Government is generally reluctant to refer powers to the Commonwealth in any particular matter, although that was done in relation to ex-nuptial children when the matter was before the previous Government.

An issue that has to be addressed is the extent to which those persons who live in a *de facto* relationship would want to be bound by laws that relate to division of property in much the same terms as those who are married and affected by the principles of property distribution under the Family Law Act. That has been a big issue in the representations that have been made to me, the extent to which the same or similar regime ought to be put in place when many couples do not want to take the step of becoming married at law but enter into a relationship.

One has to remember that under the Inheritance (Family Provision) Act and in our law there is a recognition of rates for putative spouses as there is in relation to superannuation and a number of other property areas. I will give some further consideration to the issues raised by the honourable member and, if it is necessary to bring back a more detailed response, I will do so.

BENLATE

Adjourned debate on motion of Hon. M. J. Elliott:

> That this Council calls for—
>
> 1. An immediate halt to the sale of Benlate in South Australia;
> 2. An urgent investigation by the Department of Primary Industries into the detrimental effects of Benlate on crops and human health;
> 3. The State Government to support affected growers in their legal action against the manufacturers of Benlate should the investigation confirm detrimental effects.

(Continued from 19 October. Page 479.)

The Hon. R.R. ROBERTS: I indicate from the outset that the Opposition will be supporting the principles espoused in the Hon. Mr Elliott's motion. We, too, have had contact with people in this industry, particularly Mr Antonas of Lot

22 Broadacres Drive, Penfield Gardens, to whom Mr Elliott referred to in his contribution in this place. Mr Elliott is seeking an immediate halt in the sale of Benlate in South Australia and believes that an urgent investigation by the Department of Primary Industries into the detrimental effects of Benlate on crops and human health should be undertaken. Whilst we believe, in light of the new evidence beyond that of Mr Antonas and three other applicants that we are aware of, that extra research probably needs to be done in this area, I will point out in a moment that the Department of Primary Industries has for some time been involved in investigations in respect of this matter.

The third part of the motion is for the State Government to support affected growers in their legal action against the manufacturers of Benlate should the investigation confirm detrimental effects. I am aware of the financial constraints facing some of these growers, which were outlined in some detail by the Hon. Mr Elliott in his contribution. Some of them have either gone out of the industry or gone into other industries, and on some occasions that has been brought about by the fact that they are bankrupt. It is very difficult for people in those circumstances to engage in prolonged litigation of the type normally associated with claims against multinational corporations and, indeed, there has been very expensive litigation in the United States in respect of this matter. Therefore, it may well be appropriate at the conclusion of all the investigations that we recommend assistance for those growers.

If all the circumstances prove that that is appropriate, the Opposition will be supporting it, but we will reserve our right in respect of awaiting the final confirmation of the investigations. I wrote to Mr Baker on 23 May after contact by Mr Antonas, asking three specific questions of the department, as follows:

1. Does the scientific advice received by Primary Industries SA in relation to the use of this chemical indicate that Mr Antonas may have a claim for compensation?
2. Has Primary Industries SA had contact with DuPont in relation to this matter and has it been able to ascertain whether or not DuPont wishes to settle this matter with Mr Antonas?
3. If the matter is one that should be pursued independently by Mr Antonas, is any assistance available from the South Australian or Federal Government that we may be able to offer him?

Members will see that from very early this year we have been in concert with the principles of Mr Elliott's proposal here today. I received a reply from the Minister, which I relayed to Mr Antonas, advising him that Mr Baker had said that the issue of compensation is a matter for civil litigation between himself and DuPont and that Mr Baker understood that Mr Antonas had engaged a lawyer who was advising him in relation to this matter. The letter continues:

I am informed that Primary Industries SA (formerly the Department of Agriculture) have investigated your crop damage and their investigations suggest that there may be a link between the observed crop damage and the use of Benlate DF, but so far [6 July] no contaminant has been found.

I understand that there are some technical difficulties in proving traces of contaminants in Benlate DF, and they had been explained to Mr Antonas on a number of occasions, and that Primary Industries SA had provided technical advice and legal counsel on those matters to Mr Antonas. The letter also reports to Mr Antonas:

Primary Industries SA is also awaiting the results of further analytical testing being conducted in the United Kingdom, but this testing may not necessarily provide evidence that Benlate DF is contaminated. If, however, the testing does prove the presence of a contaminant in Benlate DF, Primary Industries SA may be able to pursue a conviction against DuPont for breaching the Agricultural Chemicals Act, and this evidence may be used by you in civil litigation.

I also received a document from a Dr M. Hirsch from the Farm Chemicals Branch of Primary Industries on the current status of this case involving Mr Antonas. I believe that it needs to be reported to the Council because it covers some of the areas this motion seeks to explore. The background to the Benlate DF situation is that the fungicide Benlate was produced by DuPont and has been in use for many years all over the world. Concurrent with the introduction of a new formulation (Benlate DF), extensive crop damage was reported in the United States following the introduction of the new product. DuPont, I am advised, responded by withdrawing the product and initially paying compensation to affected producers in the United States.

At the same time, DuPont commenced a large research program to investigate the cause of these crop damages and the possible link to contaminants in the DF formulation. Since then, DuPont claims to have found alternative causes in most of these cases and has failed to reproduce any crop damage in controlled experiments.

DuPont has not found any contaminants in Benlate DF at a level which is known to cause crop damage. Claims for damages in the US are now pursued in the courts and each case is heavily contested by the manufacturer. The advice I have been given is that so far all cases have been settled out of court. In Australia, Benlate DF was also withdrawn from the market in June 1991 by DuPont. Only four suspected crop damages have been reported to the registration authorities, all in South Australia, and the Department of Primary Industries has investigated them all. Two of the cases involved cucumber crops, including that of our constituent, Mr Antonas, and the other two involved orchids. Of the four cases at the time of supply of this report, 21 June 1994, Mr Antonas was the only one pursuing the matter. In two of the other cases the growers are back in production and in the third case the operator is no longer in business.

I am advised that Primary Industries has taken some action. In the case of Mr Antonas, the Department of Primary Industries is involved in three different roles in respect of this matter. I am advised that the department registered Benlate DF under the Agricultural Chemicals Act, which confers a responsibility to ensure that the chemical products offered for sale are not contaminated with foreign active ingredients. Should that occur, the registrant, in this case DuPont, can be fined and the registration withdrawn. To exercise that power, the department needs to prove that Benlate DF contained a foreign active constituent.

The registration process does not oblige the department to resolve or even underwrite complaints of crop damages arising from the use of registered chemicals. This is a matter for civil litigation and in this case the department may take on the role of independent arbitrator or expert adviser. Secondly, the department provides extensive advice to primary producers, and Mr Antonas is a client of the office in Virginia. In delivering continued services to its clients, the department monitors the Benlate DF situation for the benefit of all producers which use this chemical preparation. The department has provided advice to Mr Antonas on options for alternative cropping. In this case the department is involved in a financial role, as Mr Antonas is also a client for the Rural Finance Division.

Since the initial complaint of crop damage in glasshouse cucumbers was made to the department in July 1991 by

Mr Antonas, there have been numerous meetings over an extended period between Mr Antonas and various officers of the department, in an attempt to establish the exact cause of what went wrong and to pursue a settlement with the company. The department analysed regulatory samples of Benlate DF for contaminants such as finis herbicides and Atrazine, which could explain the crop damages.

A lengthy report was prepared in July 1992 on the case of Mr Antonas and another grower, which can be provided if necessary, and I think this inquiry would find it probably necessary. This report was provided to DuPont, the National Registration Authority and the United States Environmental Protection Agency. In November 1992 the department organised a number of meetings between Mr Antonas and DuPont to come to a agreed settlement of Mr Antonas's claim. The initial outcome was to hire an independent consultant to undertake an assessment of the conditions in Mr Antonas's glasshouses to establish whether any modification to his crop management could rectify his problems.

The manufacturer was prepared to sponsor soil analyses and pot experiments in an attempt to settle the matter, but the consultancy never went ahead due to Mr Antonas's reluctance in accepting DuPont's offer. Mr Antonas also met with the Minister of Primary Industries at the time, Mr Terry Groom, and the Minister advised Mr Antonas to accept the company's offer for further testing so that his claim may be proven. In August 1993 the department was informed about cases being heard in the US claiming contamination of Benlate DF with sulphonylurea herbicides. This particular group of herbicides is produced by DuPont and are very active substances. Even if present at trace levels their presence may explain the crop damages, while not being detected at previous analysis.

This provided a new lead for the department's investigations. However, it is very difficult to analyse for trace levels of these herbicides and no conclusive method was readily available. The department paid for an analysis of Mr Antonas's Benlate by a laboratory in the United States, which claimed to have developed their analytical technique sufficiently to produce convincing evidence in court proceedings. This analysis indicated that two of these herbicides were present in the sample, but the usual confirmatory techniques were not used by this analyst. The department has sought a statement from the analyst comparing results from Mr Antonas's sample with samples of Benlate that he tested, but the analyst has declined to do so.

Mr Antonas was advised by the department and his own legal counsel that further testing, preferably by another analyst, was required to counter more extensive testing by DuPont, which the company claims proves that Benlate DF was not contaminated. The department has now engaged a second analyst in the United Kingdom who is now in the process of developing his analytical method. Should this testing confirm the earlier results, the department has retained regulatory samples for additional testing and is then in a position to take action under the South Australian Agricultural Chemicals Act. The department has requested the National Registration Authority in Canberra to liaise with the Environmental Protection Agency in the United States on its investigation of similar claims of crop damage. I am advised that recently the Department of Agriculture and Consumer Affairs in the State of Florida took administrative action against DuPont and claimed to have conclusive evidence of contamination of these particular herbicides. The Department of Primary Industries is now seeking further information from Florida.

The question of whether Mr Antonas has a claim for compensation is also included in the report and I also pass that information on to the Council. The issue of compensation is a matter of civil litigation between Mr Antonas and DuPont. Mr Antonas has already engaged a solicitor to advise him on the strength of his evidence. The department's investigations suggest a link between the observed crop damage and the use of Benlate DF, but so far no contaminant has been found. The department has offered a conference with his solicitor. The department appreciates the cost which may be involved in seeking a resolution through the courts and has attempted to facilitate resolution by conference with Mr Antonas and company representatives.

The technical difficulties in proving traces of contaminants in Benlate DF have been explained to Mr Antonas on numerous occasions and the department has provided technical and legal counsel. The question of whether DuPont wants to settle under those circumstances is also addressed in my report. The Department of Primary Industries facilitated dialogue between Mr Antonas and DuPont in late 1992 with the objective of settlement and some progress was made. However, given that Mr Antonas wanted to take legal action and had declined further testing, DuPont has advised him that it will not be prepared to consider settlement and will await further court action instead.

The question of assistance of the South Australian Government and the Commonwealth Government offer to Mr Antonas is the last point addressed in this report. The Government has already provided significant assistance to Mr Antonas, both analytical and financial. Mr Antonas has a debt with the Rural Finance Division of the Department of Primary Industries and payments have now been deferred for some time. So it is providing some relief there. The department has a lot of sympathy for Mr Antonas, but is of the view that it has almost exhausted the avenues available to assist him. The National Registration Authority has been requested to investigate the situation interstate and overseas and is monitoring the developments in the United States. It should be noted that, despite a call from the authority to all States for notification of other cases of suspected damage, none came forward. I stress that this report was released in June. In light of the reports referred to by the Hon. Mr Elliott, I am not certain whether that situation is current.

Should the South Australian Department of Primary Industries be successful in proving the presence of contaminants in Benlate DF and bring down a conviction against DuPont for breaching the Agricultural Chemicals Act, this evidence may be admissible and used by Mr Antonas in civil litigation. Mr Antonas has been advised of the current analytical testing in the United Kingdom and he will be notified about the results once they have been received. He has also been advised that the results may not provide any evidence that Benlate DF is contaminated with herbicides, in which case the department may not take further action on this matter.

In further seeking advice during the Estimates Committees, I had my colleague in another place ask some questions on behalf of Mr Antonas in respect of this matter. We stated in the question that we understood that further tests were to be carried out in the United Kingdom that may assist in ascertaining whether or not there were contaminants. We wanted to know whether those tests had been completed. We were advised on 22 September by a Mr Wickes, assisting the Minister for Primary Industries, that the department was well

aware of the Antonas case and had spent quite a bit of time with him. He stated:

> We have sent material to England. We have tried testing it in South Australia and have not been able to find anything in the material that he used. We now have a laboratory in the United Kingdom and have sent samples for it to set up its technique, because it is quite a difficult technique to establish, and yesterday [that would have been 21 September] we sent over the samples. We have to be very careful with the amount of sample we send because, as we are doing more testing, we are running out. We hope to have those results within the next few months. We are setting up another meeting to talk with Mr Antonas about that issue.

Having indicated to the Council that the Opposition supports the general thrust of what the Hon. Mr Elliott is proposing here and may well, at the end of the day, support his motion in its entirety, and having gone back to the records and perused them, it is quite clear, I think members would agree, from this contribution that the department in fact has been undertaking investigations. This motion is calling on the Department of Primary Industries to conduct investigations. Given that some testing is taking place and results are expected from England, I do not know that this motion is going to initiate any new activity in relation to the investigations into this matter. I am confident, having looked over the history of this matter, that Primary Industries South Australia has been making a reasonable attempt over the past two years to assist Mr Antonas and all other growers in South Australia in respect of—

The Hon. M.J. Elliott interjecting:

The Hon. R.R. ROBERTS: I take on board what the Hon. Mr Elliott has said, that people from Flinders University had made approaches to Primary Industries to become involved in the process and they were told that their interest was not welcome at that time. It may well be that we do have to have some investigations; it may well be that Primary Industries, in the final analysis, may have to have other people involved in the process of investigation.

The Hon. M.J. Elliott: They could be liable themselves.

The Hon. R.R. ROBERTS: Well, a number of issues are being brought forward in relation to this matter, which is a serious matter and which has had some devastating effects on growers in South Australia, far beyond the first four reported, because we now have some eight cases in South Australia, which I believe the Hon. Mr Elliott referred to in his contribution. In an effort to finalise a position on this, I seek leave to conclude my remarks on another occasion.

Leave granted; debate adjourned.

WORKERS' REHABILITATION AND COMPENSATION (MENTAL INCAPACITY) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 October. Page 379.)

The Hon. M.J. ELLIOTT: I rise to speak briefly in support of this Bill. There has been a tendency, particularly from the Government, in the areas of stress or mental incapacity—and they do not necessarily mean precisely the same thing—to attempt to deny WorkCover's responsibility for those matters. It must be recognised that, although stress and mental incapacity are injuries that perhaps cannot always be seen in a psychological sense (it is easy enough to see a broken arm or a cut off finger), it does not make those injuries any less real. They are just, as I said, far more difficult in terms of diagnosis, although clearly some physical injuries, for example, back injuries, present difficult diagnoses in some cases.

Once one takes the view that they are legitimate injuries—and I do—then I would argue that they need to be treated in exactly the same fashion as any other injury. As I said earlier, the Government has clearly tried to treat those sorts of injuries differently. It has tried to remove the responsibility of workers' compensation in areas of stress, and it is opposing lump sum compensation in this area. Quite clearly I do not share that view. I believe that what the Opposition is doing is correct and, from a philosophical position, I am supporting what they are doing and, therefore, support the Bill.

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

The Hon. R.R. ROBERTS: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

SELECT COMMITTEE ON THE STRUCTURE OF GOVERNMENT IN SOUTH AUSTRALIA

Adjourned debate on motion of Hon. C.J. Sumner:

1. That a select committee of the Legislative Council be established to consider and report on the structure of government in South Australia and its accountability to the people with particular reference to:

(a) recognition of the original inhabitants of the State;

(b) the relations (including financial relations) with the Federal Government and whether:

(i) powers should be referred or transferred to the Federal Parliament and/or Government;

(ii)whether powers should be referred or transferred from the Federal Government and/or Parliament to the State Parliament and/or Government;

(c) whether responsibilities and powers should be devolved on local government;

(d) the sources of funding for the three tiers of government;

(e) the modernisation of the South Australian Constitution Act including the role, functions and structure of the Executive Government and whether it should be recognised in the Constitution Act;

(f) the entrenchment in the Constitution of the independence of the judiciary;

(g) the accountability of the judiciary;

(h) the appointment and powers of the Governor including the need for a Head of State;

(i) the need for a bicameral Legislature and the number of members of Parliament;

(j) the implications for South Australia's constitutional structure of proposals for Australia to become a republic;

(k) the desirability of the establishment of a Charter of Rights for South Australians to be incorporated in the Constitution Act and the desirability or otherwise of entrenching such a charter;

(l) the education of members of the community (including schoolchildren) in issues relating to the Constitution and government, and civil rights and responsibilities.

2. That Standing Order 389 be suspended to enable the Chairperson of the committee to have a deliberative vote only.

3. That this Council permits the select committee to authorise the disclosure or publication, as it thinks fit, of any evidence or documents presented to the committee prior to such evidence being reported to the Council.

4. That Standing Order 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

(Continued from 12 October. Page 410.)

The Hon. T.G. ROBERTS: I picked up this motion in private members' time and sought leave to conclude my

remarks. I had reached the part of the select committee structure that dealt with its accountability to the people, with particular reference to recognition of the original inhabitants of the State. The points that I raised in relation to the select committee's responsibilities to investigate are an integral part of the whole motion, which has a number of points, and it is linked to the whole process of this Legislative Council's looking at the future structure of government in this State and how this State's Government, and its constitutional powers and arrangements fit into the Commonwealth.

The motion is a timely one in that I understand that other State Governments have similar motions on their Notice Papers being debated, and I suspect that at least one State, Tasmania, may even have concluded its deliberations. I do not have a copy of the report but I will be seeking one. It is looking at its relationship with the Commonwealth, its constitutional powers and arrangements and its electoral system. They are all interlinked. We have gone through a period of rapid social and economic change, and we are still in it. The social effects of that rapid social and economic change are being felt in the community, and that impact has been felt not only in political Parties but in the community generally.

As a member of Parliament and an active member of a Party, I have noticed that there is a lot of confusion in the community generally about the levels of debate that are occurring in relation to constitutional restructuring and the economic order of restructuring the economy. They are integrally intertwined.

As Australia starts to put together a total constitutional and economic package around the move towards a republic, the general public itself feels as though it is divorced from the debating process and the ability to feed into it. There is a move by the Commonwealth to broaden the debate around the republic, and a number of organisations, both at a State and a Commonwealth level, have moved the debate into the halls of academia, the popular press and the electronic media and, to some extent, many of the political commentators of the day are putting before the general public their views and attitudes towards the formation of a republic and, to some extent, the examination of the varying forms and structures that it can take. In the main, however, the general public have not been able to make their voices heard or make any input into those meetings.

The broadening of the debate (and this is a good illustration of how it has been affected in this State) has probably reached the Festival Theatre, but it has not left that style of forum and gone into the suburbs or regions; rather, it has remained stagnant at an academic level. So I think there is a certain amount of frustration. I do not think there is any fear out there: it is just frustration with the general population not being able to express an opinion.

Many people have not made up their mind because the information they are receiving is confusing. In a lot of cases, our education system has not prepared the general public for this debate. I note that most curricula that is being designed for year 11 and year 12 students includes discussion around Australia's future and its role in the Pacific and Asian-Pacific regions. The republic is part of those discussions, and that is healthy, but many people struggle to understand how the political system operates in Australia as it stands at the moment. If they do not understand how it operates at the moment, they do not stand much of a chance of being able to work out how the projected changes will affect their lives and the outcome that may follow from whichever formulation of the republican position is adopted.

Although the Hon. Mr Elliott's submission is probably more attuned to debating the issue of whether or not we should have a republic or in what form, the motion moved by the Hon. Chris Sumner before he left this place was indicative of his concerns and those of members on this side of the Council about how current State structures fit into the Commonwealth and how and whether the State of South Australia will exist in the light of the current thinking underlying restructuring programs, tied not specifically to the republican debate but more to the outcome of the Hilmer report and the determination of how the Commonwealth will be structured as a financial and economic unit in the Asian-Pacific region that will trade in Asia, Europe and the United States during the next millennium.

All the debates such as that relating to a republic are being held in the halls of academia and the Federal parliamentary arena. This matter has not yet hit the State parliamentary arena, but this motion goes some way to putting it there. It puts decision-makers in this State on notice that they should be starting to look at how this State's future constitution, its form and structure will fit into a future Australia based on a stronger Federal Government, perhaps a weakening of the constitutional powers of States, a transfer of powers between States and the Commonwealth to achieve that, a stronger regional government system, and economic regions based less on geography but more on the ability of a region's economic basis to be integrated.

Therein lies the direction and push that has been determined basically by arguments around economic theories. I will not say 'economic fundamentalism', although many people would argue that economic fundamentalists are directing the flow and play around constitutional change. I will not say that the same criticism has been made of the republic because that is a far broader push and for much more altruistic reasons, I suspect, in order to broaden the democratic processes and to break an outdated tradition of having a foreign person as a Head of State in Australia.

However, the economic fundamentalists are driving the debate and the discussion around the formation of Australia as a single trading nation. I have no argument with that. The argument that I do have is with the lack of consultation and debate in Parliaments in Australia about the future of State Governments and the future role that States will play in relation to Commonwealth powers and the transfer of powers to regional Governments.

There can be an orderly process by which this can take place. I have no problem with protecting South Australia's interests in debating economic outcomes with the Commonwealth, but after all we are a single trading nation and the States should be in a position to cooperate with the Federal Government to ensure that we have the most efficient infrastructure possible to allow that to happen. If we go back only 90-odd years to have a look at some of the problems that our founding fathers had to contend with in mopping up some of the infrastructure problems associated with squabbling between the States at the turn of the century, we see that it is pretty clear that the logic of the debate and the argument around a single trading nation is the way to go.

If we look at the infrastructure problems associated with the rail system that we inherited through the squabbling between the States, the infrastructure problems that were inherent in setting up communications and transport, and the separate power systems that we have inherited, we see that

there is now a move towards the integration of Australia's total infrastructure so that the administration of our power structures and infrastructure, which is vital for trade, can be brought together under a Commonwealth scheme and administrative process rather than all the States mirroring each other and duplicating resources.

There is a point at which those efficiencies peter out and the interests of the nation as a whole start to dwindle. That is where the economic hot spots of the nation—that is, on the eastern seaboard—do not cross-subsidise those areas in other States that are less suited or attractive to investors in setting up their economically driven programs in other parts of the nation. At the moment, Australia has a number of economic hot spots. In Queensland there is the area around Cairns, the Sunshine Coast, the Gold Coast and the area around Brisbane. The northern New South Wales area is very productive and has quite a lot of activity. There is the area north of Sydney around Newcastle and the lakes, and Sydney itself, which will be an overheated economic hot spot given that it has now won the Olympic Games. I think that can be managed, but it will suck in many people from other parts of mainland Australia and New Zealand and perhaps from the Pacific Island nations to help finance and provide the labour that will be needed for that major event.

We then move down to Victoria, where there are a lot of potential economic hot spots because of the solid economic base that Victoria has built around white goods and manufacturing. We then move through the productive areas of the South-East, which stand alone as an economic region in conjunction with the Victorian western districts. However, once you move past Adelaide and into the northern regions of South Australia there is not a lot of natural resource space for an expansion program for many of the country regional areas which are struggling now, given this horrific dry period, to sustain the family and cultural life which we are so used to in regional South Australia.

Regional Victoria is also struggling in the Mallee region. Regional Victoria has some problems associated with the restructuring of the national economy but, generally speaking, I think Victoria has a lot more geographical, resource and industrial advantages than we have.

South Australia will have to rely heavily on mining (which is not a large employer of labour) and a lot of its natural resources to sell ecotourism. It will also have to rely on the growing wine industry for any growth that comes out of this State. We hope there is a lot of natural growth from within the manufacturing sector that is linked to any economic upturn that the nation has. Unless there is an understanding that economic rationalism does not apply to national development then I am afraid that South Australia, large sections of the Northern Territory, Western Australia and Tasmania will be left to their own devices. If regional Governments do not pick up the responsibility of industry development in those regions in conjunction with primary industry developments and value-added products within those areas, then we will have uneven development within this nation.

The motion puts on notice that we as legislators, the general public and hopefully the media should have discussion and open debate about South Australia's future role in a restructured Commonwealth role within the Asia-Pacific region. There are enough sections to the motion to have radio talkback programs going for the next six months if managers and producers of informative radio programs were to look at the motion, try to canvass some of the issues and get speakers to debate some of those issues on public radio. I expect some of the issues to be canvassed publicly. I suspect that, as individual members of political Parties go about their business within their Parties, a lot of those issues will be discussed by branches and people within the forums of the Party structures who show some leadership. It will be up to us to get a lot of these issues firmly put on the debating agenda.

Paragraph (a) of the motion—and I spoke briefly to it the last time I made my contribution—was put specifically at the head of the motion on the basis that recognition of the original inhabitants of this State was one of the critical questions that we had to come to terms with if we were to show a mature attitude to becoming a nation that was prepared to develop a formal structure adequate for the constitutional powers and relationships to house a nation based on a social justice strategy that protected and looked after all its inhabitants. Unlike now, where we have uneven development, we had an economic hot-spot and a move away from cross-subsidisation between States. We are now moving to a more economic rationalist base, and there is a danger that isolation of some States will occur. There also is a danger that isolation of a lot of its inhabitants will occur. The original inhabitants of not only this State but all other States, the Aboriginal people, actually crossed boundaries. They did not recognise any of the States or borders because to them they did not exist. They had their own ways of recognising their territories, and were certainly better caretakers of the natural resources in the country than we have proven to be.

Over 40 000 to 60 000 years of existence (depending on which historian you listen to) there was little or no impact on the environment at all. In just 200 years we have made a huge impact on the environment. In some cases it has been controlled and there were value returns for its inhabitants. In other cases we have advanced across the landscape and have been bigger vandals than all the graffiti vandals put together in the metropolitan area over the past 20-odd years. I use that as a reference, but some of the issues involved with trying to rectify some of the problems that occurred through early settlement ought to be a part of any starting point for consideration of a new structure for the State and how it fits in the Commonwealth. Recognition of the original inhabitants of the State should be the top priority.

Some of the ways in which we can look at recognition of the original inhabitants of this State should be found in encouraging Aboriginal people to participate not only in their own organisational structure (ATSIC and their regions) but to look at State and Federal Parliaments as a way of expressing not only their own culture but representing their people and all people of Australia in the parliamentary forces. There are no Aboriginal members of the South Australian or Federal Parliaments. There is no forum outside of the forum set up by the Aboriginal people themselves that allows Aboriginal people to feed into the mainstream political system. I think that ought to alter. I will not make a final determination on my feet in relation to the matter. It is one of those things that needs to be examined and a consensus drawn through the select committee as to how to proceed.

I see possibilities in having an affirmative action program, particularly for the north and north-western parts of the State, to return Aboriginal members. That may mean having multi-member seats; it may mean a top-up system. It may mean affirmative action or positive discrimination in relation to Aboriginal people so that legislators hear Aboriginal views. There is a certain amount of frustration within Aboriginal communities around a lot of issues because they are unable

to feed into mainstream decision making processes. It has been an evolutionary process thus far. If it was a natural evolutionary process I am sure they would have made a lot more ground than they have to date. Unfortunately, there has been a lot of pressure at particular points in our history to subdue or repress Aboriginal views and opinions from coming forward into the mainstream of this State and nation.

Sadly, what we have now in some cases is much anger and frustration, and we need to come to terms with that in setting up a structure that recognises the original inhabitants of this State. Other views state that the Aboriginal people themselves should set up a separate parliamentary process that then feeds into the mainstream Parliament. I suspect that whatever system should be recommended to be set up will need to include consultation with Aboriginal people as to how they see their roles and functions in being able to make a meaningful contribution to framing in this State legislation that protects the interests of Aboriginal people. We have the new framework being put together under the Native Title Act, and I guess that the select committee would need to look at how that would impact on the recognition of the original inhabitants, whether land rights and property rights are enough in terms of fulfilling a democratic role and purpose.

Some people may find that as far as you need to go. My view is that with roles and responsibilities, power and ownership come the responsibility to represent interests and to be part of the mainstream of the process. Bear in mind that we are a Pacific island nation and that Aboriginal people are the original Pacific islanders. We have an Anglo-Saxon attitude to life and our work ethics are different; the way in which we solve problems is different, and it may be that Aboriginal people do not want to be a part of the form and structure that we have. If you look at the workloads that people carry in this and other places, I might not blame them. But as I said, that has to be done with cooperation and consultation, and any permutation that is set up around recognition of the original inhabitants must include consultation with those original inhabitants of this State to find out their views on their role and function in the operation of a restructured South Australia in the future.

The other issue that perhaps needs to be looked at is the State's boundaries and whether South Australia as an economic unit, with the boundaries that it has, will survive in a restructured Commonwealth, given that the nation has those economic hot spots and it is the Eastern States basically that get all the attention, the finance and the investment. The west certainly can stand on its own two feet but I fear that, unless South Australia extends its borders, changes its trading partners and joins with the Northern Territory to form one large economic bloc, South Australia will always be on the tail end of international investment programs and will probably be the last State considered for any new investment.

I can see some benefits from changing borders. It may be that Victoria also changes its borders and that you have a restructured State structure in re-forming a new Commonwealth position. If we are to move towards restructuring State boundaries, you may have to look at a new electoral system that takes into account a strengthening of the Commonwealth powers and a weakening of the State's powers. A timely article in the *Advertiser* just recently compared the Hare-Clark system to the central system that we have, and that matter may be something for the committee to look at.

If the Commonwealth structure changes to a point where the Commonwealth powers are strengthened and the State's powers weakened, there may be a changed role and function for electing local members into a State legislature. You may not have two Houses; you may have a single Assembly. These are some of the options that can be looked at by the committee.

The Hon. R.I. Lucas: The Leader of the Opposition is saying that he's not interested in that.

The Hon. T.G. ROBERTS: I am just saying that the committee can look at those sorts of options, but they need to be looked at in conjunction with the anticipated changes that the Commonwealth is actually imposing and the role, structure and form that the Hilmer report is advocating. The point I am making is that, if the debate is going to be driven by economics, we really need to look at our form and structure and where we are going. All those issues need to be thrown into the discussion arena for consideration. If we are to maintain a strong State structure, obviously the bicameral system is the one that you would prefer, because you need as many resources as possible and a very strong Government to be able to compete and to argue your case at Commonwealth level.

If the Commonwealth powers are strengthened, the relationship between a changed State Government and the way in which a legislature is formed may be the way to go. I suspect that what I have just put on the plate in the last 15 minutes is probably enough food for discussion for the next 10 or 15 years, but the point I am making is that these matters are being firmly put on the plate by other than legislators and by other than those people who should be discussing the issues at this time. So, it is a timely motion.

The issue of relations (including financial relations) with the Federal Government is paragraph (b), and subparagraph (i) of paragraph (b) states:

> . . . powers should be referred or transferred to the Federal Parliament and/or Government;
>
> (ii) whether powers should be referred or transferred from the Federal Government and/or Parliament to the State Parliament and/or Government;

That critical issue is on the agenda at the moment; the Commonwealth is putting clearly in the debating arena the transfer of powers and complementary legislation. We have been working for some time in this Chamber and this Parliament to have complementary State legislation that lines up with Federal legislation in a number of areas where the nation's interests are at stake and not just those of the States. You then examine the attitudes of the various States and find that Western Australia is a very strong States' rights State, reluctant to transfer any powers to the Commonwealth, although the Commonwealth has been able to argue, cajole and use carrot and stick strategies to get the Western Australian State Government to relinquish some of its powers on some issues. But, in the main, Western Australia is a strong States' rights State and the Government will have its work cut out to strengthen Commonwealth powers to the disadvantage of the State of Western Australia.

The Northern Territory is looking for statehood on its own, unfortunately. I would like to see it setting up discussions with the current Government as to whether State boundaries can include South Australia and the Northern Territory in a newly formed State. I suspect that, there being a conservative CLP Government in the Northern Territory, it will not be interested in relinquishing any powers to the Commonwealth and it will run a strong States' rights base.

The current Government is a small 'l' liberal Government, and I suspect, from the arguments that appeared in relation to Commonwealth financing arrangements at the last round

of talks, Mr Brown is a strong States' rightist and will not be interested in the transfer of any powers, either. The resolution or motion examines those issues and puts forward a part of the motion that should be investigated in relation to these issues. Queensland is another States' rightist, a State that will have a lot of trouble in convincing its people to transfer powers to the Commonwealth. New South Wales and Victoria seem to run the Commonwealth agenda and would probably be quite happy to transfer some of their powers as long as the transfer of finance goes with it. Tasmania again is a States' rights State with a conservative Government and it would be hard to convince it to transfer any of its powers.

In fact, recently while I was in Tasmania for the conference I talked to some people who had attended a meeting which Joh Bjelke-Petersen had addressed. It was a $120 ticket show and Bjelke was cajoling them or educating them in trying to advance their position of separating from the mainland States. The position put to me by two people who attended the meeting was that Joh was busy telling them that it would be in Tasmania's best interests if it set up a State that was separate from the Commonwealth.

He was using the same tired old arguments he had been using in Queensland when threatening Gough Whitlam with separation and was trying to convince people that, if Tasmania set up as a tax free haven with a separate Constitution with no link or role to the Commonwealth of Australia, Tasmania's future would be assured. I did not attend the meeting; as I said, I got the report second-hand from people who had attended and that was their description of the content of the debate and discussion formularised by the previous Premier of Queensland. Hopefully, his ideas will fall on barren ground, but Tasmania is going through a difficult time financially and even snake oil has been able to be sold at different times within our political history.

Part (c) of the motion refers to whether responsibilities and powers should be devolved on local government. That argument is again running out in the community like wildfire, and it is being advocated by both major Parties that stronger regional governments be formed at the expense of smaller local governments. That is an idea being picked up by all and sundry. A few people are resisting the process, but in general terms most local governments believe that their own boundaries should be extended, that a sharing of resources and administrative programs ought to be the first stage of living together and the consummation of the marriage should be that the boundaries be redrafted and redrawn and smaller councils amalgamate to form larger bodies.

That is already happening and the select committee could draw evidence from both this State and Victoria where it has been done with a sledgehammer, where councils have been threatened that if they did not amalgamate they would move in administrators. The threats went from idle threats to reality, with many councils sacked and administrators moving in, not only in the metropolitan area but also in regional areas. I was talking to councillors in the regional area of Victoria. They had been dismissed, given voluntary retirement packages and their councils amalgamated with larger regional councils which, in many cases, had nothing in common. There was no regional affinity, no economic definition and no continuity of interest. They were most unhappy about the way the Victorian conservative Government had radically moved in and changed the nature of the game.

Brian Howard made some statements recently in relation to what was going on in the local government area of Fitzroy, which had been forced to amalgamate. The issue there was that administrators who had not been elected were making decisions on behalf of constituents without any reference back to them and those decisions were very unpopular. That issue is being fought out in Victoria and I suspect that the Government will have a preferred position on that and I am sure that the select committee could come away with a recommendation that fits the three tiers together with the correct power/weight relationships between local, State and Federal Governments.

The view of many people in South Australia is that you could not hand over too many powers to local government at this stage because in many cases it is not mature enough to accept the responsibility. I suspect that it will not be long before local government and local regional government will be mature enough to accept the responsibility because it is having a lot of powers devolved to it over the years and in many cases regional governments are operating *de facto* through the LGA meetings being held throughout this State. Having attended LGA meetings, like many members opposite, I have noted a certain maturity starting to form at a regional level that perhaps does not exist when some of the people go back to their own local governments.

When powers are transferred over to local governments through the regions, with their acceptance and acknowledgment that they have to restructure and with the economic arguments that are pressing between how you spend your ratepayers' money efficiently and effectively, the only conclusion local government can draw is that amalgamations are necessary and a requirement and, with the extra resources and changes in geography, they could make a more mature contribution to being the third arm of government. We can draw from the information base in this and perhaps from other States to form conclusions about how the third tier would fit into a three-tiered system.

It may be that the committee's deliberations look at a two-tiered system with a regional government fitting into a Commonwealth Government, but that is up to the committee to decide. Part (d) refers to the sources of funding for the three tiers of government, and it has always been a struggle for the three tiers to agree to funding processes and around the formation of taxation. Therein lies a huge issue in relation to not only the way taxes are raised but the way they are spent and devolved. That issue gets to the heart of the form and structure in which the three tiers will operate and the relationship they will have together.

Point (e) refers to the modernisation of the South Australian Constitution Act, including the role, functions and structure of Executive Government and whether it should recognise in the Constitution Act the entrenchment in the Constitution of the independence of the judiciary and the accountability of the judiciary. They are two major issues that have been debated of late in this Chamber and they are questions that are being debated in forums not only in Adelaide but around Australia. They are two issues that are firmly on the public agenda and the select committee can draw on a lot of local knowledge within this State to reach its conclusions. Paragraph (h) refers to:

> The appointment of the powers of the Governor including the need for a head of State;

That is, whether we require a head of State within a reconstituted State Government in relation to how it fits into a new Commonwealth structure. Those questions can be looked at. Reference is then made to the need for a bicameral legislature and the number of members of Parliament. I touched on that

briefly by saying that if the nature of the Commonwealth, State and local government relationships were to change then we may look at restructuring the bicameral legislature.

The number of members of Parliament is already on the agenda. We have had proposals from the Lower House, from both Leaders in the other place, saying that there will probably be a proposition for fewer members and for larger electorates. No-one has made any recommendations for a change to the Legislative Council, because I guess that that would have to come from the Legislative Council itself and from the Leaders in this Chamber, in conjunction with its members, of course. However, there has been no firm debate about the role, function and number of members in the Legislative Council.

In 1989, a proposal rocked around the corridors and halls for a while to knock back the Legislative Council numbers in conjunction with a smaller number of members in the Lower House. That did not get too far into the public arena. The media often pick it up; the abolition of the Legislative Council is an annual debate in the media. However, there is very rarely any debate as to whether the numbers should be reduced; the media debate tends to be to reduce all the numbers and to have only the single House system. What the media do not do when they debate the issue is to look—

The Hon. M.J. Elliott interjecting:

The Hon. T.G. ROBERTS: I am not sure. Certainly, they will be very busy and I would say that the committee will run for a very long time. By the time the committee comes to report, the Commonwealth will already have decided the future of the States. Point (j) refers to the implications for South Australia's constitutional structure of proposals for Australia to become a republic. I suspect that that will have to be done, regardless of whether a select committee is set up, in conjunction with the Commonwealth's move to a republic, because the republican debate has to include in it a role, structure and form for the States.

Reference is then made to the desirability of the establishment of a charter of rights for South Australians to be incorporated in the Constitution Act and the desirability or otherwise of entrenching such a charter. That has implications for individual rights before the courts and their standing. It is another issue where there has been debate for some time as to whether we need a Bill of Rights or whether we need the role of the courts to change to protect each individual's interests.

In conclusion, paragraph (i) refers to the education of the members of the community (including school children) in issues relating to the constitution, Government and civil rights and responsibilities. That will have to be done, I suspect, in conjunction with the running of the select committee, but I do not think it needs to be spelt out and that people wait for the select committee to deliberate before the content of that part of the resolution is included in curricula for school children in this State. As I said in the earlier part of my contribution, in that way they can at least understand what the debate and discussions are all about.

The second major point in the motion is that Standing Order No. 389 be suspended to enable the chairperson of the committee to have a deliberative vote only. The third point covers the Council's permitting the select committee to authorise the disclosure or publication, as it thinks fit, of any evidence or documents presented to the committee prior to such evidence being reported to the Council. The fourth point is that Standing Order No. 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses unless the committee otherwise resolves, but that they shall be excluded when the committee is deliberating. I support the motion.

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

WOMEN'S HEALTH CENTRES

Adjourned debate on motion of Hon. Carolyn Pickles:

That this Council—

1. Supports the retention of stand-alone women's health centres at Noarlunga, Elizabeth, Adelaide and Port Adelaide; and
2. Opposes any move by the Liberal Government to integrate these existing facilities into the mainstream health services.

(Continued from 12 October. Page 383.)

The Hon. CAROLINE SCHAEFER: I will speak only briefly in relation to this motion. As I understand it, a process is still in train to look at the future of women's health in the context of community health services and against the background of the Commission of Audit Report and budgetary realities. It has been observed by previous speakers that the Minister for Health attended a public meeting in the pre-budget period at which he invited those at that meeting to make a submission, particularly identifying areas where administrative and infrastructure duplication could be eliminated.

A submission was consequently made on behalf of the boards of management of four of the metropolitan women's health centres. That submission was considered in some detail and the Minister responded to the boards in September with a paper that suggested the manner in which women's health and community health services may fit within regional management structures. On the same day, the Minister also released a broader discussion paper on a proposed management structure for the South Australian health system. The general directions of both papers were consistent. The chairs of the boards of women's health centres have responded and that response is being assessed. I would like to suggest that this debate not be further conducted until the results of that assessment are available.

However, I would add my own comments to this. While I have great sympathy with the women's health centres, and I have in fact been to Dale Street Women's Health Centre and assessed the great happiness and sharing between the women at that centre, I must say I find it very difficult to be sympathetic to people who want stand-alone health centres that are gender specific, when I come from an area where there has been no medical officer for 12 months within a 200-kilometre radius. It is very difficult, when you just want a doctor, to be concerned about the gender of that doctor; or, when you just want a paramedic, to be concerned about the gender of that paramedic. It is difficult for me, having lived in isolated conditions, to be sympathetic to the fact that one would need gender specific administrative staff particularly. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

COMMERCIAL TENANCIES BILL

Adjourned debate on second reading.

(Continued from 7 September. Page 276.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): I support the second reading. The Hon.

Mr Elliott has come up with some constructive suggestions to provide greater protection for small business tenants, especially those trying to make a living operating in shopping centres or malls—situations where the tenants have generally been somewhat disadvantaged in their dealings with the economically stronger landlords. The disadvantages experienced by tenants in these situations are comparable to the disadvantages experienced by many residential tenants. Essentially, landlords or their agents are usually experienced in lease preparation and negotiations, whereas it is much more common for tenants to have only limited experience in these matters.

The greater economic resources of landlords means that they are likely to have access to expert evaluation and legal advice much more readily than tenants. The Bill goes some way towards redressing these tenant disadvantages, while retaining an appropriate balance between tenant and landlord obligations. It is in some ways surprising that the Government has not introduced a Bill such as this, given the assurances of the Minister for Industrial Affairs that small business operators will be given all sorts of additional statutory protection in the light of a contentious, arbitrary and inappropriate Government partial deregulation of shop trading hours.

However, the Government has betrayed small business in several ways during its short time in office, shop trading hours and trading taxes being the most relevant examples. There is really only one reservation the Opposition has in respect of this Bill, but it is a significant reservation. This is in respect of the impact of clause 4(1) of the Bill, the effect of which will be to superimpose a term set out in the Bill upon the terms of existing leases; in other words, combined with the stipulation of standard form agreements set out in clause 7, all current leases operative in South Australia will probably need to be redrawn and re-signed. In turn, this would cause horrendous legal and stamp duty costs to be borne by small business tenants across the State.

I do not think the Democrats have properly considered the effects of the absence of any appropriate transitional provisions in the Bill. To remedy this problem, I have placed on file amendments to ensure that certain of the protected measures in the Bill can operate immediately, while allowing existing leases in a general way to run their course. I will detail during Committee the effect of these amendments and my amendments, which members can support. I support the second reading.

The Hon. K.T. GRIFFIN secured the adjournment of the debate.

The Hon. K.T. GRIFFIN: Mr Acting President, I draw your attention to the state of the Council.

A quorum having been formed:

TWO DOGS ALCOHOLIC LEMONADE

Adjourned debate on motion of Hon. T.G. Roberts:

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

(Continued from 19 October. Page 488.)

The Hon. M.J. ELLIOTT: I rise to support the motion. The vast majority of South Australians support container deposit legislation, and that has been proven in survey after survey. Even in the past month or so a phone survey was run by 5AN, where the response in support of container deposit legislation was more than 90 per cent. The legislation first came into force back in the early 1970s, and for two major reasons, the first of which was in relation to litter and its control. People who care to think back to the late 1960s and early 1970s will recall that we had a significant litter problem in South Australia; brown bottles—but not only brown bottles—were a pretty common sight on the road sides. I will return to that litter question in a moment.

The other reason (this is mentioned in the Hon. Mr Hopgood's speech when he introduced the legislation, although some people seem to have forgotten this and concentrated on the litter issue) was that it related to resources as well. Many people were and are gravely concerned that, in its many forms, packaging becomes a significant waste of resources, and an awful lot of packaging ends up finding its way into land fill.

Those who are concerned about resource depletion in relation to packaging call, first, for the reduction in the use of packaging wherever possible; they call for reuse wherever possible, and then call for recycling. They call for it in that order because they recognise that packaging which has no practical use (and that is often surplus packaging) is simply manufactured waste from the beginning, and it is nothing more nor less than a total waste of resource. So, we should use the bear minimum of packaging; we should reuse rather than recycle.

Soft drink containers are used over 10 times, and beer bottles can be used up to 20 times. The only resources used in those circumstances are those used in washing and transporting the bottle. However, if you are involved in recycling, not only does the glass container have to be transported back to some site but also it is totally destroyed and totally remade.

The situation in relation to plastic containers is quite different: you cannot use the material for the same purpose; in fact, it is used for a lower grade purpose. There is waste in this system, but I will not explore that further at this stage. I simply stress that 'reduce, reuse, recycle' is what we are on about, and in that order.

In relation to reuse *vis-a-vis* recycle, container manufacturers have a very clear vested interest in which option we should follow. If you were a manufacturer of containers, you would not want a container to be reused 20 times because you would be denied the opportunity to make 19 extra containers. As a manufacturer, you have no way of controlling the return, the washing and various other parts of the industry. You make it and hand it over, and someone else handles it for the next 19 or 20 trips. If you can encourage recycling rather than reuse, you make a container, it is smashed and destroyed, the material comes back and you make another container, and you get paid for manufacturing it 20 times.

That is the crux of the problem, that is where the real pressure is coming from, both nationally and internationally, in relation to encouraging recycling rather than reuse. After we in South Australia introduced container deposit legislation, which was aimed not only at a reduction of litter but also at getting a high return rate to care for resources, the packaging industry rapidly moved interstate to try to come up with an alternative scheme to container deposits which did not encourage reuse, because that was the last thing they wanted.

In the Eastern States, big bins are placed fairly prominently in the suburbs encouraging people to return their glass or

whatever thereto. They rely upon social conscience for that to happen. They tell me what a good thing they are doing for the environment by doing so. I agree that they are doing a good thing for the environment, but the fact that the containers are being smashed and remade is not doing the best thing for the environment. However, I stress that they are doing the best thing for container manufacturers because they are looking after their bread and butter.

It must be stressed that the return rates for packaging in the Eastern States are far worse than ours. I understand that they have a return rate—although I do not have the figures with me—at about the low 80 per cent mark, and we have a return rate in the mid to high 90 per cents.

The Hon. T. Crothers interjecting:

The Hon. M.J. ELLIOTT: That is right. So, we have an extraordinarily high return rate for reuse, but it is the container deposit that is driving that very high return rate. In relative terms, the return rate in the Eastern States has never matched ours, but I guarantee that the packaging industry will move heaven and hell to make sure that it increases its return rate even higher so that it will not be accused of obvious waste where things are simply being put into land fill. As to the more subtle waste of remaking something as distinct from reusing it, the best it can do is fudge. It was involved in such fudging when we had a debate in this place some years ago regarding beer bottles in which Bond Brewing opposed an increase in the level of container deposits. I will not go into the legal grounds for it, but it started producing data which argued that the resource—

The Hon. T. Crothers: They argued under section 92 of the Constitution, I suppose.

The Hon. M.J. ELLIOTT: It argued under section 92 of the Constitution but, leaving that to one side for the time being, in terms of the scientific arguments that it used to justify recycling rather than reuse, the data was highly open to question and highly suspect, and the major source of that information, of course, was the packaging industry itself. I note—and I have no doubt that they will deny this strenuously—that there has been an enormous effort put in by packaging companies in terms of the technology of the recyclable container. They have worked progressively to make bottles thinner, to use less glass and to put plastic laminates on the outside. They have done everything they can in terms of the technology of the container, but if we compare the recyclable beer bottle with the refillable beer bottle we see that no attempt has been made to alter the refillable bottle from probably what their grandparents used, apart from minor changes. It is not in their best interests to try to make the refillable bottle more efficient, because it would undermine the argument they are trying to create that the recyclable bottle is just as good.

I make a passing comment at this stage, now that I am leaving the resource issue and turning to the litter issue, that container manufacturers are among the major sponsors of groups such as KESAB. I make no reflection on KESAB, but it has become reliant on industry as a source of funding. It is also relied upon by Government and others as a source of information on questions such as container deposit legislation. There is a significant conflict of interest as a consequence. I do not question their need to work closely with the container industry, but their financial reliance upon the industry I would suggest undermines their capacity to be seen as an independent arbitrator or supplier of information, certainly as a supplier of information without the conflict of interest.

I note that recently a significant person from KESAB went to work for ICI. That sort of movement will be a fairly regular thing. I am not saying that he has done anything improper, but the relationship is very close. I think that creates a difficulty when Governments may legitimately try to ask questions about the litter problem and its resource implications. The primary sources of information are either the container manufacturers themselves or a group such as KESAB which has significant funding from those people.

The Hon. Diana Laidlaw interjecting:

The Hon. M.J. ELLIOTT: I certainly would be, yes. As I said, I am not making a reflection on this person. This person may, in fact, be supplying very good information from an ecological sense to the container manufacturers. The point I make is that they are working so closely together, which in one sense is a good thing, and are so reliant on funding that it creates a significant and difficult conflict of interest.

The litter situation has changed quite a bit since the 1970s, when the legislation first came in. Then we were talking just about glass bottles in terms of beverage containers. We had the emergence of the steel can and the aluminium can on which, as I recall, we put a higher deposit. That was an incentive to encourage people to use glass rather than aluminium, in particular, which is a significant waste of resources. Aluminium is a very high user of energy in its manufacture, and the recycled product, unlike glass, is of inferior quality to the original; in fact, recycled glass is superior to new glass. Not only did we have cans on which we put a deposit but also we then had the emergence of flavoured milks and fruit juices in all sorts of containers—paper board lined with foil or plastic-lined containers and plastic bottles. Then, other new products, such as wine coolers, emerged. There was a range of products and a great deal of confusion. The vast majority of these new products did not have a container deposit placed on them.

Anybody who cares to look at the litter stream—and that can be done quite easily by driving along the road—will tell you that paper board and foil line products are becoming significant components of the litter stream today. They have no deposit upon them and have become a significant problem. Those products which contain either plastics or foil will be extremely long life in the environment.

It brings me to reflect upon a meeting I attended earlier this year. In fact, I asked a question about this meeting on 9 August. The meeting was organised by people concerned about container deposits. At the meeting there were three politicians: the Hon. Mr Wotton, the Hon. Carolyn Pickles, and myself. There were people from KESAB, the container industry and sections of the industry that use containers including, from my recollection, Coca-Cola, SA Brewing, and a number of others. It became quite clear, as I commented in Parliament on 9 August, that discussions were proceeding within the industry to try to find an alternative to container deposits. That was made quite plain and a response I received from the Minister later on acknowledged that industry discussions were proceeding.

As I interpret what was said, the Government denies that it was directly involved with those discussions as either initiator or significant player. Discussions have been going on with the industry wanting to look at alternatives to container deposits, although the Government denied an intention to stop applying container deposits to those cases where they already apply. It will be very hard to maintain the logic of having new containers without a deposit in direct competition with other containers that have them. The

Government needs to be very careful that it does not allow competitors to have different rules. I argue that in relation to Two Dog alcoholic lemonade that is precisely what it has done. Two Dog alcoholic lemonade is in a segment of the market competing with other products paying deposits. The Government should have been consistent and insisted that this company pay container deposits as do it competitors. The failure to do that will ultimately create the pressure where competitors currently paying container deposits will request their removal.

It is obvious there are one of two outcomes. It should be plain from what I have said that I strongly believe in and support container deposits. There is no doubt that the vast majority of South Australians support container deposits. The Government, with what it has done, is out of step with what the community expects in this area. It cannot be allowed to create such anomalies. It should have looked to expand container deposits to pick up other beverage containers, and should not have allowed more and more products to come onto the market with an exemption granted. I do not accept the sorts of arguments put forward by the Government that this is a new company needing assistance.

New companies are starting all the time and have to pay these container deposits. For example, Bundaberg Ginger Beer managed to bring its stuff all the way down from Bundaberg into the South Australian market. It had to sell its product successfully with a container deposit, and that does not appear to have been any difficulty for it whatsoever. For goodness sake, if ginger beer from Bundaberg has to pay a container deposit then paying the container deposit on a higher cost product like alcoholic lemonade in your home market should be relatively easily. The local product has nowhere near the difficulty that an interstate marketeer has, and yet many interstate marketeers are having to do that and have done so successfully. The Government should be condemned for its weakness in this area. I will not tolerate an undermining of this legislation by stealth, which is what the Government has effectively tried to do. I support the motion to disallow the regulation.

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

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE BILL

In Committee.

(Continued from 25 October. Page 576.)

Clause 10—'Penalty for fraud, undue influence, etc.'

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

Page 6, after line 29—Insert new subclause as follows:

(1a) A medical agent who exercises powers conferred by a medical power of attorney must act (or omit to act)—

(a) honestly; and
(b) in accordance with lawful conditions and directions contained in the medical power of attorney; and
(c) if the grantor of the power has also given an anticipatory direction—consistently with the direction; and
(d) subject to those requirements, in what the medical agent genuinely believes to be the best interests of the grantor.

Penalty: Imprisonment for 10 years.

Clause 10 deals with a number of situations where there may be dishonesty or undue influence. There seems to me to be one glaring omission from this clause and that relates to the way in which the medical agent in fact acts. The new subclause which I have moved makes it an offence for an agent not to act or omit to act honestly and in what the agent genuinely believes to be the best interests of the grantor of the power. The agent will not be subject to any liability where he or she has acted in accordance with any directions in an anticipatory grant or refusal to consent to medical treatment, or according to instructions in a medical power of attorney.

Members will recollect that the amendment I moved to clause 7(7), which was not successful, sought to impose an objective standard on the attorney or agent. The standard here, I point out, is subjective. Obviously, one cannot punish a person for acting in a way in which he or she genuinely believes to be in the best interests of the grantor of the power. It is appropriate that standards be set for a person who is making decisions in what might be life and death issues and that those standards be reinforced by the creation of an offence.

The Hon. DIANA LAIDLAW: I oppose this amendment on two grounds: first, the issue of putting in a penalty. In this case the proposed penalty is imprisonment for 10 years. When people accept appointment as a medical agent they sign an undertaking to act in what they genuinely believe to be the best interests of the grantor of the power. That is very clearly stated in schedule 1 of the Bill, which indicates acceptance of the power of attorney as follows:

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

That undertaking is signed by the medical agent and also by the grantor, so it is something which they both accept and which is witnessed at the time. To seek to lay the agents's decision open to prosecution in this way, such that a criminal sanction applies, is not acceptable and I repeat the point that I have made over and over again during this debate: it is unlikely that someone would appoint one's worst enemy, or any enemy or person one was uncertain about, as a medical agent. I repeat, too, that it is not obligatory for anybody to appoint a medical agent. We are not insisting that it be compulsory; it is entirely optional and, in those circumstances, we believe that to place a penalty involving imprisonment of 10 years—a minimum-maximum sentence, no qualification, just 10 years—

The Hon. K.T. Griffin: No, it is always maximum.

The Hon. DIANA LAIDLAW: Imprisonment for 10 years: it doesn't say 'maximum'.

The Hon. K.T. Griffin: Under the Acts Interpretation Act it is the maximum.

The Hon. DIANA LAIDLAW: A maximum of 10 years, then. It is optional for a person to appoint an agent and, as I say, in terms of the schedule the grantor signs it, the prospective agent signs it, there is a witness, they can revoke it; and it is not compulsory to do so in the first place. Secondly, last night, on behalf of the Hon. Bernice Pfitzner, I moved amendments to clause 7(7), and I argue that we have essentially addressed the issues that the Attorney now raises but without the imposition of the reference to imprisonment as the penalty. There was a long debate on this matter last night. The amendment that was passed reads as follows:

> The powers conferred by a medical power of attorney must be exercised in accordance with any lawful conditions and directions contained in the medical power of attorney and, subject to those conditions and directions, in what the agent genuinely believes to be the best interests of the grantor.

Members may recall that last night there was much debate about the words 'genuinely believes'. The Attorney was not too keen to see those words in an amendment that he had to the same subclause, although I note with interest that he has used exactly the same words in the amendment that he is now moving.

The Hon. K.T. GRIFFIN: I made clear when I spoke the reason why there was a difference between this amendment and the amendment I moved last night in relation to clause 7(7). I acknowledge that the standard here is a subjective standard, because you just cannot punish a person for acting in a way in which he or she genuinely believes to be in the best interests of the grantor of the power, so it has to be a subjective standard. I need to make a couple of points: first, as I interjected, the imprisonment is a maximum period, as it is in relation to subclauses (1) and (2). It is not a fixed period: it is up to that period of 10 years, and the courts have a discretion whether to impose any range of penalties up to that maximum period if they impose any imprisonment at all.

I do not accept the argument that, because you have a grantor and grantee who at the point of actually granting the power find each other acceptable and the grantee accepts the responsibilities willingly, that is the end of the matter. As I have argued right through the debate, circumstances change and, whilst the grantor may change his or her grant of power, there may be circumstances in which that may not occur, for a variety of reasons, including incompetence, incapacity (however you describe it) or inability to make the change, or mere oversight. Of course, at some point one has to accept that people's attitudes change. A grantee who may be quite amenable now might in two or three years' time change for a variety of reasons, whether emotional, mental or other reasons.

It is in those circumstances that I think you do need to have some sanction that constrains a person exercising the power to act honestly and to act in accordance with lawful conditions and directions contained in the medical power of attorney; if there has been an anticipatory direction, then consistently with the direction; and, subject to those requirements, in what the medical agent genuinely believes to be the best interests of the grantor.

The Committee divided on the amendment:

AYES (10)

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

NOES (11)

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

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clause 11—'Medical treatment of children.'

The Hon. DIANA LAIDLAW: I move:

Page 7, lines 2 to 15—Leave out the clause and substitute new clause as follows:

Parental consent to be sought in certain cases

11.(1) If a parent or guardian of a child is available to decide whether medical treatment should be administered to a child, a medical practitioner must, before administering medical treatment to the child, seek the consent of the child's parent or guardian.

(2) However, the medical practitioner need not seek the consent of a parent or guardian of the child if the medical treatment is, in the medical practitioner's opinion, necessary for the child's health and well being but of a kind that cannot be disclosed to a parent or guardian without serious embarrassment to the child or serious risk of prejudice to family relations.

Administration of medical treatment to a child

11A.(1) A medical practitioner may administer medical treatment to a child if—

(a) the parent or guardian consents; or

(b) the child consents and—

(i) the medical practitioner who is to administer the treatment is of the opinion that the child is capable of understanding the nature, consequences and risks of the treatment and that the treatment is in the best interest of the child's health and well being; and

(ii) that opinion is supported by the written opinion of at least one other medical practitioner who personally examines the child before the treatment is commenced.

(2) However, in a case in which a medical practitioner is obliged to seek the consent of the parent or guardian for the medical treatment of a child, the medical practitioner may not administer medical treatment, on the basis of the child's consent, unless the medical practitioner has sought the consent of a parent or guardian and the consent has been refused or it has proved impracticable to obtain the consent.

This provision relating to medical treatment of children was inserted in the Bill when last in this place. It was not a matter addressed by the select committee and certainly was not a measure that has been part of the consent to the Medical and Dental Procedures Act, which this place passed in 1985. I will argue, as I argued in the debate we had last week on the age of consent for medical treatment with respect to 16 to 18 year olds, that with this same provision in terms of medical treatment of children we are going backwards, that it is a regressive step.

My amendment seeks to recast the clause. I am not seeking to get rid of it altogether, but only to recast it, following concerns expressed by a number of organisations working in the area of health services for young people and also a number of parents. The concerns have been highlighted in the context of the community debate recently taking place with respect to the issue of 16 versus 18 years as the age of consent to medical treatment. Honourable members will recall that when the matter was last before this Chamber an amendment was inserted to place an obligation on a medical practitioner to seek the consent of a parent or guardian of a child before administering medical treatment.

The provision now reads that, 'subject to this Act a medical practitioner must, before administering medical treatment to a child, seek the consent of a parent or guardian of a child'. There is no qualification: a medical practitioner under any circumstances must always seek the consent of a parent or guardian of a child. If that consent was not forthcoming the medical practitioner was still able to go ahead with the treatment of the conditions set out in clause 11(2)(b). The medical practitioner must first seek that consent, whether or not it is granted.

In situations of family harmony the amendment appeared reasonable when last before this place and was supported. However, a number of practical and philosophical difficulties have since been pointed out such that the amendment now appears unworkable and certainly unreasonable in many circumstances. First, at the practical level, a 15 year old with a throat or chest infection or tummy ache may visit the doctor on the way home from school. The parent may be at work,

unavailable to accompany the child or consider the child mature enough to visit the doctor unaccompanied, anyway. Under the Bill as it stands, the doctor would be obliged to attempt to contact the parent before prescribing the simplest of antibiotics. This is an unreasonable imposition and one that is likely to be ignored in the everyday practical realities of a medical practice, whether or not the practice is busy.

Secondly, at both a philosophical and practical level a central ongoing issue for health care providers and young people has been young people's ability to seek and gain access to confidential medical advice and treatment. This is particularly the case in matters of sexual health, sexually transmitted diseases and contraceptive advice. A legislative provision of this nature works against the strong Government and community emphasis on sexual responsibility, prevention of sexually transmitted diseases, HIV and AIDS. It also works against the interest of young people who no longer live with parents or guardians for one reason or another. It is not for us to speculate why that may be, but we all know that there is, unfortunately, a large number of children today whose family home is not harmonious. This section also works against the interests of young people who need to be provided with safe opportunities to seek confidential advice, especially where they have been victims of physical and/or sexual abuse.

Yet, notwithstanding all those circumstances within families today, where there is, regrettably, sometimes a great deal of ugliness and even criminal activity in terms of physical or sexual abuse, we would be requiring under this section that the medical practitioner must, before administering medical treatment to a child, seek the consent of a parent or guardian. The child may have gone to see the doctor because they were concerned about sexual abuse or, in cases of sexual abuse, may present with a tummy ache or headache, and even antibiotics or the simplest of treatment at that stage would have to be administered only after the medical practitioner sought to make contact with the guardian or parent, thereby alerting the parent or guardian in such circumstances, which would not necessarily be in the best interests of the child.

As I indicated earlier, this provision was not included in the 1985 Consent to Medical and Dental Procedures Act. I have argued that it would be a regressive step to include it in this Bill, at least in the form in which it appears. So, nine years ago, this Parliament debated the matter of medical treatment of children and did not see fit, at that time—and it has operated without hiccup since that time—to require that a medical practitioner in all circumstances must, before administering medical treatment to a child, seek the consent of a parent or guardian of the child. As I said, we have worked for nine years in this State without such a provision.

My amendment seeks to preserve the requirement for a doctor to seek consent from parents but, at the same time, to recognise circumstances where it may not be necessary or practical to do so, and circumstances in which it is important for the young person to be able to gain access to the services of a medical practitioner on a confidential basis—a choice which is available to them now and which we would be seeking to remove as a result of this measure.

The Hon. R.D. LAWSON: Can the Minister indicate whether proposed clauses 11 and 11A are alternatives? I must admit that I have some reservations about the wording of proposed clause 11(2). It seems to me that the two mechanisms are, in a sense, contradictory.

The Hon. DIANA LAIDLAW: I raised the same question when I first looked at this amendment and I was advised by Parliamentary Counsel that they are in fact complementary. So, I am acting on my legal advice in this matter.

The Hon. R.D. LAWSON: Can the Minister explain in what sense they are complementary, because it is not immediately obvious?

The Hon. DIANA LAIDLAW: Yes, I raised the same question myself. I will get that information.

The Hon. K.T. GRIFFIN: I have a concern about clause 11(2). I ask that the Committee put clause 11 in two parts—subclause (1) and subclause (2) separately. It seems to me that clause 11(1) is complementary to clause 11A; and clause 11(2) is not. It provides an exception which, as I read the present section 6 of the Consent to Medical and Dental Procedures Act, is not provided there. I have tried to examine the existing provision in the Consent to Medical and Dental Procedures Act (section 6). Apart from clause 11(2), it seems to me that there is a significant degree of similarity. The only other difference is that in the present section 6 of the Consent to Medical and Dental Procedures Act there is a set of circumstances in which a medical or dental procedure can be carried out on a minor who is less than 16 years of age. In those circumstances, which are described as 'prescribed circumstances', the minor shall be deemed to have consented to the carrying out of the procedure and the consent should be deemed to have the same effect for all purposes as if the minor were of full age. In those prescribed circumstances, the consent of the parent or guardian is not required. In relation to the prescribed circumstances, they exist if:

> (a) the minor is incapable for any reason of giving an effective consent to the carrying out of the medical procedure or dental procedure;
>
> (b) no parent of the minor is reasonably available in the circumstances, or, being available, the parent, having been requested to consent to the carrying out of the procedure, has failed or refused to do so;
>
> (c) the medical practitioner or dentist carrying out the procedure is of the opinion that the procedure is necessary to meet imminent risk to the minor's life or health; and
>
> (d) unless it is not reasonably practicable to do so having regard to the imminence of the risk to the minor's life or health, the opinion of the medical practitioner or dentist referred to in paragraph (c) is supported by the written opinion of one other medical practitioner or dentist.

The amendment deals with the circumstances where the consent of a parent or guardian has been refused or it has proved impracticable to obtain the consent. The opinion has to be supported by the written opinion of at least one other medical practitioner who personally examines the child before the treatment is commenced. So, three of those criteria are met in circumstances where the child's consent is sufficient, but not where the medical practitioner is of the opinion that the procedure is necessary to meet imminent risk to the minor's life or health. That is the only area that has been excluded. I have some misgivings about that being excluded. However, it seems to me that probably, on balance, one could go along with the amendments of the Minister for Transport provided, of course, that clause 11(2) was not included.

I recognise the arguments that the Minister has put in support of clause 11(2), but I think that the way in which they have been drafted is an invitation to medical practitioners to use what some might regard as insubstantial reasons for assessing that the disclosure to the parent or guardian might create serious embarrassment to the child or serious risk of

prejudice to family relations. They are very vague bases and it seems to me that they are inadequate in the context of consent where there is concern about the extent to which parents or guardians, in relation to children, might be sidelined, not only in relation to consent to the medical or dental procedures or for other purposes. However, on balance and for the moment I can support clause 11(1) and clause 11A, with that tentativeness about the condition that is in the present legislation relating to imminent risk to the minor's life or health.

The Hon. R.I. LUCAS: Following the debate we had previously about this Bill, the provision currently in the Bill was actually moved by the Hon. Mr Griffin. The Minister for Transport has referred to clause 11(1) in terms of a medical practitioner being required, before administering medical treatment, to seek the consent of the parent or guardian of the child. Going back over that debate, I noted that the Hon. Bernice Pfitzner had a similar amendment on file and supported it. The Hon. Barbara Wiese supported it as well, as did the Hon. Carolyn Schaefer. I think the Hon. Mr Elliott supported it, although he did not actually in the end say it. But no-one actually spoke in opposition to clause 11(1) during the debate. It was strongly supported by the Hon. Bernice Pfitzner, who said that she had a similar amendment on file.

The honourable member said that this measure will enhance cohesion and rapport within the family, and a variety of other issues like that. As I said, the Hon. Barbara Wiese supported it, and the Hon. Mr Elliott, who was addressing a number of other issues as well, was supportive of it. No-one spoke against it, whereas we had divisions on just about every provision when last we met, and as we are now.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: No, we still have a way to go. It seemed to be one of those issues where there was, if not unanimity, a high degree of support for the Hon. Mr Griffin's provision, which I support. I am also cautious of clause 11(2), which moves away from what was either unanimous or strong support, with members on both sides indicating support for this provision.

The Hon. R.R. ROBERTS: I support the retention of the clause as it was agreed on the last occasion we met on this matter. We have had a vigorous and protracted debate on what constitutes a child—whether it involved their being 16 or 18 years of age. Quite clearly, from the result of the debate, I assume that we accepted that anybody under 16 years of age was a child. The Minister for Transport talked about the breakdown of families and people not necessarily being available. Those issues are covered within the present clause 11 because, if there is family breakdown and the child is living away from home, the parent or guardian could not consent and there would be no parent or guardian reasonably available to make the decision. In the clause as it now stands, the medical practitioner has responsibilities, and one of those responsibilities is to check his assessment of the situation by having another written determination by at least one of his peers to allow that to occur.

Clause 11(2) seeks to allow into a doctor's surgery a 14 or a 15 year old with a situation which may cause family embarrassment or which may pose a serious risk of prejudicing family relations. Clause 11(2), as proposed by the Minister for Transport, seeks by back-door legislation again to lower the figure in years as to what constitutes a child. The arguments advanced by the Minister for Transport are and were catered for in present clause 11 that was determined by the Council when last we met on this matter.

Some members have advised me that they believe the present law is more reflected in clause 11. As I recall, those arguments were also put when last the Council considered this matter and determined that clause 11(1), as printed in the Bill, covered all those arguments to the satisfaction of the Committee at that stage. Therefore, I will support the present clause 11. I note that the Hon. Mr Lucas is making similar observations that they can be catered for under clause 11, so I will not support the amendment moved by the Minister for Transport, as subclause (1) is almost the same as the present clause, and subclause (2) is a back-door way of lowering the age of what constitutes a child for the purposes of this Act, which we have determined on another occasion.

The Hon. M.J. ELLIOTT: It appears to me—and I can be corrected—that clause 11 as it currently stands is more restrictive than the application of the current law.

The Hon. Diana Laidlaw interjecting:

The Hon. M.J. ELLIOTT: It is. Not one member has cited a case that has been brought before them where the current law has been a difficulty. There may be some arguments about the exact wording of clause 11(2), but it probably more closely reflects the current situation than does indeed—

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: I'm not saying the exact wording. It does mean that, for instance, a 15 year old, under certain fairly narrow circumstances, may find that treatment is available. That is the reality now, and that would be allowed under this measure.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: Okay; look, I said there might be some need for further refinement of the wording.

Members interjecting:

The CHAIRMAN: Order!

The Hon. M.J. ELLIOTT: I suggest that you, Sir, could give someone an early minute and send them out to dinner; then we can get on with the serious business.

The CHAIRMAN: Order! I will determine that, Mr Elliott. I suggest that you get on with the debate.

The Hon. M.J. ELLIOTT: Well, I am trying to do so, but I am being interrupted all the time. I cannot accept clause 11 as it stands. If someone wants to be more constructive by suggesting some minor variations to clause 11(2) which would give practical effect to it as the current law is, that would be the way I would prefer to go. However, in the absence of that I will support the amendments moved by the Minister for Transport.

The Hon. DIANA LAIDLAW: The Hon. Robert Lawson asked for some clarification, and I hope that I can now satisfy his questions. Clause 11, as it is in my amendment, is not in the present Act. There is no reference in the present Act to a medical practitioner having to do anything in relation to administering medical treatment to a child. The Bill includes such a practice, and it is that which I have indicated is very restrictive. It does not reflect realities in the community, and certainly it is a regressive step on the provisions that have applied for the past nine years. I agree with the honourable member. I stated earlier that the Health Commission, FACS and others do not have complaints from parents or children that the provision in the current Act, in terms of medical treatment, has been abused.

On the basis of nine years' experience, some cynics may say that it was not possible for parents to complain because

they were not aware. Parents generally have a habit of complaining to the Health Commission, any other department, a Minister or member when they are not happy about something. This matter has not attracted the wrath of parents or caused any flurry in the agencies that would normally be in receipt of such complaints. So, it is not there now.

I am proposing the exemption because this Bill introduces an imposition, in fact a requirement, upon a medical practitioner to contact a parent or guardian irrespective of the situation within that family and the circumstances of that child and that family. It is that to which I am taking exception.

Others in this place would argue that we should not have clause 11 at all and that we should keep with that which is in the existing Act, and there is some reason to be sympathetic with that argument.

Proposed clause 11A(1) is a direct reflection of what is in the current Act. Proposed clause 11A(2) should be read in conjunction with proposed clause 11, particularly subclause (1), because it qualifies the situation in a case where a medical practitioner should have gone to the parents for consent but could not rely on the parents' consent. It enables the medical practitioner to proceed in circumstances where the parent, for instance, hangs up the telephone and says, 'I just do not want to have any part of this; I refuse,' or it proved impractical to obtain the consent. So proposed clause 11A(2) should be read in conjunction with proposed clause 11 and particularly with proposed clause 11(1).

The Hon. A.J. REDFORD: I support the Minister for Transport in her assertion that the existing clause 11 is a retrograde step, not only because there is an absolute requirement to seek the consent of a parent or guardian but also, as I read the clause, to bring in the circumstances under clause 11(2) you can only then—and I object to the word 'then'—'administer medical treatment to the child if', and paragraphs (a) and (b) follow. So, this seeks to impose the regime that, even if a medical practitioner thinks there is a difficulty in the family relationship, under the existing clause he must go to the parents in every instance. I suggest that is a retrograde step and far more draconian than the regime set out under section 6 of the Consent to Medical and Dental Procedures Act.

Turning to the Minister for Transport's amendments, I have no difficult with proposed clause 11(1) or the whole of clause 11A, but I do have a difficulty with proposed clause 11(2). The concepts of 'serious embarrassment' or 'serious risk of prejudice to family relations' are quite meaningless when one starts to examine different situations. For example, on occasions, it is a serious embarrassment to my 17 year old daughter to be home before 2 a.m. Members might laugh, but that is the sort of standard they are introducing in relation to treatment that might be quite important and serious to a child. I do not seek in any way to take any retrograde step with the passage of this legislation, particularly as it affects young women who want either to have an abortion or to go on the pill. The current system works reasonably well.

I would not like to see any impediment to young women who want to exercise some degree of birth control other than the regime that currently exists. As I understand it, any child above a certain age and as young as 10, provided they have reasonable knowledge of where the facilities are, can obtain that treatment. The basis upon which they do so is pursuant to section 6(2) of the old Act, which I think is substantially mirrored in proposed clause 11A. In that case, a medical practitioner can administer treatment and prescribe the pill pursuant to the regime set out in clause 11A(1)(b), which involves getting a second opinion. In family planning clinics, that may well be done as a matter of course, but it at least provides some degree of protection, first, for the doctor who is administering medical treatment to a child and, secondly, for the child, to protect her against a hasty decision.

The Hon. Dr Pfitzner will correct me if I am wrong, but in cases such as this I am sure that there would be many occasions where young children aged between 10 and 14 would put enormous pressure on the doctor, and this amendment would make it easier for the doctor to say, 'Hang on, I've got to get a second opinion, but I will prescribe this form of treatment.'

If we adopt proposed clause 11(1) plus the whole of proposed clause 11A, it will take us back to where we should be, which is with a commonsense approach to this whole area, and at the same time it would provide some degree of protection, the best the Parliament can do, for both the parents and the children. However, I have a real problem with proposed clause 11(2) because matters such as 'serious embarrassment' or 'serious risk of prejudice to family relations' puts enormous pressure on the doctor. The doctor then prescribes the pill or some other treatment to which the family prescribes, and along comes the family and says, 'Where was the serious embarrassment or serious risk of prejudice to family relations?'—and there was not any. That one single medical practitioner is placed under enormous pressure, whereas under the current regime, under proposed clause 11A, two doctors can agree with each other and they are protected.

Progress reported; Committee to sit again.

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

CONSUMER CREDIT (CREDIT PROVIDERS) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 25 October. Page 562.)

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their contribution on the Bill. There are several issues which were raised and which need some response. The Hon. Anne Levy raised the issue about the Commercial Tribunal, which has been raised in the context of the Second-hand Vehicle Dealers Bill and the real estate package. The Hon. Anne Levy made the comment, which has been common to each of the Bills that we have considered so far, that the main purpose of the Bill is to strip the Commercial Tribunal of another jurisdiction. Once again, I repeat that as with the real estate industry and second-hand motor vehicles the role of the Commercial Tribunal in a particular jurisdiction is being considered on its merits.

In the financial year 1993-94 the Commercial Tribunal heard only four matters relating to credit. Three related to the tribunal's lifted civil jurisdiction. There was one licensing matter; no objections to licence applications; and no disciplinary matters at all. It is hard to justify the retention of a jurisdiction, let alone a tribunal and a complex and costly licensing system, on these paltry figures. The Consumer Credit Act and its companion legislation, the Consumer Transactions Act, are both more than 20 years old. The credit environment when they were passed, with finance companies dominating consumer lending, was very different from the one in existence now. Today, banks, building societies and

credit unions dominate consumer lending, and those institutions already are heavily regulated under separate specific legislation. They are exempt from the licensing provisions of the Consumer Credit Act and, to a very large extent, from the jurisdiction of the Commercial Tribunal. Disputes between these lenders and their customers are largely heard in the general court system.

Some observations were made by the Hon. Anne Levy in relation to the uniform consumer credit code. The uniform consumer credit code does not address the issue of licensing or regulation for credit providers at all. As the honourable member is no doubt aware, these matters were left for individual States to determine. Each State will be able to pass its own administration Act to accompany the code, and that administration Act can address the issue of regulation.

With all consumer legislation under review and the code proposed to be introduced next year, it therefore seemed appropriate to put in place a system of regulation which would ultimately form the basis of regulation once the code was in place. The opportunity was there to flag to the credit industry the manner in which it would be regulated under the code. At the same time, the industry could be relieved of the costly burden of the now irrelevant licensing system. Unlike other licence groups, credit providers pay an annual fee, based on turnover. Because of the extensive exemptions from the current legislation, both under section 6 and by proclamation, only a very small percentage of the industry is being compelled to pay these fees.

The honourable member also raised a question about penalties and the reference in the Bill where it related to penalties to the need for the court to take into consideration the prudential standing of the company that might be subject to the imposition of a penalty. The honourable member is correct when she says that there is reference to the prudential standing of the credit provider in the uniform consumer credit code. Prudential standing is one of the factors to be taken into consideration by a court when addressing the issue of civil penalties. One of the disciplinary powers that will be available to the District Court under this amendment Bill will be the power to suspend a credit provider's licence or to disqualify the credit provider from trading. This is a very serious sanction which can destroy a business or, at the very least, cause severe financial hardship and considerable loss of custom.

The prudential standing requirement has been introduced into the amendment Bill for much the same reason as it appears in the proposed code; that is, to ensure that the punishment fits the crime and that, when the powers to suspend and disqualify are used, the full implications of such a penalty are considered by the court. I consider that the absence of such a consideration has been something of an oversight in the existing legislation which, as I said, was designed for quite a different and much less sophisticated marketplace. It is important to recognise that, in the time since the Consumer Credit Act and the Consumer Transactions Act were enacted 20 years ago, accounting standards have changed. There is a much more rigorous approach to auditing as well as to accounting standards in the corporate sector.

The fact is that in the deliberations that I have been part of since the election in relation to the uniform credit code, the point has been made on a number of occasions by industry, in particular, that the failure to recognise the impact on a company's prudential standing in relation to civil penalties is something that, as I have said, can send a company broke in accounting terms, because any contingent liability always has to be brought to account. So, the whole framework within which companies now operate—their accounts are prepared, the auditing is undertaken and, in terms of public accountability with a publicly listed company through the Stock Exchange—has changed quite significantly. Apart from the question of equity and justice, there is a need to ensure that courts take into account the significant impact that is likely to occur from the civil penalty regime.

The Hon. Sandra Kanck made a number of observations. One was in relation to what she described as the haste in having these amendments introduced with respect, particularly, to the Commercial Tribunal and the abolition of the licensing obligation. Again I refer to my response to the Hon. Anne Levy, that, in the course of the review of all the legislation administered by the Office of Consumer and Business Affairs, we took the opportunity to review this piece of legislation in light of the fact that there will be a uniform credit code, most likely from 1 September next year and that, in those circumstances, it was appropriate to send some signals about the sort of regulatory regime that this Government believes ought to be in place when the code comes into operation.

The Hon. Sandra Kanck made some comments on a different uniform agreement. The uniformity agreement for the credit code was confirmed by all Ministers at the latest meeting of the Ministerial Council. Given that the Queensland Parliament has now passed the code in good faith, expecting other States to follow suit, the uniformity agreement cannot change. The legislation passed in Queensland is what is known as template legislation and is designed to be adopted by all States in due course and in any event no later than 1 September 1995. Western Australia is tackling it from a slightly different perspective but, by the enactment of its own legislation in Western Australia, it will nevertheless maintain the general approach to uniformity in this area.

This legislation is not coming into effect in Queensland until it comes into effect across Australia. So, there is no opportunity to watch how the Queensland legislation is implemented; it all comes in across Australia on a uniform basis, which is the whole object of the uniform credit code that is has been negotiated over some 10, 15 or more years. There is no opportunity for any so-called finetuning before the whole scheme comes into operation. In its implementation there may be changes which might be necessary in the first year or so. They will be considered by the Ministerial Council from time to time. Amending legislation would then be introduced into the Queensland Parliament to take effect by virtue of the triggering mechanisms which are likely to be enshrined in each State's legislation.

The Hon. Sandra Kanck also made some observations about the application of the legislation in respect of all credit providers. I note the honourable member's comment that the current Act will extend to all credit providers and regret to advise that she is mistaken. The current Bill retains the status quo in terms of applicability, pending the introduction of the code. To make the Consumer Credit Act 1972 apply to all lenders at this point would cause incredible confusion and expense for those currently exempt. It raises constitutional issues, particularly in relation to banks. The banks will be bound by the new uniform credit code because the Commonwealth and the ACT are participating in the uniform regime.

If we were to seek to apply South Australian law to some aspects of banking in terms of credit provision, there may

well be some constitutional issues raised and in that short period it would be unwise for that to occur pending the introduction of the uniform credit code. It is important to recognise that what we are seeking to do in terms of the preservation of the status quo, apart from the licensing obligation, is to ensure that all credit providers remain subject to the current Act's provision on harsh and unconscionable terms and procurement of credit. If we were to apply the whole of the code to all credit providers, it would mean that they would have to revise all documentation (banks and credit unions in particular), and that, for the relatively short period until September next year, is a burden we do not believe ought to be imposed upon them.

We are simply seeking to remove the licensing obligation on the basis that a very substantial body of credit providers are already exempt from the licensing provisions of the current Act and we will, by virtue of this amendment, put all credit providers in respect of licensing on an equal footing. That does not mean that those presently licensed escape the obligations presently imposed upon them other than in relation to licensing because the intent of the Bill is to ensure that all the provisions that currently apply to those credit providers which are presently licensed will continue to apply.

The penalties which can be imposed, whether it be reprimand, fine, suspension of licence or cancellation will continue to apply to all credit providers; even those which are presently exempt from the licensing requirements will continue to be bound by the current Act's provisions relating to harsh and unconscionable terms and procurement of credit, so that maintains the *status quo* in that respect. I think that has answered all members' questions. I look forward to their consideration of the Bill in Committee, and I signal that we will endeavour to deal with it tomorrow.

Bill read a second time.

LAND TAX (SCALE ADJUSTMENT) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 October. Page 565.)

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I thank the Leader of the Opposition for her contribution. Whilst I accept the fact that the Government and Opposition views are different in relation to the land tax provision, I nevertheless welcome the Leader's and her Party's attitude towards this financial matter and their general attitude towards budget related matters.

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

MOTOR VEHICLES (CONDITIONAL REGISTRATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 October. Page 563.)

The Hon. SANDRA KANCK: The Democrats do not see any necessity for a continuation of the administrative rigmarole, classic left-hand drive car owners currently have to go through in order to drive their cars on public roads each time there is a club event. However, as it is intended that unregistered vehicle permits for left-hand drive cars be replaced with conditional registration as long as the owners are members of a recognised car club, I believe there should be a means of providing third party insurance coverage for these vehicles just as it is required for fully registered vehicles. I note that the Minister has not specified in her Bill that third party insurance coverage should compulsorily apply to left-hand drive vehicles, and I would like to know whether she intends that this be brought about through the power of the Registrar of Motor Vehicles to impose additional conditions on their use.

I am not sure whether it would be better for a third party insurance premium to form part of the application fee paid to the Registrar of Motor Vehicles or whether, since the purpose of this Bill is administrative simplification, third party insurance would best be obtained by the classic car clubs for each club event. It may also be appropriate for the Registrar of Motor Vehicles to provide guidelines to classic car clubs for the conduct of club events so that they are not left in any doubt as to their responsibilities. The Democrats support the second reading of the Bill.

The Hon. BERNICE PFITZNER secured the adjournment of the debate.

ROAD TRAFFIC (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 October. Page 564.)

The Hon. SANDRA KANCK: As this amendment Bill seeks to make changes to two different and distinct aspects of traffic regulation, I will deal with each part separately. In the first part it would appear that the motivation for the amendments relates to buses which make hook right turns in order to protect TransAdelaide from legal liability when these turns are made by TransAdelaide buses. As well, it will enable TransAdelaide drivers more easily to undertake right-hand turns at busy intersections where it is difficult for them to move to the right of the carriageway.

We have no particular objection to buses making hook right turns but we would like to see some safeguards put in place. The North Terrace/King William Street intersection is of particular concern to me. There was another accident there last Tuesday (25 October), and these accidents seem to occur much too regularly at this intersection. Taking police away from the intersection during peak times will do nothing to enhance its safety. I am concerned that a motorist who is unused to this intersection—and this would apply particularly to people from other States—might in a hurry run through an amber or even a red light and be confronted with a bus turning right in front of them. I have no sympathy for red light runners, but I do have some sympathy for the innocent bus passengers who might be injured in such an accident. I hope, therefore, that the Government also plans to erect some sort of signage at intersections from where buses will make hook right turns to ensure that motorists who might be tempted to run an amber or red light are aware that a bus may be turning in front of them.

Regarding the amendments that seek to enable the establishment of shared zones for cars and pedestrians, I am not sure that they will necessarily achieve the objectives stated by the Minister. In her second reading explanation, the Minister said that the objective of a shared zone is to improve the amenity of the area by creating an environment which discourages unnecessary traffic and inappropriate speeds. As I understand what the Minister is proposing, pedestrians

would be allowed to move onto a roadway in a shared zone in front of cars. In these circumstances they would constantly have to look out for cars and hurry out of their way. I believe that it would be far more amenable to pedestrians to establish a mall than a shared zone in these circumstances.

By way of example, I note that recent works have been carried out in Hindley Street to widen the footpath in certain places. I guess that Hindley Street may be a candidate for shared zone status. Currently on a Friday or Saturday night on Hindley Street there is a line of cars from one end to the other, and few if any of these would be travelling at more than 10km/h. So what happens on Hindley Street could be akin to the sort of shared zone that the Minister is suggesting, but you could hardly say that the situation in Hindley Street enhances the amenity of the area for either pedestrians or cars.

It would seem, too, that if there is no restriction on the type of traffic in a shared zone there would be a danger to pedestrians. Indeed, for small children shared zones could be more dangerous. The low speed of vehicles in shared zones would allow them to move in front of a vehicle out of the line of sight of a driver. So, it could be that the sort of shared zones that the Minister is proposing will not bring the results that she wants.

I would like to suggest to the Minister a type of traffic management arrangement that would achieve her stated aim. I know that in Cambridge in the United Kingdom no vehicles are allowed on streets in the central business area except for taxis, public transport buses and bicycles, with commercial vehicles permitted access only at certain times of the day and subject to certain conditions. General traffic is excluded. This creates an excellent environment for people to be in.

There is the unusual feeling in Cambridge that the town centre is a very peaceful place. This not only enhances the environment for people who live, work and study in the town centre but provides a unique tourist experience as well, since one can experience the grandeur and tremendous history of the place as a sort of living museum rather than as a lavishly decorated main street. I believe that shared zones of this nature would be of much greater benefit to South Australians, particularly in central Adelaide, as they could be used to entrench Adelaide's reputation as a cultural tourism destination and a university town. I support the second reading.

The Hon. BERNICE PFITZNER secured the adjournment of the debate.

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE BILL

In Committee (resumed on motion).
(Continued from page 598.)

Clause 11—'Medical treatment of children.'

The Hon. CAROLYN PICKLES: I move:

Page 7, lines 2 to 15—Insert the following new clause:
Administration of medical treatment to a child
11. A medical practitioner may administer medical treatment to a child if—
(a) the parent or guardian consents; or
(b) the child consents and—
(i) the medical practitioner who is to administer the treatment is of the opinion that the child is capable of understanding the nature, consequences and risks of the treatment and that the treatment is in the best interest of the child's health and well-being; and
(ii) that opinion is supported by the written opinion of at least one other medical practitioner who personally examines the child before the treatment is commenced.

Before the dinner break there was some confusion about what was the existing law and what was the intention of the new amendment. So, to simplify matters for members of the Committee I have moved this amendment, which is the same as the existing law, so that this clause will now reflect the existing law, which has been in place since 1985 and with which, on my understanding, there has been no difficulty in relation to the administration of the Act. I therefore ask members to support this amendment, because I believe that it will clarify the issue.

The Hon. BERNICE PFITZNER: There are two issues before us, the first of which relates to consent, and with consent comes the parents' knowledge of the child's condition. The second issue relates to the administration of the treatment, which must be supported by one other medical practitioner. The original option provides that the medical practitioner 'must' seek the consent of the parent or guardian of the child, and this means that the medical practitioner must inform the parents. I feel rather comfortable with that, as the Hon. Mr Lucas said in a debate in the last sitting, because I recall that when I was working in the Family Planning Clinic I had great difficulty prescribing oral contraceptives to very young teenagers without letting their parents know.

As contained in the amendment moved by the Hon. Ms Pickles, the previous Act provided that the medical practitioner 'may' inform, and we were guided by that provision; we did not have to inform the parents, but we pushed very strongly that the child should inform the parents.

The amendment moved by the Hon. Minister for Transport provides that the medical practitioner 'must' seek consent, unless there will be serious embarrassment or serious risk of prejudice of family relations.

That would be the prescription of oral contraception—and there are only two conditions that I can recall. The second would be the procedure of abortion, and the third would be a severe haemorrhage needing intravenous therapy, but that is catered for under 'emergency medical treatment' in clause 12(5). My preference is for the original amendment, which provides that the medical practitioner must inform the parent or guardian of the child before he or she administers the treatment.

The second part is similar in all cases, and this means that, when the practitioner administers the treatment, the child must be capable of understanding it and that it would be in the paramount interest of the child's health and well-being; and secondly, that the opinion is supported by written opinion of at least one other medical practitioner. I therefore support the original provision as printed in the Bill.

The Hon. BARBARA WIESE: My preference is to return to the wording that exists in the current legislation. As previous members have indicated, the legislation as it stands has been in operation for nine years and, so far as I am aware, there have not been any serious problems or indeed any problems at all with its administration.

I understand the Hon. Dr Pfitzner's point concerning her preference as a medical practitioner to encourage young people who may be coming to her seeking certain forms of medical treatment to inform their parents of their wishes. My preference would always be for young people in those circumstances to inform their parents and have their parents'

consent and acknowledgment of any treatment that they may be seeking from a medical practitioner.

However, the fact is that there are occasions when this is not possible or appropriate. I can think of numerous occasions when it may be a problem for a young person to gain their parents' consent. The parent may not be around at the right time. A young person may be estranged from their parents for one reason or another. It could be that a young person is being physically or sexually abused by a parent and, therefore, does not wish to discuss their medical needs with that parent.

In some cases it is possible that consent in those circumstances would not be forthcoming, but in any reasonable person's mind it would be appropriate and reasonable for that young person to receive the medical attention that they seek. I can envisage a range of circumstances where it would not be possible or appropriate for a parent's or guardian's consent to be obtained prior to medical treatment. I therefore think the law should recognise that.

As I have already said, the wording of the current legislation has worked adequately. The wording that we ended up with in the Bill when it was last debated was agreed to, and I must admit that I do not remember the exact circumstances under which it was agreed at the time, except that I know that people were bending over backwards to try to reach some sort of accommodation and compromise to get out of the Legislative Council a Bill which might have been something that we could all live with, albeit a compromise proposal. I understand that there are certain legitimate circumstances in which a young person might seek treatment that none of us envisaged at the time of the previous debate.

The Hon. Ms Laidlaw outlined at least one of those when she originally moved her motion: the circumstance of a young person who might call in to the doctor on the way home from school to get a prescription for antibiotics, to get their foot fixed, or to have a cut on the leg or something that they might have sustained at school treated. That is a reasonable request. It is a reasonable thing for a young person to do, and it should not require the approval or consent of a parent who may simply not be available—if not both parents, the guardian or the parent with whom the young person lives—because they may be working, interstate or anywhere. That person should not be denied medical treatment in those circumstances because a parent or guardian is not available to provide consent. The legislation should allow for those circumstances.

I appreciate the Hon. Ms Laidlaw's attempts to amend the clause in the Bill, which was the compromise that came out of our last debate on this matter, to try to accommodate some of those circumstances. In practice, what that new amendment is doing is somehow confusing the issues further. Some members feel that that amendment is somehow opening up some new avenue for—

The Hon. R.I. Lucas: Which amendment is this?

The Hon. BARBARA WIESE: The Hon. Miss Laidlaw's amendment. Some people believe it is providing an avenue for people to seek medical treatment without parental consent, although I do not believe that that is the intent of her amendment. It seems to me that the way to overcome that problem is to return to the wording that exists in the current legislation. There should not be a single member in this Chamber who would be able to produce evidence to suggest that the current legislation has not been effective or that it is not working. For that reason, we should return to that wording, because the legislation has worked well, and I certainly know of no reason to change it. Although I appreciate the sentiments expressed in the Hon. Miss Laidlaw's amendments, and I agree with the direction she is trying to take, at the appropriate time in voting on the various amendments, I will seek to have reinserted in this legislation the wording that exists in the current legislation as outlined in the Hon. Ms Pickles' amendment.

The Hon. SANDRA KANCK: In its current form, clause 11 is very restrictive when compared with the South Australian Consent to Medical and Dental Procedures Act 1985. The wording proposed by the Hon. Ms Pickles is not exactly the wording from that Act, but it takes bits and pieces from it and is probably a lot more simple than the amendment proposed by the Hon. Ms Laidlaw. Before the dinner break the Hon. Mr Roberts expressed concern about the role of the parents under Ms Laidlaw's amendments, and the point was made that what is proposed in Ms Laidlaw's amendments is not all that different from the provisions that have applied for the past nine years. I will read part of the Consent to Medical and Dental Procedures Act into the record so that people know we are not being hoodwinked. Section 6(4) provides:

> The consent of the parent of a minor who is less than 16 years of age in respect of a medical procedure or dental procedure to be carried out on the minor shall be deemed to be a consent given by the minor and to have the same effect for all purposes as if the minor were of full age.

That is probably a little more legalistic than the Hon. Ms Pickles' amendment, which simply provides that a parent or guardian consents. Section 6(2) of that Act provides:

> The consent of a minor who is less than 16 years of age in respect of a medical procedure . . . to be carried out on the minor has the same effect for all purposes as if the minor were of full age where, in the opinion of a medical practitioner or a dentist supported by the written opinion of one other medical practitioner or dentist, as the case may be—
>
> (a) the minor is capable of understanding the nature and consequences of the procedure;
>
> and
>
> (b) the procedure is in the best interests of the health and well-being of the minor.

Again, this is similar to the Hon. Ms Pickles' proposed amendment. The one thing I would say is that, in whatever form this clause gets through—with whatever amendment—it will still be more restrictive than the current Act, because section 6(3) of the Act allows for the possibility of only one medical practitioner making the decision, where it provides:

> The requirement under subsection (2) that the opinion of the medical practitioner or dentist be supported by the opinion of another medical practitioner or dentist does not apply in any circumstances where it is not reasonably practicable to obtain such an opinion having regard to the imminence of risk to the minor's life or health.

From that we can see that what the Hon. Ms Pickles is proposing is really not even as open as the current consent Act. I therefore cannot see what problems people would have, given that the current Act has operated for nine years without problems.

The Hon. K.T. GRIFFIN: The provision in the Bill is more restrictive than the present Act in the sense that it requires a medical practitioner to seek the consent of a parent or guardian, although it does provide that, if no parent or guardian is reasonably available to make the decision but the child consents and certain conditions are satisfied, parental consent is not required. That is different from the Hon. Diana Laidlaw's amendment to clause 11(1).

Subclause (2) is not in the Consent to Medical and Dental Procedures Act. I have attempted to analyse section 6. It seems to me that the Hon. Carolyn Pickles' amendment reflects only part of what is in that section. It is not clear

whether she intends to support the Hon. Diana Laidlaw's clause 11A, because the Hon. Carolyn Pickles' clause 11, together with the Hon. Diana Laidlaw's clause 11A, goes a long way towards meeting the provisions of section 6. However, as I outlined when I spoke first on this clause, there are differences. Section 6(5) of the Act provides:

> Where a medical procedure (or dental procedure) is carried out in prescribed circumstances by a medical practitioner (or a dentist) on a minor who is less than 16 years of age, the minor shall be deemed to have consented to the carrying out of the procedure and the consent shall be deemed to have the same effect for all purposes as if the minor were of full age.

That is to be distinguished from subsection (2) which deals with circumstances in which parental consent is not required where 'the minor is capable of understanding the nature and consequences of the procedure; and the procedure is in the best interests of the health and wellbeing of the minor,' and there is the opinion of a medical practitioner or a dentist, supported by the written opinion of one other medical practitioner or dentist.

I have already referred to the prescribed circumstances, but it will not hurt to repeat them. They exist if:

> (a) the minor is incapable for any reason of giving an effective consent to the carrying out of the medical procedure;
> (b) no parent of the minor is reasonably available in the circumstances, or, being available, the parent, having been requested to consent to the carrying out of the procedure, has failed or refused to do so;
> (c) the medical practitioner carrying out the procedure is of the opinion that the procedure is necessary to meet imminent risk to the minor's life or health—

that, of course, is one of the major areas where there is a difference—

> (d) unless it is not reasonably practicable to do so having regard to the imminence of the risk to the minor's life or health, the opinion of the medical practitioner (or dentist) referred to in paragraph (c) is supported by the written opinion of one other medical practitioner (or dentist).

As I said when I spoke on proposed clause 11A, whilst the focus is on the best interests of the child's health, where the child consents but the parent or guardian has not consented, in a case in which a medical practitioner is obliged to seek the consent of the parent or guardian for the medical treatment of the child, the medical practitioner may not administer medical treatment on the basis of the child's consent unless the medical practitioner has sought the consent of a parent or guardian and the consent has been refused or it has proved impracticable to obtain the consent. My concern is with the reference to 'impracticable'. I was reasonably attracted to the package in clause 11(1) and clause 11A, because it placed greater emphasis on parental or guardian involvement in the decision and provided circumstances in which that consent, if it could not be obtained, would be dispensed with. The difficulty is: what is impracticable? I think there is a possible difficulty with that.

But the other issue is this question of imminent risk to the minor's life or health. To some extent that is covered by emergency medical treatment where the patient is incapable of consenting, but nevertheless it still has to be pointed out that, because of that, it is certainly not on all fours with the existing law. So, I am of the view that, wherever possible, parental or guardian consent should be obtained. I recognise that there will be circumstances in which that is not practicable to do so, and certainly that needs to be addressed. If we can find an accommodation which perhaps modifies clause 11 in the Bill and addresses that issue, I am certainly prepared to give further consideration to those amendments.

The Hon. CAROLINE SCHAEFER: After much consideration of the three amendments, my preference is to support clause 11 as it now stands in the Bill. I cannot tolerate clause 11(2) of the amendment of the Minister for Transport: I think it is just too broad. We have discussed at some length the rights of the child, but there are also rights and responsibilities that go with the parenting of children, and I see clause 11(2) as negating the rights and responsibilities of parents. I think there is provision in most of these amendments for the exception where the child does not have the consent of a parent or may not have a parent or may not have a responsible parent, and those provisions are contained in clause 11(2)(b), as I see it.

I see nothing wrong with that clause as it stands in the current Bill. It was agreed upon last time by almost everyone here. It was one of the few clauses that were not contentious, and I see no reason to change it. I have looked at the amendment as presented by the Hon. Carolyn Pickles and was somewhat attracted to that but, as I see it, there is no provision there for a parent to have any say whatsoever in the decision of their child. As I say, there are exceptions where the parents should not and would not want any responsibility for the medical treatment of their child, but I think they are exceptional cases and are provided for in another part of that clause. My choice will be to support the clause as it now stands in the Bill.

The Hon. CAROLYN PICKLES: I am just wondering if there is any honourable member present in the Chamber today who can indicate to me what the problem is with the present administration of the Act. All this amendment seeks to do is replace the wording in the existing Act.

The Hon. Diana Laidlaw: It has been there for nine years.

The Hon. CAROLYN PICKLES: I have never had one complaint in the nine years I have been in Parliament. I do not know whether any other member present has had any complaint, or whether any of the legal people present could tell me what is wrong with the present administration of the Act.

The Hon. BERNICE PFITZNER: I have had numerous complaints from parents of 14, 15, and 16 year old children to whom I prescribe oral contraceptives, because under this Act it is not a requirement that they must be informed. I would support and concur with these parents because they feel that they have not been taken into account nor informed of a very major step. There have been complaints, but not in a very vocal or public manner.

The Hon. T.G. ROBERTS: I know it is confusing the issue a bit, but we agreed in clause 9 to give responsibility to the medical practitioner to act in conjunction with the agent to take life and death decisions with people who are in the terminal stages of a terminal illness. I was one of those who spoke for giving more responsibility to medical practitioners to work in conjunction with the patient and loved ones of the patient—the nearest and dearest at that particular time—to enable that contact to be made so that those decisions could be worked out in the best possible way.

To be consistent in the application of this principle, to transfer some of that responsibility now back to the medical practitioner in relation to treatment, is probably better handled in the original Act, rather than the provision that is before us—either the amendment or the Bill—because it is much clearer and it does spell out (although a lot of people

have some fears about its not being prescriptive enough) the way in which a doctor would seek a parent's or a guardian's consent. For the reasons outlined by the Hon. Barbara Wiese, concerning a student who had to seek medical treatment and was not able to consult with a parent at that particular stage—and I know we look at the worst possible scenarios in relation to the application of the Bill—

The Hon. R.I. Lucas interjecting:

The Hon. T.G. ROBERTS: Yes, I understand that—but (a) allows for a medical practitioner to attempt to make the contact with the parent or the guardian. If that is not possible and if the treatment is so serious that the doctor is unable to make the contact, then I am sure the medical practitioner would use practical commonsense and treat the child, perhaps without the contact, and then make the contact later. There is a lack of faith and trust that some members are not placing in the medical practitioners to be able to make those diagnoses and accept the responsibility for the concerns that some of us have.

Some of the provisions that we are looking for are applications to the best possible principle for very concerned parents who have close contact with their children, and we tend to look at things through those eyes. I suspect that there are a lot of children out there who have to make those decisions themselves from a very early age and have to take responsibility for a lot of things, including their own health and treatment, who just do not have that parental guidance. The openness of the original Act that 'the parent or guardian consents; or' covers the difficulties that we have in drawing a conclusion around this amendment, because there are prescriptions inherent in the amendment put forward by the Minister—and a very simplified non-prescriptive amendment—that a lot of people have to take on trust, using the professional judgement of those people involved in the industry. I prefer the original position in the Act.

The Hon. R.R. ROBERTS: I spoke earlier in this debate, but a couple of other points have been raised. We are continually talking about this child going home with a tummy ache, who calls in the doctor. It has been my experience as a parent of three children that if they have a tummy ache they normally ring home and say, 'Listen, come and pick me up and take me to the doctor.' But there is the position where that child could conceivably go into a medical practitioner's premises, explain the symptoms, and the doctor says, 'Well, yes, I will prescribe antibiotics. We will contact your parent.'

In some circumstances with working families that can occur and parents cannot be contacted. If it is an emergency situation we then have to move down the Bill to where emergency medical treatment is concerned. If it is an emergency situation there are provisions in the next part of the Bill for that doctor to provide the appropriate treatment in the best interests. The Bill even goes further than that because, even if the guardian refuses consent, the treatment may be administered despite the refusal if it is essential to the child's health and well being. So, in those emergency situations we are covered.

Another point raised in the debate concerned the application of the old Act. Normally, when people get into trouble in these situations, and there is a dispute in respect of the lawful situation, often times they do not come and see a member of Parliament: they go to their legal adviser. The legal adviser then looks at the Act and says, 'You have not got a leg to stand on because the Act does not prescribe for the parent to get involved in the thing.' Some members who have been in Ministerial positions talked about what happens and said they have not had any complaints. With the greatest respect, being a Minister and dealing with constituents does not always go hand in hand because most of those members are somewhat detached from the run-of-the-mill stuff.

I can advise the Committee, having had some experience in electoral offices over four years, that I have had numbers of parents complaining about the reduction in their rights to be parents and their rights to parent their children, which have been taken away from them by the law. They always say, 'You cannot do anything about it because the law says you cannot.' People are saying that because it has been there for nine years we should not even consider changing it. Not too many pieces of legislation actually survive nine years without being amended. What is being proposed with this piece of legislation is that we reconsider the Act in light of the experience we have had over the past nine years, and take all of these arguments we are now re-canvassing into account.

On its last inspection of the Bill the Committee came up with clause 11. We also talked about the emergency treatment, which has been raised here again, with the situation of a child with a tummy ache on the way home. We canvassed both of those issues. I am not convinced by any of the debate so far that clause 11 does not cover the situations and examples used when it is read in conjunction with clause 12. Almost every example put before this Committee tonight is either covered in the provisions of the existing clause 11 or by the existing clause 12. If someone wants to amend clause 12 later on that is fine; that is their right to do so and the Committee should consider that.

I suggest to the Committee, having had some experience in this area, that we ought to consider clause 11 in conjunction with clause 12 and with all the other considerations taken. I again draw the Committee's attention to the fact that we have debated *ad infinitum* what represents a child. I refer to the point I made early in the debate: we have to consider the rights of people in the terminal phase of a terminal illness. We have to consider the rights of the child, but we also have a responsibility and a duty as members representing the community. All parties are committed to the prospect of the family unit. An integral part of that is the parental component together with the rights and responsibilities that go with it. We need to come back to what we are trying to achieve. We need to look at the rights of children, those who are ill and parents. Clause 11, as it presently stands in conjunction with 12, overcomes most of the problems raised. I will be supporting clause 11 as it stands in the Bill.

The Hon. R.I. LUCAS: In relation to the existing clause 11 which the Hon. Ron Roberts has just indicated he supports, when one looks back at the last Parliamentary debate on this there was a very unusual coalition of interest which supported it, with this parent provision clause put into it. It was an unusual coalition of interest because on many of the clauses there were strongly differing views, but on this clause we actually had supporting it the Hon. Barbara Wiese, the Hon. Trevor Griffin, the Hon. Bernice Pfitzner, the Hon. Carolyn Schaefer and, as I said, I think the Hon. Mike Elliott, and there was no division on the provision. I remember the debate well: no-one in the debate opposed this provision. When one looks through the clauses, whenever anyone opposed a provision they were up like jack rabbits making sure their position was on the record, saying they would not have a bar of this, and people were calling divisions just to make sure that it was recorded.

The Hon. Barbara Wiese: We were ill advised at the time about the implications of it.

The Hon. R.I. LUCAS: It is quite proper for people to have a change of heart if they wish, but they will need to explain that.

The Hon. M.J. Elliott: It might be a change of heart but it might be a change of understanding, too.

The Hon. R.I. LUCAS: It may well be that they did not understand the Bill and they are now learning to understand it. The essence of having a role for parents introduced into the legislation, which is different, as members are acknowledging, was a provision introduced by that amendment, which was supported very broadly by everyone. No-one stood up and opposed having the notion of some role for parents. I still remain strongly of the view that there should be some role for parents. I understand many of the dilemmas that members have raised. Some, although not all, of those that the Hon. Barbara Wiese and the Minister have canvassed are in part covered by the Bill.

It includes 'if there is no parent or guardian reasonably available to make a decision', so estrangement and a whole variety of other examples that members have used are clearly covered in the legislation. I know it does not cover all cases but certainly does cover some of the examples that have been used by members, such as if there is no parent or guardian, or you cannot find the parent or guardian, or the child is living independently of the parent or guardian. My understanding of this is that those sorts of circumstances are covered. So, I genuinely believe that there should be some role for parents, whether it be exactly the same as in clause 11(1) or in the amendment that the Hon. Diana Laidlaw is moving to clause 11(1). With her amendment she is supporting a continuing role for parents.

I remind members that the amendment being moved is that, if a parent or guardian of a child is available to decide whether medical treatment should be administered to a child, a medical practitioner must, before administering medical treatment to the child, seek the consent of the child's parents or guardian, which is slightly different from the existing 11(1), because it leads in with the clause 'if a parent or guardian of a child is available to decide'.

Something like that or some adaptation of it really ought to remain part of this general section. It comes back to the point the Hon. Ron Roberts made. We discussed earlier whether we would allow medical treatment for a child, at what age it would be, whether 16 or 18, and the majority in this Chamber (or everyone) said that over the age of 16 they can make these sorts of judgments for themselves. A clear corollary of that is that under the age of 16 they cannot make all these judgments for themselves. Therefore, there must be someone else with a role in the decision. It is a clear corollary of the decision we took in relation to the 16/18 decision.

What we are canvassing here is what will be the exceptions and under what conditions. I have to say that as a parent, if I had a 13 year old daughter who wanted to have an abortion, frankly, I do not think it is right that that can occur without me at least having some role. Whether I have to give consent, whether someone has to sit down and talk to me, or whether I have to talk with my child and a medical practitioner and a Supreme Court judge, or whatever else—I am not suggesting that—surely as a parent of a 13 year old child who wants to do something as significant as have an abortion I have a right—

An honourable member: Or be sterilised.

The Hon. R.I. LUCAS: Or be sterilised, as the—

The Hon. T. Crothers: How say you in the case of a mixed marriage, where one parent may support abortion and the other parent may not?

The Hon. R.I. LUCAS: That is a problem.

The Hon. Anne Levy: You may have problems with the child.

The Hon. R.I. LUCAS: There may well be problems with the child—I happily concede that. However, does not a parent at least have the right to, if not consent, be informed, to be able to discuss it, be able to put a viewpoint to his or her daughter and say, 'Look, have you thought about the consequences of these decisions? You are a 13 year old. These are my views, I am your parent, you are living with us.' I do not think it is right that a 13 year old can go along—

An honourable member interjecting:

The Hon. R.I. LUCAS: I do not think that a five year old would be pregnant, but it is quite possible with a 13 year old. It is not right that a 13 year old should be able to make those decisions with a stranger, a medical practitioner, quite apart from a parent at least having some say in it.

The Hon. Barbara Wiese: What if the parent has been abusing them?

The Hon. Anne Levy: What if the pregnancy is the result of incest?

The Hon. R.I. LUCAS: If the parent has been abusing them and the medical practitioner is aware of that, there should be mandatory notification.

The Hon. Anne Levy: There is. How does that help the kid?

The Hon. R.I. LUCAS: Then I presume there is some sort of police action.

The Hon. Anne Levy: But that does not help the kid.

The Hon. Barbara Wiese: That does not help the child asking for medical attention, whatever the medical treatment is that they have requested. That will not help them—the fact that there is mandatory reporting and so on. It does not affect the decision about medical treatment.

The Hon. R.I. LUCAS: I acknowledge that there are no black and white answers and there are grey areas, and we are highlighting the grey areas. What I am highlighting is that I do not believe it is right that a 13 year old can have an abortion, a sterilisation or something like that without the opportunity for a parent to at least have some say in the issue. The Hon. Bernice Pfitzner talked about parents complaining about the provision of contraception to under 16 year olds. I have had a number of examples of parents talking about that situation. It has certainly been raised with me. The Hon. Caroline Schaefer has said that it has been raised with her. The Hon. Ron Roberts is aware of cases and it is an issue.

I can see concerns with that as well, but in the scale of priorities in relation to oral contraception or a variety of issues and someone taking a decision as significant as a sterilisation or an abortion, in my judgment I see those issues as being far more important, even though I acknowledge that some parents have strong views about under 16 year olds having access to contraception. The Hon. Anne Levy suggested looking at examples for boys. If I had a 13 or 14 year old boy who, for some reason, contracted AIDS, under the Hon. Diana Laidlaw's suggested new clause 11(2), that would be an embarrassing situation and there may well be treatment being undertaken by a medical practitioner unbeknown to me as a parent.

If one looks at the current law or the amendment of the Hon. Carolyn Pickles, it says that a medical practitioner may administer medical treatment to a child if the parent or

guardian consents. As I read that provision, there is nothing that says that the medical practitioner should try to make contact with the parent or guardian. I acknowledge in practice that many might, but there is nothing in the way that the amendment of the Hon. Carolyn Pickles is structured which requires at least an attempt by a medical practitioner to seek consent. The amendment provides:

> A medical practitioner may administer medical treatment to a child if—
> (a) the parent or guardian consents; or
> (b) the child consents and—
> (i) the medical practitioner who is to administer the treatment is of the opinion the child is capable of understanding the nature, consequences and risks of the treatment. . .

For example, a doctor can explain to a 13 or 14 year-old boy with AIDS that he will undertake AZT treatment, explain the nature, consequences and risks of the treatment, and then make the judgment that the child of 13 or 14 can understand those issues. Clearly, the doctor, I presume, will make a judgment that the treatment currently in vogue for treating someone with AIDS is in the best interests of the child's health and well-being; and then, under the provisions of the current legislation and the Hon. Carolyn Pickles' amendment, and certainly on my understanding of the provision, the medical practitioner does not even have to discuss the issue with the parents.

In those circumstances, if the child consents, and being satisfied that it is in the best interests of the child, the doctor can undertake a whole series of treatment using AZT or any other experimental treatment for AIDS. A whole range of quack and near-quack type cures are being recommended for AIDS at the moment, and practitioners have a variety of treatments that they believe are suitable and in the best interests of a patient's health and well-being. A doctor may be in partnership with another medical practitioner who also agrees to treating the child in that way. These are hypothetical circumstances, but the Hon. Anne Levy said, 'What about talking about young boys and not just young girls?' As a parent, if I am not giving consent to this treatment, there ought to at least be an opportunity for me to sit down with my 14 year-old and say, 'This is my view. This is my opinion.'

The Hon. R.D. Lawson: The child might deny you that opportunity.

The Hon. R.I. LUCAS: If you know.

An honourable member: It's your responsibility.

The Hon. R.I. LUCAS: But if the 14 year-old does not want to tell you because he or she does not want you to know-

The Hon. Diana Laidlaw interjecting:

The Hon. R.I. LUCAS: That might be the case.

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: That is exactly right. There may well be communication problems, but in this world many families have communication problems.

The Hon. K.T. Griffin: Many families have no communication problems but children still do not tell you everything.

The Hon. R.I. LUCAS: That might be the case, too. Under the current drafting of the legislation, and under the amendment of the Hon. Carolyn Pickles, there is no requirement for a medical practitioner to even attempt to speak to a parent or guardian.

The Hon. Diana Laidlaw: And there hasn't been for nine years.

The Hon. R.I. LUCAS: Exactly. Certainly, when Parliament last discussed this issue no-one objected to that. The Hon. Diana Laidlaw's amendment to clause 11(1) continues the notion that a medical practitioner must, before administering medical treatment to a child, seek the consent of the child's parent—

The Hon. Diana Laidlaw: That's not my preferred option.

The Hon. R.I. LUCAS: It is up to the Hon. Diana Laidlaw to explain. All I can do is look at the amendment she has moved in her name and work from that. This is a longwinded contribution, but it is an important issue. The only point I would like to make is that a number of members in this Chamber want to see some continuation of the parents' role. There seem to be two camps at the moment. The Hon. Mr Griffin suggests a continuation of the Hon. Diana Laidlaw's proposition in respect of clause 11(1) and the abolition of clause 11(2), and he supports proposed new clause 11A. Other members, such as the Hon. Ron Roberts, the Hon. Bernice Pfitzner and the Hon. Caroline Schaefer, at this stage support a continuation of clause 11 in the Bill.

All I can suggest is that, if a number of members in this Chamber want to see a continuation of some sort of a role for parents as opposed to returning to the current legislation, it might well be advisable for those persons to come to some agreement, at least at this stage, to support one or the other—that is, to come to an agreement to support the Hon. Mr Griffin's position in respect of clause 11(1) and the abolition of clause 11(2)—

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: No, that's a different group.

The Hon. Anne Levy interjecting:

The CHAIRMAN: Order!

The Hon. R.I. LUCAS: That's an extraordinary interjection.

Members interjecting:

The CHAIRMAN: Order!

The Hon. R.I. LUCAS: I think that is an extraordinary interjection, but I will continue with good humour. I suggest that, if that were to occur, that provision would at least remain in the Bill at this stage. When we come to the recommittal, those members who are freely and willingly of that view could then decide to continue with that view or return to a position similar to the existing legislation, while those members who want to see the role of the parents retained ought to get together to support the existing Bill, because otherwise divided we might fall.

The Hon. R.D. LAWSON: It seems to me that when the Hon. Robert Lucas talks about a continuation of a role for parents he is really advocating a continuation of the existing provision. No-one has ever denied the rights or responsibilities of parents in relation to medical treatment. In my view, the situation is adequately covered under the existing legislation. These provisions about children were not the subject of any detailed consideration by the select committee. Most members in this Chamber are speaking entirely anecdotally and completely in a vacuum without regard to the whole of the state of knowledge and the whole of the development of learning about this very issue.

In 1985 in England, following very detailed consideration, the House of Lords came to the following conclusion in relation to parents and consent:

> Parental power to consent to medical treatment on behalf of a child diminishes gradually as the child's capacities and maturity grow. A minor is capable of giving informed consent when he or she

achieves a sufficient understanding and intelligence to enable him or her to understand what is being proposed.

That is what the House of Lords decided in 1985. In 1992, this question came before the High Court of Australia which, after full argument, agreed with the conclusion which had been reached in England. We had an Act of Parliament which, as far as I am aware, was not the subject of any substantial complaint and was not considered by any select committee. It came along to this Council on the last occasion, and members, again speaking anecdotally from their own experience and without the benefit of any consideration by experts or examining the literature, came up with clause 11 which is now in the Bill. I must say that again, apparently without reference to the literature or close examination of the problem or how it has been addressed elsewhere, other amendments are proposed today.

In the light of this, I support the retention of the *status quo*. If it is found that there is in fact some difficulty upon examination of the question in full—not in a half-baked way—we can amend the existing provision in due course. However, I simply have not heard anything—

The Hon. K.T. Griffin interjecting:

The Hon. R.D. LAWSON: No, the existing provision in the Consent to Medical and Dental Procedures Act—the current law—which in my view does not deny parents any rights or responsibilities at all.

Members interjecting:

The Hon. R.D. LAWSON: Perhaps it does not guarantee them a right of veto. That is because, not for the past nine years but for the past 100 years, they have not had that role, and it has been determined that that is, and always has been, the common law position.

An honourable member interjecting:

The Hon. R.D. LAWSON: No. There was a time, I must admit, when a father did have complete dominion over his children and a husband did have dominion over his wife. That has not been the position in our law for 80 years. In the circumstances, I think this Chamber exposes itself to ridicule by adopting half-baked solutions until some proven need for reform is demonstrated.

The Hon. T. CROTHERS: I rise to support the sentiments stated so succinctly and eloquently by, on this occasion, my colleague the Hon. Mr Lawson.

An honourable member interjecting:

The Hon. T. CROTHERS: Perhaps if the honourable member who is the part-time respondent with the Port Pirie *Recorder*, will stop interjecting he might learn something. In particular do I rise in support of the sentiments contained in the Pickles amendment. I have no doubt that, when a debate of this nature takes place within these hallowed walls, the truth comes out of every member in here: they genuinely believe what they stand up and say. As such, debates of this type are really to the betterment of the standing of the Council.

We would, however, diminish that standing if we allowed what under normal circumstances in debate would be our conservative tendencies or perhaps our Asquithian Liberal tendencies to get the better of us in respect of our thinking processes. In my view, the Pickles amendment virtually is a mirror image amendment reflecting the current Act. I may be wrong in that, but that is my view of it.

In particular do I want to address the members in this Committee on the following proposition: much has been made by members speaking for and against particular provisions about the parental control issue. I think the Hon. Mr Lawson has clearly demonstrated that in the highest court of appeal in the United Kingdom, and certainly in the highest court of appeal in Australia, those expressions that have been put forward in support of their position by members who are saying that parental control exists in the same fashion as it existed 20 or 30 years ago are wrong in law, and quite clearly they are wrong in law.

However, there are other reasons why the Pickles amendment deserves members' closest consideration and support. I know that you, Mr Chairman, will pardon me on this occasion, but way of interjection I raised the question of child consent with the Hon. Mr Lucas. I said, 'What about in a mixed marriage? If the child is an early teenager and is pregnant it is that child who, when grown to womanhood, will have to take care of the baby.'

If a baby is born, is unwanted and is unloved, the probability is that the State will have to take care of that child. We know what happens in some of the institutions that are run by various Government bodies—and I say that irrespective of whether a Labor or Liberal Government is in power. Children are changed by being brought up in institutions.

I said that you can get a child of a mixed marriage. Twenty or 25 years ago in this country, a mixed marriage meant a marriage between persons of Roman Catholic persuasion on the one hand and of one of the Protestant denominations on the other hand, and it was as simple as that. However, in this multicultural society in which we live today, it is not that simple. If it was common place 30 years ago, it is much more common place now.

Members should look at some of the alliances that occurred six weeks ago in Cairo, Egypt, when the issue of the control of population was introduced and debated at some length. We had the Muslim faith siding with the Roman Catholic faith, almost coming to the point of refusing any proposition that embraced any form of birth control. I guess that their ideas in respect to the sanctity of life would be not dissimilar.

In addition, we have the Jehovah's Witnesses of the Hon. Angus Redford fame, and perhaps people who belong to the Seventh-Day Adventists, another faith which may well embrace the sanctity of life. So, it would probably be the most common thing that would occur in our society in respect of giving the child that alternative: to make a decision where the parents cannot agree.

Again, what about a child who is the result of the union of mentally impaired parents and whose mental capacity may be 100 per cent, whereas the parents' mental capacity may not be so? And what of the child who comes from a multicultural family, where English is a totally foreign language, yet the child is taught in an Australian school and therefore is quite familiar with English and is quite capable of conversing with any member of the medical profession but, perhaps because of the way in which relationships exist in those families, does not feel free to be able to communicate to mother or father?

I must tell you that the male exercises a very dominant role in those societies. I watched the other night a program that was centred on Malaysia, and I was very surprised to see that the male dominance that existed in our society up to 25 to 30 years ago still exists there in spades. So, there is a plethora of reasons why members should support the Pickles amendment; there is the rationale which says that there must be some escape valve for the child, and I believe that the amendment moved by the Hon. Ms Pickles provides that. I

believe that it does it with caveats of safeguards in respect of paragraph (b) subparagraphs (i) and (ii) in relation to the fact that the medical practitioner must have at least the support in writing of one other medical practitioner who examines the child.

For all those reasons, which have not been put as eloquently as those advanced by the Hon. Mr Lawson, I believe that, if this Council is not to ridicule itself, and if it is to be able to show the community that it can come to a commonsense approach in relation to matters of this nature, that members are not out of touch with reality, and that we do not live in ivory towers, members should support the amendment moved by the Hon. Ms Pickles. I commend the amendment to members and thank them for listening.

The Hon. ANNE LEVY: I strongly support the Pickles amendment. I would like to make a few comments in relation to contributions made by other members. The existing clause in the Bill was not voted on. I was unaware even of its existence at the time. I was not in the Chamber at the time when it was voted on. Certainly, had a division been called I am sure I would not have supported the obligatory nature of clause 11(1), which is in the Bill.

I was very glad that the Hon. Mr Lawson has reminded members of the decisions both by the House of Lords and the Australian High Court that their interpretations mean that the common law has always meant that a child as it grows in maturity achieves greater responsibility for its ability to consent to medical treatment. I recall that when the legislation went through this Council in 1985 and what is now the Pickle's amendment became law, it was accepted by the Council on the basis that it was a statutory declaration of the existing common law. The House of Lords had given its judgment before the Act went through Parliament and the wording used in the Act was taken to be the statutory formulation of the existing common law situation.

A number of members have commented, 'What about the rights of parents?' Obviously, parents have many responsibilities with regard to their children and often far too much emphasis is given to the question of rights rather than responsibilities. Parents have many responsibilities towards their children: they have the responsibility of bringing them up and they have duties towards their children, and far more emphasis should be given to that rather than to the question of rights. Children are people also.

Many people are just ignoring what happens in real life. Currently, if a young person has a medical problem, in the vast majority of cases they will discuss it with their parents. Most parents have relationships with their children such that that discussion will occur, but we must recognise that there are some children who for whatever reason are just not able to discuss matters with their parents.

As I indicated by way of interjection, it may be that the parent is the cause of trouble—that the parent is abusing the child, physically or sexually, and obviously the child cannot turn to its parent in those circumstances. It may be that the child does not live with the parents, has been thrown out of home or is a street kid. We all hope that such cases are rare, but we must be realists and recognise that they do exist. In this discussion, no-one has thought about what happens in real life in regard to the medical profession. Most medical practitioners are highly ethical and highly responsible individuals. When a young person comes to them, they will discuss the matter whatever the problem is.

They will ask the young person, 'Have you discussed this with your parents? Don't you think you should? I think it would be desirable for you to do so.' They will apply great pressure to the young person to consider the matter with their parents. However, it is against all medical ethics for a doctor to break the confidentiality of his patient, regardless of age. Doctors do not want to go against their ethics. I happen to have the current code of ethics for the AMA in Australia.

The Hon. R.D. Lawson: Are you sure it's not the AJA?

The Hon. ANNE LEVY: No; it's a few notches up on that one. This is the AMA. Under the heading 'Responsibilities to patients' it states:

> Keep in confidence information derived from your patient or from a colleague regarding your patient and divulge it only with the patient's permission, except when a court demands.

It is part of a doctor's code of ethics that they do not break the confidences of patients who go to them, regardless of age or condition. If a young person comes along with AIDS, I am quite sure that the medical practitioner would bend over backwards to get that young person to confide in and seek help from his or her parents. The medical practitioner would offer to arrange a conference with the parents. They would do everything in their power, but they are under an obligation not to break the confidence of their patient. If the patient, at whatever age, says, 'No, you are not to tell anybody,' the doctor abides by that confidence. Saying that a doctor should break their patient's confidence to inform anyone against the explicit instructions of the patient is equivalent to saying that lawyers must break their professional confidence and must reveal what has been said in a client-lawyer relationship. It is just not on.

I know of medical practitioners who, when approached by young people, have said, 'Your parents should know; won't you tell them?' If the patient is adamant that they do not want to tell their parents, the doctor will ask, 'Well, can I tell them; would it make it easier for you if I told them?' In some cases that has worked. The young person is very keen for their parents to know but just does not feel capable of telling them. However, they are happy for the doctor to do it. The doctor cannot break that doctor-patient confidential relationship without the permission of the patient. For us to write into law anything contrary to that fundamental part of the ethics of the medical profession would be totally wrong of this Parliament.

For this reason, I do not support the Minister for Transport's amendment to clause 11(1) which makes it mandatory that consent from a parent or guardian be sought. I infinitely prefer the formulation of the existing law, which is a statutory statement of the common law situation and which is covered in the amendment of the Hon. Carolyn Pickles, on the basis that we are not calling into question the confidentiality between doctor and patient.

A doctor is bound to uphold this, although he can do his utmost to persuade the patient to have others informed, but I do not think we can ask him or her to break that confidentiality in law. I think it is a very major issue that some people here should be suggesting that the confidentiality of the doctor-patient relationship should be broken. I am sure they have not thought of the full implications of this for the confidential lawyer-client and priest-confessor relationships and for a number of other relationships where confidentiality is one of the core principles. Ms Pickles' amendment does not in any way threaten that confidentiality, but it acknowledges that the interests of the child are very much taken to heart by the medical practitioner and that medical practitioners will do their utmost to see that parents and guardians are involved, provided the child has given their permission for this to happen. This is by far the safest amendment; it has existed in

law for nine years with hardly a ripple in our community as a result, and we tamper with it at our peril.

The CHAIRMAN: Far be it from me to suggest to the Minister for Education and Children's Services that there is repetition here—

The Hon. R.I. LUCAS: You have not heard it yet. I will not take exception to that, because I have not even spoken. I have two points. One is that I think the Hon. Ms Levy is asking why we need a provision of 16 at all, and by way of interjection to the Hon. Anne Levy I suggested that, if that is her view with respect to confidentiality and so on, why provide for 16 at all? The logical consequence of the honourable member's argument is that we do not have any provision at all. The other point I want to make is certainly not revisiting past arguments. There are varying views about the House of Lords decision and the High Court decision. Far be it from me to argue with a QC, but let me at least put something on the record and seek a response from the Hon. Mr Lawson in relation to that.

In relation to the House of Lords, one lawyer's interpretation is that we look at clause 11 and, therefore, some provisions of the existing legislation—the Pickles amendment. That is my interpretation. It says:

> It seems to be saying that parents can consent to any operation on their children; that is, they can consent to, for example, female genital mutilation, abortion or sterilisation.

I presume that is the interpretation of the provision which states that the medical practitioner may then administer medical treatment to the child if the parent or guardian consents. On a literal interpretation of that, if the parent or guardian consents in relation to a child, the medical practitioner may administer medical treatment. One lawyer's interpretation is that it seems to be saying that parents can consent to any operation on their children, no matter what. It further states:

> Also, it seems to be saying that children themselves can consent to such procedures provided that two medical practitioners agree that the child understands the nature, consequences and risks of the treatment and that the treatment is in the best interests of the child's health and wellbeing.

Again, that seems to be an interpretation of clause 11(2)(b) of the Bill and the similar provision in the existing legislation, as outlined in the Pickles amendment. Another lawyer's interpretation of that is:

> This is contrary to the House of Lords decision in Gillick's case and the High Court decision in Marion's case.

Far be it from me to argue at length with a QC or anybody else with a legal background, but given that the Hon. Mr Lawson put on the record the House of Lords and High Court decisions and the Hon. Anne Levy said that what was in the existing legislation reflected the High Court and House of Lords decisions, on my non-lawyer's interpretation and relying on another legal person's interpretation, I wonder whether that is the case.

The Hon. K.T. GRIFFIN: I should like to ask a question about procedure, Mr Chairman. Is it intended that, if clause 11 does not stand part of the Bill, you will then put the Hon. Diana Laidlaw's clause 11 in two parts, subclause (1) and subclause (2)?

The Hon. DIANA LAIDLAW: Before you make a judgment on that, Mr Chairman, I suggest that in the circumstances, and acknowledging the confusion that we had last night about some of these complicated amendments, my amendment not be put, if at all, until after the amendment moved by the Hon. Carolyn Pickles. I am not saying that I will not move it at all, but I would prefer that it be put and voted on after the amendment moved by the Hon. Carolyn Pickles. I understand that there is nothing in Standing Orders that would make my suggestion unacceptable.

The CHAIRMAN: The tradition has been that as they come on file they are dealt with. However, I would seek comment from the Committee. If the Committee agrees that can happen, I cannot see why it should not.

The Hon. M.J. ELLIOTT: With our consent.

The CHAIRMAN: Yes. If the Committee considers that to be so, I see no difficulty about it.

The Hon. Sandra Kanck interjecting:

The CHAIRMAN: This is not as complex as the situation last night.

The Hon. SANDRA KANCK: I still do not know what happened last night.

The CHAIRMAN: The Attorney-General asked me a question about the Hon. Diana Laidlaw's amendment. Did you have another comment?

The Hon. K.T. GRIFFIN: Yes, I did, Mr Chairman. I would have thought we ought to follow the normal practice. In effect, it will not ultimately matter, I suppose, because if one does not get up, the other will, I presume, provided existing clause 11 does not stand part of the Bill. That is the first question. Then it is a question as to which of the two amendments is preferred, and I can indicate that if the Hon. Diana Laidlaw does not move her amendment if the amendment of the Hon. Carolyn Pickles is not successful, then I am certainly prepared to move it. What I want to know, in whatever order these are taken, if we get to the point of considering the Hon. Diana Laidlaw's amendment, will you be putting clause 11 in two parts?

The CHAIRMAN: It is quite distinct. I think it should be put in two parts. Just to clarify what you are asking for, did you want clause 11(1) and (2), as in the Minister for Transport's amendment, put in separate parts, or did you want clause 11 and clause 11A separated?

The Hon. K.T. GRIFFIN: I wanted clause 11(1) put separately from clause 11(2).

The CHAIRMAN: Yes. Then clause 11A in total.

The Hon. R.I. LUCAS: You sought views from members in the Chamber, and my preference would be to see the normal convention followed. It is all a question of finding majority support, and as one honourable member, I am anxious to support the Hon. Diana Laidlaw, and therefore there is the greater prospect of having that provision, 11(1), supported. I would like to see that provision put first, in the normal convention that these amendments are handled.

The Hon. DIANA LAIDLAW: In the circumstances, while I have moved my amendment, I withdraw it.

The Hon. K.T. GRIFFIN: Then I seek leave to move clause 11(1).

The CHAIRMAN: Yes, that is accepted. That facilitates the order in which we vote on these. So, the question now is that clause 11 stand as printed (that is the Bill as it stands).

The Committee divided on the clause:

AYES (3)

Pfitzner, B. S. L.	Roberts, R. R. (teller)
Schaefer, C. V.	

NOES (17)

Crothers, T.	Davis, L. H.
Elliott, M. J.	Feleppa, M. S.
Griffin, K. T.	Irwin, J. C.
Kanck, S. M.	Laidlaw, D. V. (teller)
Lawson, R. D.	Levy, J. A. W.

NOES (cont.)

Lucas, R. I.	Pickles, C. A.
Redford, A. J.	Roberts, T. G.
Stefani, J. F.	Weatherill, G.
Wiese, B. J.	

Majority of 14 for the Noes.

Clause thus negatived.

The Committee divided on new clause 11 as proposed to be inserted by the Hon. Carolyn Pickles:

AYES (11)

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

NOES (9)

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

Majority of 2 for the Ayes.

New clause thus inserted.

New clause 11B—'Parental consent to be sought in certain cases.'

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

Page 7, lines 2 to 15—Insert the following new clause:

11B If a parent or guardian of a child is available to decide whether medical treatment should be administered to a child, a medical practitioner must, before administering medical treatment to the child, seek the consent of the child's parent or guardian.

One of the possibilities which we did not consider and which I think we now ought to consider, having passed that clause, is to address the issue of clause 11(1) of the Hon. Diana Laidlaw, so that the two may sit together. I hold the view that there ought to be some parental involvement at all stages. That is why I preferred to have clause 11(1), as proposed by the Hon. Diana Laidlaw and clause 11A, because it gave some flexibility but nevertheless provided for parental involvement if the parent was available; if it otherwise proved impracticable then the parental involvement was not necessary.

The Committee divided on the new clause.

AYES (9)

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

NOES (11)

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

Majority of 2 for the Noes.

New clause thus negatived.

Clause 12—'Emergency medical treatment.'

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

Page 7, line 20—Leave out 'is incapable of consenting' and insert 'is not competent to consent'.

On the majority of amendments relating to 'incapable of making decisions' or 'incapable of consenting', I have not been successful, although I have been successful in respect of clause 4(2) and also in clause 4 in relation to a representative, which means a person empowered by a medical power of attorney or some other lawful authority to make decisions about the medical treatment of another when the other is not competent to make decisions for her/himself. The same applies in relation to clause 4(2). My amendment deals with the question of consenting, which is consistent with other amendments which have been successful in relation to competence and not in the context of clauses 6 and 7 where 'incapable of making decisions' is referred to.

The Committee divided on the amendment:

AYES (10)

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

NOES (10)

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

The CHAIRMAN: There being 10 Ayes and 10 Noes, I cast my vote for the Ayes.

Amendment thus carried; clause as amended passed.

Clause 13—'Register.'

The Hon. DIANA LAIDLAW: I oppose the clause, which requires the Minister to establish a register of advanced directive in medical powers of attorney and to assign a public servant as registrar. It is then a voluntary matter as to whether a person seeks to have their directives or power of attorney entered on the register. This is an unnecessary bureaucratic measure. It raises questions of whether the register will be available 24 hours a day for searching; who would have access to it; issues of privacy; and whether medical practitioners would come to rely on the register as a source of evidence that an advanced directive or a medical power of attorney existed when, in fact, it is voluntary for a person to lodge such instruments on the register.

A host of questions are raised that were never addressed when this matter was last before the Parliament. At some stage in the future a register may be developed. It may be that a voluntary organisation, with experience in holding information about medical conditions or medical-related matters will take on this task, if experience indicates that a register is desirable, or it may be that a specifically designated plastic card carried in a wallet or purse, indicating that the holder has made an advanced directive or a medical power of attorney, is a much more efficient way to go in addressing the concerns expressed by members on the last occasion.

Following the passage of this legislation, a good deal of attention will be focused on educating the public as to its provisions and intentions. To constrain the Minister to set up another form of bureaucracy from day one, bearing in mind that all the provisions of the legislation will come into force simultaneously, is unnecessarily burdensome; it is certainly expensive; and it is not an initiative that I wish to support.

I note also that this amendment was moved by the Hon. Michael Elliott last time. Almost every speaker indicated that it was a matter which they were asked to consider at the last minute. The Hon. Barbara Wiese, who

conducted the Bill for the Government, did not support the measure, and the Hon. Trevor Griffin said at the time that he agreed with the concept but that some matters needed to be addressed. He thought that, rather than let it go and address it later when the Bill was recommitted, it was wise at least to address the issue and let it pass while the Bill was before this place. At best, the Hon. Trevor Griffin was lukewarm in respect of this issue.

The Hon. K.T. Griffin: I am passionate now.

The Hon. DIANA LAIDLAW: Apparently he has become passionate as others have seen how unwise it is to move in this direction. I voted for it last time and, with the benefit of hindsight, I see that that was an unwise move.

The Hon. R.I. Lucas interjecting:

The Hon. DIANA LAIDLAW: Yes, the Hon. Carolyn Pickles also, but I think it is fair to say that, although she said she was originally attracted to the idea, she had some difficulties with the measure, particularly with its implementation. She said that she understood that the Bill was to be recommitted and that she would then have time to consider the reservations she had about the measure. So there were certainly mixed feelings when this measure was last before this place and the matter was evenly divided when it was put to the vote.

As I said, I take my advice from the Minister, who has suggested that there are much better ways to address the Hon. Michael Elliott's sentiments. More and more members would be aware that various cards, whether they be pub cards or cards for blood donors or for a whole range of things, are being used today to advise people about such things as blood type or age. In this case, it is suggested that, just as one carries their driver's licence or a wallet containing money, a card could be carried which would indicate whether or not a person consented to medical treatment and, if so, whom they have chosen to be their agent.

That would be a more efficient and certainly a less costly or bureaucratic way. It would not pose all the difficult questions about whether the register was open for 24 hours, 12 hours or eight hours a day and who was to pay for it at such a difficult time, and it would overcome the issue of unhealthy reliance on a register that is voluntary.

I make the point also that when it comes to wills and deeds and a whole range of other legal measures, which people again take out in a voluntary manner in the same way as they would make a decision regarding a medical agent in a voluntary manner, there is no such register. Therefore, I oppose this clause.

The Hon. M.J. ELLIOTT: I think the important point about this register is that it is voluntary to start with. It offers protections in two directions for those who want them. The person who decides particularly to fill in the second schedule—that is, an advance directive—does not have an agent acting on their behalf. This often happens, perhaps, with older people who may have no living relatives in the State.

The Hon. Anne Levy: And don't trust Robin Millhouse.

The Hon. M.J. ELLIOTT: And who don't trust Robin Millhouse, who seems to be the honourable member's particular hang-up. That is just an example of a person who might actually benefit by this. They can leave something on the register and a doctor can go to the register and say, 'Is anything held on Fred Bloggs?' He or she is told, 'Yes, this person has lodged something with us.' This is enabling a person to have their wishes fulfilled when there is no individual otherwise taking responsibility for that. That is one form of protection, where a person is wanting something to happen.

What if a person has filled in a form under schedule 1, a medical power of attorney, and then appoints a second one, and there are two forms in existence?

The Hon. K.T. Griffin: The latest one should prevail.

The Hon. M.J. ELLIOTT: The latest one should prevail, but what if the person with the first one lobs at the doctor's and says, 'I have the form'? The doctor, not knowing of the existence of a later document, which was meant to replace it, would not know. There is a protection of the sort that some other people are seeking.

I am merely saying that this voluntary register offers some protections in both directions. Some people have fears of abuse and others have fears that their wishes will not be fulfilled. In all senses, a register has the capacity to start addressing that. Yes, there will be a cost, but as I see it is something that could be held in a form that allows electronic access. Therefore, the staffing requirement would be incredibly low. In fact, I am not even sure that a staff member would have to be present if it was stored electronically and it had to be accessed. I argue that the register does provide some protections and should not simply be dismissed out of hand.

The Hon. K.T. GRIFFIN: I support the clause. As the Hon. Michael Elliott says, it is voluntary. I just pick up a couple of points that the Hon. Diana Laidlaw made—at least that I understood she made—in relation to wills. There is in fact a repository for wills. There is a provision under the Administration and Probate Act that will enable a testator to deposit his or her will with the Probate Office before death. So there is already a registry for the purpose of storing a will which is yet to be activated.

The Hon. R.D. Lawson: No-one does it.

The Hon. K.T. GRIFFIN: That is so, but the fact of the matter is that the opportunity exists if people want to use it. The other is that the General Registry Office allows one to deposit a power of attorney. One does not have to.

The Hon. Diana Laidlaw: Does everyone have access to the name of your power of attorney?

The Hon. K.T. GRIFFIN: They do once you lodge it at the General Registry Office.

The Hon. Diana Laidlaw: So anyone can dial in and get the name?

The Hon. K.T. GRIFFIN: Anyone can go to the General Registry Office and search; it is a public registry. You cannot access it at the Probate Office; that is, if you are not the person or the executor of the will once the person has died. I would not have thought that there were significant hurdles in relation to privacy issues, because it says that the Registrar—

The Hon. M.J. Elliott: Access is restricted to the practitioners treating the person.

The Hon. K.T. GRIFFIN: The Bill provides:

> The Registrar must, at the request of a medical practitioner responsible for the treatment of a person by whom a registered direction or power of attorney was given, or any other person with a proper interest in a registered direction or power of attorney, produce the direction or power of attorney for inspection by that medical practitioner or other person.

This does not set out the whole framework within which it is to operate. That can be dealt with administratively. I would have thought that, because it is voluntary, it ought not be regarded as a big issue.

The Hon. ANNE LEVY: I support very strongly the principle of having this register. It is a protection for people who have appointed medical powers of attorney or who have given advance directions in that, should the need arise but should they not be capable of giving consent to their medical practitioner, the registry exists whereby the medical practitioner, who may not be their normal medical practitioner, can discover what their advance wishes are or can find out who can express their advance wishes.

I have a slight concern in relation to subclause (4) where it states 'or any other person with a proper interest in a register direction or power of attorney'. I am not quite sure who that would be, or who would determine whether someone coming to the registrar wanting access to someone's directions—if it was not the actual medical practitioner—had a proper interest in them. There is nothing indicating on what basis that determination would be made. In relation to the aspects of privacy of the individual, when a person gives an advance direction, that direction is for a medical practitioner and is not necessarily anybody else's business at all.

The Hon. T.G. Roberts interjecting:

The Hon. ANNE LEVY: Yes; indeed.

The Hon. K.T. Griffin: If you have a medical agent who is acting under a power of attorney and who wishes to determine whether there is not an advance direction, maybe that issue has to be addressed. It may be that the medical agent knows that he or she has been appointed but does not have all the terms and it may be on deposit. Those sorts of issues need to be addressed.

The Hon. ANNE LEVY: I appreciate that, but there is no guidance in subclause (4) as to who is to determine whether the other person has a proper interest and what protections for privacy might exist. Is it to be entirely at the discretion of the registrar, who may or may not have some privacy principles to guide him or her? I wonder whether this needs to be set out in some way or whether regulations or guidelines for a registrar might be adequate in that circumstance. I can see there could be occasions when someone other than the medical practitioner might legitimately have a reason to ask, but one does not want any stickybeak having access to such a register purely to satisfy their curiosity. I certainly support very strongly the principle of having such a register.

Clause passed.

Clause 14—'Medical practitioner's duty to explain.'

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

> Page 9, lines 5 and 6—Leave out 'or a person empowered to consent to medical treatment on the patient's behalf' and insert '(or the patient's representative).'

I explained the reason for this amendment when moving the amendment to clause 4 to insert a new definition of 'representative'. Clauses 14, 15 and 16(1) refer to 'a person empowered to consent to medical treatment on the patient's behalf', while clause 16(2) refers to a 'patient's representative', which is defined in clause 16(5). The references to 'a person empowered to consent to medical treatment on the patient's behalf' will be amended to read 'representative'.

Amendment carried; clause as amended passed.

Clause 15—'Protection for medical practitioners, etc.'

The Hon. K.T. GRIFFIN: I oppose the clause and move:

> Page 9, line 13—Insert the following new clause:
>
> 15. A medical practitioner responsible for the treatment or care of a patient, or a person participating in the treatment or care of the patient under the medical practitioner's supervision, incurs no civil or criminal liability for an act or omission if—
>
> (a) the patient or the patient's representative consents or the act or omission is authorised without consent under this or some other Act; and
> (b) the medical practitioner or other person acts (or omits to act) in good faith and without negligence; and
> (c) the act or omission is reasonably appropriate having regard to proper professional standards of medical practice; and
> (d) the act or omission is in the best interests of the patient.

The proposed new clause changes the present clause in two major ways. Clause 15 deals with the civil or criminal liability of medical practitioners. A medical practitioner incurs no civil or criminal liability provided he or she acted in accordance with the criteria set out in the clause. One of the criteria is that the medical practitioner acted in accordance with proper professional standards. The cases make it clear that proper professional standards are to be determined by the medical profession. There is nothing wrong with this, provided those standards adequately reflect the public interest. However, there is no mechanism for ensuring that the public interest is taken into account appropriately in defining those medical standards which are, after all, formulated for the benefit of the medical profession. The Consent to Medical and Dental Procedures Act 1985 in section 8(1)(b) provides:

> A medical practitioner incurs no civil or criminal liability if the procedure is reasonably appropriate in the circumstances having regard to prevailing medical standards.

It is already in the present Act. This brings to bear an element of objectivity which I consider essential. Otherwise, we will leave questions of medical treatment totally in the hands of the medical profession. Accordingly, my amendment provides that a medical practitioner will incur no civil or criminal liability for an act or omission if the act or omission *inter alia* is reasonably appropriate having regard to proper professional standards of medical practice.

Another of the criteria is that the medical practitioner must have acted or omitted to act in order to preserve or improve the quality of life. My amendment replaces this with the requirement that the medical practitioner acts or omits to act in the best interests of the patient. Quality of life is a vague concept, certainly more vague than the 'best interests of the patient'. Quality of life is a judgment that only an individual can make about himself or herself. On the other hand, a medical practitioner can make judgments about what is in the best interests of the patient in the context of his or her medical treatment and the context in which it is being administered.

My recollection is that on the last occasion we debated the issue of 'quality of life' the same concerns were expressed about the vagueness of that description. Certainly, I would like to see at least a more appropriate standard inserted in order to ensure that medical practitioners have protection from liability in more clearly defined circumstances.

The Hon. DIANA LAIDLAW: I oppose the Attorney's amendment. Paragraphs (c) and (d) set up the situation for objective assessments of standards of medical practice and the best interests of the patient, and we have addressed the issue of objective and subjective assessments some days ago. It was decided then that more subjective standards were appropriate to give some flexibility to individual circumstances. That does not mean that we are denying that this Bill requires us to address the issue of protection for medical practitioners; it does and it does so satisfactorily.

It also provides the level of protection with which medical practitioners, the AMA and others are completely satisfied on the basis of all the consultations undertaken to date.

Nobody—especially not the AMA and others—is proposing that there should be *carte blanche* for medical practitioners. They are not seeking that. They are seeking these limited protections now contained in the Bill. The honourable member is saying that he is not prepared to trust proper professional standards of medical practice. He wants the court to make up its mind whether an act or admission was reasonably appropriate in the circumstances, and proper professional standards of medical practice will be considered but they will not be the only things considered. The Attorney's amendment makes the already complex area of medical practice far more difficult. That is not my view alone nor that of the Minister for Health but the view of the representative associations of doctors in this State and of individuals who deal on a regular basis with death and dying and with palliative and hospice care.

The Hon. BERNICE PFITZNER: I oppose this amendment, because I do not believe in this clause. Indeed, this clause is very important for medical practitioners. It has a very negative connotation, because it repetitively uses the words 'acts of omission of the medical practitioner', implying that perhaps the general practitioner is not up to standard. This was not the intention. The intention was to protect the medical practitioner who was preserving or improving the quality of life and as a side effect death would occur. I oppose the amendment.

The Hon. SANDRA KANCK: I also oppose the amendment. I am told that, of the select committee's submissions, not a single one was opposed to the clause in its present form. At a meeting of the heads of churches in South Australia, one of those present was heard to describe this clause as 'the perfect palliative care clause'. What was particularly attractive was paragraph (d)—'in order to preserve or improve the quality of life'—and that is missing from the amendment, among other things. Also, I do not like the implication in the amendment that there is something amiss with doctors. If people do not like and do not trust their doctor they should find another one.

The Hon. CAROLINE SCHAEFER: I point out once again that this involves Part 3, Division 1—'Medical Practice Generally'—and that we are not discussing people who are dying: we are talking about medical practice generally. As such, the amendment needs to be viewed in that context.

The Hon. R.D. LAWSON: I oppose this amendment on the sole grounds that paragraph (d) again seeks to introduce objective standards by which the decisions made by a patient, a patient's representative and the medical practitioner can be reviewed and second guessed by outsiders. In my view existing clause 15, especially having regard to paragraph (d), the requirement that the treatment be to preserve or improve the quality of life, is adequate protection to the public.

The Hon. K.T. GRIFFIN: I vigorously disagree with that. As the Hon. Caroline Schaefer says, this is not just about the care of the dying: it is about medical practice generally, and there must be some standards by which a medical practitioner is judged in determining whether the medical practitioner is or is not to be liable to prosecution for murder, manslaughter or some other criminal offence or in relation to a civil action for damages. I would suggest that there has to be an objective standard, because if you do not have an objective standard whose standard do you apply? You apply the so-called proper professional standards of medical practice. With all due respect to the medical profession, it sets the professional standards. No objective measuring of the standards of medical practice would be brought to bear. 'In order to preserve or improve the quality of life' can mean just about anything, whereas 'the best interests of the patient' focuses upon what, in all this context of the medical treatment, is in the best interests of the patient. I suggest that it is a different issue from the one being debated earlier in relation to when decisions may or may not be taken. I very vigorously oppose the present clause 15 and equally vigorously support the amendment.

The Hon. R.I. LUCAS: I wish to ask the Hon. Mr Lawson a question. As I understood the honourable member, he opposed the Hon. Mr Griffin's amendment, because when paragraph (d) provides that the act or omission is in the best interests of the patient it introduces an objective measure, and he opposes objective measures. I am struggling with this concept; will the honourable member explain to me how that is an objective measure? I presume he is therefore arguing exactly the same for paragraph (d) of the current Bill where it provides 'in order to improve the quality of life'. How is that not an objective measure? What is the difference, in his opinion?

The Hon. R.D. LAWSON: It seems to me that there is a distinct difference. The purpose of this amendment can only be to add the requirement that something or other is in the best interests of the patient so that decisions made by the patient himself or herself, by the patient's representative and by the patient's medical adviser can be second guessed by some outside party. In this case it would be a judge of the court.

The Hon. R.I. Lucas interjecting:

The Hon. R.D. LAWSON: They are not in the best interests.

The Hon. R.I. Lucas: Why can someone not simply say it will not improve the quality of life? Why could the judge not equally second guess or say that it will not preserve or improve the quality of life?

The Hon. R.D. LAWSON: There will always be argument about that.

The Hon. R.I. Lucas: I thought your argument was that one was objective and one was not, and that it could be second guessed by someone else.

The Hon. R.D. LAWSON: I think ultimately the decision about the preservation or improvement of the quality of life will be made medically.

The Hon. R.I. LUCAS: On this occasion I do not understand the Hon. Mr Lawson's logic in relation to this. As I understand him he is arguing against the Attorney-General's proposed paragraph (d) on the basis that, when it provides that it is in the best interests of the patient, a court or someone else may well argue that it is not in the best interests of the patient and that therefore it is something we should not have in the law, because the court or someone else may well be second guessing and saying it is not in the best interests of the patient. When I then go back to the measure that the honourable member supports, namely, 'in order to preserve or improve the quality of life', and apply the same test, I would think that in exactly the same way a court or someone else could second guess and argue that it might not preserve or improve the quality of life. The argument that he seeks to apply against paragraph (d) of the Attorney-General's amendment would equally apply to the existing paragraph (d) in the Bill.

The Hon. M.J. ELLIOTT: It seems to me that the question of preservation or improvement in the quality of life are things that would incline medical practitioners to say, 'This action will in all likelihood preserve or improve the

quality of life,' whereas 'best interests' is in part almost philosophical and arguments other than the simple preservation of the quality of life might become involved in that.

The Hon. K.T. GRIFFIN: I should have thought that the quality of life is a very subjective criterion, because the medical practitioner is saying that if you are on your back and are being fed intravenously and you pull the plug that will not affect the quality of life, but if you leave it in it may. It introduces all sorts of judgments that the medical practitioner has to make and by what standards. This is a protection against action for breaches of the criminal law or for damages in the civil area. I should have thought that it is preferable to have a judgment made about what is in the best interests of the patient in the context of the medical treatment than a judgment by the medical practitioner, 'The quality of life, whatever that means, is something of a much lesser standard.'

I follow the questioning by the Hon. Robert Lucas, and it raises some important issues, but 'best interests of the patient' always puts the patient first in an objective sense. If there is a challenge about the doctor prescribing certain treatment or omitting to treat in a particular way, it is for the court ultimately to say, 'If you have done it in this way you have not acted in the best interests of the patient; you have acted in your own best interests or in the interests of someone else and therefore you have committed an offence.'

The Hon. R.D. LAWSON: One ought to consider the existing position. Under section 8 of the Consent to Medical and Dental Procedures Act, a medical practitioner is relieved from civil or criminal liability in respect of the carrying out of a medical procedure on a person with his consent if:

(i) the procedure is reasonably appropriate in the circumstances having regard to prevailing medical or dental standards; and
(ii) the procedure is carried out in good faith and without negligence.

Thirdly, according to subsection (1)(a), the procedure must be:

reasonably appropriate in the circumstances having regard to prevailing medical or dental standards. . .

The Hon. K.T. Griffin interjecting:

The Hon. R.D. LAWSON: No. Frankly, omissions do not add much to the meaning.

The Hon. K.T. Griffin: It is important if a medical practitioner does not do something that he should have done in the context of professional standards.

The Hon. R.D. LAWSON: An omission is an act in those circumstances.

The Hon. K.T. Griffin interjecting:

The Hon. R.D. LAWSON: I beg to differ with the Attorney-General on that point. To add the word 'omission' every time the word 'act' appears is merely a verbal flourish and does not add much to the meaning. The point I want to make about section 8 of the existing law is that there is a perfectly reasonable and commonsense standard applied. What the committee recommended, for some reason frankly which I cannot now recall, was to adopt the same test but then to add the requirement—

The Hon. K.T. Griffin interjecting:

The Hon. R.D. LAWSON: In accordance with proper professional standards of medical practice, it seems to me to be a useful way of describing the substance of what appears in the existing law. The committee recommended and the Bill now includes the following provision:

. . . in order to observe or improve the quality of life.

It considered that that was some form of improvement to the law and I am prepared to accept its recommendation.

The Committee divided on the clause:

AYES (13)

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

NOES (8)

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

Majority of 5 for the Ayes.

Clause thus passed.

Divisional heading—Division 2—The Care of the Dying.

The Hon. DIANA LAIDLAW: I move:

Page 9, line 22—Leave out 'the dying' and insert 'people who are dying'.

As I explained with the amendment to clause 3 which passed, this is a more personal way of addressing our intent, and that is to address the needs and care of people.

Amendment carried.

Clause 16—'The care of the dying.'

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

Page 9, lines 24 to 32—Leave out subsection (1) and insert—

(1) A medical practitioner responsible for the treatment or care of a patient in the terminal phase of a terminal illness, or a person participating in the treatment or care of the patient under the medical practitioner's supervision, incurs no civil or criminal liability by administering medical treatment with the intention of relieving pain or distress if—

(a) the patient or the patient's representative consents; and
(b) the medical practitioner or other person acts in good faith and without negligence; and
(c) the treatment is reasonably appropriate having regard to proper professional standards of palliative care;

even though an incidental effect of the treatment is to hasten the death of the patient.

Clause 16 deals with the care of the dying. The existing clause provides *inter alia* that a medical practitioner incurs no civil or criminal liability by administering medical treatment with the intention of relieving pain or distress in accordance with proper professional standards of palliative care. This amendment is similar to my amendment to clause 15. It requires that the treatment must be reasonably appropriate in the circumstances, having regard to proper professional standards of palliative care. I make the point that it is appropriate to qualify the standard instead of relying solely on the proper professional standards of palliative care, which, as I have indicated earlier in relation to medical standards, is solely an issue within the hands of the medical profession, whereas if one makes a judgment that the treatment is reasonably appropriate, having regard to proper professional standards of palliative care, that tends to remove to some extent the ultimate standard from the medical practitioner/medical profession. It is consistent with the provisions of the present section 8. There is a difference I would suggest between the two, and the preference I have, for the reasons I have previously indicated, is for my amendment.

The Hon. DIANA LAIDLAW: I oppose this amendment. I note that the Attorney's amendment is reasonably similar to the amendment that he moved and has just lost on clause

15. For the reasons that I outlined there, I oppose the measure—the objective assessments, the central distrust, I suppose, or lack of trust in the professional standards of medical practice, and the fact that it is making an already complex area more difficult. I will not go through all the reasons I used when arguing successfully against the earlier amendment.

The Committee divided on the amendment:

AYES (8)

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

NOES (13)

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

Majority of 5 for the Noes.

Amendment thus negatived.

The Hon. DIANA LAIDLAW: I move:

Page 10, lines 4 and 5—Leave out 'extraordinary measures' and insert 'life sustaining measures.'

This is consequential on earlier amendments where I sought, and Parliament agreed, to get rid of the term 'extraordinary measures' and insert the term 'life sustaining measures.'

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

Page 10, lines 1 to 6—Leave out subclause (2) and insert—

(2) If—

(a) the effect of using or continuing to use life sustaining measures in treating a patient would, in the opinion of the medical practitioner responsible for the patient's treatment or care, be merely to prolong life in a moribund state without any reasonable prospect of recovery or in a persistent vegetative state; and

(b) two other medical practitioners who have both personally examined the patient have certified in writing that they agree with that option; and

(c) no direction has been given by the patient or the patient's representative expressly requiring the use or continuation of life sustaining measures;

the medical practitioner or a person participating in the treatment or care of the patient under the medical practitioner's supervision is under no duty to use, or to continue to use, life sustaining measures in treating the patient (and therefore incurs no civil or criminal liability by refraining from using, or discontinuing the use of, life sustaining measures).

This amendment makes three changes of substance to clause 16(2). The existing clause 16(2) provides that a medical practitioner is, in the absence of an express direction, under no duty 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. The amendment firstly adds that the medical practitioner is under no such duty if the effect would be to prolong the patient's life in a persistent vegetative state. It can be argued that there is a difference between a moribund state and a persistent vegetative state. The *Oxford English Dictionary* defines moribund as: 'At the point of death.'

'Persistent vegetative state', as I earlier noted, is the phrase used in the cases and literature to describe those patients with irreversible brain damage who, on recovery from a deep coma, pass into a state of seeming wakefulness and reflex responsiveness but do not return to a cogitative, sapient state. Some patients in a persistent vegetative state can live for a considerable time after artificial feeding and life support systems have been withdrawn. Some patients in a persistent vegetative state have a swallowing reflex and do not need to be artificially fed. Thus it could be argued that a person in a persistent vegetative state is not necessarily moribund and a doctor who withdrew extraordinary measures would not receive the protection of clause 16(2). This amendment will put the matter beyond argument.

The second way in which clause 16(2) is amended is that new subclause (b) will require two medical practitioners other than the treating medical practitioner to concur in the decision not to use or continue to use life sustaining measures in treating a patient. This is an important provision. It introduces second opinions, which are the necessary prerequisites to a medical practitioner's enjoying immunity from liability. Opinions may differ on the number of medical opinions that should be required. For example, the House of Lords in Bland's case endorsed a procedure which had been proposed by the President of the Family Division. The President of the Family Division proposed that the approval of the court should be sought in all future cases where termination of treatment of a patient in a persistent vegetative state was considered desirable, and in all such applications there should be at least two responsible medical opinions.

Where there is no requirement of an application to a court, it is reasonable that the opinion of two medical practitioners, apart from the treating doctor, should be required. The third change to the subclause is to provide that not only is the medical practitioner under no duty to use or continue to use life sustaining measures but that the medical practitioner incurs no civil or criminal liability by refraining from using or discontinuing the use of life sustaining measures. The clause is at present drafted in terms of a legal statement that a person has no duty to act in certain circumstances. The purpose of the clause is to define the circumstances in which a person will not attract criminal or civil liability by failing to act, and the specification of lack of duty is a means to that end.

However, since the previous clause 16(1) is drafted in a straightforward manner in terms of not incurring civil or criminal liability, I believe it to be better to phrase the succeeding clause in the same way. That also has the advantage of saying directly what is meant to be achieved rather than saying it indirectly by reference to duty to act.

The Hon. DIANA LAIDLAW: I have received advice from a doctor working in the Southern Community Hospice based at Daw House and also from Dr Michael Ashby based at the Royal Adelaide Hospital and the Mary Potter Hospice. Both opinions are opposed to this amendment moved by the Attorney. They argue that it imposes a committee style decision-making process on the medical practitioner that is unacceptable in the special circumstances in which they work. Anyone who has been through this process of death and dying fully appreciates the care and devotion provided to the person who is ill by nurses and doctors in both hospice and palliative care situations.

I place great reliance on those two doctors and their colleagues when considering this amendment. As I say, they believe that this committee style decision-making process is unacceptable in the special circumstances in which they work. They view it to be excessively procedural and, to quote Doctor Ashby, 'a disaster for palliative care in this State'.

That is the advice I have received in relation to this amendment.

The Hon. CAROLINE SCHAEFER: I cannot understand why the provision of a second opinion would not increase the protection for the medical practitioners involved rather than decrease it and, as such, I am puzzled as to why there would be opposition from the very people who I believe this amendment chooses to protect.

The Hon. BERNICE PFITZNER: I also oppose the amendment. The clause deals with care of the dying, and we understand that these people are in an incurable state. To have this intrusion into their dignity whereby another two medical practitioners examine them is a great intrusion on the privacy of a terminally ill patient. It would be an onerous task for the patient—a patient who is perhaps riddled with cancer. The examination would have to be quite extensive and intrusive, and the dignity of the patient would not be preserved. I oppose the amendment.

The Hon. K.T. GRIFFIN: As the Hon. Caroline Schaefer said, there has to be some accountability and some protection—

The Hon. Bernice Pfitzner: They are dying.

The Hon. K.T. GRIFFIN: They may be, but when you are going to discontinue life sustaining measures there are occasions where a medical practitioner is wrong. I would have thought that it was in the interests of the patient as well as the medical practitioners for there to be a requirement for protections. In the United Kingdom the ultimate court of appeal has determined that when these sorts of decisions are taken—serious decisions about life and death—there ought to be an independent assessment apart from the treating doctor, who may well have a close emotional attachment either to the patient or the relatives and would benefit from the additional opinions. The only other point I make is that the two other issues of principle to which I have referred and which address defects in the existing clause, apart from the question of the other medical opinions, do not seem to have been addressed. I would have thought that they are equally as important as the particular objection on the basis of the so-called committee style of approach to this.

The Hon. M.J. ELLIOTT: Under the Natural Death Act, which has been in force for some nine years now, one doctor alone determines whether or not a person is suffering from a terminal illness. Under that Act it does not have to be the terminal phase of a terminal illness, but they can simply determine that a person is suffering from a terminal illness and the withdrawal of extraordinary measures is not seen to constitute a cause of death. It seems that even the Bill as it now stands is far more restrictive than the Natural Death Act has been for the past nine years.

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

AYES (13)

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

NOES (8)

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

Majority of 5 for the Ayes.

Amendment thus negatived; the Hon. Diana Laidlaw's amendment carried.

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

Page 10, lines 7 to 16—Leave out subclauses (3), (4) and (5) and insert—

(3) for the purposes of the law of the State——

(a) the administration of medical treatment for the relief of pain or distress in accordance with subsection (1) does not constitute an intervening cause of death; and

(b) the non-application or discontinuance of life sustaining measures in accordance with subsection (2) does not constitute an intervening cause[1] of death.

[1] A *novus actus interveniens* i.e. a cause that breaks a pre-existing chain of causation.

Three subclauses are amended by this amendment. First, subclause (3) is amended. The current draft states that compliance with clause 16(2) and (3) means that the act or omission is not a cause of death. That is a fiction. The act or omission is a cause of death. The purpose of this clause is to ensure that any person who caused the patient to be in a terminal state cannot use the intervention of measures authorised by the Bill to escape liability for homicide. For example, suppose A and B have a fight. A hits B, and B falls into a persistent vegetative state. If a medical practitioner terminates B's life support in accordance with the provisions of this Bill, the law should be that A can still be prosecuted for homicide, and it should not be possible to argue that A did not cause the death of B because the doctor did.

The purpose of my amendment to subclause (3) is to make this clear. That would not best be done by stating a fiction that the medical treatment was not a cause of death. It was a cause of death. It is best stated by saying directly that the actions authorised by this measure do not interrupt the chain of causation from the original perpetrator, if there is one. The Latin for that, as the footnote states, is that the intervening act authorised by this measure is not a *novus actus interveniens*: a new intervening act.

The other parts of this amendment are drafting amendments. Subclause (4) provides that a direction may only be given under subclause (2) by a patient's representative if the patient is incapable of making a decision about his or her medical treatment. This is now provided for in the amendment that I moved to clause 4(2), and subclause (5) sets out what is a patient's representative. This is now defined in clause 4.

The Hon. DIANA LAIDLAW: I support the amendment.

The Hon. ANNE LEVY: If life sustaining measures are turned off, that does not constitute an intervening cause of death. I appreciate the Attorney-General's argument that, if A hits B, A should be capable of being charged with murder, of having caused the death of B. However, under this amendment what would be written on the death certificate as the cause of death? Would it be the underlying cause, such as a massive cancer, or would it be the removal of life sustaining measures. I think this is very important. A large number of people die from diseases such as cancer, and for the purpose of medical records the cause of death is collected by the Health Commission, which publishes figures on the number of deaths caused by a particular disease. If the underlying cause of death is cancer, it would be necessary that that appear on the death certificate as the cause of death. I want reassurance that the Attorney's phrase of an intervening cause, a *novus actus interveniens*, would not affect cancer or a particular disease being put on the death certificate as the cause of death.

The Hon. K.T. GRIFFIN: My understanding is that it will not prejudice that at all.

Amendment carried; clause as amended passed.

Clauses 17 and 18 passed.

Schedule 1—'Medical power of attorney.'

The Hon. BERNICE PFITZNER: I move:

Page 12, after line 19—Insert under the space for the signature—
Dated the day of 19 .

This is a technical amendment regarding dating of the schedule.

The Hon. DIANA LAIDLAW: I accept the amendment.

Amendment carried.

The Hon. BERNICE PFITZNER: I move:

Page 12, line 23—Leave out 'my principal's desires so far as they are known to me' and insert 'the conditions and directions set out above'.

I am not sure that I should proceed with that.

The Hon. K.T. Griffin: What happens if there is specific instruction set out above?

The Hon. BERNICE PFITZNER: I understand that this refers to clause 7, which is to put the best interests of the grantor into the actual body of the legislation and the schedule, and Parliamentary Counsel directed—

The CHAIRMAN: It is consequential.

The Hon. K.T. GRIFFIN: I would have thought that it was necessary because, if you look at the form of the medical power of attorney, you will see that it states:

2. I authorise my medical agent to make decisions about my medical treatment if I should become unable to do so for myself.

3. I require my agent to observe the following conditions and directions in exercising, or in relation to the exercise of, the powers conferred by this power of attorney.

I would have thought that it was necessary for the attorney at least to acknowledge that the grant of powers is accepted upon the conditions which are set out and not just an issue of the 'principal's desires so far as they are known to me'. It is already covered in the body of the Bill that the attorney is required to act in a—

The CHAIRMAN: I point out that, in clause 7, the Hon. Bernice Pfitzner moved an amendment, which related to new clause 7(7) and which stated that the powers conferred by a medical power of attorney must be exercised in accordance with any law, conditions and directions contained in the medical power of attorney. I think that this is just bringing it into line with that, is it not?

The Hon. BERNICE PFITZNER: I understood that Parliamentary Counsel directed it would be necessary for this to be inserted if that amendment was accepted.

The CHAIRMAN: It was accepted.

The Hon. BERNICE PFITZNER: I was directed that this is a consequential amendment.

Amendment carried.

The Hon. BERNICE PFITZNER: I move:

Page 12, after line 26—Insert under the space for the signature—
Dated the day of 19 .

This is a technical amendment which dates the schedule, as does the amendment to line 34.

Amendment carried.

The Hon. BERNICE PFITZNER: I move:

Page 12, after line 34—Insert under the space for the signature—
Dated the day of 19 .

Amendment carried; schedule as amended passed.

Schedule 2—'Direction under section 6 of the Consent to Medical Treatment and Palliative Care Act 1994.'

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

Page 13, line 4—Leave out 'in a vegetative state that is likely to be permanent' and insert 'in a persistent vegetative state'.

Amendment carried.

The Hon. BERNICE PFITZNER: I move:

Page 13, lines 7 to 11—Leave out and insert 'I am not to be subjected to life sustaining measures if the effect of so doing would be merely to prolong life in a moribund state without any real prospect of recovery.'

The intention of this amendment is to simplify the advance directive, especially when we have people as young as 18 having to sign it. At present, the directive has two options: the first part is a simplified provision, which states that a person is not to be subjected to extraordinary measures if they will tend to prolong life without any real prospect of recovery; and the second part goes into the details of the kinds of medical treatment that the person wants. I am concerned that a very detailed advance directive could be couched in medical jargon which, I feel, could lead to litigation. I have two copies of draft advance directives. One has been drafted locally, and I will read to my colleagues the kinds of details for medical treatment that a person nominated to sign this schedule might have to understand. The section explains the medical conditions to which this directive applies, as follows:

(a) in the terminal phase of an incurable illness.
(b) [that I am] permanently unconscious—

which is rather difficult to ascertain sometimes—

or conscious but irreversibly brain damaged, such as in the persistent vegetative state or advanced dementia. . .

They then go on to explain what the persistent vegetative state means:

. . . a state in which severe and irreversible damage has occurred to the higher cortical centres of the brain (e.g. after stroke or head injury), but the brain stem is intact and consequently the vital reflexive functions of the body. . . continue. The patient may have periods of apparent wakefulness with eyes open, but does appear to be able to communicate, talk, see or hear.

The Hon. Caroline Schaefer interjecting:

The Hon. BERNICE PFITZNER: Yes, this is all in the advance directive that has to be signed. It is put forward by Dr Michael Ashby *et al*. With respect to dementia I quote as follows:

Progressive impairment of brain function, with variable features and time course. Common features include loss of interest in life, personality change and recent memory loss with anti-social and disinhibited behaviour and depression. Sleep disturbance and wandering, loss of bowel and bladder control. . . often occurs. Increasing confusion and complete social disintegration lead to the person becoming bedridden, and eventually death occurs. The commonest cause of dementia over 60 years is Alzheimer's disease.

That is a rather contentious statement. The following passage relates to cardiopulmonary resuscitation (CPR):

Emergency measures to maintain heart pumping. . . and artificial ventilation. . . when a person's breathing and heartbeat have stopped. . .

That is the draft of an advance directive. Because of the lateness of the hour I will refer to another one only briefly. It is a personal health directive put up by a Canadian group and it contains a chart with the categories of life threatening illness, feeding and cardiac arrest. Under that it states that if the condition is reversible four things should be done, involving palliative, limited, surgical and intensive categories. If it is irreversible, there are, again, four things to be done: palliative, limited, surgical and intensive. They then define 'reversible condition' as follows:

. . . condition that may be cured without any remaining disability;

That is a rather contentious description. 'Irreversible condition' is then defined as follows:

> [one] that will leave lasting disabilities;. . . multiple sclerosis, severe head injury, Alzheimer's disease.

It then explains in technical medical jargon 'palliative care', 'limited care', 'surgical care' and 'intensive care'. I have a great worry about these advance directives and have moved the amendment with that concern in mind. I would like this simple advance directive rather than the more detailed and difficult advance directive.

The Hon. M.J. ELLIOTT: We will go through this whole exercise again, I presume tomorrow. I oppose the amendment. The vast majority of people who fill out an advance directive will fill it out in the terms that the Hon. Ms Pfitzner proposes. However, the amendment does not allow anybody to do anything different. If a person chooses, because they have knowledge or whatever, to do a more elaborate advance directive, surely that is their right. Whilst some people who are happy to deny all extraordinary measures, there may be some people who will say, 'There are some extraordinary measures I do want tried and some that I don't,' and they are quite explicit about it.

I know that the Hon. Mr Irwin has made comment about people in comas and the fact that they might come out. He might like to make an advance directive that could say, under certain circumstances, 'I don't want it.' I do not think we should make this advance directive too inflexible, even though I suspect that the vast majority of people who choose to do them will probably do them in exactly the terms that the Hon. Ms Pfitzner suggested.

The Hon. Anne Levy interjecting:

The CHAIRMAN: Order!

The Hon. M.J. ELLIOTT: That's right. That was a reasonable interjection. I do very strongly oppose the amendment. When this form is available, I would expect advice to be available with it. People could say, 'Here is one way you could fill it in, or there are other options.' I would hope and expect that explanatory material would come with it giving people some options.

The Hon. DIANA LAIDLAW: I, too, oppose the amendment and argue that it is too limiting, very much in the sense that the Hon. Mr Elliott did. It is important to recognise that the amendment does not allow a person scope to nominate particular forms of treatment. Clause 6(2)(a) provides:

> A direction under this section must be in a form prescribed by section 2 or in a form prescribed by regulation.

I understand that it would be the Minister's intention, after discussion with Dr Michael Ashby and others involved in the hospice and palliative care movement, is to market test a number of forms to see what the response is generally to that and then to prescribe that form by regulation. So, we are not confined to this form, and the Bill already provides for that other alternative by way of regulation, which I understand the Minister wishes to exercise.

The Hon. BERNICE PFITZNER: I think that, rather than limiting it, this is making it more flexible, because the term is 'life sustaining measures', and the only thing it does not detail is the kind of life sustaining measures. My concern is that different experts will interpret all those various medical procedures quite differently. A general practitioner will interpret some of those life sustaining measures quite differently from how a specialist interprets them. It is my concern that if you actually denote the type of life sustaining measures it will restrict you and, over and above that, it will cause a lot of arguments, dissent and, in the end, litigation. That is the point of the amendment.

The Hon. T. CROTHERS: Members are having problems with what is a complex matter. However, at the moment I have the problem of having put in two successive 18 hour days and I am suffering from a lack of sleep sufficient to prevent my being able to grasp the matter with the commonsense which is required and which was embraced by the Leader of the Government in this Chamber. In the interests of commonsense and a capacity to address the matter properly, might I suggest at this stage that his suggestion be taken up?

The Hon. R.I. LUCAS: It seems that some members think that if we conclude this tonight we will have a clean Bill by tomorrow. They ought to know that that is not the case; the staff are superhuman but not quite that superhuman, so the prospect of passing it tonight will not mean we have a clean Bill for tomorrow. As I understand the process, whether we complete it tonight or tomorrow, we will get a clean Bill some time before next Tuesday; we hope on Friday, so that members and Parliamentary Counsel can go over it. I know the Hon. Mr Elliott thinks —and some others may well have the same view—that if we complete it tonight we will have a clean Bill tomorrow and can recommit it then. That will not be possible. On my understanding, the recommittal will have to be on Tuesday next week. I will make the comment that I wanted to make earlier.

One of my concerns about this issue relates to a number of the other issues in the Act. From the (I presume) informed opinion of a number of medical practitioners who have given indications by way of possible advance directives, the Hon. Bernice Pfitzner has raised a whole series of options, for example, that this legislation will apply to cases such as advanced dementia and in particular to Alzheimer's disease.

In relation to this issue, which has arisen on a number of occasions throughout the Bill, I refer back to the definition of the terminal phase of a terminal illness. There were widely differing views in the debate that we had earlier, but the argument that I was trying to develop was that because of the definition in the Bill of a terminal phase of a terminal illness meaning the phase of the illness reached when there is no real prospect of recovery or remission of symptoms, I take it that the Hon. Bernice Pfitzner's examples from medical practitioners who have lodged or who will lodge advance directives are clearly of the view that this provision will apply to persons with advanced dementia or Alzheimer's disease on the basis that the Bill, when it refers to the terminal phase of a terminal illness, makes reference to it. That issue was debated last time and many members argued that was not the case. Again, we have argued about it this time and some members have argued that is not the case and that we are not talking about people in those positions. How many thousands of people are there with Alzheimer's disease? There is now a national publicity campaign talking about the tens of thousands of people with Alzheimer's disease.

The Hon. Anne Levy: How many of them are on drips?

The Hon. R.I. LUCAS: I have no idea. We are not just talking about drips.

The Hon. Anne Levy: Life sustaining measures.

The Hon. R.I. LUCAS: You have missed the point that I was making. It is not just in relation to the advance directive; it is in relation to all the other aspects of the Bill and whether the terminal phase of a terminal illness applies to people other than those whom some of us were talking

about—someone who is in a coma or someone who is flat on his back with drips and a whole variety of other extraordinary measures being applied to them. The argument was that the terminal phase of a terminal illness could apply to a range of other conditions because of its definition. Having heard the Hon. Bernice Pfitzner's advance directives written by a number of medical practitioners, surgeons or experts—

An honourable member interjecting:

The Hon. R.I. LUCAS: Mr Ashby wrote it. Mr Ashby is the expert whom a number of members have been quoting (the Hon. Sandra Kanck and the Hon. Diana Laidlaw) as being the expert in this area and he has indicated that this Bill refers to people with Alzheimer's disease or advanced dementia. That is confirmation from the most senior advisers that the provisions of the Bill relate to a whole range of people whom some members have previously argued we were not talking about. I repeat the point made by the Hon. Mr Elliott in relation to problems in connection with the definition of a terminal phase of a terminal illness. Based on advice from Mr Ashby and others, I indicate that my view remains exactly the same on that matter, and something needs to be done.

The Hon. DIANA LAIDLAW: I indicated earlier that we have clause 6 which provides that the directive can be in the form as in schedule 2 or by regulation. It is the Minister's intention to do it by regulation after Michael Ashby and others have canvassed opinion on a variety of forms that have been produced for this purpose. He wants to market test them. That is the approach supported by the Health Commission, the Minister and others. We can argue for the next 20 hours about what is in schedule 2, but we have provided the alternative in the Bill that it can be by regulation, and it is the Minister's intention that it will be by regulation.

The CHAIRMAN: There is a small amendment that should be made to the Hon. Bernice Pfitzner's amendment. Instead of 'extraordinary measures' we revert to what appears in the Bill—'life sustaining'. Will you move that that amendment be agreed to?

The Hon. BERNICE PFITZNER: I move to have that amendment included.

Amendment negatived.

The Hon. BERNICE PFITZNER: I move:

Page 13, after line 14—Insert under the space for the signature—
Dated the day of 19 .

This amendment is consequential.

Amendment carried.

The Hon. BERNICE PFITZNER: I move:

Page 13, after line 22—Insert under the space for the signature—
Dated the day of 19 .

This is consequential.

Amendment carried; schedule as amended passed.

Schedule 3—'Repeal and transitional provisions and consequential amendments.'

The Hon. DIANA LAIDLAW: I move:

Page 14, line 10—After 'extraordinary measures' insert 'as defined in that Act.'

This simply clarifies the situation. It is a drafting amendment.

Amendment carried; schedule as amended passed.

Long title.

The Hon. DIANA LAIDLAW: I move:

Page 1, line 7—Leave out 'the dying' and insert 'people who are dying'.

Amendment carried; title as amended passed.

SOUTH AUSTRALIAN WATER CORPORATION BILL

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

SOUTH AUSTRALIAN COUNTRY ARTS TRUST (TOURING PROGRAMS) AMENDMENT BILL

Returned from the House of Assembly without amendment.

ELECTRICAL PRODUCTS (ADMINISTRATION) AMENDMENT BILL

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

ADJOURNMENT

At 12.26 a.m. the Council adjourned until Thursday 27 October at 2.15 p.m.